Passage of the

Welfare Funds (Scotland) Bill 2014

SPPB 214
Passage of the

Welfare Funds (Scotland) Bill 2014

SP Bill 51 (Session 4), subsequently 2015 asp 5

SPPB 214

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Stage 1 report did not include the oral and written evidence received by the committee. This material was originally published on the web only, and is now included in full in this volume.

The Finance Committee reported to the lead committee. The report was originally published on the web only. It is included in full in this volume along with the written submissions received by the Finance Committee. The Minutes and Official Report of the meeting at which the Committee took oral evidence are also included in this volume.

The Delegated Powers and Law Reform Committee (DPLRC) reported to the lead committee at Stage 1 on the delegated powers provisions in the Bill. The Committee did not take oral evidence and therefore no extracts from the minutes or the Official
Report of that meeting are included in this volume. The DPLRC report is included in this volume.

The DPLRC considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
Welfare Funds (Scotland) Bill
[AS INTRODUCED]

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3 Administration of welfare funds
4 Review of decisions
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Welfare Funds (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

1 Welfare funds
Each local authority is to maintain a fund (called a “welfare fund”) comprising—
(a) any grants paid into the fund by the Scottish Ministers, and
(b) any amounts paid into the fund by the local authority.

2 Use of welfare funds: assistance for short term need and community care
(1) A local authority may use its welfare fund only in order to provide occasional financial or other assistance to or in respect of individuals for the purposes of—
(a) meeting, or helping to meet, an immediate short term need—
(i) arising out of an exceptional event or exceptional circumstances, and
(ii) that requires to be met to avoid a risk to the wellbeing of an individual, or
(b) enabling qualifying individuals to establish or maintain a settled home.
(2) “Qualifying individuals” means individuals who have been or, without the assistance, might otherwise be—
(a) in prison, hospital, a residential care establishment or other institution, or
(b) homeless or otherwise living an unsettled way of life.
(3) A local authority may exercise its power under subsection (1) by making a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.

3 Administration of welfare funds
(1) A local authority may make arrangements for another person to administer its welfare fund on its behalf.
(2) Two or more local authorities may make joint arrangements under subsection (1) for another person to administer the authorities’ welfare funds jointly in accordance with any instructions agreed by the authorities.
Such joint arrangements may include arrangements under which a joint committee established by the local authorities administers the authorities’ welfare funds jointly.

4 **Review of decisions**

(1) The Scottish Ministers may, by regulations, require local authorities to review decisions made by them in pursuance of section 2.

(2) Regulations made under subsection (1) may—

(a) make all decisions made in pursuance of section 2 subject to review, or provide for types of decisions which are to be subject to review,

(b) provide for the circumstances in which reviewable decisions are to be reviewed.

(3) If dissatisfied with the outcome of such a review, the individual concerned may apply to the Scottish Public Services Ombudsman for a further review.

(4) If, on a review, the Ombudsman considers that a different decision should have been made, the Ombudsman may quash the decision and—

(a) direct the local authority to reconsider the application to which the decision relates, or

(b) direct the local authority to use its welfare fund to provide—

(i) the assistance concerned, or

(ii) any other assistance (being assistance which may be provided by the local authority under section 2).

(5) Regulations made under this section are subject to the negative procedure.

5 **Welfare funds: further provision**

(1) The Scottish Ministers may, by regulations, make further provision in connection with this Act.

(2) Regulations made under this section may, in particular, make provision—

(a) about how an application to receive assistance in pursuance of section 2 is to be made,

(b) about the procedure which local authorities are to follow in relation to such applications, including the period within which they are to take any particular steps,

(c) about the eligibility of individuals to receive assistance in pursuance of section 2,

(d) about other circumstances in which assistance may, or may not, be provided in pursuance of section 2,

(e) about the type of assistance which may be so provided,

(f) about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided,

(g) requiring a local authority to provide the Scottish Ministers with such information in connection with the exercise of its functions under this Act as may be specified in the regulations,

(h) about arrangements which may be made in pursuance of section 3,
Welfare Funds (Scotland) Bill

(i) about how an application for review by a local authority in pursuance of section 4 is to be made,
(j) requiring persons to provide information for the purposes of a review by a local authority in pursuance of section 4,
(k) about circumstances in which an application to receive assistance or an application for review by a local authority may be made by a person on behalf of an individual.

(3) Regulations made under this section may make—
(a) different provision for different purposes,
(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) Regulations made under this section may not make provision about reviews by the Scottish Public Services Ombudsman in pursuance of section 4.

(5) Regulations made under this section are subject to the negative procedure.

Guidance

(1) A local authority must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of its functions under this Act.

(2) Guidance issued under this section—
(a) must be addressed to, and apply in the same way to, all local authorities,
(b) may be general or specific,
(c) may be varied or revoked.

(3) Before issuing, varying or revoking guidance, the Scottish Ministers must consult—
(a) such body representing local authorities as they think fit, and
(b) such other persons as they consider appropriate.

(4) The Scottish Ministers must publish guidance issued under this section in such manner as they consider appropriate.

Commencement

(1) This section and section 8 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order made under this section may include incidental, supplementary, consequential, transitional, transitory or saving provision.

Short title

The short title of this Act is the Welfare Funds (Scotland) Act 2015.
Welfare Funds (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

Introduced by: Nicola Sturgeon
Supported by: Margaret Burgess
On: 10 June 2014
Bill type: Government Bill
These documents relate to the Welfare Funds (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 10 June 2014

WELFARE FUNDS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Welfare Funds (Scotland) Bill introduced in the Scottish Parliament on 10 June 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 51–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

3. The Bill makes provision for the establishment of welfare funds which will be maintained by local authorities and will be established to reflect the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013: SI 2013/192. The Bill is comprised of eight sections. It confers duties on local authorities to maintain and administer welfare funds in particular fashions. It confers powers on the Scottish Ministers to make regulations, and publish guidance which will set out how welfare funds should be administered. It also requires the Scottish Public Services Ombudsman (SPSO) to carry out reviews in relation to local authority decisions on provision of assistance under welfare funds.

4. The detail of how welfare funds will be administered is not set out in the Bill. However, the intention is that the package of the Bill, associated regulations and guidance which the Scottish Ministers intend to make, will set out in legislation arrangements that have been in place on an interim basis since April 2013. Those interim arrangements are known as the Scottish Welfare Fund (SWF) and are based on a voluntary agreement between the Scottish Ministers and the Leaders of the Convention of Scottish Local Authorities (COSLA). The intention is that the legislative package will allow for these arrangements to continue, notwithstanding a change in how second tier reviews will be undertaken. A summary of the interim scheme is provided in paragraphs 5-10.

Summary of the interim Scottish Welfare Fund

5. The interim SWF aims to—

- provide a safety net in an emergency when there is an immediate threat to health and safety through the provision of a non-repayable grant which is known as a Crisis Grant (CG); and
- enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant (CCG). This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.
6. CGs are awarded to meet expenses that have arisen as a result of an emergency or disaster in order to avoid serious damage or serious risk to the health or safety of the applicant or their family.

7. CCGs are awarded to—
   - help people establish themselves in the community following a period of care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
   - help people remain in the community rather than going into care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
   - help people set up home in the community, as part of a planned resettlement programme, following an unsettled way of life;
   - help families facing exceptional pressures, such as the breakdown of a relationship, or repair and replacement of items damaged by behavioural problems within the family; and
   - help people to care for a prisoner or young offender who is living with them on release on temporary licence.

8. The interim SWF is aimed at supporting people on low incomes. Some of the main users of are—
   - disabled people
   - lone parents
   - unemployed people
   - older people
   - care leavers
   - homeless people
   - ex offenders
   - carers.

9. The interim SWF operates on a discretionary, budget-limited basis, with applications being prioritised according to need. Local authorities are expected to manage expenditure in such a way as to ensure effective budgetary management of funds over the financial year. They are able to supplement funding from the Scottish Ministers, but are not obliged to do so. The intention is for the funds to link to other local services and provide a better service to vulnerable members of the local community. The most common services that applicants are signposted or referred to are advocacy, welfare rights, housing and money or debt management.

10. The interim SWF was designed to take advantage of local delivery, while maintaining a national character. The Scottish Government has sought to standardise the decision making and notification process for the interim SWF by providing comprehensive guidance, a standard
application form, a guide for decision makers and model documentation. In addition to this a national training programme and funding for a dedicated Development Officer, based in COSLA, in order to promote consistency and support implementation has been provided by the Scottish Government. However, local authorities have full discretion over local arrangements for delivery i.e. the arrangements for taking and processing applications and the arrangements for paying grants or fulfilling them by other means. This allows local authorities to align the SWF with other relevant services, make effective links with local organisations and to ensure that their delivery meets local needs, for example in terms of geography.

**COMMENTARY ON INDIVIDUAL PROVISIONS**

**Section 1: Welfare funds**

11. This section establishes the concept of a “welfare fund”. It requires each local authority to maintain a fund. The funds are to be made up of any grants paid into the fund by the Scottish Ministers, and any amounts paid into the fund by the local authority.

**Section 2: Use of welfare funds: assistance for short term need and community care**

12. This section sets out the circumstances in which a local authority can provide financial or other assistance to or in respect of individuals.

13. It repeats relevant text from the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013: SI 2013/192 which set out an exception from the social security reservation in the Scotland Act 1998 so as to give the Scottish Parliament competence to legislate for welfare provision. Section 2 sets out the general scope of the funds.

14. Subsection (1) allows local authorities to use their welfare funds to provide occasional financial or other assistance to, or in respect of, individuals for the purposes of meeting, or helping to meet an immediate short term need arising out of an exceptional event, or exceptional circumstances. The short term need must also be one that would mean there would be a risk to the wellbeing of an individual if it were not met.

15. This section also allows local authorities to use their welfare funds to provide occasional financial or other assistance to, or in respect of, individuals to enable qualifying individuals to establish or maintain a settled home.

16. Subsection (2) provides that welfare funds can be used to provide assistance to qualifying individuals who have been or, without the assistance, might otherwise be in prison, hospital, a residential care establishment or other institution such as foster care, or be homeless or otherwise living an unsettled way of life.

17. Subsection (3) provides that a local authority may pay third parties to provide assistance to qualifying individuals by either providing goods or services. For example, a local authority may pay a contractor to provide furniture or carpets to fulfil a grant.
Section 3: Administration of welfare funds

18. This section provides that a local authority may make arrangements for another person to administer its welfare fund on its behalf. This means that local authorities can outsource the provision of their welfare fund, to the private or third sector or to another local authority. They would retain responsibility and accountability for the fund, but it would be delivered by a third party.

19. Subsection (2) allows for a number of local authorities to come together and outsource the provision of their welfare funds jointly, in accordance with any instructions agreed between the authorities.

20. Subsection (3) allows for local authorities to administer their welfare funds jointly. This subsection allows them to establish a joint committee which would administer their joint welfare funds.

Section 4: Review of decisions

21. Subsections (1) and (2) of this section allow regulations to be made about arrangements that local authorities are required to have in place to carry out reviews of decisions they make in relation to the provision of assistance. Where the applicant requests a review, the local authority can be required to arrange for the case to be looked at again, within the parameters that will be set out in regulations.

22. Subsection (3) sets out a right for an individual to apply for a further review, beyond that carried out by a local authority, by the SPSO. This is a new jurisdiction for the SPSO and is distinct from the SPSO’s current jurisdiction which involves considering whether there has been maladministration.

23. Subsection (4) gives the SPSO the power, where it considers that the decision made by the local authority is not the one that should have been made, to direct the local authority to make an award out of its welfare fund or to remit the case to the local authority so that it can re-consider its decision.

24. Subsection (5) specifies that regulations made under this section are subject to the negative procedure.

Section 5: Welfare funds: further provision

25. This section provides the Scottish Ministers with the power to make regulations to set out how welfare funds should operate, and what local authorities’ functions are in relation to the funds.

26. Subsection (2) sets out a number of particular matters about which the Scottish Ministers may make provision in regulations. Any regulations made under this section will in effect set out the detailed legislative framework for the operation of the welfare funds.
These documents relate to the Welfare Funds (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 10 June 2014

27. Regulations may in particular make provision about how an application to receive assistance is to be made; the procedure which local authorities are to follow in relation to applications; eligibility to receive assistance; other circumstances in which assistance may, or may not be provided; the type of assistance which may be provided; and circumstances in which payments or assistance may or may not be repaid or recovered. They may also make provision requiring local authorities to provide the Scottish Ministers with information for monitoring and reporting purposes; about arrangements which may be made relating to the administration of welfare funds under section 3; about arrangements for review of decisions by local authorities and requiring applicants to the funds to provide information for the purposes of a review by a local authority and about circumstances in which an application to receive assistance or an application for review by a local authority may be made by a person on behalf on an individual.

28. Subsection (3) provides that the regulations may make different provision for different purposes. They may also make incidental, supplementary, consequential, transitional, transitory or saving provision.

29. Subsection (4) provides that regulations under this section may not make provision about reviews by the SPSO. The SPSO is independent of the Scottish Ministers and will set out its own procedures for review.

30. Subsection (5) provides that regulations under this section are subject to the negative procedure.

Section 6: Guidance

31. This section provides that local authorities must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of functions under the Bill.

32. Subsection (2) provides as to the guidance that the Scottish Ministers can issue. The guidance must apply in the same way to all local authorities, may be general or specific and can be varied or revoked, subject to consultation requirements contained in subsection (3).

33. Subsection (3) provides that the Scottish Ministers must consult such body representing local authorities as they think fit, and other persons as they consider appropriate before issuing, varying or revoking guidance.

34. Subsection (4) provides that the Scottish Ministers must publish guidance in such manner as they consider appropriate.

Section 7: Commencement

35. This section provides for commencement of the Bill. Sections 7 and 8 will come into force on the day after Royal Assent.

36. Subsection (2) provides that the other provisions of the Bill will come into force on such day as the Scottish Ministers may by order appoint.
37. Subsection (3) provides that a commencement order may include incidental, supplementary, consequential, transitional, transitory or saving provision.

Section 8: Short title

38. This section gives the short title of the Bill.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Welfare Funds (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 10 June 2014. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

2. The Bill makes provision for the establishment of welfare funds which will be maintained by local authorities and will be established to reflect the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013: SI 2013/192 (the Order). The Order provided a new exception to the social security reservation, which is set out as Section F1 in Part 2 of Schedule 5 to the Scotland Act 1998. This meant that following the abolition by the Welfare Reform Act 2012 of community care grants and crisis loans for living expenses from the Social Fund operated by the Department for Work and Pensions (DWP), the legislative competence of the Scottish Parliament was widened so that it can legislate in relation to the provision of welfare assistance in case of a crisis or to help establish or maintain a settled home.

3. DWP transferred funding to the Scottish Government for financial years 2013/14 and 2014/15 in relation to welfare provision. This funding could have been used for any purpose. However, the Scottish Ministers decided to use it for local welfare provision through the Scottish Welfare Fund.

BILL PROVISIONS

4. The Bill is comprised of eight sections. It confers duties on local authorities to maintain and administer welfare funds in particular fashions. It confers powers on the Scottish Ministers to make regulations, and publish guidance which will set out how welfare funds should be administered. It requires the Scottish Public Services Ombudsman (SPSO) to carry out reviews in relation to local authority decisions on provision of assistance under welfare funds.

5. The detail of how welfare funds will be administered is not set out in the Bill. However, the intention is that the package of the Bill, associated regulations and guidance, which the Scottish Ministers intend to make, will set out in legislation arrangements that have been in place on an interim basis since April 2013.

6. Those interim arrangements are known as the Scottish Welfare Fund (SWF) and the intention is that the legislative package will allow for these arrangements to continue, notwithstanding a change in how second tier reviews will be undertaken. A summary of the interim scheme is provided in paragraphs 7 - 13.
SUMMARY OF THE INTERIM SWF SCHEME

7. The interim SWF aims to—
   • provide a safety net in an emergency when there is an immediate threat to health and safety, through the provision of a non-repayable grant which is known as a Crisis Grant (CG); and
   • enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant (CCG). This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.

