

Scottish Public Services Ombudsman Scottish Welfare Fund Independent Review

Equality and Human Rights Impact Assessment

Status: Draft – open to comments

Summary

This is our *Draft* Equalities and Human Rights Impact Assessment. In this, we are publishing what we have done so far to ensure that when undertaking the role of independent reviewer of Welfare Fund decisions that we take account of and respect the rights of those bringing the decisions to us for review.

This document sets out the background and the approach we have taken to date. It also includes the analysis of the key documents the statement of practice and rules for oral hearings – appendix 1. This uses a tool which we've adapted from those used by others for our purposes.

We are not though finalising our assessment. The review process will not begin until 1 April 2016. This assessment is of a practice, process and approach that does not yet exist and is, at this stage, theoretical. This means we have found it difficult to engage actively with users to the extent that we had hoped. In addition, in response to our consultation on our approach to equalities and human rights, we received a number of comments stressing that this should not be a tick box exercise. We have always said that all of the aspects of our work will be reviewed and may change as we gain experience and this will particularly be the case in the first year of our work.

Having considered all those points, we have decided to not finalise the impact assessment until we can test our process and understand users experience *as it is* and that means it will remain live until at least the end of the first year. We will also publish how we found this experience of conducting the analysis on an on-going rather than a snap-shot basis.

This means we are welcoming comments on this document and will not complete the assessment of our process until 1 April 2017. If you have any comments on any aspects of the assessment including the tool we are using or if you have any feedback from your experience of our service that would help develop this work, please contact us.

Background and methodology

From an early stage we wanted to ensure we were exhibiting best practice in this area. In discussions with the Government about the legislation that would give us this responsibility we asked them to include in that legislation statements which would:

- allow us to take reviews orally as well as in writing; and
- allow us to meet the standards of article 6 of the European Convention of Human rights. Article 6 is concerned with the fairness of formal decision-making.

As we began to prepare for this new role, we asked a group of third sector organisations to join a sounding board that would allow us to take their views in to account as we prepared. They have provided us with invaluable advice and assistance throughout.

The Consultation

In September 2015 we consulted on our approach to this work. The consultation document set out the limits of what this assessment would cover. It could not cover the creation of the scheme, legislation or guidance which were the responsibility of the Scottish Government. Instead, we needed to focus on our responsibility which is the delivery of the review process.

In that consultation document, we said we intended to undertake an EQHRIA – looking both at equalities and at human rights. This was based on good practice advice issued by the SHRC and EHRC. We highlighted the FAIR approach and the 10 building blocks that support this.

Our general approach received broad support, we were encouraged in the additional comments to ensure that we:

- treated applicants with dignity and respect
- could be confident our service was accessible
- collected sufficient information to understand our users and identify any equality issues
- used the experience of users from protected characteristic groups and
- were genuine and open minded when considering the impact on different groups

We were also asked to consider additional approaches and principles, in particular,

- To consider the PANEL approach
- To consider the Principles of Inclusive Communication

- To consider a Child's Rights Impact Assessment

We were provided with advice about sources of information and further support.

Taking this forward

The first part of the FAIR approach requires us to look at the facts that are available.

FACTS

In the consultation we identified information that was already easily accessible to us and of clear relevance this included:

- **Information published by the Government relating to the interim scheme.**
- **The experience of the Independent Review of the Social Fund (IRS)**
- **Our own experience as a provider of a service to the public**

As can be seen from above, the consultation responses identified some additional principles that could help us understand what approaches would be effective. We were also encouraged to use the experience of welfare rights and advocacy workers and signposted to some academic work on decision-making.

We are committed to listening to users. We held an engagement event which, though small in number, provided us with some very important feedback. In particular about the need to listen and the benefits of personal contact.

From our own experience, we engaged with our own advice team who as well as having the most direct experience of our work are members of the Ombudsman's Association's Equality and Rights Group. This is an informal group which shares best practice across the sector.

Analysis

We said in our consultation we would set out our understanding of our legal obligations. Like all public organisations equalities and human rights are things we need to take into account.

As a public sector body we are required to take into account human rights and this includes ensuring our decisions are in line with them and we interpret legislation etc, when we can to comply with the convention. We are subject to the General Equality Duty, although, not the public sector specific duty. We must process information in accordance with Data Protection principles and legislation. And, notably the need to treat people with respect and preserve their dignity is built into the legislation surrounding the welfare funds.

We knew we needed to analyse our approach from the point of view of our obligations. We also decided we did not want to be limited by them and have looked at how we could comply with the specific PSED in analysing our equalities position in detail. We do have equality commitments in our strategic

plan which we will take into account and will consider whether we should put in place equalities outcomes for this area. In the consultation other rights and principles were named and we have also looked at how these could supplement and support the work that we do. **We are keeping this analysis open and would be very happy to receive comments and views on the rights that we are considering and if there are others it would be useful to include.**

The analysis in the appendix shows how we have tried to keep human rights and equality duties at the forefront of our thinking when finalising the statement of practice and rules for oral hearings. The statement of practice is our foundational document. Our guidance and practice flow from this. It can only be changed after consultation. We asked for the legal powers to issue rules for oral hearings to ensure we could be compatible with article 6 of the ECHR. The analysis shows how we approached making specific decisions about these when thinking about equalities and human rights. We did though also want to highlight some points which underlined our thinking throughout.

