

Scottish Welfare Fund - SPSO Independent Review

Statement of Practice

Introduction to the Statement of Practice

The Welfare Funds (Scotland) Act 2015 gives the Scottish Public Services Ombudsman (SPSO) the responsibility of reviewing decisions made by local authorities (section 7).

The Act allows us to make the decisions about how we conduct reviews and the procedures that we will put in place. Section 9 of the Act says we must prepare a Statement of Practice setting out the approach we intend to take to the conduct of reviews, and the Act also gives us the power to obtain information and to hold oral hearings if we consider it necessary to do so.

The aim of the Statement of Practice is to set out how we will consider, investigate and respond to reviews. It does not cover every detail but sets out the most important steps.

The Statement of Practice is designed to be a formal document as these are commitments that we will ensure are met.

In this document, unless otherwise specified, the applicant means an applicant for further review (someone requesting that the SPSO consider a Scottish Welfare Fund (SWF) decision that has already been considered at the local authority review stage), or someone authorised to act on their behalf).

Section A: Principles

We will ensure applicants are able to access an easy and simple to use process which allows the SPSO to make quick, fair and clear decisions. We will have a range of investigative tools to help us make decisions and will use the ones most appropriate for each decision.

The key principles in our approach to reviews is to ensure that our process is:

- independent
- accessible
- fair
- proportionate
- timely; and
- designed to ensure that applicants are treated with dignity and respect

These principles will guide our approach to reviews. Our actions will always be in line with these principles. These principles will be used when we interpret how the Statement of Practice and sections of related internal guidance are applied to a particular case. If we find that anything in this Statement of Practice or our internal guidance conflicts with the principles, we will follow the principles. In cases where such a conflict has been identified, we will record the reasons why we have followed the principles, and explain the reasons for this to the local authority and the applicant.

Section B: Information we will provide

We will ensure that information about our process is available and accessible to applicants, possible applicants and their advisers. We want to make sure applicants are able to access any information they need about applying for a review.

The information we will provide will include details of what we will do when we receive a request; how long this may take; and how we will manage any information provided by applicants or obtained as part of the review process.

Section C: Applications for review

This section deals with how an individual can contact us and what information we need from an applicant.

Section 7 (3) of the Welfare Funds (Scotland) Act 2015 allows us to accept a review in writing or orally. We will accept a request for review when an applicant tells us (in writing or orally):

- they applied for a Welfare Funds grant
- they have received a response to that application
- they asked for a review
- they have received a response to that review
- (if available) reasons why they think the review decision was wrong
- they have provided sufficient personal details for us to obtain the relevant documents from the local authority

Section D: Application for review by someone other than the applicant

We will accept a request for review from someone other than the applicant when:

- they can provide the information referred to in section C and
- they either have the consent of the applicant to act on their behalf or
- the applicant is unable to consent and they are a suitable person to represent the applicant.

When someone is representing the applicant in this way they would normally be our main point of contact. References to applicant throughout the Statement of Practice should, therefore, be taken to also include a representative acting on their behalf.

Section E: How we will consider evidence

We will only seek to establish matters which are required to make the decision. We will take into account new information obtained during the review about the applicant's circumstances at the time the local authority made their final decision on the application.

If, when making the decision a point of fact, opinion or other evidence was:

- known or should have been known by the local authority; and
- was accepted or not disputed by the local authority; and
- had or should have had a role in determining that decision

we will proceed on the basis that the point of fact, opinion or other evidence has been accepted as established.

The exception to this is if:

- it is disputed by the applicant, whether it was disputed earlier or not, or
- the local authority now dispute the point and have provided reasons why it was not reasonable for them to have done so earlier and is reasonable for them to do so now.

Where we consider we need to resolve a point of fact that is disputed to make a decision we will make such a decision on the basis of what is, more likely.

We may decide we need more evidence or that we need to test the evidence we have in the interests of fairness. This means we may:

- obtain further information direct from the applicant; the local authority or any other person either orally or in writing

We may also, if we consider the individual circumstances merit this:

- conduct interviews or
- undertake a visit to an applicant's home or other relevant location or
- hold an oral hearing.

It is our responsibility to decide what steps we need to do in the interest of fairness. If we decide we need to do more than obtain oral or written information we will explain why. Applicants will not be required to comply with any requests (see section G).

Applicants and local authorities will be able to ask for any one of the methods listed above to be used to resolve a matter they consider to be under dispute. They will

need to explain what the dispute is and why they consider that using that method is in the interests of fairness.

Section F: Obtaining information

Section 10 (3) allows us to require people to supply us with the information we need to make a decision. This includes the applicant, the local authority or any other person.

If we consider we need further information to make a decision we will:

- contact that person as soon as we become aware we need this additional information and
- clearly state what information we need and why.

In circumstances where the person needs time to provide the information, we will provide a deadline by which the information should be provided and let them know that, if not provided by the deadline, we will proceed on the basis of the information we hold. We will also tell them we have discretion to extend the deadline and to contact us if they are having difficulties.

We will proceed on the basis that, in bringing a review to us, the applicant is consenting to us obtaining any additional information we need to make that decision. However, if the information we wish to obtain is from a third party we will usually seek to have the consent of the applicant first.

Section G: Other methods of obtaining evidence (interviews, visits, oral hearings)

Rules for oral hearings are set out separately and are not contained within this statement of practice.