8. CGs are awarded to meet expenses that have arisen as a result of an emergency or disaster in order to avoid serious damage or serious risk to the health or safety of the applicant or their family.

9. CCGs are awarded to—
   • help people establish themselves in the community following a period of care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
   • help people remain in the community rather than going into care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
   • help people set up home in the community, as part of a planned resettlement programme, following an unsettled way of life;
   • help families facing exceptional pressures, such as the breakdown of a relationship, or repair and replacement of items damaged by behavioural problems within the family; and
   • help people to care for a prisoner or young offender on release on temporary licence.

10. The interim SWF is aimed at supporting people on low incomes. Some of the main users are—
    • disabled people
    • lone parents
    • unemployed people
    • older people
    • care leavers
    • homeless people
    • ex offenders
    • carers.
11. The interim SWF operates on a discretionary, budget-limited basis, with applications being prioritised according to need. Local authorities are expected to manage expenditure in such a way as to ensure effective budgetary management of funds over the financial year. They are able to supplement funding from the Scottish Ministers but are not obliged to do so.

12. The interim SWF links to other local services with the aim of providing relevant support to address underlying issues which have resulted in a crisis or the need for a CCG. The most common services that applicants are signposted or referred to are advocacy, welfare rights, housing and money or debt management.

13. The interim SWF was designed to take advantage of local delivery while maintaining a national character. The Scottish Government has sought to standardise the decision making and notification process for the interim SWF by providing comprehensive guidance, a standard application form, a guide for decision makers and model documentation. In addition to this a national training programme and funding for a dedicated Development Officer, based in COSLA, in order to promote consistency and support implementation has been provided by the Scottish Government. However, local authorities have full discretion over local arrangements for delivery i.e. the arrangements for taking and processing applications and the arrangements for paying grants or fulfilling them by other means. This allows local authorities to align the SWF with other relevant services, make effective links with local organisations and to ensure that their delivery meets local needs, for example in terms of geography.

OVERVIEW OF AREAS WHERE COST WILL BE INCURRED

14. The following paragraphs provide a summary of where any significant costs/financial pressures will arise as a result of the introduction of the Bill.

15. There are costs associated with a number of sections within the Bill. Initial start-up and administration costs have already been incurred by both the Scottish Government and local authorities in respect of interim arrangements that have been in place since April 2013. These include staff costs within the Scottish Government and local authorities, IT setup costs, staff training costs and publicity.

16. There will also be ongoing financial pressures on the Scottish Government to provide programme funding for local authorities to distribute through welfare funds, and to provide associated administration funding. The programme funding has been confirmed as continuing at £33 million per annum until the end of the current spending review period in 2015/16.

17. The administration funding for 2014/15 is £5 million. The administration budget for 2015/16 has not yet been decided, however, provision has been made for this within budget plans to maintain it at the same level.

18. Section 4 of the Bill provides for the SPSO to have powers to carry out reviews of local authority decisions relating to assistance under welfare funds. The new powers diverge from SPSO’s traditional role in dealing with maladministration and require a different approach. The Scottish Government has estimated set up costs and annual running costs for a separate unit that is envisaged within SPSO to deal with independent review requests from welfare funds.
applicants. Funding for the SPSO will be transferred from the Scottish Government to the Scottish Parliamentary Corporate Body (SPCB), which funds the SPSO, for 2014/15 and 2015/16, after which permanent arrangements will be put in place for funding.

19. The table below summarises the costs that have been identified as falling on the Scottish Government to the end of the current spending review period in 2015/16, and where this funding is being allocated in order to deliver the welfare funds. Further details on costs are available at paragraphs 28 - 52.

<table>
<thead>
<tr>
<th>Organisation funding allocation</th>
<th>Year</th>
<th>Programme Funding (£)</th>
<th>Administration Funding (£)</th>
<th>Second Tier Review Funding (£)</th>
<th>Implementation and LA support (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013/14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>340,000</td>
</tr>
<tr>
<td>LA</td>
<td></td>
<td>33,000,000</td>
<td>5,000,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPCB /SPSO</td>
<td></td>
<td>60,000 – 100,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2014/15</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>340,000</td>
</tr>
<tr>
<td>LA</td>
<td></td>
<td>33,000,000</td>
<td>5,000,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPCB /SPSO</td>
<td></td>
<td>6,000 – 100,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2015/16</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SG</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>340,000</td>
</tr>
<tr>
<td>LA</td>
<td></td>
<td>33,000,000</td>
<td>TBC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPCB /SPSO</td>
<td></td>
<td>250,000 - 400,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**COSTS ON THE SCOTTISH ADMINISTRATION**

**Funding transfer from the UK Government**

20. The SWF replaces the discretionary Social Fund which was abolished by the UK Government under the Welfare Reform Act 2012. The table below shows DWP funding for the discretionary Social Fund in Scotland for a selection of years where data are available, prior to the transfer to the Scottish Government as mentioned previously in paragraph 3.

<table>
<thead>
<tr>
<th>Year</th>
<th>DWP Expenditure (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005/06</td>
<td>25,122,500</td>
</tr>
<tr>
<td>2009/10</td>
<td>30,181,900</td>
</tr>
<tr>
<td>2010/11</td>
<td>29,051,700</td>
</tr>
<tr>
<td>2011/12</td>
<td>27,667,200</td>
</tr>
</tbody>
</table>

Source – [DWP Social Fund Localisation Data](http://webarchive.nationalarchives.gov.uk/20120403151637/http:/dwp.gov.uk/local-authority-staff/social-fund-reform/localisation-data/)

21. The budget for the Social Fund was transferred to the devolved governments and local authorities in England for financial years 2013/14 and 2014/15. In the case of the Scottish Government, this transfer amounted to £23.8 million for programme funding. This reflected a

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period of “managing back demand” (narrowing eligibility) for the discretionary Social Fund in recent years to below the level of 2005/06.

<table>
<thead>
<tr>
<th>Year</th>
<th>Transfer of funds from DWP</th>
<th>Additional funding provided by SG</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Programme Funding (£)</td>
<td>Administration Funding (£)</td>
<td></td>
</tr>
<tr>
<td>2013/14</td>
<td>23,795,000</td>
<td>5,000,000</td>
<td>28,795,000</td>
</tr>
<tr>
<td>2014/15</td>
<td>23,795,000</td>
<td>4,600,000</td>
<td>28,395,000</td>
</tr>
</tbody>
</table>

Source for DWP funding - DWP social fund settlement funding allocation

22. The Scottish Ministers decided to use the full allocation from the UK Government to provide local welfare assistance. They decided to top up the funding for financial years 2013/14 and 2014/15. By providing an additional £9.2 million of funding for both of these years the total funding available for the welfare fund in each of these years is £33 million. The additional funding is in recognition of the de facto cuts in spend on the Social Fund in the years before transfer and the expectation of additional demand on the fund as a result of welfare reforms.

23. As the funds will be discretionary, the Bill does not create any entitlement. Under the interim SWF, local authorities manage the fund by varying priority levels through the year to avoid exhausting the fund. It is planned that this would continue under the permanent funds. It is anticipated that wide ranging changes in welfare benefits and relatively high retail prices and food costs will continue to create pressure on low income households in the immediate future. This is why funding continues at £33 million in 2014/15 and 2015/16, a level which was endorsed by the Welfare Reform Committee as part of its scrutiny of the 2014/15 budget.

24. Statistics on the interim SWF are published quarterly. Spend by local authorities between April and December of 2014 was £18 million and the full year spend is estimated to be in the region of £29 million.

25. The UK Government also transferred funding for administration costs of just over £5 million in 2013/14, falling to just over £4.6 million in 2014/15.

26. Further, the UK Government also proposed to transfer a one-off amount of just under £240,000 for set-up costs in 2012/13. The Scottish Government pressed DWP for further funding for set-up costs. The final transfer from the UK Government for set-up costs was in the region of £2 million. All of this funding was passed on to local authorities to enable the interim scheme to be established in April 2013.

27. The total funding transferred to local authorities for local welfare provision thus far is therefore £2 million in 2012/13 for set-up costs, and £38 million (for programme and administration costs) in 2013/14 and 2014/15, giving an overall total of £78 million.

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2 http://www.dwp.gov.uk/docs/social-fund-settlement-funding-allocation.pdf
3 www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/swfSpend
Funding commitments

28. The Scottish Ministers have committed, in the Budget for 2014/15, to maintaining programme funding for welfare funds at £33 million for the current spending review period. This means that £33 million will be made available in programme funding for local welfare provision in 2015/16 from the Scottish Government block grant. The terms of the funding for 2015/16 are yet to be agreed between the Scottish Ministers and COSLA. The Bill allows the funding to be ring-fenced.

29. The 2014/15 budget also included £4.6 million for administration funding. Following discussions with COSLA, the Scottish Ministers have agreed to increase administration funding for 2014/15 to £5 million. This is reflected in the Local Government Finance (Scotland) Order 2014 - Settlement for 2014-15 and Redeterminations for 2013-14.

30. All funding from 2015/16 will be part of the Scottish Government block grant from the UK Government. It will be for the Scottish Ministers to allocate funds from the Scottish Government block grant from financial year 2016/17, in the same way as other funding pressures are met.

Establishment of the welfare funds, and support for local authorities

31. There will be an administrative cost on the Scottish Government to put in place the necessary subordinate legislation, and to produce the statutory guidance to underpin the high level framework as set out in the Bill. These costs will be in addition to ongoing administrative costs on the Scottish Government in relation to the quality improvement programme for the SWF that is in place to support local authorities. This involves the collection of statistical information, a series of visits to local authorities to help them adjust to their new decision-making role, and sponsorship of a Development Officer based in COSLA.

32. The associated staffing cost for implementation of the Bill and ongoing support to local authorities, as outlined in paragraph 31, is estimated at approximately £340,000 per annum for 2014/15. This estimate is based on average staff costs for the grades of staff that are currently engaged in work related to the SWF and the implementation of the Bill. It is estimated that approximately £75,000 of the £340,000 is directly related to implementation of the Bill. These costs are anticipated to start to reduce in 2015/16, with further significant reductions in the following years, with estimated steady state costs being £65,000 per year. These costs will be met through existing resources in the Welfare Divisional Budget and are predictable and fairly certain.

33. The Scottish Government has retained a sum of £150,000 from the administrative funding for 2013/14 and 2014/15 to support a quality improvement function for the interim scheme. In 2013/14, this funding was used for the COSLA Development Officer, a secondee from DWP, and training and awareness sessions and publicity materials for the interim arrangements.

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4 http://www.scotland.gov.uk/Topics/Government/local-government/17999/11203/Circular#approve
COSTS ON LOCAL AUTHORITIES

34. The main cost on local authorities will relate to the administration of the scheme. As mentioned at paragraph 26 above, the Scottish Government made some £2 million available to local authorities for start-up costs for the interim SWF. The Bill does not make any significant alterations to the administrative requirements for local authorities. Therefore the Scottish Government does not anticipate that local authorities will incur any net costs to adapt to the statutory nature of the funds once the Bill is passed. Paragraph 39 below suggests areas where local authorities may make savings under the permanent arrangements.

35. The Scottish Government made a bid to the DWP in respect of funding for set-up costs, which included IT procurement, staff recruitment and training, publicising the new arrangements and necessary adjustments to premises. The basis of the distribution across local authorities was agreed with COSLA leaders and the joint COSLA/Scottish Government Settlement and Distribution Group. The set-up funding was distributed on the basis of cost elements that were included in the national bid for funding that was made by the Scottish Government to the DWP.

36. The distribution of the administrative funding for 2013/14 and 2014/15 was based on the number of applications for DWP CCGs and Crisis Loans (CLs) made from local authority areas in 2011/12 (the most recent full year’s data available from DWP). Grant funding was based on the number of awards for CCGs and CLs made from local authority areas in 2011/12 (the most recent full year’s data available from DWP). As for the set-up costs, the basis of the distribution across local authorities was agreed with COSLA leaders and the joint COSLA/Scottish Government Settlement and Distribution Group.

37. New functions for local authorities under the scheme include the set-up cost mentioned in paragraph 26. These sit alongside ongoing requirements in respect of delivery of the funds. The Scottish Government passed on to local authorities the full £5 million administration funding for 2013/14 that was transferred from DWP, and proposed passing on the transferred funds from DWP of £4.6 million in 2014/15. DWP had transferred a reduced sum for 2014/15 by assuming efficiency savings in year two of operation.

38. Following representations by local authorities to make £6.8 million available for administration funding in 2014/15, the Scottish Ministers decided to top up the administration funding that DWP had transferred for 2014/15 to £5 million to match that provided in 2013/14.

39. Under the interim scheme, local authorities have been undertaking second tier reviews with the associated costs of arranging and supporting panel meetings. They have absorbed these costs in to administration costs. Following the set-up of independent review by the SPSO, local authorities will no longer have to meet these costs. Discussions on administration funding will continue to take place with COSLA as local authorities establish the costs and benefits associated with administering the funds under the permanent arrangements.

40. One of the main benefits of local delivery of the welfare funds is the ability of local authorities to offer holistic support to applicants by facilitating access to other services. This approach should help to ensure that applicants can find a way to avoid being in crisis in the future. By helping applicants to set up or stay in their own homes rather than be in care, costs of
care services falling on local authorities should be reduced. The impacts of wider welfare reforms aside, this should create a downwards pressure on other local authority budgets such as section 12 emergency social work payments and homelessness in the longer term, though this cannot be quantified.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

41. The Scottish Government has carried out a full *Business and Regulatory Impact Assessment*[^5] and does not anticipate the Bill introducing significant costs on bodies beyond the Scottish Government, local authorities and the SPSO.

42. The Scottish Government has not identified any costs that would be put on individuals as a result of the introduction of the Bill.

SCOTTISH PUBLIC SERVICES OMBUDSMAN (SPSO)

43. Section 4 of the Bill provides for the SPSO to have powers to conduct reviews of decisions made in relation to applications to welfare funds. The new powers diverge from SPSO's traditional role in dealing with maladministration and will lead to further set up costs and annual running costs for a separate unit that is envisaged within SPSO to deal with reviews for welfare funds applicants.

44. The number of reviews that have been carried out under the interim scheme is significantly lower than the number that was carried out by the DWP under the discretionary Social Fund. This was not what was anticipated, and it has made it difficult to make reliable estimates for the cost of administering reviews through the SPSO.

45. Under the discretionary Social Fund, the review functions to be undertaken by SPSO were carried out by the Independent Review Service (IRS). The number of second-tier reviews undertaken in Scotland by the IRS for financial year 2011/12 was 6258. The Scottish Government does not have full data for second-tier reviews under the interim arrangements but estimate that there will have been fewer than 500 reviews in the first year of running. Following consultation with stakeholders, the Scottish Government has identified a number of potential reasons why reviews are this low for the interim scheme.

46. One reason is that the SWF aims to take a holistic approach which means clients can receive other help or advice even if they do not get an award from the funds. It may also be the case that applicants are not fully aware of the second-tier review process or that a second review by local authorities lacks credibility. The Scottish Government knows that many local authorities have been paying grants for items of high, medium and low priority during the first year due to relatively low initial application levels. This means that fewer applications have been rejected than the Scottish Government might have expected. It may be that this has resulted in fewer requests for review.

[^5]: [http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/welfarefundsbill](http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/welfarefundsbill)
47. Based on assumptions that review numbers will rise as the review process becomes more widely known, the Scottish Government anticipates there will be more reviews conducted by the SPSO than the number of second-tier reviews the Scottish Government has seen so far in the interim scheme. However, changes to the way the welfare funds will operate in comparison with the Social Fund mean that the Scottish Government does not anticipate that review numbers will reach the level handled by the IRS. The Scottish Government has used a planning assumption of 2,000 reviews per year to provide figures for the cost of setting up and hosting reviews within SPSO.