Identifying the critical points in the scheme

The starting point is that everyone has rights and deserves to be treated as such. The legislation which creates the welfare funds highlights dignity and respect. In considering how the rights and duties of individuals should be reflected in our policies and practices, we need to ensure that everyone has the:

- Ability to **Access** our service
- Ability to **Participate** in the process
- Right to be **Respected and have their dignity preserved**
- Right to be **treated as someone with rights**

The final point is not circular but is about ensuring we are always aware of the person as someone whose autonomy we need to respect and support.

We do need to be aware of the difficult question of costs and the need to be proportionate in our approach. This mean, in all our decisions, we need to assess what we can best achieve with the resources we have available “while always ensuring that the decision we make protects people’s rights as much as possible in the circumstances”. By undertaking this analysis we can reassure ourselves that we are meeting the obligations we need to and that people are not being discriminated against.

Identifying actions need and responsibilities for doing this

The analysis tool that we have used and which is still under development allows us to identify who is responsible for taking any issues forward or providing monitoring. We are also considering how to link this to other tools and to make this a streamlined part of our regular process of analysis and review.

While the analysis is still on-going, we wanted to highlight some practical steps that had already been taken. The first document that we needed to finalise was the Statement of Practice. The first decision we made was in response to concerns raised about the possibility that we could take a negative inference from a failure by an applicant to provide information. We received many comments that, all, in effect said this was a failure to respect an individual's context and we agreed very quickly that we will not take a negative inference if a member of the public chooses not to provide information or is reluctant to engage in a particular method of inquiry.

We also had a number of detailed comments about consent. We knew from talking to both council practitioners and the third sector that this needed to be handled sensitively. We decided to undertake a Privacy Impact Analysis to look specifically at the rights engaged around this. Discussions around this led to a further change in the Statement of Practice. Previously we had said we would attempt to let people know if we felt we would need to obtain information from a third party that was sensitive. Given the vulnerabilities of the groups using the SWF and the need to ensure they were treated with dignity and respect, we decided that this should become a more positive obligation and we now say we will usually contact people when we will be obtaining information from a third party. This will allow them a chance to object. The use of the phrase "usually" provides us with flexibility when this will be routine – such as obtaining DWP data through the Council who already have access to this. The PIA can be found at Appendix 2.

One very practical step we looked at was the way we currently asked people for information about themselves and we are piloting a new approach to the way we record equalities monitoring information.

It is also important to recognise that the regular practice of our office helps to support this area. One example is that in line with our regular practice we are working with a plain language organisation to help prepare our key documents and leaflets. We will also be able to use the accessibility tools that SPSO already has which include access to translation support. We have noted the comments about the principles of inclusive communication and will use those as part of those review.

Conclusion

Our initial assessment has given us confidence that the statement of practice and the rules oral hearings would not have any negative or detrimental impact on people with protected characteristics and will help us to ensure we are taking human rights into account. The assessment has already helped us make some initial decisions. We have also been able to build on our existing practice as an accessible organisation when developing points of access to the scheme.

However, we are very aware that underlying these documents is a process that is not yet in existence. We have sought to understand what that would be like for users by some direct contact and working with groups who support them but we did feel that this was more abstract than we would have liked. This is why we are committing to keeping this assessment open for the full first year of operation. We will be happy to receive comments from anyone viewing this on our website but we will also actively seek to reflect on feedback from those who bring us applications and continue to work with representative and other groups such as advocates whose perspective will help us to ensure when we reflect on our practice that equalities and human rights considerations are clearly taken into account.

Going forward – ongoing Review and monitoring

We will use the real life experience of users to test our processes and systems.

We will keep the assessment under review until our practices are established to ensure that any significant changes in the first year are not approved until they are considered from a rights and equalities perspective

Staff will be encouraged to identify human rights and equalities issues in their work. This will be built into our training plans.

We will consider how we can best embed this approach in our regular practice of QA and review.

We will also consider and reflect on comments on this document until 1 April 2017.

SPSO: Draft Equality and Human Rights Impact Analysis (EHRIA)

Equalities duties and human rights are set out in separate table but cross-referencing is encouraged and remember the same evidence may be relevant for each.

