

Response to the Scottish Government consultation on Social Security in Scotland

Submitted to **Consultation on Social Security in Scotland**

Submitted on **2016-10-28 09:53:35**

Information About You

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Public Services Ombudsman

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (anonymous)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Independent advice and scrutiny

Do you think that there is a need for an independent body to be set up to scrutinise Scottish social security arrangements?

Not Answered

Please explain your answer.:

We have no clear preference on the creation or not of a statutory body but have some comments based on our experience that we hope may be useful. The decisions that are being made are significant and there will be a need to ensure the social security agency has a robust quality assurance process. While this could involve external scrutiny, there is also a need to ensure that the agency remains primarily responsible for the quality of its decision-making. They should be encouraged to report publicly on a range of performance indicators and be transparent about their standards of service and what applicants should expect. Any external scrutiny would look at how well the organisation is assuring itself of quality as well as undertaking an analysis of the quality of the work itself.

If you agree, does the body need to be established in law or would administrative establishment by the Scottish Government of the day be sufficient?

Not Answered

Please explain your answer.:

We would recommend that if a separate organisation is established it uses the information from appeals and complaints as part of that scrutiny process. They should also have a clear and focussed remit. While, the AJTC had external access to a number of hearings each year, the resources it had to attend hearings from a small panel in Scotland was arguably not sufficient to really understand the process. They were also responsible for having an overall view of the administrative justice system and that was arguably far too broad a role to combine with the detailed role of scrutiny. It may be that something closer to an inspectorate would be more appropriate.

If yes, what practical arrangements should be made for the independent body (for example, the law could state how appointments to it are made and the length of time an individual may serve as a member of the body)?

what practical arrangements should be made for the independent body :

Further considerations & Independent scrutiny of standards

Should there be a statutory body to oversee Scottish social security decision making standards?

Not Answered

Please explain your answer.:

If yes, should the be a separate body in its own right?

Not Answered

Please explain your answer.:

Do you have any other views about the independent scrutiny of social security arrangement in Scotland (e.g. alternative approaches)?

about the independent scrutiny of social security arrangement in Scotland :

Complaints, reviews and appeals

Do you agree that we should base our CHP on the Scottish Public Services Ombudsman's 'Statement of Complaints Handling Principles'?

Yes

Do you agree that we should base our CHP on the Scottish Public Services Ombudsman's 'Statement of Complaints Handling Principles':

The creation of the Complaints Standards Authority by the Scottish Parliament in 2010 has had significant impact on the way public organisations across Scotland respond to complaints. We were pleased to read the intention in this consultation that the proposed social security agency should base its CHP on the Scottish Public Services Ombudsman's statement of Complaints Handling Principles which were approved by the Scottish Parliament in January 2011.

It is perhaps worth mentioning that if the proposed social security agency is designated as a listed authority within the SPSO Act 2002 (which is normally the case for new Scottish public authorities), the agency would be required to meet those principles. The agency would also come within the powers we have to notify organisations they need to comply with the model complaints handling procedure. Being a listed authority also ensures we will be able to support the new agency as we can also provide advice and training to listed authorities.

How should a Scottish internal review process work?

How should a Scottish internal review process work?:

We have no direct experience of the mandatory consideration process but we do have experience of internal reviews being conducted in the area of the Scottish Welfare Funds. We took on the role of independent reviewer on 1 April 2016. There are benefits to a fast, accessible and person-centred review. It allows a straight-forward way to allow for individuals to call for changes to decisions without needing to find ways to access another agency.

The culture of the organisation is critical to the success of any review process. It needs to be open to changing decisions and accept when mistakes have been made. While generally, the Scottish Welfare Funds internal review process works well within Councils, it is also possible to build on that experience. We have had concerns at times about the limited amount of information given to people explaining why decisions have been made both in the original decision and at first-tier review. When this is not clear it is not possible to challenge the decision easily. We also have had concerns that the only way to access this process is in writing. We have allowed for access by phone direct to our independent review process for Scottish Welfare Fund decisions and this has been popular with individuals and has allowed a group who did not access previous systems to do so.