48. Working with the SPSO, the Scottish Government has estimated the following costs: set up costs of £60,000 to £100,000, based on the SPSO experience of setting up a new function, and an estimated annual running cost of £400,000. The estimated annual running costs are based on the costs of delivery of a similar scale review function by the Office of the Social Fund Commissioner for Northern Ireland (OSFC). The most recent published figures for the OSFC are shown below.

<table>
<thead>
<tr>
<th>OSFC Expenditure in 2012/2013</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Operating Costs</td>
<td>£58,690.27</td>
</tr>
<tr>
<td>Salaries</td>
<td>£314,852.72</td>
</tr>
<tr>
<td>Total</td>
<td>£373,542.99</td>
</tr>
</tbody>
</table>

Source: OSFC Annual Report

49. These estimates will be subject to review as the new process is established (the SPSO has requested an initial review after six months) but they are the best indicators that are available, drawing on experiences the SPSO has in setting up new functions, and learning from other review bodies in respect of their costs.

50. As discussed above, there is uncertainty over the number of reviews that will reach the SPSO. This means there are significant uncertainties relating to these costs, not least in relation to the possibility that the SPSO may have to physically expand their estate to accommodate the expected number of staff required to undertake reviews. Any expansion of the SPSO estate would be subject to interactions with its current functions and staffing levels and the costs relating to second tier review functions would be subject to negotiation.

51. If the number of reviews does not rise as expected, there may be a reduction in the cost of undertaking second-tier reviews, although the reduction in costs would not be in direct proportion to the reduction of cases, as fixed costs would remain. Some reductions in cost may be possible by reducing staff numbers. However, to ensure quick turnaround of cases a minimum staffing level would be required – this minimum staffing level will be established over time, as it becomes clearer how many reviews SPSO will be undertaking. It is reasonable to assume that, with a considerably lower number of reviews, say 400 per annum, staff costs could be reduced by something in the region of £150,000, giving an annual running cost of approximately £250,000. The table below shows estimated running costs for high and low levels of demand for second-tier review.

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These documents relate to the Welfare Funds (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 10 June 2014

<table>
<thead>
<tr>
<th>Level of second-tier reviews</th>
<th>Estimated annual costs of administering second tier review in SPSO (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>High – 2000 reviews</td>
<td>400,000</td>
</tr>
<tr>
<td>Low – 400 reviews</td>
<td>250,000</td>
</tr>
</tbody>
</table>

52. Costs relating to the SPSO review procedure that are provided for in the Bill will be met through grant funding from the core Scottish Government block grant. This funding will be transferred by the Scottish Ministers to the SPCB in years 2014/15 and 2015/16, who in turn will pass the funding to the SPSO. There is provision in the Welfare Reform Mitigation Budget to meet the initial set-up costs for the SPSO review function and the running costs in years 2014/15 and 2015/16.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 10 June 2014, the Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Welfare Funds (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 10 June 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Welfare Funds (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Welfare Funds (Scotland) Bill introduced in the Scottish Parliament on 10 June 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 51–EN.

2. The Bill makes provision for the establishment of welfare funds which will be maintained by local authorities and will be established to reflect the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013: SI 2013/192. The Bill is comprised of eight sections. It confers duties on local authorities to maintain and administer welfare funds in particular fashions. It confers powers on the Scottish Ministers to make regulations, and publish guidance which will set out how welfare funds should be administered. It also requires the Scottish Public Services Ombudsman (SPSO) to carry out reviews in relation to local authority decisions on provision of assistance under welfare funds.

3. The detail of how welfare funds will be administered is not set out in the Bill. However, the intention is that the package of the Bill, associated regulations and guidance which the Scottish Ministers intend to make, will set out in legislation arrangements that have been in place on an interim basis since April 2013. Those interim arrangements are known as the Scottish Welfare Fund (SWF) and the intention is that the legislative package will allow for these arrangements to continue, notwithstanding a change in how second tier reviews will be undertaken. A summary of the interim scheme is provided in paragraphs 7 - 14.

Legislative background

4. The Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013 provided a new exception to the social security reservation, which is set out as Section F1 in Part 2 of Schedule 5 to the Scotland Act 1998. This meant that following the abolition by the Welfare Reform Act 2012 of community care grants and crisis loans for living expenses from the Social Fund operated by the Department for Work and Pensions (DWP), the legislative competence of the Scottish Parliament was widened so that it can legislate in relation to the provision of welfare assistance in case of a crisis or to help establish or maintain a settled home.
5. The Scottish Ministers, in consultation with the Convention of Scottish Local Authorities (COSLA) and other stakeholders, decided that local authorities were in the best position to provide local welfare assistance in case of a crisis or to help establish or maintain a settled home.

6. To do that, local authorities have, since April 2013, been using their powers under section 20 of the Local Government in Scotland Act 2003, known as their power to advance well-being, to deliver an interim SWF. To do so they have been following Ministerial guidance – Scottish Welfare Fund Guidance1 - issued under section 21 of that Act. The interim SWF is based on a voluntary agreement between Scottish Ministers and COSLA. The Bill will put welfare funds on a statutory footing in Scotland.

POLICY OBJECTIVES OF THE BILL

7. The policy objective of the Bill is to provide a framework which, along with the associated regulations and guidance that the Scottish Ministers intend to make, will put the interim SWF arrangements on a statutory footing.2 The following paragraphs provide a summary of the interim scheme. The objectives of the interim SWF are to—

- provide a safety net in an emergency when there is an immediate threat to health and safety, through the provision of a non repayable grant which is known as a Crisis Grant (CG); and

- enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant (CCG). This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.

8. CGs are awarded to meet expenses that have arisen as a result of an emergency or disaster in order to avoid serious damage or serious risk to the health or safety of the applicant or their family.

9. CCGs are awarded to—

- help people establish themselves in the community following a period of care where circumstances indicate that there is a risk of the person not being able to live independently without this help;

- help people remain in the community rather than going into care where circumstances indicate that there is a risk of the person not being able to live independently without this help;

- help people set up home in the community, as part of a planned resettlement programme, following an unsettled way of life;

1 http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/scottishwelfarefundguidance

2 Detail on the provisions of the Bill is set out in the Explanatory Notes
help families facing exceptional pressures such as the breakdown of a relationship, or
repair and replacement of items damaged by behavioural problems within the family; and

- help people to care for a prisoner or young offender on release on temporary licence.

The aim of the interim SWF

10. The aim is to support individuals, families and communities to manage better in the
longer term and promote resilience. CCGs generally provide household items. They align well
with the overall Scottish Government approach of early intervention, through targeting
transitions which increase risks of adverse outcomes, such as leaving prison, moving out of care,
or taking on a tenancy. They also support specific Scottish Government policies such as care in
the community, tackling child poverty and reducing homelessness. CGs are generally smaller
payments for food and fuel until the next regular income is received. They do not fit the early
intervention approach but have a role in preventing further harm, reducing the longer term
impact on other services.

Operation of the interim SWF

11. The interim SWF operates on a discretionary, budget-limited basis, with applications
being prioritised according to need. Local authorities should manage expenditure in such a way
as to ensure effective budgetary management of funds over the financial year. They are able to
supplement funding from the Scottish Ministers, but are not obliged to do so. The interim SWF
links to other local services with the aim of providing relevant support to address underlying
issues which have resulted in a crisis or the need for a CCG. The most common services that
applicants are signposted or referred to are advocacy, welfare rights, housing and money or debt
management.

12. The interim SWF was designed to take advantage of local delivery, while maintaining a
national character. The Scottish Government has sought to standardise the decision making and
notification process for the interim SWF by providing comprehensive guidance, a standard
application form, a guide for decision makers and model documentation. In addition to this a
national training programme and funding for a dedicated COSLA Development Officer in order
to promote consistency and support implementation has been provided by the Scottish
Government. However, local authorities have full discretion over local arrangements for
delivery i.e. the arrangements for taking and processing applications and the arrangements for
paying grants or fulfilling them by other means. This allows local authorities to align the SWF
with other relevant services, make effective links with local organisations and to ensure that their
delivery meets local needs, for example in terms of geography. The intention is that the package
of the Bill, and regulations and guidance under the Bill, will allow for these arrangements to
continue.

13. The Scottish Government produced a detailed data specification for IT systems used to
administer the SWF and publishes quarterly statistics. This information is allowing local
authorities to identify trends and anomalies and is intended to drive improvement and inform

Equality monitoring. There is a wide range of other activity under way which is intended to support local authorities in implementation of the SWF in its early stages so that operation is as effective as possible by the time the Bill passes and the permanent welfare funds come into operation. This includes regular meetings of a SWF practitioners group to resolve problems and share practice, an online knowledge hub, a quality improvement officer who undertakes case sampling and feeds back to the local authority, a two day initial training course on the SWF and regular decision-making workshops for local authority staff.

14. Heriot Watt University has also undertaken an independent evaluation of the SWF (the Heriot Watt evaluation) which is feeding into the on-going improvement of the interim scheme and the development of the permanent arrangements.

CONSULTATION

15. There has been extensive consultation on both the interim scheme and the draft Bill. This section provides details on these consultations and other stakeholder engagement activity in relation to both the interim scheme and the Bill.

Devolution of Community Care Grants and Crisis Loans: Consultation on Successor Arrangements

16. A consultation paper, “Devolution of Community Care Grants and Crisis Loans: Consultation on Successor Arrangements” (the successor arrangements consultation) was published in August 2011. The consultation closed in February 2012. There were 50 responses. Forty-six responses were from organisations, with four individual responses from people with professional experience of the issues. Twenty-nine responses were from third sector organisations, thirteen from local authorities and four from other public sector organisations, including the Social Fund Commissioner. Amongst the third sector respondents, almost two-thirds were organisations with a national remit and a third were more locally focused. Third sector responses include social enterprises. The responses are available online at [http://www.scotland.gov.uk/Publications/2012/02/1585/downloads](http://www.scotland.gov.uk/Publications/2012/02/1585/downloads).

17. The successor arrangements consultation asked for views on how the successor arrangements might operate in Scotland. The Scottish Ministers had concluded that the successor arrangements should continue to address similar needs as those which were met by the discretionary Social Fund, as these remained current, so did not seek views on alternative uses for the successor arrangements. It did however, consider different ways to deliver support, in particular—

- whether the successor arrangements should combine the current systems of grants and loans into one grant fund;
- whether the Scottish Government should use a centralised or local delivery system;
- which organisation or organisations might deliver a locally based scheme

4 [http://www.scotland.gov.uk/Publications/2014/05/8469](http://www.scotland.gov.uk/Publications/2014/05/8469)
6 [http://www.scotland.gov.uk/Publications/2012/02/1585/downloads](http://www.scotland.gov.uk/Publications/2012/02/1585/downloads)
• re-focussing scheme eligibility;
• providing goods (e.g. using furniture re-cycling, white goods purchased through government procurement) rather than cash grants; and
• including other support such as budgeting or other advice and encouraging savings.

18. The Scottish Ministers decided, on the basis of the successor arrangements consultation, to establish a single Fund, delivered by local authorities based on national guidance issued by the Scottish Ministers. The Fund was established for a two year period from April 2013, with the intention that it should be made permanent through legislation. This has allowed for the running of the interim scheme to influence the approach taken in the Bill. Since the interim scheme has been running, there have been changes made to the guidance to take account of feedback from local authorities and third sector organisations representing the interests of users. In particular, eligibility was broadened, removing the requirement for applicants to be on a specified benefit and broadening community care grants for exceptional pressure to families without children.

19. The decisions made on the interim scheme are covered in detail in the paragraphs 26 - 50, which outline alternative approaches that were considered in relation to the introduction of the interim scheme. An analysis of the responses to the successor arrangements consultation was published on the Scottish Government website.

Informal consultation on draft guidance and Equality Impact Assessment for the SWF

20. An informal consultation on draft guidance and a draft Equality Impact Assessment (EQIA) for the interim SWF took place during August 2012. The consultation was issued to the mailing list of stakeholders including all local authorities, organisations which had responded to the public consultation in October 2011, organisations which attended the stakeholder events in June 2012 and a number of umbrella organisations for groups which share protected characteristics for which the Scottish Government had little or no evidence.

21. There were 49 responses to the consultation despite the short timescale. 24 were from local authorities, 15 from the third sector, three from Scottish Government policy interests and six from other, mainly national, organisations. The responses gave constructive and detailed feedback on the guidance which allowed for improvements to be made to its focus and enabled the elimination of impacts which the Scottish Government had not intended. Many of the comments made in relation to the EQIA reflected issues raised in the initial public consultation and at subsequent stakeholder events. Respondents welcomed the move to more holistic support through local authorities and their partners. The information gathered was used to inform the high level principles of the SWF and the guidance and advice and training for local authorities on how they should deliver the service.

7 http://www.scotland.gov.uk/Publications/2012/02/1585/downloads
8 http://www.scotland.gov.uk/Topics/People/welfarereform/socialfund/draftguidance/draftguidance
9 http://www.scotland.gov.uk/Topics/People/welfarereform/socialfund/EQIAsummary
Consultation on draft Welfare Funds (Scotland) Bill and options for challenging decisions made by local authorities on applications to the Scottish Welfare Fund

22. A further consultation paper “Consultation on draft Welfare Funds (Scotland) Bill and options for challenging decisions made by local authorities on applications to the Scottish Welfare Fund”[10] (the Bill consultation) was published on 15 November 2013. This set out plans to put the current interim scheme onto a statutory footing. This consultation closed on 7 February 2014. There were 58 responses to this consultation[11] from a range of respondents – COSLA, 18 local authorities, 24 third sector organisations, four other public sector bodies, nine social enterprises, one business and an individual.

23. The consultation responses suggested that the Bill contained the elements that would be expected. There were a number of requests to include a section in the Bill setting out more clearly the scope and intentions of the funds and there were calls for the Bill to reflect the current guidance in relation to the types of people who can qualify for support, i.e. families under pressure, dependent children and definitions of disaster and emergency. These suggestions were not reflected in the Bill as any attempts to identify subgroups within those identified in section 2 of the Bill may only serve to narrow the scope of the funds.

24. There were suggestions that consultation on changes to the guidance should be widened beyond local authorities to include third sector organisations and members of the public where appropriate. There were also suggestions that the guidance should apply to all local authorities and that the Scottish Ministers should not have the power to direct guidance to individual local authorities. The Bill was redrafted prior to introduction to take account of these suggestions.

Scottish Government and COSLA led Reference Group

25. The Scottish Government has, jointly with COSLA, established a Reference Group, comprising third sector, local authorities and Scottish Government representatives to help steer the development of the legislation. Scottish Government officials have also attended a number of stakeholder meetings, as well as holding a dedicated stakeholder workshop, to discuss the interim scheme and plans for the Bill and associated regulations and guidance.

ALTERNATIVE APPROACHES

Requirement for a Bill

26. A legislative approach is considered to offer the best solution to delivering a national framework, with local delivery. It will ensure there is nationwide coverage in the future which is not reliant on a voluntary agreement between the Scottish Ministers and COSLA. This will give certainty to all parties that the vital support offered by welfare funds will be available across Scotland on a continuing basis.

27. The legislative approach also helps to strengthen the national nature of the scheme. Under the interim scheme, the guidance regarding the operation of the scheme has no status
This document relates to the Welfare Funds (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 10 June 2014

beyond the agreement reached between the Scottish Ministers and COSLA. The package of the Bill and regulations, and guidance under the Bill, will provide a sound legislative basis for the delivery of the welfare funds that could not otherwise be achieved. The regulations will provide a framework for the elements of the funds that should be approached consistently across local authorities. Guidance will provide more detailed explanation of what the Scottish Ministers intend, good practice and how to handle specific situations. However, local authorities will still have the scope to integrate access to the funds with other local services and make sure that the way in which they fulfil their grants fits local need and takes advantage of local opportunities, for example in furniture re-use.

28. There is no fundamental difference between the principles of the interim arrangements, the draft Bill issued for consultation in November 2013 and the Bill as introduced. The only proposed change is to the process for undertaking second tier reviews. Paragraphs 42 - 50 cover second tier review, which was a key element of the Bill consultation.

29. The following paragraphs detail the significant alternative approaches that were considered when making decisions regarding the content and delivery of the interim scheme, on which the permanent arrangements will be based. These issues were all covered in the successor arrangements consultation.

Grants not loans

30. It is expected that local authorities will provide grants and not loans. Provision of grants alone reduces complexity, improves effectiveness, lowers delivery and administration costs and avoids putting vulnerable people into debt. Proposals were made in the responses to the successor arrangements consultation which suggested running a scheme which encompassed both grants and loans. The key advantage of loans was seen as providing an opportunity to recycle funds back into the scheme. However, while DWP recovered crisis loans from benefit income at source, it advised that loans would be unsustainable for local authorities and devolved administrations providing local welfare as recovery costs were likely to exceed repayments. Responses to the successor arrangements consultation gave a qualified endorsement of the proposal that the successor arrangements should operate a single grant fund. The key advantages of operating a grant fund as opposed to loans, or a mixture of grants and loans, were financial benefits, both to applicants and organisations.

Delivery

31. The Bill establishes a system where local authorities will administer welfare funds.

32. The successor arrangements consultation asked for views on delivery models. Local authorities were considered the most appropriate delivery vehicle for local welfare because they offer a national delivery network and already deal with many of the client groups which used the Social Fund. They also had the necessary links, through their own services or those of community planning partners, to provide the holistic service that adds value to the one-off grants given by the SWF.
33. Prior to the start of the interim arrangements, consideration was given to different delivery models. Operating standard arrangements across Scotland with a centralised system was considered. This could have reduced the costs of implementation and ongoing delivery. However, it would have been more difficult to achieve a client-focused and joined-up approach which is sensitive to local circumstances. This is one of the key aims of the welfare funds.

Refocusing scheme eligibility

34. The successor arrangements consultation asked for views on refocusing eligibility of the scheme to focus on particular groups, such as ex-offenders or homeless people, or supporting older people to remain in the community. Respondents to the consultation challenged the idea that either groups or events should be the focus of eligibility. The suggestion was that prioritisation should be based on individual need and the immediacy and extent of any threat to the individual and their families' health and wellbeing. This ties in with the discretionary nature of the funds and is the approach that has been adopted in the Bill.

35. Section 2 of the Bill sets out the general circumstances in which welfare funds may be used to assist qualifying individuals. This section reflects the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013. The exact scope of the funds will be set out in regulations.

Goods rather than cash or grants

36. The Bill allows for the provision of financial or other assistance. This allows local authorities to provide goods as well as cash or other forms of grant. The advantage of providing goods rather than cash grants is that local authorities would expect to be able to deliver the same support for less money, or to provide more support for the same money. Also, some vulnerable people find it an additional burden to have to shop for items following a cash award, especially if they live in a remote area or do not have access to transport and, therefore, welcome items. However, providing goods rather than grants reduces choice which is a disadvantage to some recipients.

37. In place of cash, some local authorities are providing cash equivalents such as loaded cards, barcodes or vouchers under the SWF. These can be an efficient way of making awards quickly but some stakeholders have concerns that they are stigmatising. The Bill does not require local authorities to provide either grants or goods, but will allow them to provide support in the manner they believe is most appropriate, taking into account the specific needs of the applicant, for example any disability.

38. This approach was generally supported by respondents to the successor arrangements consultation. Those in favour of the provision of goods saw the potential for savings through bulk purchasing and through avoiding the potential for inappropriate spending of cash payments. The main perceived disadvantage of providing goods was that it limited individual choice and personal responsibility.

39. The current guidance for the interim scheme requires local authorities to ensure that goods that are provided are suitable for the applicant. This requirement will be replicated under
the new legislative framework to ensure those with genuine needs for non-standard goods are not disadvantaged. The Heriot Watt evaluation, as mentioned in paragraph 14, suggests that there is support for awards in kind as long as they are appropriate for the need and that goods are in a good condition, preferably new.

Include other support such as budgeting or other advice and encouraging savings

40. Respondents to the first consultation on the successor arrangements were generally in favour of offering other types of support (such as budgeting advice). However, there was a strong feeling that such support should not be compulsory.

41. This type of support will, therefore, not be compulsory in relation to the welfare funds and as a result, is not referenced in the Bill. Rather, the holistic nature of the funds which allow local authorities to integrate welfare funds with other services will allow for joining up with provision of other services that may be offered in the local area, particularly where the pattern of application may suggest an underlying problem.

Second tier review model

42. As mentioned previously at paragraph 28, second tier review was a key part of the Bill consultation. If an applicant disagrees with the decision on their application, they can ask for a review of their case. This is a first tier review and is carried out by another member of the welfare fund team within the local authority. Following this first tier review, if the applicant is still unhappy with the decision, they can ask for a second tier review.

43. Second tier review is an important protection for applicants. It provides an impartial check on local decision-making processes, ensuring administrative justice for the applicant, drives improvement in decision making and gives stakeholders confidence in the integrity of the funds. Under the interim scheme second tier reviews are carried out by an impartial panel made up of local authority staff who are separate from the SWF team and, in some cases, independent members. Providing for welfare funds in primary legislation means that there are more options for second tier review under the permanent arrangements than has been possible under the interim arrangements.

44. As part of the Bill consultation, three options for second tier review under the permanent fund were considered. These were—

- panels, convened by local authorities, with mandatory independent membership. This is based on the current practice under the interim SWF, with some alterations to make it fit better with the desired characteristics of review;
- second tier review by SPSO, probably with additional powers to consider the merits of cases rather than just maladministration and service failure; and
- a tribunal, supported by the Scottish Tribunals Service (STS).

45. The options were considered with the purpose and characteristics of second tier review in mind. In relation to welfare funds, second tier review purposes are—
This document relates to the Welfare Funds (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 10 June 2014

- to ensure that both initial decisions and decisions on first tier review are consistent with the legislation and guidance for the funds and that discretion has been reasonably exercised;
- to identify any deficiencies in local authority decision-making and give feedback to local authorities on the quality of their decision-making;
- to give confidence to applicants for review and to the wider public that the arrangements for second tier review are independent and impartial and that there is an effective remedy for defective decisions by local authorities; and
- to identify where the regulations, guidance or local policies appear to be having unintended consequences and highlight these as appropriate.

46. Desirable characteristics for first and second tier review are to—

- be transparent, fair and accessible system;
- be timely, recognising the circumstances of the applicant;
- be high quality, impartial, free to use and independent;
- operate quickly, making sound and accurate decisions;
- communicate effectively; and
- be proportionate and cost effective.

47. The SPSO has been identified as the preferred option for second tier review and this has been reflected in the Bill. It most closely fits the desirable characteristics for the review process and purpose of second tier review. In particular, it is independent of local and central government, providing a credible effective check on local authority decisions which will give users and stakeholders confidence in the funds. The inquisitorial approach used by the SPSO is appropriate to the types of questions that are most likely to be raised by applicants, the majority of which are likely to relate to discretionary decisions. It will effectively support quality improvement and drive improvement in decision making.

48. The main concern regarding the SPSO acquiring this function is that its current processes and culture might not be suitable for the quick turnaround required for welfare fund cases. This is a point which the SPSO acknowledges and will seek to address.

49. Based on the results of an options assessment and stakeholder views, a tribunal was not deemed suitable for second tier review. It is not the most appropriate approach for the type of decision being made, it is less likely to result in a good flow of improvement information to decision makers, and it would be very difficult to achieve satisfactory turnaround times. While there were positive comments expressed in the consultation about the independence of a tribunal and the fact that this would fit with appeal processes for DWP welfare benefits, there was also concern that a tribunal would be slow and overly complex for welfare fund cases.

50. The local authority option was rejected mainly because any option based in, or facilitated by, local government has the fundamental disadvantage that it is not independent. In discussion with COSLA, consideration was given as to how the arrangements for the interim scheme could
be developed to increase the independence of panels and provide access to an oral hearing. However, this would have meant the loss of some of the key advantages of local panels such as knowledge of local arrangements and the ability to provide quick turnaround and feedback to welfare fund teams.

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

**Human rights**

51. The Bill is considered to be fully compatible with the European Convention on Human Rights (ECHR). The only substantive ECHR issue arising relates to whether Article 6 of the Convention applies to a decision as to granting financial assistance out of a welfare fund. If it does (because the decision would involve a determination of a person’s civil rights and obligations), then Article 6 would require the availability of a process allowing decisions to be tested by an independent and impartial tribunal. It has yet to be established conclusively that decisions on welfare benefits of a purely discretionary nature fall within Article 6, but in any event the provisions in the Bill concerning review by the SPSO ensure that the Bill complies with that Article.

**Equal opportunities**

52. An EQIA\(^{12}\) was carried out when the decision was taken to introduce the interim SWF. The EQIA identified relatively limited impact on groups who share protected characteristics from the change in delivery from the DWP to local authorities, but highlighted some potential for improvements in service to applicants as a whole.

53. The SWF took the DWP eligibility criteria as a starting point but made some changes to simplify and to respond to criticisms of the Social Fund, and to achieve a better fit with the Scottish policy context. For example, the initial SWF criteria for families under exceptional pressure gave priority to families with children with the intention of contributing to the reduction of child poverty. This had the effect of disadvantaging families which included disabled adults who might previously have had awards under this category. However, from October 2013, revisions to the guidance have allowed some of the impacts identified in the EQIA to be reversed. Since the revision of the guidance, exceptional pressure awards have been available to all families, not just those with children. Further changes to the guidance also provided greater clarity on when payments to people who have had their benefits stopped or reduced by DWP because they have not complied with the conditions related to the benefit in question can be made, decreasing impacts in an area which may have disadvantaged people with poor mental health.

54. Another key finding of the EQIA was that there was not sufficient data gathered by the DWP on the Social Fund to allow for effective analysis. This informed the design of the Scottish Government data specification for SWF IT systems.

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\(^{12}\) [http://www.scotland.gov.uk/Topics/People/welfarereform/socialfund/EQIAsummary](http://www.scotland.gov.uk/Topics/People/welfarereform/socialfund/EQIAsummary)
55. The EQIA was updated in May 2014 to take account of the progression from the interim scheme to the statutory scheme. This involved considering the impact on equalities groups of introducing independent review of local authority decisions by the SPSO, and reviewing equalities monitoring information from the first 9 months of operation of the interim SWF to see what early lessons are to be learned and what further action is required. The updated EQIA and a summary of it\(^\text{13}\) have been published on the Scottish Government website. The key areas of activity as a result of the EQIA are—

- a programme of work to improve data quality;
- on-going data monitoring to identify long term trends;
- working with local authorities to promote good practice in relation to equalities groups; and
- promoting the fund to groups where data suggests that groups may be under-represented.

56. As the SPSO service does not yet exist, there is no data to look at in relation to the statutory scheme. However, the SPSO is bound by the Equality Act 2010 and has substantial processes in place for equalities planning, monitoring and reporting and the Scottish Government has not found indications that equalities groups would be disadvantaged by the introduction of the independent review service. Equalities considerations will be taken into account in designing its new service.

57. In practice, the regulations and statutory guidance will have a greater impact on equalities groups than the Bill itself. So, the Scottish Government intends to undertake a further EQIA at a relevant point in the development of the regulations.

**Island communities**

58. The Scottish Government has not identified any specific impacts on island communities through the introduction of the Bill.

**Sustainable development**

59. The Scottish Government has not identified any specific impacts in relation to sustainable development through the introduction of the Bill, though the framing of the interim scheme and guidance encourages local authorities to make use of furniture re-use schemes to fulfil awards under the SWF and this will apply in the proposed legislative framework.

**Local government**

60. The Bill will directly impact on local authorities. This has been set out in this Policy Memorandum and in the other accompanying documents to the Bill.

61. The Scottish Government has worked closely with COSLA through the introduction of the interim SWF. This close working relationship has been carried on with the implementation

\(^{13}\) [http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/welfarefundsbill](http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/welfarefundsbill)
of the joint COSLA/Scottish Government Reference Group comprising third sector, local authorities, and Scottish Government representatives to help steer the development of the legislation.

62. The Scottish Government also funds a development officer post in COSLA whose role is dedicated to supporting local authorities in implementing the SWF.
WELFARE FUNDS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Welfare Funds (Scotland) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by Parliament.

BACKGROUND

3. The Bill will make provision for the establishment of welfare funds which will be maintained by local authorities. The Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013 No. 192 provided a new exception to the social security reservation, which is set out as Section F1 in Part 2 of Schedule 5 to the Scotland Act 1998. This new exception widened the legislative competence of the Scottish Parliament so that it can legislate in relation to the provision of local welfare assistance in case of crisis or to help establish or maintain a settled home. The intention is that the package of the Bill, and regulations and guidance under the Bill, will set out in legislation arrangements that have been in place on an interim basis since April 2013. Those interim arrangements are known as the Scottish Welfare Fund (SWF).

Rationale for subordinate legislation

4. The Bill contains delegated powers which are explained later in this document. In deciding whether legislative provisions should be specified in the Bill or left to subordinate legislation, the Scottish Government has had regard to the need to:

- Strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances with the benefit of experience, without the need for primary legislation;

- Allow detailed administrative arrangements to be kept up to date with the basic structures and principles set out in the primary legislation; and
• Consider the likely frequency of amendment.

Delegated powers

Section 4 – Review of decisions

Power conferred on: Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

5. Section 4(1) and 4(2) allows regulations to be made about arrangements that local authorities are required to have in place to carry out reviews of decisions they make in relation to the provision of assistance. The regulations may make all decisions made under section 2 of the Bill subject to review or they can set out particular types of decision which would be subject to review. The regulations can set out that decisions of a reviewable type only require to be reviewed in particular circumstances.

Reason for taking this power

6. Section 4 is necessary to allow requirements to be placed on local authorities to carry out reviews of decisions in relation to applications for assistance through welfare funds. It is considered that it is more appropriate to set out in regulations (rather than on the face of the Bill) the details of which decisions need to be reviewed. This will give flexibility for the future so as to restrict or widen the category of reviewable decisions as considered appropriate in light of experience with the operation of the welfare funds and the review arrangements.

Procedure

7. Regulations made under section 4 of the Bill will be subject to negative procedure which is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny in relation to which decisions should be reviewable. It is not considered that the sort of administrative detail which would be covered by the regulations necessitates the use of affirmative procedure.

Section 5 – Welfare funds: further provision

Power conferred on: Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Provision

8. Section 5(1) provides the Scottish Ministers with the power to make regulations which would make further provision in connection with the Bill. The regulations may in particular
make provision about how an application to receive assistance is to be made; the procedure which local authorities are to follow in relation to applications; eligibility to receive assistance; other circumstances in which assistance may, or may not be provided; the type of assistance which may be provided; and circumstances in which payments or assistance may or may not be repaid or recovered. They may also make provision requiring local authorities to provide the Scottish Ministers with information for monitoring and reporting purposes; about arrangements which may be made relating to the administration of welfare funds; about how an application for review is to be made; requiring persons to provide information for the purposes of a review by a local authority; and about circumstances in which applications can be made by one person on behalf of another.

9. Under this section, the Scottish Ministers are empowered to make different provision for different purposes and to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate.

10. Regulations made under this section may not make provision about reviews by the Scottish Public Services Ombudsman in pursuance of section 4.

Reason for taking this power

11. Section 5 is necessary to allow further provision to be made as to how the welfare funds will operate. It is considered that it is more appropriate to provide for the eligibility, administrative, and procedural aspects in relation to the welfare funds in regulations as opposed to the Bill, given the level of detail likely to be required. It is also considered that it would be useful to have the flexibility to change these aspects of the welfare funds if the need arises. For example, there may be a wish over time to make different detailed provision as to the eligibility of individuals to receive financial assistance from out of a fund.

Procedure

12. Regulations made under section 5 of the Bill will be subject to negative procedure which is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny in relation to the operation of the welfare funds. It is not considered that the sort of administrative detail which would be covered by the regulations necessitates the use of affirmative procedure.

Section 7 – Commencement

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Provision

20. Section 7 allows for sections 1 to 6 of the Bill to be commenced by order. Any order under section 7 may include incidental, supplementary, consequential, transitional, transitory or saving provision.

Reason for taking this power

21. Since it is not known at present exactly what would be the ideal commencement date for the substantive provisions of the Bill, it is necessary to have the flexibility of setting this by order. The Bill provides for setting on a statutory footing the ongoing arrangements for the provision of financial assistance by local authorities and it is not impossible that this may give rise to the need to include transitional or other supplementary provision in a commencement order.

Procedure

22. In line with standard practice, any commencement order would be laid before the Parliament but would not be subject to any further procedure.
Welfare Reform Committee

Stage 1 report on the Welfare Funds (Scotland) Bill
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Welfare Reform Committee

To keep under review the passage of the UK Welfare Reform Bill and monitor its implementation as it affects welfare provision in Scotland and to consider relevant Scottish legislation and other consequential arrangements.

www.scottish.parliament.uk/welfarereform
WelfareReformCommittee@scottish.parliament.uk
0131 348 5182
Committee Membership

Convener
Michael McMahon
Scottish Labour

Deputy Convener
Clare Adamson
Scottish National Party

Annabel Goldie
Scottish Conservative and Unionist Party

Ken Macintosh
Scottish Labour

Joan McAlpine
Scottish National Party

Christina McKelvie
Scottish National Party

Kevin Stewart
Scottish National Party

Note: The membership of the Committee changed during the period covered by this report, as follows:

Christina McKelvie and Joan McAlpine joined the Committee on 27 November 2014, replacing Annabelle Ewing (Scottish National Party, Fife, Mid Scotland) and Linda Fabiani (Scottish National Party, East Kilbride, Central Scotland).

Clare Adamson joined the Committee on 27 November 2014, replacing Jamie Hepburn (Scottish National Party, Cumbernauld and Kilsyth, Central Scotland) and became Deputy Convener on 2 December 2014.

Annabel Goldie joined the Committee on 3 December 2014 replacing Alex Johnstone (Scottish Conservative and Unionist Party, North East Scotland).
Executive Summary

1. From 1 April 2013 the UK Department of Work and Pensions abolished the Social Fund and transferred Scotland’s share in relation to Community Care Grants and Crisis Loans to the Scottish Government. Scottish Ministers chose to use the funds to create an interim scheme, in agreement with COSLA, known as the Scottish Welfare Fund. The Scottish Government topped up the DWP funding by £9.1 million to provide a total of £33 million of programme funding in 2013/14.

2. The UK Government also made the corresponding funding available to the devolved administration in Wales and local authorities in England to provide assistance as they saw fit. This has led to some areas in England not offering a social fund equivalent.

3. The aim of the interim scheme is to provide grants for people on low income during a disaster or emergency. It also provides ad hoc support to help vulnerable people maintain a settled home and remain independent in the community.

4. The Welfare Funds (Scotland) Bill aims to put the interim scheme into legislation. The essence of the scheme will remain the same. The main change is the proposal to introduce the Scottish Public Service Ombudsman (SPSO) as a ‘second tier reviewer’ dealing with applicants who wish to further appeal their award decision. The Bill provides a framework with detail of how the fund will operate being set out in regulations and guidance.

5. The Committee received written and oral evidence from a range of witnesses. It came to the following conclusions and recommendations.

General Principles

6. The Committee welcomes the Bill and believes that it achieves its general aims and principles. It recognises the benefits a statutory Scottish Welfare Fund may bring to local authorities and fund users. For example, the greater stability that a statutory duty for local authorities to maintain a welfare fund brings in securing staff and resources as well as an improved, more holistic service.

7. However, the Committee was made aware of some concerns that the eligibility criteria may be drawn too tightly. It recommends that the Scottish Government reconsiders the criteria in section 2 of the Bill, in light of all the written and oral evidence received, to ensure that all those in legitimate need of the fund are able to access it.

8. The experience of carers was also drawn to the Committee’s attention. In light of this evidence, it recommends that the Scottish Government make every effort to integrate the work of the Scottish Welfare Fund with the Children and Young People Act 2014 and the upcoming guidance related to this Act.
Outsourcing the operation of the fund

9. The Committee acknowledges the benefits that may be drawn from local authorities working jointly to administer the fund. It also takes some comfort from the view of the Minister that the Scottish Government does not envisage the fund being outsourced to a private company.

10. However, in light of the evidence received the Committee recommends that the Scottish Government consider the issue of outsourcing in light of EU procurement laws and thresholds to ensure that private companies are not allowed to undertake the work.\(^1\) \(^2\)

11. The Committee would also suggest that the Scottish Government issue guidance to help steer local authorities through the outsourcing process and to provide consistency in approach.

Local Authority first tier reviews

12. The Committee is content with the continuation of local authorities conducting first tier reviews. However, it recommends that the Scottish Government and COSLA monitor the number of reviews and, if necessary, explore the reasons for the low numbers to date. The Committee also recommends that notification of the right of appeal is included in all rejection letters to applicants.

13. The Committee notes the view of the Delegated Powers and Law Reform Committee that it is preferable to require, rather than allow, Scottish Ministers to regulate regarding local authority reviews. It is encouraged that the Scottish Government does not foresee any difficulties with this change in language.

SPSO conducting second tier reviews

14. The Committee believes that the qualities of impartiality and independence are important in any review body. As such it supports the Scottish Government’s proposal for the SPSO, instead of local authorities, to conduct second tier reviews.

15. The Committee welcomes the commitment of the SPSO to carry out a full consultation and publish guidance on how it will conduct reviews in which it will set out its obligations, timescales and processes. The Committee also supports the SPSO in its call for an appropriate provision to this effect to be included in the legislation.

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\(^1\) Alex Johnstone MSP dissents from this paragraph.

\(^2\) Michael McMahon MSP and Ken Macintosh MSP wished to replace this paragraph with the following wording “However, the Committee recommends that the Scottish Government removes the opportunity for local authorities to outsource to a third party and restrict the provision in the Bill to solely joint working with other local authorities”. See Annexe B for detail.
16. The Committee suggests to the Scottish Government that it would be useful to include the SPSO on the list of groups to consult on changes to regulations or guidance. It would also be helpful to include, in regulations or guidance, a requirement for local authorities to provide information or representation to the SPSO when required.

**Fraud, the recovery of funds and loans**

17. The Committee recognises the need to be able to act accordingly if there is fraud or abuse of the fund to the detriment of genuine fund users. However, it believes that the fund should preserve an ethos of trust and respect and should not start from the assumption that Scottish Welfare Fund users intend to defraud.

18. The Committee understands and supports the Scottish Government’s clear intention that the fund is a grant making scheme and that it has no wish to revert to loans. However, in the interests of clarity, and to future proof the grant making aspect of the fund, it would recommend a tightening of the language in section 5 to clarify that the provision is indeed concerned with fraud.

**Administrative Funding**

19. The Committee supports the Finance Committee’s view that it is vital that administration of the fund is supported by the appropriate resource levels and that growth in demand for assistance is recognised.

20. The Committee welcomes the assurance of the Minister that the Scottish Government is happy to reconsider the distribution of administrative funding pending any strong evidence which arises through the benchmarking exercise from COSLA. It encourages COSLA to make its findings publically available as soon as practically possible.

**Programme Funding**

21. The Committee recognises the challenges that the current financial climate and the recent welfare reforms may present for the Scottish Welfare Fund. It agrees with the view of the Finance Committee that the Scottish Welfare Fund can be considered as a preventative tool that can play a role in preventing future, potentially more costly, demands falling on public services.

22. The Committee welcomes the Scottish Government proposal to adopt a needs based approach to the allocation of Scottish Welfare Fund programme funding. It recommends that an additional category to monitor any unmet need, and the reason why that need has arisen, is included in COSLA’s benchmarking indicators.
**Funding to set up the SPSO as a second tier reviewer**

23. The Committee notes that uncertainty about the number of appeal cases will have a significant, yet currently unquantifiable, impact on the funding, resource and space requirements for the SPSO.

24. The Committee supports the recommendation from the Finance Committee and the SPSO that reviews should be put in place to allow the true nature of demand for second tier reviews to be established.

**Review**

25. The Committee is aware of the increasing administrative workload which is being placed on local authority staff. In light of this the Committee recommends on-going monitoring, rather than a review clause. This would allow the Scottish Government and local authorities to keep a close eye on performance and respond more proactively to any needs.

26. The Committee suggests that the Scottish Government may wish to work with COSLA to consider how its benchmarking evidence may be useful in this process.

**Power to make regulations**

27. The Committee notes the view of the Delegated Powers and Law Reform Committee that the regulations should be subject to the affirmative procedure. As the Bill provides a framework and the majority of the operational detail will be contained in regulations the Committee feels it is important that regulations receive a detailed level of scrutiny.

28. The Committee welcomes the Scottish Government interim response that it foresees no difficulties in moving to the affirmative procedure.
Introduction

1. As part of the Welfare Reform Act 2012, the UK Department for Work and Pensions (DWP) abolished the discretionary Social Fund, with effect from 1 April 2013. It then transferred Scotland’s share of the discretionary elements of the Fund (Community Care Grants and Crisis Loans) to the Scottish Government.

2. Social security is generally reserved to the UK Parliament. However, a modification to Schedule 5 of the Scotland Act 1998 provided a new exception to the social security reservation, which widened the legislative competence of the Scottish Parliament. This allows it to legislate in relation to the provision of local welfare assistance in cases of crisis, or to help establish or maintain a settled home.

3. Since April 2013, the Scottish Government has operated ‘the Scottish Welfare Fund’ as an interim scheme. These interim arrangements are based on a voluntary agreement between Scottish Ministers and the Convention of Scottish Local Authorities (COSLA). The interim Scottish Welfare Fund aims to—

   • provide a safety net in an emergency when there is an immediate threat to health and safety through the provision of a non-repayable grant which is known as a Crisis Grant; and

   • enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant. This includes providing assistance to families facing exceptional pressures. For example, where there has been a breakdown in family relationships, perhaps involving domestic violence, which results in a move.

4. The Welfare Funds (Scotland) Bill was introduced to the Scottish Parliament by Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities on 10 June 2014. The Welfare Reform Committee was designated as lead Committee.

5. The Bill seeks to place the scheme in legislation and to make provision for the establishment of welfare funds which will be maintained by local authorities. The detail of how welfare funds will be managed is not set out in the Bill. However, the Bill was accompanied by associated draft regulations and will be followed up with revised guidance.

6. In order to inform its scrutiny of the Bill the Committee took oral evidence on 30 September, 7 October, 28 October and 4 November 2014. See Annexe for detail of the oral witnesses.
7. The Committee also issued a call for written evidence which ran from 25 June 2014 until 28 August 2014. A total of 48 submissions were made, 18 from local authorities and COSLA, 25 from third sector groups, 2 from the NHS and 3 from ombudsman and tribunal services.

8. Evidence on the Bill was also considered by the Finance and Delegated Powers and Law Reform Committee. Links to the reports from these Committees are included in Annexe A and B.

9. The findings and recommendations of the Committee are detailed in the following report.
The Bill

General principles

11. Overall, submissions and witnesses were supportive of the Bill and its general principles. As the Bill provides a framework for the fund, much of the detail about the running of the fund will appear in regulations and guidance. Witness suggestions for operational improvements have been included later in the report.

12. When asked how the Bill and the interim scheme compared to the UK DWP administered fund witnesses were very positive. Scott Robertson from Quarriers observed that—

“The comparison between the new system and the previous system is like night and day.”

13. Local authorities stated that providing them with a statutory duty to maintain a welfare fund would give local authorities greater assurance and the ability to retain staff members, expertise and knowledge. It was also suggested this statutory duty would help to secure local authority funding and resources on an on-going basis.

14. It was noted by Alastair McArthur from Renfrewshire Council that a recent Audit Scotland report highlighted the difficulty that many councils face in securing and retaining benefits-qualified staff that are able to make the kind of decisions needed for the Scottish Welfare Fund. Dave Berry from Dundee City Council told the Committee that—

“The proposed legislation would give local authorities assurance. In fact, they will now have a duty that must be done. That can only be good for the continuing development of the Scottish welfare fund. The interim scheme worked well, but lasted for only two years. Because we have not been able to employ staff on permanent contracts, given the two-year length of the scheme, we have started to have high turnover.”

15. It was also suggested that participation in the interim scheme to date has led to better engagement with local partners and a greater understanding of the issues local people may face. Improved communication and interaction with local partners was also reported as enabling local authorities to work preventatively with vulnerable individuals. Councillor Norman MacDonald from Comhairle nan Eilean Siar said—

“The Scottish welfare fund has contributed significantly to the building of those partnerships and our being far more effective and proactive in recognising what the issues are for local people.”
16. The scheme was also credited with allowing greater integration across local authority services. Dave Berry said—

“In Dundee, the scheme that we set up is integrated between social work and our revenues department in recognition of the fact that different departments have different skills.”

17. However, this was not the case across the board as users of the Scottish Welfare Fund who appeared in front of the Committee suggested that communication across local authority departments was lacking. We comment further on this in the section on awareness and signposting below.

18. One organisation, SCVO, did call for the Bill to be delayed. However, upon further reflection when appearing before the Committee SCVO stated that the important thing is to ensure that the Bill is regularly reviewed and working on the ground for the people whom it is intended to help.

19. The Committee welcomes the Bill and believes that it achieves its general aims and principles. It recognises the benefits a statutory Scottish Welfare Fund may bring to local authorities and fund users. For example, the greater stability that a statutory duty for local authorities to maintain a welfare fund brings in securing staff and resources as well as an improved, more holistic service.

Eligibility and use of welfare funds

20. Section 2 of the draft Bill sets out the circumstances in which a local authority can provide financial or other assistance to an individual. There is a concern from some witnesses that the current wording within the Bill is too tightly drawn and may exclude those with a legitimate need. As such the Committee heard a range of calls to amend this section.

21. For example, Capability Scotland, the Scottish Campaign on Welfare Reform (SCOWR), Health and Social Care Alliance and Inclusion Scotland stated in written evidence that disabled people are disproportionately impacted by the welfare reforms. As such an extra category of “disabled people who would otherwise be unable to maintain their ability to live independently” should also be included.

22. There was also a call in written evidence from Inclusion Scotland for the Committee to seek an amendment to bring Gypsy Travellers within the eligibility scope of the Fund. Currently, they may be excluded as to receive a payment you need to reside, or be about to reside, in a local authority area or be homeless.

23. In particular, the Committee heard strong requests for an amendment to include ‘families under exceptional pressure’ and carers.
Families under exceptional pressure

24. Currently, short-term need is described in the Bill as “arising out of an exceptional event or exceptional circumstances”. However, third sector organisations such as One Parent Families Scotland, Shelter Scotland, Barnardos, Poverty Alliance, CPAG, and Engender note that families are increasingly facing extreme financial pressure, not as a result of crisis, but part of their everyday life. They attribute this on-going pressure to a variety of factors such as increases in benefit sanctions and the cost of living.

25. It was noted in written evidence from Capability Scotland that the UK Discretionary Social Fund had a category for families under “exceptional pressure” which is not present in the Scottish Bill. Jon Shaw from CPAG states—

“There is an important point about ensuring that the needs of the groups whose needs the guidance quite clearly intends to meet are met. In the bill at the moment, families under exceptional pressure are taking a back seat, and the statistics appear to show that families with children are applying less than they did for community care grants under the old system”.

Carers

26. Under the Children and Young People Act 2014 there is a much greater emphasis on the corporate parenting responsibilities held by local authorities and other public bodies for formerly looked-after young people. A number of third sector organisations called for greater alignment of the Welfare Funds (Scotland) Bill and the 2014 Act to ensure formerly looked after young people do not fall between the cracks.