Policy/practice The SPSO Statement of Practice and Rules for Oral Hearings

<p>Intended outcomes (include outline of objectives and function aims)</p>	<p>There is a statutory requirements to have a statement of practice. We have been given the power to issue rules for oral hearings (sections 9 and 10 of the Welfare Funds (Scotland) Act 2015. They provide the foundation of our work as the independent reviewer of welfare fund decisions. They will be built on with guidance and practice but if guidance conflicts these will apply.</p>
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<p>Who will be affected?</p>	<p>People who have applied to the fund who come to us for an independent review. Local Authorities whose decision we will be reviewing The Government who are supporting an oversight role for the fund. Reviewers who will be responsible for making decisions on behalf of the Ombudsman.</p>
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<p>Engagement and involvement</p> <p>Have you involved people who use services, staff and other stakeholders? Include known representation across the characteristics protected in the Equality Act: age, disability, gender, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion and belief, and sexual orientation.</p>	
<p>Target Group</p>	<p>Summary of Involvement</p>

People who use services	This service is not yet in use. We have had a user event with Inclusion Scotland to talk to disabled users and users with learning difficulties. We used an easy read version of the statement of practice for this. We have also created a sounding board to help us prepare. This include people from groups who support and advice potential applicants either directly or through other groups. Members of the group were from: [list]. We have a pre-existing customer sounding Board who were given early sight of the documents too. And we had a full public consultation.
Staff	We have had a small team involved in preparing for this role. The reviewers are now in post and will be asked to review this and other aspects of our practice
Other stakeholders	Local authorities participated in the full public consultation. We also created a sounding board of local authority users. This was made up of staff from local authorities with active involvement in the current scheme. We also had a representative from COSLA. The government participated in this group.

Protected characteristics and evidence

The welfare funds scheme itself has been reviewed on this basis and approved by the government. We have developed the statement of practice and the oral hearings rules to support participation and access for all. We were provided with useful evidence as a result of our consultation and evidence was also available that was directly related to the find. We have highlighted evidence that was particularly influential in our thinking in appendix 3. This includes evidence available for the current scheme and the previous independent review

It will be seen from this summary below that what we found was that poverty combined with a protected characteristic increases vulnerability and that is something we intend to keep in mind as we review our process and the needs of those who come to us going forward. In this table we highlight briefly some of the main points we have identified for each protected characteristic. There was significantly less available evidence for Gender reassignment; pregnancy and maternity; race; religion or belief and sexual orientation. We use generally available information about these groups.

Summary of evidence for protected characteristics	
Age: (include younger as well as older people, safeguarding, consent and child	Statistics for age of actual applicants are available on the SG website. The fund cannot be directly applied for by an applicant under 16 but their needs can be taken into account. There has been some concern about older people not applying for the fund and low awareness. This predates the Scottish funds and was also noted in the previous UK

welfare)	wide schemes.
Carers: (impact of part-time working, shift-patterns, general caring responsibilities)	Evidence from the Government and the Social Fund study show applications from families under multiple pressures. While there is no specific evidence relating to carers it is likely that people applying will be in caring roles and these may go beyond the immediate household.
Disability: (include attitudinal, physical and social barriers)	The study conducted in 2011 by the Social Fund highlighted the proportion of applicants reporting mental health issues and physical disabilities. Around 29% of applicants were noted to have both. In the consultation we were signposted to the Principles of Inclusive Communication as good practice.
Gender: (men and women)	Current data suggests more men apply for Crisis grants and more Women for CCGs. Women were likely to be lone parents with caring responsibilities. It was noted in the analysis by the government that domestic abuse was a factor in applications. We were told during discussions that, for this particular group, privacy and the protection of information was particularly important. Recent reports have highlighted the particular impact of welfare reform on women
Gender Reassignment: (transgender and transsexual people, issues such as privacy of data and harassment):	Limited information was available about users of the scheme. When specific information for the fund was not available we looked at the information on the Government's equality finder for each group. These suggested particular issues around prejudice within families and the community which may lead to increased risk of an unsettled life. Poverty in all groups compounded existing vulnerabilities.
Pregnancy and maternity: (impact of working arrangements, part-time working, infant caring responsibilities and breastfeeding)	Limited information was available about users of the scheme. When specific information for the fund was not available we looked at the information on the Government's equality finder for each group. The impact of welfare reform on women has been highlighted and the additional vulnerability of pregnancy and maternity can lead to crisis as well as longer term needs arising from long-term poverty.
Race: (include differences between ethnic groups, nationalities, gypsies and travellers, language barriers)	Limited information was available about users of the scheme. When specific information for the fund was not available we looked at the information on the Government's equality finder for each group. Overall there was some evidence of an increased risk of relative poverty for some ethnic groups and gypsies and travellers were noted to have particular vulnerabilities.

Religion or belief: (include different religions, beliefs and no belief)	Limited information was available about users of the scheme. When specific information for the fund was not available we looked at the information on the Government's equality finder for each group. Poverty was higher amongst the population of certain religions. In addition, issues relating to religion and belief can arise around culture, food and family life when decisions are made without an awareness/ensuring choice and participation.
Sexual Orientation: (include impact on heterosexual people as well as lesbian, gay and bi-sexual people)	Limited information was available about users of the scheme. When specific information for the fund was not available we looked at the information on the Government's equality finder for each group. Decisions within the scheme should reflect diverse families and be non-discriminatory.

