

28 August 2014

Kenneth Gibson
Convener
Finance Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

I am writing in response to your call for written evidence on the Financial Memorandum of the Welfare Funds (Scotland) Bill.

I set out the Committee's questions below. Before I proceed to answering the individual questions, I would like to confirm that, as a parliamentary body, it is our settled practice when commenting on Scottish Government policy to provide information and advice both to the Government and Parliament but to be clear that any decision on the policy and impact on us rests ultimately with the Parliament.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

The consultation paper itself did not contain detailed financial information about the three review options then being considered by the Scottish Government. There was a list of assumed categories of costs for each option. We, therefore, commented only generally on costs in that response.

Following the consultation, the Scottish Government produced an options paper for the review stage which included costs information and we were asked to comment on this. We have also had discussion with the Scottish Government about costs while they were in the process of preparing the Financial Memorandum (FM).

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

The FM broadly reflects the more detailed comments and discussions we have had to date with the Scottish Government.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. *If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.*

The FM correctly identifies there will be an impact on the SPSO if we take on this new function. It includes two figures for the SPSO – transition costs and running costs. The estimate on transition costs reflects previous transitions and the running costs are based on an office in Northern Ireland which is currently carrying out a similar function.

5. *Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?*

This will be a completely new role for this office and this has meant that our existing cost base was not an appropriate starting point for any estimates and also that any estimate will have some degree of uncertainty about it. In our discussions with the Scottish Government, it was agreed that using the actual running costs of an office carrying out a similar function - alongside costs based on our own recent experience of taking on other new areas of jurisdiction - would be, on the whole, a reasonable indication of the likely costs. We detail below the areas where we think there is uncertainty. While there are a number of areas of uncertainty, we do not currently anticipate, accommodation issues aside, that the running costs will be significantly different for the current estimated number of cases. The transition costs are also based on previous experience and, while we consider that is appropriate, there will always be some uncertainty given that this is a new area and function. We are already beginning to look at these in more detail and, to date, apart from some possible upward pressure on IT costs, these continue to look reasonable.

6. *If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?*

We are funded directly by the Scottish Parliament. We do not have any capacity in our current budget for any new roles or functions. Our budget is approved by the SPCB and we understand that the SPCB is seeking assurances from the Scottish Government that this will be fully resourced.

7. *Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?*

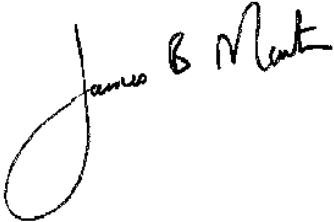
The Bill sets out the two largest areas of uncertainty, which are the number of reviews and the question of accommodation. The FM points out that a reduction in review numbers from the 2,000 estimated may allow us to reduce some costs but that certain fixed costs will remain. It should be noted that our initial analysis suggests that, of all the areas of uncertainty that could lead to an increase in costs above the estimate, accommodation costs look to be the most significant.

An additional area of uncertainty which is implicit but which I'd like to highlight is that the ongoing costs are based on an office in Belfast operating under different legislation. I have said above that this is a reasonable estimate, however, this does not take into account what would happen if we need to operate differently for any reason. This could be because of changes to the Bill itself. We have also had legal advice on the Bill, which indicates that it would be a sensible precaution, to protect us from legal challenge, to ensure our systems would be compliant with article 6 of the European Convention of Human Rights. At present, we do not think that would lead to significant additional costs but we are intending to ensure that we can hold hearings in some circumstances. The experience of other Ombudsmen is that these will be rare, but they would have some impact on the cost base.

Additionally, all of our work is subject to judicial review and that will be the case with this new role. Neither the estimates nor our current budget allow for the cost of judicial review. This new area and function may well bring a higher risk of more frequent use of judicial review in relation to our decisions than the current extremely low rate.

We suggested in our consultation response to the Scottish Government that, given some of the uncertainties, there should be an ongoing review of funding. We would stress that we appreciate the need to ensure the efficient use of resources and that we have a good track record on achieving savings for the public purse when taking on new roles. As we have said above, we do not anticipate very different costs from those in the FM, however, the costs described in it can only properly be described as estimates at this stage.

Yours sincerely

A handwritten signature in black ink that reads "James B Martin". The signature is written in a cursive style with a large, looping initial 'J'.

Jim Martin
Ombudsman

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