27. Barnardos stated that, under the Act, all formerly looked-after young people under the age of 26 should be deemed to be qualifying individuals for Scottish Welfare Fund assistance. Barnardos and Who Cares? Scotland sought confirmation that the eligibility criteria in the Bill includes all young people who have been in the care of a local authority or kinship care and not just those who have been in residential care.

28. Users of the Scottish Welfare Fund, from whom the Committee took evidence, reported that many authorities that they come into contact with do not know about the concept of ‘corporate parents’. They also reported that they could be doing more in the role to offer information about the support that is available. Connor, a Scottish Welfare Fund user, said—

“Corporate parent’ is just another term for ‘parent’, essentially. Corporate parents are supposed to be like a family, but when you get to a certain point they are just not interested any more. To me, that is just not fair.”
29. The Committee recommends that the Scottish Government reconsiders the eligibility criteria in section 2 of the Bill in light of all the written and oral evidence received to ensure that all those in legitimate need of the fund are able to access it.

30. The Committee recommends that the Scottish Government make every effort to integrate the work of the Scottish Welfare Fund with the Children and Young People Act 2014 and the upcoming guidance related to this Act.

Contracting services out to a third party

31. Section 3 of the Bill allows a local authority to make arrangements for another organisation to administer its welfare fund on its behalf. This means that local authorities can outsource the provision of their welfare fund to the private or third sector or to another local authority. It also allows for a number of local authorities to come together and either administer or outsource the provision of their welfare funds jointly.

32. All local authorities, COSLA and some of the third party organisations agreed with the provision. Many referenced the benefits of the provision, particularly for smaller authorities. These include economies of scale, increased purchasing power, sharing best practice and increased consistency. Many authorities in their written submissions referenced this power in relation to working with other local authorities or with the third sector. Alastair Macarthur from Renfrewshire Council said—

> “We are content to have the flexibility to outsource under the bill. It is not so much about bringing the private sector on board; it is more about looking across local authority boundaries.”

33. Reported drawbacks include the dilution of local knowledge affecting the holistic nature of the fund, reduced accountability and a lack of clarity on where to direct complaints and uncertainty on how internal reviews will operate. It was noted that there might also be inconsistency in decision making if authorities have different levels of demand or deprivation. Councillor Norman MacDonald said—

> “It is important that the local authority still has a degree of control over services that are outsourced either informally or formally, because we will ultimately be held to account for delivery of those services to some of the most vulnerable people in our community.”

34. Third sector organisations were very firmly against the use of private third party providers being involved in the delivery of state benefits for profit. The experience of ATOS was referenced. Marion Davis from One parent Families Scotland said—
Outsourcing could open the door to contracting out to private companies. The evidence shows that contracting out to the private sector in the welfare system has not been successful. We feel that there is a conflict of interest that has led to poor outcomes.”

Some observed that third parties might be useful but only in specific situations, which should be set out in regulations alongside criteria to identify suitable providers. Clear knowledge and experience of the vulnerabilities of applicants would be essential. Mark Ballard from Barnardo’s said—

“Our point is that there would need to be very clear guidelines on suitability and that they need to be set out in regulations. Third sector providers might be able to offer support, but they would have to demonstrate very clearly that they understood the vulnerabilities of the people involved.”

Beth Reid from Citizen’s Advice Scotland echoed this point—

“All too often situations result in which people bounce between the local authority, which is saying, “That’s not our responsibility, it is the contractor’s” and the contractor, which is saying, “Well, we have not had the email from them.” We need a clear and transparent system if outsourcing is to be considered.”

There was also a call from Citizen’s Advice Scotland (CAS) for clarity on whether outsourcing to the third sector would involve administrating the delivery or the application process. Concerns were raised about a potential conflict of interest if an organisation such as CAS was advocating for an applicant and then being involved in the processing of the application.

The Minister observed that she did not envisage the Fund being open to outsourcing to anyone other than local authorities and the third sector. She said—

“The provision was put in because it was felt that the potential for outsourcing would provide flexibility. I assume that any outsourcing would be to the third sector and not to anywhere else. Indeed, I do not assume that work will be outsourced at all.”

However, Inclusion Scotland raised concerns about the legal implications of the provision which would allow the private sector to automatically bid for work if the third sector was invited to bid. Bill Scott said—

“I am also worried about the idea that the third sector might be able to bid for contracts but the private sector would not. Since when does that fit with European law? As soon as we open the door to the third sector bidding to do the work on behalf of a local authority, we are also opening the door for the private sector.”
40. The Committee notes that contracting out these services would likely be subject to the EU regulation on public procurement which requires public bodies to comply with rules around equal treatment and non-discrimination of potential suppliers.

41. Although there are some types of contract which can be reserved for certain suppliers it is not clear whether, under the current rules, contracts under the bill could be reserved to, for example, third sector bodies.

42. The Committee is also aware that there are new rules on EU Procurement that must be transposed into Scots Law by April 2016, which may allow for more flexibility in this area. The Scottish Government is expected to publish its consultation on implementing the new EU Directives (and its own Procurement Reform Act) before the end of 2014.

43. The Committee acknowledges the benefits that may be drawn from local authorities working jointly to administer the fund. It also takes some comfort from the view of the Minister that the Scottish Government does not envisage the fund being outsourced to a private company.

44. However, in light of the evidence received the Committee recommends that the Scottish Government consider the issue of outsourcing in light of EU procurement laws and thresholds to ensure that private companies are not allowed to undertake the work.iii, iv

45. The Committee would also suggest that the Scottish Government issue guidance to help steer local authorities through the outsourcing process and to provide consistency in approach.

Reviews and appeals

Local authorities conducting first tier reviews

46. Currently, if an applicant disagrees with the decision made on their application they can ask for a review which would be carried out by another member of the Scottish Welfare Fund team within the local authority. The Scottish Government intends that this approach continues and the Bill allows regulations to be made about arrangements local authorities must have in place to review decisions.

47. In general, the majority of submissions were content with the local authority continuing to provide first tier reviews. However, there was a concern, raised by SCVO, that although there have been a small number of first tier reviews overall, when reviews do occur they have a high overturn rate and the decision goes in the

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iii Alex Johnstone MSP dissents from this paragraph.
iv Michael McMahon MSP and Ken Macintosh MSP wished to replace this paragraph with the following wording “However, the Committee recommends that the Scottish Government removes the opportunity for local authorities to outsource to a third party and restrict the provision in the Bill to solely joint working with other local authorities”. See Annexe B for further detail.
applicant’s favour. SCVO also recommended that the reason behind the low numbers of first tier reviews should be explored.

48. In some circumstances, knowledge of the appeals process was lacking. Lana, a welfare fund user said in relation to an application—

   “I had mine denied straight away and they did not tell me that I could appeal it. If it was not for my training, I would not have known.”

49. The Committee queried why it has been considered appropriate to frame section 4(1) as being permissive, in that it allows the Scottish Ministers to regulate to require local authority reviews, rather than requiring Scottish Ministers to regulate for local authority reviews. The Scottish Government highlighted that there are many ways in which a provision can be phrased that would achieve similar results. It stated—

   “From our preliminary analysis, we do not see difficulties with that, so I suspect that we will come more into line with what that Committee is looking for.”

50. The Committee is content with the continuation of local authorities conducting first tier reviews. However, it recommends that the Scottish Government and COSLA monitor the number of reviews and if necessary explore the reasons for the low numbers.

51. The Committee recommends that notification of the right of appeal is included in all rejection letters to applicants.

52. The Committee notes the view of the Delegated Powers and Law Reform Committee that it is preferable to require, rather than allow, Scottish Ministers to regulate regarding local authority reviews. It is encouraged that the Scottish Government does not foresee any difficulties with this change in language.

Scottish Public Services Ombudsman conducting second tier reviews

53. As part of the interim scheme second tier reviews are carried out by an impartial panel made up of local authority staff, separate from the Scottish Welfare Fund team. If the review goes beyond the second tier the applicant can make a complaint to the SPSO who will consider whether there had been maladministration. The Bill proposes a change to current practice, and provides applicants with a right to apply for a second tier review by the SPSO. This would effectively provide the SPSO with a dual role.
Currently the SPSO looks into complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure. These new powers would also allow the SPSO to consider whether the decision regarding the award of a Scottish Welfare Fund grant is one that should have been made, and to direct the council to put in place an alternative decision or reconsider their original decision, where appropriate.

The views received on this new duty were split. The majority of local authorities were against the new role of the SPSO and would prefer the power to remain with them. It was commented that it would be more consistent with the principles of local self-governance for secondary reviews to remain in local authority control. Others voiced concerns that it would mean greater administrative work and higher costs for the local authority with a less effective and timely service to applicants. Some questioned whether the SPSO would be able to respond to appeals quickly enough. It was also suggested that the inclusion of local knowledge in decision-making would be lost.

In general terms, the third sector organisations and some local authorities were in favour of the use of the SPSO as it was seen as independent, consistent, and impartial. Others agreed but questioned the scale of the need involving the SPSO on such small value claims. As Highland Council’s written submission said “is this a sledgehammer to crack a nut?”

Some third sector organisations felt that the use of the SPSO would give the Scottish Welfare Fund a national consistency which is important when the scheme is designed to take advantage of local delivery, while maintaining a national character. Derek Young of Age Scotland said—

“The ambition that the Scottish Government stated when the Scottish welfare fund was created on a non-statutory basis was that the funds should be locally administered but that the approach should be consistent nationally. Our firm view is that, if second-tier reviews cannot be done at a Scotland-wide level, no structural dynamic will ensure consistency.”

Barnardos also noted that using the SPSO would allow best practice and learning to be shared across all local authorities and not just the authority in which the review took place—

“The most important thing is ensuring that the learning from the SPSO’s reviews is used to improve the practice of local authorities across the board, and not just the practice of the authority to which the review related.”

The SPSO was also perceived as being fair and impartial in a way that the local authority would be unable to be. Bill Scott from Inclusion Scotland said—

“nobody—not one single disabled person whom we asked—said that the local authority should do it. People said that that would not be perceived as
fair. Even if the decision was correct, the local authority would still be reviewing its own decision, and that was just felt to be unfair.  

60. This was echoed by Duncan Dunlop from Who Cares? Scotland—

“Given that it is part of the same establishment that rejected the first claim, why would they go through it again? Obviously, people are very vulnerable emotionally at such times, and it would be great if they thought that the matter would be reviewed independently.”

61. Concerns were raised in evidence about possible confusion over the two powers of the SPSO (complaint and review). The SPSO acknowledged this issue in evidence submitted to the Committee. Members also pursued the issue of complaints versus reviews in oral evidence sessions. The SPSO said it was confident that it would be able to determine quickly how the issue should be dealt with – either as a complaint, as a review or both.

62. There was an understanding that the governance arrangements for the SPSO means that no regulations for its operation can be laid by the Scottish Government. However, there was desire for clear processes, rules and timescales to be set out as quickly as possible.

63. The SPSO said in its written submission that it intends to ask the Scottish Government to include a provision in the legislation allowing the SPSO to produce rules, after appropriate consultation, showing how it will consider reviews.

64. The Committee believes that the qualities of impartiality and independence are important in any review body. As such it supports the Scottish Government’s proposal for the SPSO, instead of local authorities, to conduct second tier reviews.

65. The Committee welcomes the commitment of the SPSO to carry out a full consultation and publish guidance on how it will conduct reviews in which it will set out their obligations, timescales and processes. It also supports the SPSO in its call for an appropriate provision to this effect to be included in the legislation.

66. The Committee suggests to the Scottish Government that it would be useful to include the SPSO on the list of groups to consult on changes to regulations or guidance. It would also be helpful to include in regulations or guidance a requirement for local authorities to provide information or representation to the SPSO when required.
Fraud, the recovery of funds, and loans

67. Section 5 of the Bill sets out the circumstances in which payments or assistance may or may not be repaid or recovered. There was a call from third sector organisations for clarification that the drafting in section 5(2) is indeed to do with fraud and would not enable a shift back to loan repayments. While there was general agreement that there should be mechanisms to deal with fraud it was felt that the current wording is too vague. Mark Ballard from Barnardo’s said—

“The key point is that, if section 5(2)(f) is going to talk about ‘circumstances in which moneys have to be repaid’, that needs to be balanced by something in the bill that defines the fund as a grant-making fund not a repayable loan-making fund, to clarify exactly what that reference to moneys being repaid means.”

68. There was also the view that any fraud was in the minority of cases. Marion Davis from One Parent Families Scotland (OPFS) said—

“We support the grant model over loans. When witnesses were asked at, I think, the previous meeting what the evidence base for fraud was, it came through to me that there was no clear evidence base. There may be anecdotal cases, which we will probably always get, but there is no evidence of widespread fraud or the reselling of goods on a massive scale. When we met Scottish Government officials, they agreed that that was the case.”

69. There was also a clear preference indicated by witnesses for grants over loans in terms of service provision. Jon Shaw from CPAG said—

“We have always been firmly in favour of a grants system. The issue with loans is simply that the repayment causes further on-going financial pressure to those on the lowest incomes.”

70. The Committee recognises the need to be able to act accordingly if there is fraud or abuse of the fund to the detriment of genuine fund users. However, it believes that the fund should preserve an ethos of trust and respect and should not start from the assumption that Scottish Welfare Fund users intend to defraud.

71. The Committee understands and supports the Scottish Government’s clear intention that the fund is a grant making scheme and that it has no wish to revert to loans. However, in the interests of clarity, and to future proof the grant making aspect of the fund, it would recommend a tightening of the language in section 5 to clarify that the provision is indeed concerned with fraud.
Funding

Administration budget

72. A strong message coming from the evidence submitted to both the Committee and the Finance Committee is that the funding provided to administer the fund is falling short and that local authorities are supplementing the funding from their own budgets. Submissions from, for example, Edinburgh, East Dunbartonshire, Fife, East Ayrshire, Dundee, Scottish Borders, Perth and Kinross, Argyll and Bute and Moray commented that the administration funding was insufficient compared with the actual costs of running the fund. For instance, East Dunbartonshire received £43,970 in administration costs. The total cost of running the Scottish Welfare Fund in the area last year was £224,232\textsuperscript{24}. This funding gap had to be made up by the local authority. Dave Berry from Dundee Council said—

“even stripping out what we might call the added elements and looking purely at the cost of processing the applications, we feel that we are still short by around 30 or 40 per cent in relation to the actual administration grant funding, which is a concern, going forward.”\textsuperscript{25}

73. COSLA stated in written evidence to the Finance Committee that—

“Failure to address the concerns highlighted around administrative funding could potentially jeopardise the wider outcomes the Welfare Funds (Scotland) Bill is trying to achieve”\textsuperscript{26}

74. Many local authorities also commented in written evidence that it would be unrealistic to expect savings referred to in the Financial Memorandum as applications to the fund were expected to increase resulting in additional administrative costs for the authority. The third sector agrees that the demands on the fund are going to increase and organisations such as SCVO noted the significant time and effort which has been put in by the third sector to help bed in the fund. Lynn Williams from SCVO said—

“Suddenly people are starting to get more involved—as my colleagues have outlined—in seeing people through the application process and in advocacy. Staff are being trained in the new system on existing budgets, so there is a hidden cost to the third sector there.”\textsuperscript{27}
75. The Minister highlighted the benchmarking project that is currently being undertaken by COSLA to assess the average costs of delivering the fund. She also assured the Committee that the Deputy First Minister would be happy to reconsider the distribution of the administrative funding, provided that the evidence was strong enough. She said—

“The Convention of Scottish Local Authorities has said that 15 per cent is insufficient to administer the fund and it is conducting a benchmarking exercise. The Deputy First Minister has said that once the benchmarking is complete, if there is compelling evidence that demonstrates that the fund cannot be administered for the costs for which we believe it can be administered, she will look at the issue again. However, she will not do so until that evidence is placed in front of us.”

76. At the time of agreeing the report the Committee had not yet had sight of COSLA’s benchmarking evidence.

77. The Committee supports the Finance Committee’s view that it is vital that administration of the fund is supported by the appropriate resource levels and that growth in demand for assistance is recognised.

78. The Committee welcomes the assurance of the Minister that the Scottish Government is happy to reconsider the distribution of administrative funding pending any strong evidence which arises through the benchmarking exercise from COSLA. It encourages COSLA to make its findings publically available as soon as possible.

Programme budget

79. The increasing level of demand on the fund and the cumulative impact of welfare reforms, many of which are still to be seen, were concerns for many witnesses. In particular, the introduction of Universal Credit and Personal Independence Payments, the increase in sanctions and an improved awareness of the fund could be expected to increase demand.

80. Third sector organisations highlighted concerns about the variation in spending and average award across Scotland. For example, Poverty Alliance presented information from the recent Scottish Welfare Fund statistics stating that there was a “postcode lottery for applicants”. Carers Scotland also called for consideration to be given to the disparities in fund access and grant award to ensure equity of experience across Scotland. Mark Ballard from Barnardo’s said—

“There were 10 local authorities that had spent less than 75 per cent of their budgets, but there was no clear pattern or any link between the local authorities that appeared to have an issue in spending that budget.”
81. The Minister stated that the funding distribution was currently set out in an agreement between COSLA and the Scottish Government. This agreement based the funding allocation on historical data from the DWP Social Fund. She responded to the concerns about variation in spend with an assurance that the Scottish Government would consider a needs based approach to future funding allocations. This would be based on the operation of the Scottish Welfare Fund to date. The Minister said—

“I am not going to say that we can absolutely resolve the issue; I can say that we will look at a more needs-based approach as we go forward with the permanent scheme, to reduce the inconsistency that you are talking about.”

82. The Minister also stated the programme funding was fixed for this Spending Review but would be considered again after 2015/16. When questioned on the different priority levels that local authorities apply, the Minister explained that those authorities with large demands on their budgets would only be able to pay out to high priority clients. Bill Scott from Inclusion Scotland raised the issue of unmet need and suggested that recording of all enquiries and applications could be improved. He said—

“we need to measure unmet need; we need to find out what the fund has been unable to resource as well as what it has been able to resource. Some local authorities are spending up to and just over the budget that they are getting; other authorities are not. I would like to know why, because we know that need exists.”

83. The Committee recognises the challenges that the current financial climate and the recent welfare reforms may present for the Scottish Welfare Fund. It agrees with the view of the Finance Committee that the Scottish Welfare Fund can be considered as a preventative tool that can play a role in preventing future, potentially more costly, demands falling on public services.

84. The Committee welcomes the Scottish Government proposal to adopt a needs based approach to the allocation of Scottish Welfare Fund programme funding. It recommends that an additional category to monitor any unmet need, and the reason why that need has arisen, is included in COSLA’s benchmarking indicators.

Setting up SPSO as second tier reviewer

85. This issue provoked a mixed response. Some local authorities raised concerns that SPSO funding was disproportionate due to their own very low numbers of second tier reviews. As such, many did also not anticipate the savings indicated in the Financial Memorandum as part of the move to SPSO.
86. Some local authorities suggested that the funding might be more effectively used to address shortfalls in administration budgets. Others voiced concern that binding decisions by the SPSO could cause difficulties in managing budgets throughout the year.

87. The Minister was asked about the costs of using the SPSO relative to maintaining second tier reviews with local authorities or setting up a tribunal service. She said—

“We reckon that the cost per case for the Scottish Public Services Ombudsman will be about £202, based on a planning assumption of 2,000 cases. We needed to make a planning assumption in order to calculate the cost. The tribunal cost would be £413, with much higher set-up costs, and the cost were local authorities to review would be anything from £420 to £500 per case. It will certainly be cheaper to use the ombudsman service.”

88. The numbers contained in the Financial Memorandum were based on an estimated number of 2,000 reviews a year. There was a focus in the discussion about how this figure was arrived at. The Scottish Government advised that it was agreed by the Scottish Government as well as the reference group, which includes local authorities, COSLA, the third sector and stakeholders. Mr Karamjit Singh, the Social Fund Commissioner for Northern Ireland, noted that in previous years for Scotland under the DWP Social Fund the number of reviews was in the region of 6,000. Jim Martin the Scottish Public Services Ombudsman said—

“The figure was 6,000; we are currently seeing about 400. We know that the number for Northern Ireland is 1,650. For planning purposes, we have had to arrive at numbers in order to think through what the implications would be if we reach a certain level of appeals. What the actual numbers will turn out to be is anyone’s guess at the moment.”

89. The SPSO observed that the approach taken in Scotland is different to that of the Social Fund. Applicants are provided with signposting to other services and are offered a more holistic support. This is thought to potentially have also had an impact on the reduction of appeals—

“The local authority system in Scotland may well be directing people to routes where they were not previously being directed by the DWP. There might be a better qualitative response in Scotland, which is lowering the numbers that come through.”

90. The Committee notes that uncertainty about the number of cases will have a significant, yet currently unquantifiable, impact on the funding, resource and space requirements for the SPSO.
91. The Committee welcomes the SPSO’s intention to be flexible in order to adapt to changing demands. It supports the recommendation from the Finance Committee and the SPSO that, once the legislation is in place, reviews should be conducted to allow the true nature of demand for second tier reviews to be established.

Review clause

92. A small number of organisations called for a review clause. This would enable further consideration of the operation of the fund, in light of the outcome of the Smith Commission process and any Scottish Government response to the continuing welfare reform agenda. Lynn Williams from SCVO said—

“First, we need to ensure that we are getting this right, that it is working and that it is achieving its purpose. Will the context in which it is operating change over the next couple of years? Given that we are potentially in the middle of further powers being devolved to Scotland, would such devolution change things? Would we have to look at what the fund is doing and why it is doing it? Having done some work with the Standards, Procedures and Public Appointments Committee on the operation of legislation in the Scottish Parliament, I know that we do not review the working of legislation enough. As a result, a standard review clause stipulating a review a year or two years in will allow us to revisit the matter and ensure that the fund is doing what it was intended to do and that people are being supported.”

93. The Committee is aware of the increasing administrative workload which is being placed on local authority staff. In light of this the Committee recommends on-going monitoring, rather than a review clause. This would allow the Scottish Government and local authorities to keep a close eye on performance and respond more proactively to any needs.

94. The Committee suggests that the Scottish Government may wish to work with COSLA to consider how its benchmarking evidence may be useful in this process.

The power to make regulations

95. In a letter to the Scottish Government the Delegated Powers and Law Reform Committee stated that “the regulations should be subject to the affirmative procedure, unless there is good reason why that procedure would not be suitable.” In response Stuart Foubister of the Scottish Government Legal Directorate stated—
“we have not finalised our response to the Delegated Powers and Law Reform Committee, but I would be surprised if we were to see difficulties in moving to the affirmative procedure.”

96. The Committee notes the view of the Delegated Powers and Law Reform Committee that the regulations should be subject to the affirmative procedure. As the Bill provides a framework and the majority of the operational detail will be contained in regulations the Committee feels it is important that they receive a detailed level of scrutiny.

97. The Committee looks forward to seeing the full Scottish Government response to the enquiries from the Delegated Powers and Law Reform Committee. It welcomes the Scottish Government interim response that it foresees no difficulties in moving to the affirmative procedure.

Issues for regulations and guidance

98. According to the Scottish Government, one of the reasons behind the interim scheme was to learn lessons from its operation before putting the new arrangements on a statutory basis. The Committee heard a wide range of evidence on the operation of the fund to date which highlighted good practice, areas of concern and suggestions for improvement.

99. Although, the detail of how welfare funds will be administered is not directly set out in the Bill the Committee feels that it is important that a record of this important feedback is made available through the Committee report.

Awareness and signposting

100. When the Committee took evidence from Scottish Welfare Fund users they stated that no one had heard about the fund through their local authority. Many were signposted by a third sector organisation that they were already working with, a friend or family member or the job centre. Some users reported that they were unaware that the fund was still continuing under the guise of the Scottish Welfare Fund and thought it had been abolished by the DWP. Laura said—

“I did not know that the fund existed anymore. It had changed, and I thought that it had been taken out and that was it—there was nothing to replace it.”

101. Local authorities acknowledged that while in some areas there had been concerns about awareness they were working to improve the situation. Dundee City Council reported that—
“There are a number of projects for which the partnership has successfully obtained funding to get the message across in response to welfare reform, regarding not just the Scottish welfare fund but other assistance that is available (...) The situation is not perfect. There are people who are still not aware of the fund, but we are getting better in that regard.”

102. Nicola Dickie from COSLA assured the Committee that COSLA was aware of the situation and was working with housing and social work colleagues to raise awareness and identify best practice. She said—

“We still regularly see and brief the decision makers who make Scottish welfare fund payments and try to make them aware of the issues that customers are coming up against, but as part of that wider group we are working with stakeholders, if you like, to ensure that we are getting the Scottish welfare fund on their radars as best we can.”

103. When asked what was the best way to inform potential applicants of the Scottish Welfare Fund users said that a key point for support is when a person is starting a new tenancy. They suggested that the housing association or landlord could give them information about funds. They also suggested that social workers be fully briefed on the support the fund could offer. Derek Young from Age Scotland said—

“The people, whom you do come across, such as health and social care professionals, might have no knowledge, or only poor knowledge, of the funds, which means that they might give inaccurate advice.”

104. The Committee noted that there was perhaps an assumption that people applying to the fund were “already in the system”. However, in reality, many people could perhaps be facing hardship for the first time and be uncertain about where to turn for assistance.

105. The Minister acknowledged that more could be done but was confident that this was something that could and would be addressed. The Minister reported the work that is currently being done by Scottish Welfare Fund teams to raise awareness locally and within their authorities. This is in addition to the work done by the Scottish Welfare Fund reference group and the dedicated Scottish Welfare Fund officer at COSLA.

106. The Committee recommends that all social housing providers be provided with information on the Scottish Welfare Fund to be passed onto new tenants. The Committee acknowledges that making contact with private landlords is more complex. However, information could be provided to landlords when registering or through the various tenancy deposit schemes.
107. The Committee is supportive of the exchange of good practice that is currently underway and encourages all involved to continue to raise awareness of the fund and expand their knowledge.

108. The Committee welcomes the assurance of the Minister that the comments of the Scottish Welfare Fund users will be addressed and that she will look at ways to improve the flow of information on the Scottish Welfare Fund between various local authority departments.

**Stigmatisation**

109. One of the key themes running though all of the submissions and witness testimony was the danger of stigmatisation for fund users. Third sector representatives emphasised the importance of maintaining dignity and respect when accessing the fund. Stigmatisation was an issue which was raised by Connor, a Scottish Welfare Fund user, who said—

> “when I was speaking to the person on the phone, it felt as though they were looking down their nose at me and judging me quite a lot. I also felt that I had to lie to them, because at the time I lived in a supported care placement—I still do.”

> “I felt quite a lot of the time as though the person did not recognise me as a person. They just saw me as a voice on the phone looking for money. If they were to meet face to face with people they could see the reality that you are a human being who has nowhere else to turn”

110. Lynn Williams from SCVO stated that—

> “The language that is used in the bill and how that filters through to regulation and operation are incredibly important. I do not know how you do it, but we call for up—front principles around the bill that say that we are taking a rights-based approach and that, because when people go to the fund they cannot afford to provide the most basic of human rights, such as food and shelter, how they are treated is critical. Dignity and respect must be at the heart of that.”
111. One of the fundamental opportunities available to Scotland in the devolution of the social fund is the potential to take a different approach to this aspect of welfare. The Committee believes that the Scottish Welfare Fund could be enhanced by outlining the importance of the principles of dignity and respect for Scottish Welfare Fund users as a key part of the regulations and guidance.

Accessibility

‘Gatekeeping’

112. There is a concern from a number of third sector organisations that some local authorities have ‘gatekeepers’ who refuse applications before full consideration is given to the case. Resulting in the fund being underused, unmet need going unrecorded and potentially legitimate applications being rejected. Calls were made for all applications to be given full consideration. Alternatively for records to be kept of all enquiries including any vulnerability, for example age, lone parent, being in care and the reason the application was stopped.

113. Local authorities challenged the claim that ‘gatekeeping’ was an occurrence. Nicola Reid from West Lothian Council said—

“When our applicants phone to make an application, our customer service centre takes the application regardless of whether it thinks the person would qualify for a grant.”

114. However, in the subsequent session with the third sector John Shaw from CPAG said—

“At times your discussion with local authorities seemed to be missing the point a wee bit. For example, I believe that someone said, “Once an application is recorded on our Northgate system, it is passed straight to the decision maker.” However, the point about gate keeping is that you do not get to the point of registering your application, so you do not have the right to request a review. That is still a live issue. Although it is getting better, we are now seeing it in different ways.”

115. Another example of more subtle ‘gatekeeping’ was offered by CAS. Beth Reid said—

“They might be told that only high-priority applications are being considered or that there was a similar case to theirs the other day in which the application did not go the whole way. As a result, people might not disclose the full information and the application might not be pursued. We have had cases of people thinking that they had made an application only to realise that they had not.”
116. It was also reported in written evidence that there was a misconception amongst some Scottish Welfare Fund staff that an applicant can only be awarded a grant if they have a qualifying benefit in place. An example was given of a person challenging an Employment Support Allowance decision. John Shaw from CPAG said —

“they could not be awarded a repeat application for a crisis grant until they had a qualifying benefit in payment. Even if you read the guidance from end to end, you will not see that information. It was a case of making the award but gate keeping a future application by putting somebody off from coming back if the crisis had not been resolved.”

117. The Committee accepts that there are differing views about so called ‘gatekeeping’ of the Scottish Welfare Fund. The key question behind the issue is whether ‘gatekeeping’ is leading to unmet need going unrecorded and unaddressed.

118. The Committee recommends that the Scottish Government consider ways in which local authorities can better record all successful and unsuccessful enquiries to ensure that the situation can be monitored.

119. The Committee also recommends including, within training or guidance, awareness raising so that staff are not unintentionally ‘gatekeeping’ the fund in initial discussions with applicants.

Applications

120. Evidence suggested to the Committee that the length and complexity of application forms sometimes put applicants off applying for the fund. This can be particularly challenging, for instance, for those with learning disabilities or mental health problems. Lengthy applications over the phone and online were also perceived to be difficult for people with children. It also made the assumption that everyone would have access to a computer. It was reported that some people only manage their application with support of an organisation. Marion Davis from One Parent Families Scotland said—

“There is still confusion about where people go to access various parts of the system. There are three channels: online; by telephone; and on paper. We found that there are challenges around online and telephone applications. It can take up to 40 minutes to make a claim. If parents come to our office, our staff will support them to submit the claim over the phone. However, for those who are not supported by organisations, it can be challenging. Some people are in local authority areas where there is no face-to-face support. In Glasgow, for example, people cannot go somewhere and see someone.”
121. There was a clear preference from Scottish Welfare Fund users for face to face applications. Lana said—

“I would prefer to do it face to face. I get stuttery when I am on the phone and I get frustrated when I cannot explain myself. If I was to sit down with someone, they would be able to see that I am being genuine and not just phoning up to make a claim. I would probably find that a lot more helpful and beneficial.”

122. However, the Committee recognises that it can be challenging to provide face to face applications at the same time as meeting processing targets for awards. The Minister highlighted that current guidance states that local authorities should make at least two methods of application available. She said—

“Some authorities take telephone and online applications, or applications from the third sector. There is nothing to prevent face-to-face contact, but that could slow the process down.

There is some evidence that the most vulnerable people are making their application with the assistance of another agency, so they have a face-to-face interview at that point.”

123. It was also made apparent by Scottish Welfare Fund users appearing before the Committee that the majority were involved with another part of the local authority that already had information on file about them. For example, social work or housing. Users approved of the idea of sharing information across departments if that would speed up the application process. It was also seen as a way to validate their claim, for example if social work confirmed their circumstances.

124. The Committee recommends that a mechanism should be put in place, subject to the consent of the applicant, to allow relevant information already held on file in other areas of the local authority to be passed to the department dealing with the Scottish Welfare Fund.