Equalities Analysis – overview

Eliminate discrimination, harassment and victimisation
(includes unlawful discrimination because of marriage or civil partnership status, as well as other protected characteristics)

The Government's analysis identified no equalities issues with the underlying scheme.
http://www.legislation.gov.uk/sdsi/2016/9780111030332/pdfs/sdsieqia_9780111030332_en.pdf It was though very clear from the evidence that poverty combined with protected characteristics to make applicants particularly vulnerable. Critical points for the review process are to ensure we understand the context of users to allow us to help them to participate and to ensure decisions are being made appropriately. Decisions about the final version of the statement of practice and oral hearing rules focused on this need. In terms of taking this forward, the action plan highlights the need for review and support for staff training. We were aware of the importance and sensitivity of personal information and have conducted a PIA for this scheme.

We have not identified any aspects of our approach to reviews which would have a negative impacts. Some aspects of the scheme such as the move to allowing oral applications may improve access. We intend to keep access and participation in particular under review. When doing so, we will consider whether the principles for inclusive communication may assist.

<p>Advance equality of opportunity (includes removing or minimising disadvantages, taking steps to meet the needs, and encouraging participation in public life of people from protected groups)</p>	<p>Participation is critical to the review process. The equalities information from the scheme currently operating in Northern Ireland stressed communication and training. The need for understanding and good communication was a strong focus of the consultation responses we received. Decisions were made to improve access and to take into account differing access needs. We intend to report on our work both in terms of who is applying for independent reviews and any work we undertake to reduce barriers and improve participation but also so that the impact of the scheme generally in terms of discrimination can be understood. There was limited involvement in the from actual users and evidence was mostly through others or from other schemes. The action plan concentrates on how we review the process to ensure that we can take into account the views of users directly.</p>
<p>Promote good relations between groups</p>	<p>This is not a central part of our role as reviewer. however by adding to the information in the public domain through reporting we would hope to support better understanding of the impact of poverty on the vulnerable.</p>

<h2>Human Rights</h2>	
<p>Human rights potentially engaged</p>	<p>In 2002 the IRS undertook an analysis which stressed the responsibility on public bodies to act in way compatible with rights. In this area that would include setting up the process and in our decision-making. This analysis looks at the process aspects. We have noted in particular the significance of rights in article 6 and article 8. Article 6 is the fairness in decision-making article and article 8 concentrates on respects for private and family life which includes issues of privacy, as well as autonomy, choice and participation.</p> <p>While we have concentrated on the process issues we have also noted that there are also international human rights obligations which the welfare fund contributes towards achieving. Article 11 of the International Covenant on Economic, Social and Cultural Rights provides the right to an adequate standard of living, adequate food, clothing and housing, and to the continuous improvement of living conditions. Article 9 of that Convention provides for the right to social security. The Disability Convention (UNCRPD),</p>

	Article 28, also provides for the right to an adequate standard of living and social protection, highlighting the additional considerations for disabled people e.g. “to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including...financial assistance...”. These wider human rights obligations can help shape the work of the welfare fund, in terms of the overall goals it aims to achieve
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Statement of Practice – changes made

We assessed the statement of practice.

- We decided we needed to understand the privacy impact in more detail and have conducted a PIA. This led to a change to emphasise that it will be our regular practice to ensure, so far as possible, that applicants are aware and comfortable with us approaching third parties for information (ie not the Council).
- We decided not to make a negative inference if an applicant decides not to participate. The feedback we have indicates that this could have had a negative impact on some groups who may find it difficult to engage or who may be intimidated. We will try to ensure that requests are made in a way that will allow people to engage when, without this, it is likely we will make a negative decision, but will respect decisions not to.

Oral hearings – changes made

- There was concern that it was not obvious that lay representation would be allowed. The rules were amended to make it clear that both lay representation and a supporter were options to give those who may be attending the choice of what would work for them.
- We agreed with a comment that there should be changes to allow for an overriding objective. These changes allow us flexibility when the normal process would be unfair and allow us to reflect individual needs. This also gives us more flexibility to both reduce and increase timescales.
- We emphasized the timeliness by noting we would write the decision “as soon as is reasonably practicable”.

Log of Equality and Human Rights actions

Give an outline of the key actions based on any gaps, challenges and opportunities identified during engagement, involvement and evidence analysis. Include any action required to address specific equality issues and data gaps that need to be addressed.

Category	Lead (in consultation with key internal and external stakeholders)	Target Date	Actions	Success measure	Completion Date
Protecting sensitive information	Head of CSA	1 April 2016	Undertake a privacy impact assessment	Ensure our consent and other policies are fully compliant with legislation and consider the needs of users before launch	1 April 2016
Understanding users	SWF Team Manager	Review end of Quarter 1 2016/17 to assess achievable target date, based on review of experience to date	Develop a training plan to support reviewers	Assess confidence of reviewers before and after training	
Involving users	SWF Team Manager	Review end of Quarter 1 2016/17 to assess achievable target date, based on review of experience to date	Develop a plan to ensure we have appropriate feedback from users	user involvement directly drives service improvements	

Improving the understanding of the role of rights/equalities in the scheme	SWF Team Manager	Review end of Quarter 1 2016/17 to assess achievable target date, based on review of experience to date	Using information when available to highlight rights/equalities issues	Publish report which highlights rights/equalities issues.	
Identify potential equality outcomes for the review process	SWF Team Manager		To undertake further analysis and consideration through the year and review the data on users to help support improvement work in 2017/2018	Publish analysis and outcomes	1 April 2017

Appendix 2 – Privacy Impact Assessment

Privacy impact assessment screening questions

These questions are intended to help you decide whether a PIA is necessary. Answering 'yes' to any of these questions is an indication that a PIA would be a useful exercise. You can expand on your answers as the project develops if you need to.