What would be a reasonable timescale for the review to be carried out?

What would be a reasonable timescale for the review to be carried out? :

The system of review for the Welfare Funds has different timescales to reflect differing levels of urgency. This has worked well and we would suggest that timescales reflect the possible impact of each separate benefit.

Should a tribunal be used as the forum for dispute resolution for the Scottish social security system?

Not Answered

Please explain why.:

If no, are there any alternative methods of dispute resolution that you think would be preferable to a tribunal?

If no, are there any alternative methods of dispute resolution that you think would be preferable to a tribunal?:

How can we ensure that our values underpin the appeals process for a Scottish Social Security agency?

How can we ensure that our values underpin the appeals process for a Scottish Social Security agency? :

In responding to this question, we thought our experience as Scottish Welfare Funds Reviewer would prove helpful. We consulted on our process and statement of practice as well as conducting an Equalities and Human Rights Impact Assessment. In order to make the process as accessible as possible, we have been clear that we take responsibility for obtaining evidence and while we ask for this from parties, we do not require people to prepare a case or paperwork to come to us. Our process is often described as inquisitorial. We also take the responsibility for sharing any evidence or testing this. We do most of this by telephone and in discussion with the person requesting a review. It is possible for someone to request a review and complete our process without putting anything in writing or submitting any evidence. They will though have had a number of points of contact from submitting the application, to discussing the evidence with us and then receiving our decision (we do so also by phone and follow up in writing).

The review process is still in its early stages but we are seeing an a higher proportion of reviews in relation to crisis grants than has been seen previously when the number of community care grant reviews far outweighed the number of crisis grant review. Those applying for crisis grants are often particularly vulnerable

and under multiple points of pressure. The amount sought, though significant for an individual in crisis, are low and in the old systems very few people sought to appeal against a decision. The proportion is at a much higher level of reviews than that in either the system where there was a second level of internal review or the system before that where there was an independent review service but the only access to that service was in writing. The decision to make the point of access significantly easier than in either previous system appears to be allowing people who are unhappy with the decision to take that forward rather than giving up. We are currently finding that about 60% of all cases where we have been making review decisions were initially made by telephone.

Are there any other values that you feel should be reflected in the design of the appeals process?

Are there any other values that you feel should be reflected in the design of the appeals process? :

What do you consider would be reasonable timescales to hear an appeal in relation a decision on a devolved benefit?

What do you consider would be reasonable timescales to hear an appeal in relation a decision on a devolved benefit:

We currently operate to short and challenging timescales as the Scottish Welfare Funds Reviewer. For Crisis Grants, it has been possible to make decisions within 24 hours on most cases from the point at which we have the information we need to make our decision. It is also a good idea to allow for some flexibility in timescale as long as that is used to benefit the applicant rather than the organisation. There are currently two different timescales reflecting the urgency of the two different types of groups and this has not been problematic to manage. We have also put in place simple arrangements which allow us to obtain evidence from local authorities very quickly which also significantly helps with the speed of decision-making. We do most of our work by phone and this includes taking the initial application ; discussing the evidence with the applicant before the decision is made and communicating the final decision. Decisions are followed up in writing but this means they can be issued very quickly. We do allow for applicants to request formal hearings but this has not happened to date and we find that applicants appreciate the direct one to one contact with the decision-maker.

In order to ensure a transparent appeals process, what steps could be taken to ensure that those appealing fully understand and are kept informed at each stage of the appeals process?

In order to ensure a transparent appeals process, what steps could be taken to ensure that those appealing fully understand and are kept informed at each stage of the appeals process? :

We produce simple, standard information but find that the best way to do this is simple, personal contact with the decision-maker. Every person requesting a review is given a named contact and they can call them to discuss progress. Staff will also actively make contact to keep people up-to-date when appropriate. We have also ensured that standard information about the process is in the final decision letter by the authorities.

How could the existing appeals process be improved?

How could the existing appeals process be improved?: