

26 January 2016

Hugh Henry MSP
Convener
Welfare Reform Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

Welfare Funds (Scotland) Regulations

Thank you for inviting us to give evidence in relation to the regulations. The independent review process for which we will be responsible from 1 April 2016 is not included in the regulations but we appreciate our role will be an important part of the process. We welcome the opportunity to provide the Committee with information about our role and how we are preparing for it, as well as contributing to the discussion about the regulations.

Our new role

When the new statutory funds come into existence on 1 April 2016, we will become the independent, external stage of the review process. This is not a complaints process and, as an independent reviewer, we will be able to review welfare funds decisions made by local authorities and, where appropriate, change those decisions. We have powers to direct local authorities to use the funds to provide the assistance requested; or another award, or to reconsider the application.

We also have been given the power and responsibility to design our process and approach to reviews within some broad limits set out in the legislation – there must be an internal review first and there is a time limit (one month), which we can extend if appropriate. This reflects our role as a Parliamentary organisation which is not subject to government direction, and is the reason why there are no direct references to us in the regulations and only limited reference in the guidance which supports it. We are responsible for creating and developing our own equivalents.

Steps we have taken to prepare

As the complaints-handling organisation for local authorities, we have been involved in the welfare funds since before the interim scheme was launched, and have been a member of the Scottish Government reference group which has brought together a broad range of interests to advise on the interim scheme and its replacement. This interim phase means that the scheme as operated by local authorities is now relatively mature, and I know you have seen that in the confidence expressed by the local authority staff who have given evidence to you about its general operation. The independent, second-tier review is new and we know this means it will take time to become as mature. We have approached preparing for it by seeking advice and support from others. We have set up two sounding boards. One is made up of local authority practitioners, people who have direct involvement in operating the scheme at present. The second is made up of representatives of advocacy, support and campaign groups in the third sector. We have also had close contact with the Government. Although the scheme now being operated is very different, we have also spent time with the Independent Review Scheme for the Social Fund (IRS), both while it was still operating UK-wide and the current scheme still operating in Northern Ireland. The IRS had built, over 20 years, a good reputation and we were keen to learn lessons.

Building on that engagement, advice and support, we have:

- Recruited a small team who will operate as a specialist unit within SPSO and provide a dedicated resource for this function;
- Consulted on key aspects of how we will operate the fund¹:
 - A statement of practice which sets out how we intend to operate the review process;
 - Rules for oral hearings so we can have this investigative tool available if required; and
 - Our approach to an Equalities and Human Rights Assessment to make sure our process takes full account of the rights and needs of users.
- Developed our detailed internal processes for handling and responding to review applications;
- Prepared the necessary technology changes;
- Created, and are implementing, a dedicated communications and engagement plan.

Based on positive feedback from our consultation, we are confident in our general approach but we are also keen to learn. We anticipate that the way we operate reviews will develop and improve as we gain experience. We also want to support those who operate the scheme with learning and improvement from our experience of reviews, as we do with complaints more generally. We are considering options about the best way to feed back and report to local authorities, the Government and Parliament on any themes we see.

One of the most difficult things to anticipate has been numbers. When this was a UK-wide scheme delivered by the DWP, the IRS had 6,000 reviews from Scotland (the current scheme in Northern Ireland has 2,000). In the interim scheme, this role was undertaken by local authorities and the numbers have dropped significantly and are now in the hundreds. The figures are increasing and, in order to prepare, we have projected that increase forward and are currently estimating and preparing for around 800-1000 per year. The Government and SPSO have been clear throughout the consultation on the new review function that those numbers will need to be monitored and reviewed regularly until we establish a clear sense of stable numbers.

The regulations and the SPSO

The power we have been given by Parliament is to make the decisions that should have been made. The policy decisions that underpin the scheme are a matter for the Parliament and Government. Our role will be to assess the decisions made by local authorities within the scheme created in line with that policy. Our statement of practice explains how we will assess decisions so that this is transparent, and we were pleased there was broad support for the approach in responses to the consultation. We will first make sure that the decision correctly applies the legislation, regulations and guidance. We will then assess any discretion exercised on the basis of what is fair and reasonable in all the circumstances. There is a hierarchy in that process. The legislation and the regulations will be binding and the local authorities must “have regard to” the guidance. This means they could decide to act outside aspects of the guidance as long as they are still acting with the broad parameters of the legislation and regulations. We would anticipate that, when doing so, the local authorities would provide clear reasons, and we would assess whether we agreed the decision was fair and reasonable in all the circumstances. This would include having regard to the aims of the funds, including ensuring the dignity of applicants is preserved and that they are treated with respect.

The detail of the regulations

As noted above, the regulations have been developed based on some years’ experience of the existing scheme. They will be supplemented by guidance which will be the main resource for decision-makers on a day-to-day basis. In general, we do not comment on the policy, which is a matter for Government and Parliament, but do have one comment on a practical matter. The need for easy access was one of the most frequent comments we heard in relation to our role in the scheme. This is a scheme aimed at vulnerable people at times when they are in crisis. We were

¹ <http://www.spsso.org.uk/news-and-media/spsso-consultation-scottish-welfare-fund-reviews>

very pleased when the Government agreed, at our suggestion, to put on the face of the primary legislation that we could accept reviews both orally and in writing. We did and do anticipate there will be challenges in taking reviews orally but felt this was the right thing to do to ensure quick and simple access for applicants. In our consultation on the statement of practice, we also emphasised that, for us, accessibility is not simply the ability to get to SPSO but is about us helping the person to give us their best argument.

By contrast, there is a requirement that applications for first-tier internal reviews by local authorities should be in writing and signed, which is something that reflects the operation of the previous scheme until now. We have fed back to the Government that, although not fundamental to the accessibility of our role as external reviewer, we feel there is an inconsistency here which might affect accessibility to the scheme itself. As we have said above, taking reviews orally will not be without challenge, but we think this can be a practical and fair part of the process. There is some flexibility in that applications for internal review can be accepted by local authorities unsigned and/or not in writing if they consider there are “exceptional” circumstances. However, “exceptional” is rather a high standard and may lead to inconsistency.

In closing, we would like to add that, throughout the period of preparing for this new role, we have engaged widely and have been impressed by the level of goodwill and commitment to supporting the efficient and effective operation of the funds and our new independent role from the government, councils and the third sector. We also are committed to ensuring our part of the process is a positive addition to the scheme.

Yours sincerely

Jim Martin
Ombudsman