You can adapt these questions to develop a screening method that fits more closely with the types of project you are likely to assess.

Will the project involve the collection of new information about individuals?

Yes

Will the project compel individuals to provide information about themselves?

We won't be compelling individuals but it will be necessary for individuals to provide information about themselves to allow us to process and progress their request for an independent SWF review.

Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information?

Occasionally this may be the case. For example:

- advocacy agencies, support workers or other advocates/representatives who haven't seen all of the information processed or collected by the Council
- Possibly GPs (very occasionally)
- Some others

Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?

We will be using information about individuals for a purpose it is currently used for. We will be using information to consider an SWF application previously processed and reviewed by a council.

Does the project involve you using new technology that might be perceived as being privacy intrusive? For example, the use of biometrics or facial recognition.

No.

Will the project result in you making decisions or taking action against individuals in ways that can have a significant impact on them?

We will be making decisions about people and not against. Given that applicants to SPSO will be people in crisis or leaving care, the decisions will have an impact on them and in some cases this could be significant.

Is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For example, health records, criminal records or other information that people would consider to be private.

Yes. Health records or information, personal financial information, sensitive information about difficult personal or family circumstances (example prison sentences or family breakdown) or other information that people would consider to be private.

Will the project require you to contact individuals in ways that they may find intrusive?

No. Our contact will be person-led and suited to individuals' circumstances. Some councils do 'spot-check' visits but we do not intend to do these. This may change in the future but we have no intention at the moment.

Annex two

Privacy impact assessment template

This template is an example of how you can record the PIA process and results. You can start to fill in details from the beginning of the project, after the screening questions have identified the need for a PIA. The template follows the process that is used in this code of practice. You can adapt the process and this template to produce something that allows your organisation to conduct effective PIAs integrated with your project management processes.

Step one: Identify the need for a PIA

Explain what the project aims to achieve, what the benefits will be to the organisation, to individuals and to other parties.

You may find it helpful to link to other relevant documents related to the project, for example a project proposal.

Also summarise why the need for a PIA was identified (this can draw on your answers to the screening questions).

The project will plan, prepare for and deliver for the SPSO taking on the Scottish Welfare Fund (SWF) independent review function on 1 April 2016. The objective is for SPSO to be fully ready to undertake the independent review function. The project will ensure SPSO is prepared to efficiently and effectively receive, consider, reach decisions on and respond to requests for review of local authority SWF decisions on crisis grants and community care grants from members of the public from 1 April 2016.

It will benefit individuals by providing an opportunity for external independent review of decisions, in some cases changing the local authority decision and providing access to grants previously refused in full or part.

It will provide benefit to councils by providing external independent review of decisions and feedback on areas where their decision-making (or service) could improve.

A PIA was identified as necessary as part of the development of internal process guidance, when considering some of the issues related to the processing of individual's information which will be required to consider their request for review. The group had been identified as vulnerable and further we had feedback that they may be particular issues and sensitivities around the use and sharing of personal data. As a public body we are aware of our responsibilities and duties in relation to both the Freedom of Information (Scotland) Act 2002 (FOISA); and the Data Protection Act 1998 (DPA) which are outlined in our internal Complaints and Investigations Guidance and also in our Information Governance handbook. As a new and different function for

SPSO, however, we recognise the need to ensure that these requirements are met as part of the development of our new SWF independent review process.

Step two: Describe the information flows

You should describe the collection, use and deletion of personal data here and it may also be useful to refer to a flow diagram or another way of explaining data flows. You should also say how many individuals are likely to be affected by the project.

Applying for SWF Independent Review and SPSO collection and transfer of information

People can apply for an independent review by:

- Phoning or attending our office;
- Submitting a form (online or through the post); or
- Writing to us with the details of their request (letter, email or fax).

It is for SPSO to decide what information we seek to allow us to make a fair decision but this will always be with the appropriate consent. We will generally ask for information from the applicant on the phone (or in their form) which will include personal details and information about their application to the council for a SWF grant. Once we have established that an application is eligible for review, we will email and/or phone the council to request information they hold on the customer's application and decision. We have to give the council enough information to identify the relevant file. We will only confirm things needed for that decision.

Generally, in our handling of reviews, we may obtain information from the council, the applicant and / or a third party. We can also arrange interviews, visits, oral hearings (where this is required to establish key facts and in the interests of fairness). It will be necessary for individuals to provide information about themselves to allow us to process and progress their request for an independent SWF review. We will be using information to consider an SWF application previously processed and reviewed by a council. Our contact will be person-led and suited to individuals' circumstances.