If we decide to conduct interviews or visit a location, we will contact the applicant and local authority and clearly state what we want to conduct and why we have decided to do this. If an applicant does not wish to be interviewed or to allow a visit we will proceed on the basis of the information we hold. If, after deciding to conduct an interview or visit a location, we are provided with this information by alternative means, we may decide not to proceed.

Section H: Opportunity for applicant to challenge new information

Where we obtain from the local authority or a third party or otherwise new information, and it is likely or it is the case that the new information will form part of a decision not to change the decision made by a local authority we will, whenever reasonably practicable, share that information with the applicant to allow them to comment or challenge that information before the decision is made.

Where we obtain information which we consider is likely to be new to the local authority and it is likely or it is the case that the new information will lead us to change the decision made by a local authority we may share that information with them to allow them to comment or challenge that information before the decision is made.

Section I: Order of decision-making

When making a decision about a review request we will consider:

- our own remit/jurisdiction

- the decision on eligibility
- the decision on qualifying criteria
- the decision on priority
- the merits of the decision

In considering the decisions made by the local authority we will in line with our powers in the legislation, consider whether a different decision should have been made by them.

Section J: Decisions to be issued in writing

Decisions will be issued in writing to both the applicant and the local authority.

Decisions may also be communicated in any further way that is appropriate taking into account the needs and wishes of the applicant.

In the case of a crisis grant, where the decision is made to award a grant we may inform the local authority in a summary form to allow the grant to be processed prior to the issuing of the written decision.

We will seek to establish procedures with local authorities which will allow for a quick issue of crisis grants in these situations.

Section K: Information to be included in all written decisions

Written decisions will include:

- the decision and the reasons for this.
- details of the key information on which that decision was based
- information about how to challenge the decision
- where the decision was changed or referred back to the local authority we may ask them to provide information about what will happen next.
- where we have identified potential or actual failings but found that the decision should remain the same, we will highlight this to the local authority and, where appropriate, make a suggestion for improvement.

Section L: Asking us to reconsider a decision

An applicant and the local authority will be able to ask us to look again at a decision on the basis that we have made a mistake. This could be an error of fact or law. They will be given notice of this in our written decision. We will not normally accept a request to reconsider a decision made more than one month after the day on which the applicant or local authority first had notice of the outcome of the review. However, we may extend the time limit if we consider that is appropriate in all the circumstances.

Any such request will be dealt with by someone other than the first decision-maker and the response to the request will be issued in writing.

In considering such a request, we will consider whether the original decision made by the Ombudsman was correct, or whether it was incorrect and should be changed.

No reduction in award will be made as a result of such a request. However, only the corrected decision will be reported or recorded in statistics about the performance of the local authority.

Section M: Change in circumstances following the decision by the local authority

Where there has been a significant change in circumstances since the local authority considered the application we will not take that into account in our decision. We will advise the applicant of this and of their ability to make a new application on the basis of this change. We may set up systems to allow us to refer such applications direct to local authorities with the agreement of the applicant.

The applicant will be able to use the review process for any new decision made in these circumstances.

We would not regard the availability of new information about the situation as it existed at the time a decision was made as a change. This only covers changes in circumstances since the application was made.

Section N: Time taken to make decisions

We will try to make all decisions as soon as is practical and will aim to respond within the following timescales:

- one working day for crisis grants, from the point at which we have received all the information required to make a decision.
- 21 working days for community care grants, from the point at which we have received all the information required to make a decision.

Where we have failed to meet these timescales, our decision letter will include the reasons why this happened.

Section O: when we receive a possible complaint with an application for review

Nothing in the Welfare Funds (Scotland) Act 2015 prevents us from also considering complaints in the terms of the Scottish Public Services Ombudsman Act 2002.

It is also clear from the 2002 Act that it is not anticipated we would normally consider a complaint if there was also a right of appeal to an independent body such as a court or tribunal. A complaints process would not usually look at the same issue dealt with in an appeal process.

If we receive as part of a request for review an allegation that could be a complaint in terms of the SPSO Act 2002 and it is a description of a failing that could alter the decision – i.e. a matter that will be considered as part of the review - we will consider this as part of the review. We do not intend to also investigate the allegation as a complaint unless there are significant aspects of the allegation that would not be dealt with in the review process and/or there is an alleged or potential injustice suffered as a result of this failing which would be unresolved by the review process.

If we receive an allegation that relates to an aspect of service provision which, even if upheld, would not affect the decision, we may investigate this.

We will not proceed to investigate a complaint without confirming that the applicant wishes us to do so. If they do, we will consider this in line with our powers under the SPSO Act 2002 as amended.

If the person does not wish us to look at this, we may still record and report that we have received a complaint about service aspects of the delivery of the Scottish Welfare Fund. This is in line with our general reporting of complaints which we receive and give advice on but which we do not take further.

Section P: SPSO management of information

Information will be handled in line with the SPSO's archiving and retention policy. This policy ensures that we handle sensitive information with care and in line with data protection. It also ensures we can comply with freedom of information requirements. The policy reflects additional protection in the SPSO Act 2002 which limits our ability to release information obtained by us while undertaking a review unless it is for certain specified purposes. One of those purposes is that there is a likely risk to the health or safety of a person or persons.

Additionally, if an applicant makes specific requests not to pass on information to the local authority or a third party we will respect that as far as we can but will let them know if that may affect our ability to make a decision. We will only make decisions based on information that we can include in a decision sent to a local authority.