Decisions

Once we have all appropriate information, we will seek to make our decision based on this. We may need to seek further information from the applicant, council or third parties.

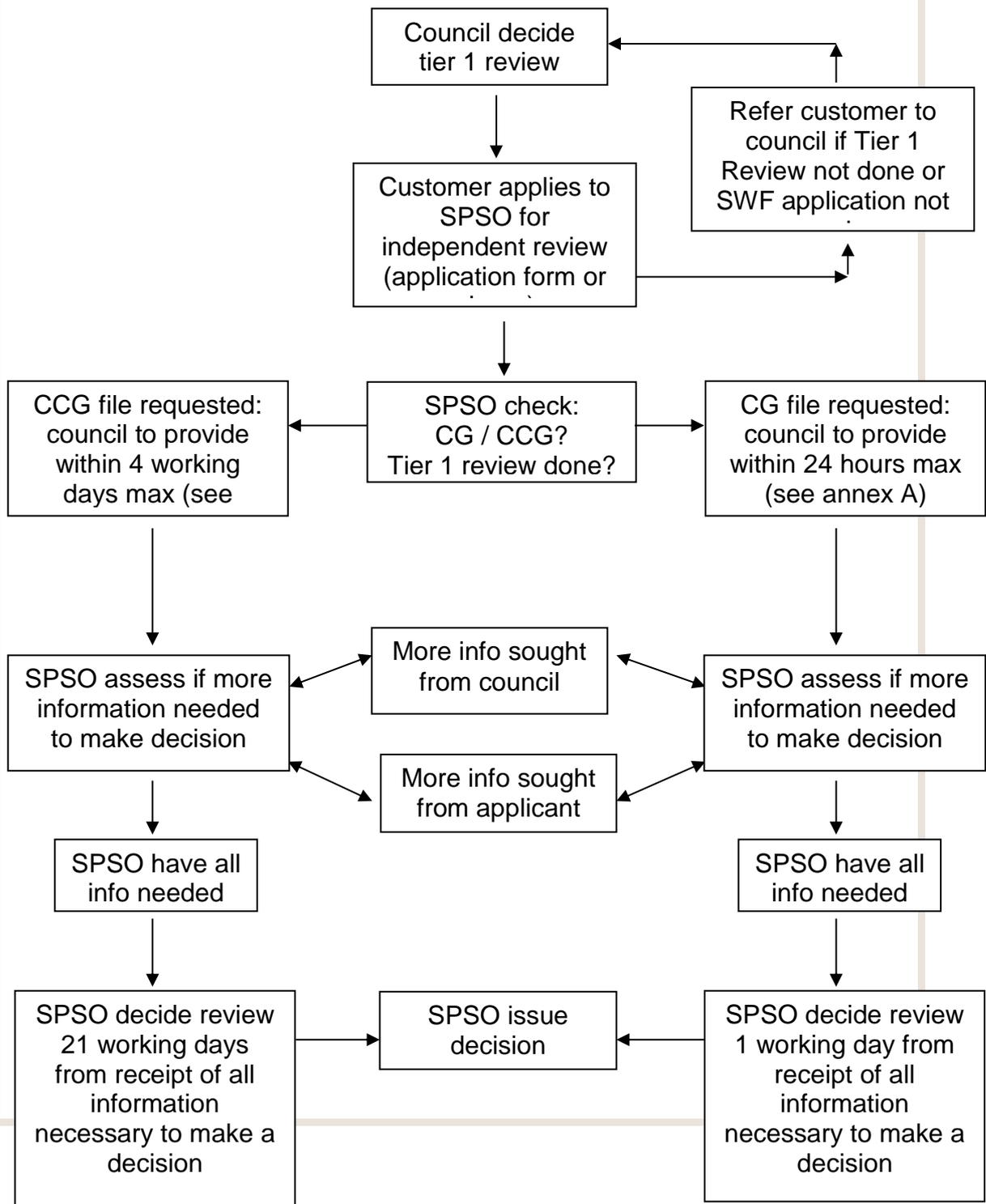
Our decisions will be communicated to applicants by telephone and will be followed up in writing. We will also inform the council in writing. Where we

have decided to change a decision and award to an applicant, we will also contact the council by phone and then in writing.

Retention

We will retain information in line with our information retention policy. Under this we retain information in hard copy for two years and electronic for three years , both from the pint of the last major contact (a reconsideration, a customer service complaint, our decision or other post-closure activity/correspondence).

High level flowchart of our process



Other

In line with our existing policies we will ask people for monitoring information for equalities purposes. This will not be kept with the review information. We may contact those who have had a service from us to ask them to complete a survey. This will not be linked to their review or other personal information.

Consultation requirements

Explain what practical steps you will take to ensure that you identify and address privacy risks. Who should be consulted internally and externally? How will you carry out the consultation? You should link this to the relevant stages of your project management process.

You can use consultation at any stage of the PIA process.

We have consulted on our high level Statement of Practice (SoP) which outlines broadly how we will undertake the independent SWF review function, including some areas on our use of information and consent. We have and continue to seek advice on our SoP and our more detailed process from our Sounding Boards of Local Authorities' and third sector representatives. We have also engaged with some users on our process, including some focus on how we will accept, seek and obtain information.

We discussed key aspects with ICO who confirmed that the legislation allows us to process information lawfully.

Step three: Identify the privacy and related risks

Step four: Identify privacy solutions

SPSO already identify privacy risks in our main risk register and we have a robust records management system in place. This PIA did not identify any additional risks that would lead to us making changes to those but established

our current systems could also be used here.

Our full information governance document is available here: [http://www.spsso.org.uk/sites/spso/files/communications_material/foi/corporate_documents/InformationGovernance\(R.2017.04\)W.pdf](http://www.spsso.org.uk/sites/spso/files/communications_material/foi/corporate_documents/InformationGovernance(R.2017.04)W.pdf)

Two key areas emerged from the consultation and discussions with ICO. These were around our powers to require, particularly third parties to disclose information to us (section 10 (3) of the Welfare Funds (Scotland) Act 2015. And how we ensure we have appropriate consent to take a review made “on behalf of” an applicant.

We do not require consent to obtain information because the legislation provides us with the power to do so and it is a legitimate step to take to ensure we make the right decision. However, while those requesting review may assume we will contact the Council it was not clear to us that they would assume we would contact third parties. We had been informed that some of the vulnerabilities of groups applying make them particularly sensitive – this could include women who were fleeing domestic abuse and who would be very keen to understand who their data was being shared with and those who may not wish others to know they were on a low income given their remains societal stigma associated with poverty.

We are ensuring that, in complying with fair processing requirements, we let people know that we will need to access data. We are framing this in the language of “consent” in application forms and discussions as that is a plain language way to explain this. If someone does not allow us consent, we will not access the information but will explain the impact this may have on any decision we would make. We have also strengthened our statement of practice to make it clear that if we intend to contact a third party we will usually ensure the applicant knows this and can object before we do so. We have not made this an absolute requirement as, in cases of crisis there is a need to act quickly and we intend to not include too much bureaucracy. For example, we can access DWP information via the Council who would already have accessed that as part of their review process. We would not consider that we would regularly need to discuss that with individuals. We do anticipate we will contact people whenever possible if we need to talk to a third party such as a landlord or GP.

S.7(1) of the SWF Act says that applications for independent review can be made where the applicant is dissatisfied with the outcome of the council’s review. In many cases this will be a straightforward assessment, although staff may, on occasion, have to ask the appropriate questions to confirm this.

The SWF Act also allows for a third party to bring an independent review to us on the applicant’s behalf (i.e. a ‘person authorised for the purpose’). This is not defined and we will have to satisfy ourselves that the applicant had authorised the third party to bring us the application. We have discretion to decide if the application has been ‘duly made’ for this purpose and staff should take the steps needed to satisfy themselves about the applicant’s

consent.

Although the SWF Act does **not** say that such authorisation must be in writing, where it is (e.g. a signed paper form or letter) then we could proceed on that basis. In cases without such clear consent, we should tell the representative that we will need to confirm the applicant's consent by either:

- Sending a mandate to be signed and returned; or
- Phoning the applicant to satisfy ourselves that:
 - They are the applicant;
 - They have authorised the third party to bring us their independent review;
 - They consent to us getting and reviewing the council's file (which may have sensitive personal information); and
 - They accept that this information will likely be shared with the third party.

Verbal consent **must** be file noted.

Given the time pressures involved, a written mandate may only be appropriate for Community Care Grants. This will be a case by case decision, with a balance to be struck between not inappropriately disclosing sensitive information, being vigilant for potential fraud, the importance of accessibility and applicants' personal situations but also that this may be a crisis.

In addition, our SoP explains that if the applicant is unable to consent we will accept a request for independent review from a suitable representative. Care must be taken where capacity (which can change and develop over time) is a potential issue and staff should use their judgment; more generally, if staff have any concerns about the suitability of the person bringing us an application for independent review they should discuss this with the Team Manager and / or Legal & Policy Officer as necessary. Note, consent to subsequently contact third parties is covered later in this document.

We are also committed to keeping our EQHRIA which prompted this PIA under review and if this raises any additional issues they will be considered with care.

Step five: Sign off and record the PIA outcomes

Minuted approval of this PIA as part of the EQHRIA by SMT was given on 23 March 2016.

Step six: Integrate the PIA outcomes back into the project plan

Outcomes relating to privacy notices were actioned as part of the document/web/information preparation for the scheme.

Appropriate changes were made to the Statement of Practice

Annex three

Linking the PIA to the data protection principles

Answering these questions during the PIA process will help you to identify where there is a risk that the project will fail to comply with the DPA or other relevant legislation, for example the Human Rights Act.

Principle 1

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:

- a) at least one of the conditions in Schedule 2 is met, and**
- b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.**

Have you identified the purpose of the project?

Yes

How will you tell individuals about the use of their personal data?

Information is in our statement of practice, on our website and on leaflets, we will supplement this by explaining to people who contact us by phone that we will be obtaining information and why.

Do you need to amend your privacy notices?

We will be having specific sections of our website and leaflets for this group and will have appropriate privacy notices in place.

Have you established which conditions for processing apply?

Yes. The processing is necessary for 'the exercise of any functions conferred on any person by or under any enactment' (Schedule 2:5(b) and Schedule 3:7(b)).

In terms of the legislation we can require the production of information to allow us to make a decision.

If you are relying on consent to process personal data, how will this be collected and what will you do if it is withheld or withdrawn?

We are not relying on consent to process personal data as processing is necessary for the exercise of any functions conferred on any person by or under any enactment (per Schedule 2:5(b) and Schedule 3:7(b)).

We will usually be requiring consent before contacting third parties (ie someone other than the council) to ensure a transparent and fair approach. If this is refused we will proceed on the basis of the information we already have.

If your organisation is subject to the Human Rights Act, you also need to consider:

Will your actions interfere with the right to privacy under Article 8?

Have you identified the social need and aims of the project?

Are your actions a proportionate response to the social need?

This is a qualified and not an absolute right. The powers under the Welfare funds (Scotland) Act 2015 to acquire information are critical to being able to make decisions. The aim is to ensure correct decisions have been made by the Council. We are taking a proportionate approach by making it clear in our statement of practice that we will only be obtaining the information we need.

We are required to only use information obtained within very narrow limits which further makes this proportionate.

Principle 2

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Does your project plan cover all of the purposes for processing personal data?

Yes – the data will be processed for the purposes of the scheme. This may include surveying. Equalities monitoring will be done only on a voluntary basis and will not be stored with casefiles.

Have you identified potential new purposes as the scope of the project expands?

No.

Principle 3

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

Is the quality of the information good enough for the purposes it is used?

Yes.

Which personal data could you not use, without compromising the needs of the project?

We have been careful to ensure we are only accessing the minimum of information.

Principle 4

Personal data shall be accurate and, where necessary, kept up to date.

If you are procuring new software does it allow you to amend data when necessary?

We are using our existing system (with adaptations) which does allow us to amend data.

How are you ensuring that personal data obtained from individuals or other organisations is accurate?

Information used in our decisions and any disputed information (where this is different to information individuals have provided to us or the council) will be shared for comment.

Principle 5

Personal data processed for any purpose or purposes shall not be kept for longer than necessary for that purpose or those purposes.

What retention periods are suitable for the personal data you will be processing?

We will be keeping data in line with our retention policy (available here [http://www.spsso.org.uk/sites/spso/files/communications_material/foi/corporate_documents/InformationGovernance\(R.2017.04\)W.pdf](http://www.spsso.org.uk/sites/spso/files/communications_material/foi/corporate_documents/InformationGovernance(R.2017.04)W.pdf))

Are you procuring software that will allow you to delete information in line with your retention periods?

We will align our approach and systems for delete/retaining information with our existing organisational approach which allows us to delete data in line with our retention policy.

Principle 6

Personal data shall be processed in accordance with the rights of data subjects under this Act.

Will the systems you are putting in place allow you to respond to subject access requests more easily?

We will align our approach and systems for responding to subject access requests for SWF information with our existing organisational approach which allows us to respond to such requests promptly, efficiently and in line with legislative requirements.

If the project involves marketing, have you got a procedure for individuals to opt out of their information being used for that purpose?

NA

Principle 7

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Do any new systems provide protection against the security risks you have identified?

We provide significant information about this in our information governance document (which incorporates our Records Management Plan) and we are satisfied that this remains relevant and contains appropriate measures to prevent unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data [http://www.spsso.org.uk/sites/spso/files/communications_material/foi/corporate_documents/InformationGovernance\(R.2017.04\)W.pdf](http://www.spsso.org.uk/sites/spso/files/communications_material/foi/corporate_documents/InformationGovernance(R.2017.04)W.pdf)

What training and instructions are necessary to ensure that staff know how to operate a new system securely?

All staff have been trained appropriately, internally, in line with our approach to information governance.

Principle 8

Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures and adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Will the project require you to transfer data outside of the EEA?

If you will be making transfers, how will you ensure that the data is adequately protected?

We will not be required to transfer data outside of the EEA.

Links to evidence used

http://www.osfcni.org.uk/experiences_of_social_fund_customers_in_northern_ireland.pdf

<http://www.gov.scot/Resource/0038/00387962.pdf>

http://www.legislation.gov.uk/sdsi/2016/9780111030332/pdfs/sdsieqia_9780111030332_en.pdf

<http://www.gov.scot/Resource/Doc/352757/0118675.pdf>

<http://www.engender.org.uk/content/publications/A-Widening-Gap---Women-and-Welfare-Reform.pdf>

http://www.osfcni.org.uk/equality_scheme_2005-2010_web.pdf