125. The Minister suggested in evidence that at least two methods of application should be available. The Committee recommends that all options should be available in all areas. Even if they are not available as standard they should be made available on request.

126. The Committee recommends that the Scottish Government review the length of the current application form.
Awards

Consistency

127. In oral evidence the Committee was made aware of a case where an applicant was treated differently when moving across council boundaries. The Committee recognises that there may be certain circumstances in which technical issues related to other council policies may impact on an application. For example, homelessness. COSLA assured the Committee that although the fund is discretionary; the qualifying conditions are standard and are applied as standard across the country.

128. The Committee encourages local authorities to take a common sense approach to resolving these issues and employ joined up working wherever possible.

129. The Committee understands the flexibility inherent in a discretionary fund. However, the Committee recommends that the Scottish Government and COSLA monitor the situation to ensure that the policy is applied as consistently as possible across the country.

Cash versus goods

130. Clear arguments were put forward on both sides regarding whether it was better for an applicant to receive an award in the form of cash or whether it was better to receive vouchers or goods in kind (for example a sofa or a washing machine as part of a community care grant). Fund users were positive about receiving goods through the Community Care Grant. Charlene, a welfare fund user, said—

“We used to get community care grants paid into our bank accounts. Let us be honest. I am young. If I get hunners of money paid into my bank account, I am not going to spend it on furniture if I have an addiction or whatever. In that sense, the welfare fund is fantastic because they come out and put the goods into your house or put the carpets down. I see that as a really high positive rather than a negative.”

131. Local authorities voiced strong support for providing goods in kind as it allowed them to know that the award was being used as intended and provided
opportunities for local business to be involved in procurement and distribution. Dave Berry from Dundee City Council said—

“Many of the goods that we provide are sourced locally, which means that we are able to support local businesses. We support a supported employment workshop through the provision of furniture and we use a social enterprise for carpet fitting. Through a locally based electrical distributor, we can create employment opportunities. We have found the fund to be very positive.”

132. There was a fear that some vulnerable people, especially those with addiction problems, may misuse the funds. Councillor Norman MacDonald from Comhairle nan Eilean Siar said—

“We tend to give out five times more goods than cash to people through crisis care. The goods are material things. We know what the money is being spent on and that the goods that go into people’s homes will be there for the benefit of everybody within that setting. That contrasts with giving out the money and then wondering whether it is being spent on what it is intended to be spent on.”

133. Helen McGreevy from South Lanarkshire Council gave an example of clients misusing awards and noted the benefits in providing energy vouchers as the money was able to be redeemed—

“We have statistics on the number of vouchers that are paid out but not redeemed. The figures amazed me when I started with the project. We award energy vouchers after going through the whole process and explaining it to people, but they do not cash them.”

134. The Convener asked whether the money was then lost. Helen McGreevy answered—

“No, it is paid back into the fund. I review that on a monthly basis. The voucher expires after a month, and we pay it back into the system. It is quite a large amount.”

135. However, the third sector voiced serious concerns about the potential stigmatisation and damage that this may cause. Particularly in terms of vouchers. Jules Oldham from Homeless Action Scotland said—

“Can we really base things on such a small minority? People in that minority are likely to have an addiction, so what are they going to do with that voucher or those goods? They are going to sell them on. It is not as if the voucher is going to stop them getting a hit; they might just get less of a hit and need to go shoplifting as well.”
136. Concerns were also raised that people may not be able to access the shops to use the vouchers, especially in rural areas. Jules Oldham from Homeless Action Scotland said—

“We seem to be moving away from trust and giving people a whole host of problems instead. As we can see from the figures, not everybody actually uses their voucher, either as a result of stigmatisation or because it just does not work for them. They might not even have the money to get to the place where the voucher can be spent.”  

137. CAS reported cases where applicants received vouchers by email or in the post. If applicants are in a crisis situation then they are not in a position to wait a few days for the post to arrive. There is also the assumption that a person has access to email. Vouchers may also cause particular concern to older people who are particularly protective and private about their finances.

138. There was a clear call for choice to be built into the system and efforts made to better understand the needs of individuals rather than simply providing what is already on offer or being able to fit an applicant into a particular ‘box’. John Shaw from CPAG said—

“We have heard worrying examples of those taking applications over the phone saying, “Our authority does food and clothing vouchers, but that’s not what you’re asking for.”

139. One practical suggestion was raised by the Committee highlighting the use of pre-paid cards in lieu of vouchers. For example the Accord card in Aberdeen which is already currently used by all school children to pay for their school meals.

140. The Minister acknowledged the concern over stigmatisation when using vouchers. She said—

“we will be looking at it again to ensure that there is absolutely no stigmatisation of people if local authorities decide to pay out by voucher and that there is a good reason for doing so.”

141. The Committee recognises the positive impacts that providing goods in kind can have. Particularly in terms of bulk buying, allowing the fund to go further and help more people. Also the positive role it can have in stimulating local jobs and social enterprises in the provision of those goods.

142. However, it is also aware how important choice is to maintain a level of dignity, self-determination and reduce stigma. Treating applicants with respect, despite their circumstances, is essential. Cash payments can also be particularly useful to those in rural areas.
143. The Committee is aware that local authorities have discretion on how the funds are paid out. However, it welcomes the Scottish Government assurance that it will be looking again at the issue of stigmatisation and choice. Providing options and meeting individual needs should be central to the Fund’s process.

### Processing times

144. In the interim Scottish Welfare Fund scheme local authorities have 48 hours in which to process a claim. However, in the previous DWP administered fund that deadline was 24 hours. Users of the fund stated that they wished the fund to pay a grant as soon as possible. Lana said—

> “I think that the limit should be changed back to 24 hours, if not a bit less, because, at the end of the day, you can be sitting with children for two to three days waiting for a decision.”

145. The Minister said—

> “I think that the majority of local authorities and teams work to a one-day deadline if all the information is there. The evidence suggests that 67 or 68 per cent of all grants are paid out on the same day. You are absolutely right that if people are in crisis they should expect money as soon as possible. There is no presumption of a two-day deadline; the presumption is to get things done as quickly as possible, if all the information that local authorities require to make the decision is there.”

146. The intention to work as quickly as possible was backed up by local authorities. However, it was noted that the Scottish Welfare Fund encourages a more holistic way of working which may impact on time constraints. Councillor Norman MacDonald from Comhairle nan Eilean Siar said—

> “The intention is certainly to award the grant as soon as possible, but with the onus on joint working and dealing with the issues in a collaborative way, it is inevitable that the process will sometimes go into the second day. I do not necessarily think that that is a bad thing.”

147. When questioned on why the Scottish Welfare Fund has a two day target when the DWP scheme only had a one day target the Minister said that the DWP target only applied once sufficient information was received—

> “At least when Scottish welfare fund teams handle claims, they are proactive in trying to get any missing piece of information. In many cases, they phone and get the information, and then the decision is made. The DWP’s 24-hour deadline for decisions applied only once all the information was there. Sometimes such a decision could take three weeks because the DWP said that it did not have all the information. I am simply saying that
that is not happening now. We are trying to get those decisions taken as quickly as possible. We and local authorities are working to a same-day deadline. Going forward, 48 hours is the maximum that we are looking at.

148. However, the issue for some third sector organisations was not the deadline itself but how it applies over the weekend. Scott Robertson from Quarriers said—

“Our concern is not the difference between one day and two days, but the fact that an application that is made on a Friday or a Thursday evening may not be processed until late on Monday. The situation is a crisis by definition, but it takes perhaps four or five days for help to be given.”

149. The Committee views Crisis Grants as an essential part of the safety net provided to vulnerable people. It is essential that local authorities work as quickly as possible to deliver grants to applicants and keep them informed of the process.

150. The Committee notes the Ministers assurance that the Scottish Government and local authorities are working to a same-day deadline and that 48 hours is the maximum time allowed.

Services for those that do not meet the fund criteria

151. Councillor MacDonald noted that his local authority would like some kind of loan scheme for people who do not meet the criteria for the community care grant or the DWP budgeting loan, either because they are single adults or because they do not experience exceptional pressures. The Committee invited in representatives from COSLA and non-traditional banking to address this line of inquiry.

152. All witnesses were clear that there was no room for loans within the Scottish Welfare Fund. COSLA reported that it had worked hard to rebrand the Scottish Welfare Fund and the grants it provides. To return back to loans would “muddy the waters” and sit uneasily with the role of being a corporate parent.

153. The Scottish League of Credit Unions was clear that the credit union movement was not the solution to this problem. Loans can only be extended if the customer has established existing savings with the union. There was a concern expressed that it was perceived as being a “poor man’s bank”. This was seen as damaging to credit unions long term sustainability. Low interest loans can only be extended to vulnerable customers if the union has a broad membership of savers from all walks of life who can service those loans. Dermot O Neil said—
“It would be wrong to give the impression that credit unions can help in all circumstances; they can help only when the member has the capacity to self-help. That involves the capacity to save and, in the event of borrowing, the capacity to repay.”

154. The message coming from witnesses was that prevention was better than cure and that we need to work holistically to maximise income and prevent future crisis. Jackie Cropper from Grand Central Savings said—

“We try to manage them out of their crisis, educate them and get them ready for a credit union. That is a success story for Grand Central Savings. We are not around to give out loans, and I hope that we are certainly not around to be here for ever.”

155. Nicola Dickie from COSLA suggested that there are other funds across local authorities which can be used for those who fall outside the criteria for the fund. For example, working with housing or homelessness colleagues to access discretionary housing payments and tenancy sustainment programmes. She also highlighted the work on-going with the reuse sector to allow customers to access alternative furnishings cheaply instead of using pay day lenders to buy brand new furniture.

156. The Committee is of the view that loans have no place within the Scottish Welfare Fund. It is of course up to local authorities to make their own arrangements surrounding loans if they wish.

157. The Committee recommends that the Scottish Government further explore what options are available for those who are in need but do not qualify for the fund. This includes the good practice put forward by COSLA and organisations such as Grand Central Savings. The results of this exploration should be disseminated across all local authorities.

158. The Committee recognises that credit unions may not be the solution for the short term crisis related to Scottish Welfare Fund applications. However, it also acknowledges that credit unions and creating the saving habit may be a good way to provide greater stability and help prevent crisis in the future.

159. As such the committee recommends that local authorities build on current good practice so that all Scottish Welfare Fund users and all people going into new social tenancies are informed about the credit union services available in their area.
Equalities

Vulnerabilities not being recorded

160. There is a concern, expressed in written evidence, that some local authorities are not properly recording vulnerabilities. For example, one submission stated that only 23 authorities have provided any data on vulnerabilities and raised questions about the accountability and transparency of the fund. In some cases submissions noted that gaps may be due to software failures where the system only allows recording of one vulnerability or recording default rather than actual responses.

161. Although the Committee is clear that it does not support lengthy application forms it feels that it is important for people’s circumstances to be accurately reflected. In particular disabled people will experience multiple vulnerabilities and failure to record and consider these appropriately may risk these applications not being given sufficient priority.

People with Disabilities

162. It was noted that disabled people are more likely to apply to the fund as the welfare reforms have a significant impact on this group. As such, it was seen as essential that the fund is made fully accessible and that those with disabilities are not disadvantaged by the application form or decision-making process.

163. Third sector organisations called for all decisions to be followed up in a written letter rather than on the phone. Those with sensory or learning disabilities are not able to take down decisions made over the telephone. A verbal confirmation is also not helpful should a decision need to be challenged.

Race

164. The Scottish Refugee Council also reported problems with software in its submission. It noted that software will not allow an application to continue without a national insurance number. This is an issue for migrant groups, refugees or those with indefinite leave to remain. It was argued that refugees have a number of additional barriers to accessing the fund and there is a need for specific guidance on refugees and other migrants.

Older people

165. It was noted that the fund has a low level of applications from older people who may be in need raising concern about how the fund is linked to other policies and supports.
Gender

166. It was argued also that the unequal gender impact of welfare reform and women’s particular support needs are not reflected in the Scottish Welfare Fund. There was a call for training on gender equality issues and awareness raising of the barriers women may face when trying to access the fund.

167. The Committee recommends that the Scottish Government address any limitations with the software that may impact negatively on any particular Scottish Welfare Fund user group. It would also encourage all local authorities to provide regular and accurate data on vulnerabilities to the Scottish Government.

168. The Committee recommends that the Scottish Government look again at the current training available on the vulnerabilities or protected characteristics that Scottish Welfare Fund users may have. If necessary working with local authorities to put in place additional information or support to fill any current gaps in provision. It also recommends that any award decision be followed up in writing.

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Highland Council, Written Submission, Welfare Reform Committee
East Dunbartonshire, Written Evidence, Welfare Reform Committee
COSLA, Written Submission, Finance Committee
Poverty Alliance, Written Submission, Welfare Reform Committee
Consideration by other Committees

Delegated Powers and Law Reform Committee

169. The Delegated Powers and Law Reform Committee (DPLRC) is required to report on powers to make subordinate legislation in particular Bills or other proposed legislation.

170. The DPLRC report draws the attention of the lead Committee to a range of issues, in particular surrounding the review of decisions and commencement dates. It also included a letter, sent to the Scottish Government raising a number of queries. The DPLRC report is available on the Scottish Parliament Website. See Annexe A.

171. The Committee thanks the Delegated Powers and Law Reform Committee for its report and draws it to the attention of the Scottish Government.

Finance Committee

172. Scrutiny of the Financial Memorandum for the Bill was undertaken by the Finance Committee. Financial matters in relation to the Bill have been discussed earlier in this report. The Finance Committee’s findings are set out in a report which is available on the Scottish Parliament website. See Annexe A.

173. The Committee thanks the Finance Committee for its report and draws it to the attention of the Scottish Government.
Annexe A: Reports from other Committees

Delegated Powers and Law Reform Committee

175. The Delegate Powers and Law Reform Committee report on the Welfare Funds (Scotland) Bill is available on the Scottish Parliament website using the following link:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82236.aspx

Finance Committee

176. The Finance Committee report on the Welfare Funds (Scotland) Bill is available on the Scottish Parliament website using the following link:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83020.aspx
Annexe B: Extract from minutes and oral evidence

10th Meeting 2014 (Session 4) Tuesday 24 June 2014
The Committee considered and agreed its work programme.

13th Meeting, 2014 (Session 4) Tuesday 30 September 2014
Welfare Funds (Scotland) Bill: The Committee took evidence, in a round-table discussion, on the Bill at Stage 1 from—
- Susan Donald, Benefits Manager, Aberdeenshire Council;
- Dave Berry, Head of Service (Finance, Contracts and Welfare Rights), Dundee City Council;
- Councillor Norman MacDonald, Convener of Comhairle nan Eilean Siar;
- Alastair MacArthur, Finance and Operations Manager, Renfrewshire Council;
- Helen McGreevy, Scottish Welfare Fund Co-ordinator, South Lanarkshire Council;

14th Meeting, 2014 (Session 4) Tuesday 07 October 2014
Welfare Funds (Scotland) Bill: The Committee took evidence, in a round-table discussion, on the Bill at Stage 1 from—
- Derek Young, Policy Officer, Age Scotland;
- Mark Ballard, Head of Policy, Barnardo’s Scotland;
- Marion Davis, Head of Policy & Research, One Parent Families Scotland;
- Scott Robertson, Operational Manager, Quarriers;
- Lynn Williams, Policy Officer, Scottish Council for Voluntary Organisations;
- Jon Shaw, Welfare Rights Worker, Child Poverty Action Group (CPAG) in Scotland;
- Beth Reid, Policy Officer, Citizens Advice Scotland;
- Jules Oldham, National Policy & Practice Coordinator, Homeless Action Scotland;
- Bill Scott, Director of Policy, Inclusion Scotland;
- Paolo Mazzoncini, Director of Operations East, Sacro;
- Duncan Dunlop, Chief Executive, Who Cares? Scotland.
15th Meeting, 2014 (Session 4) Tuesday 28 October 2014
Welfare Funds (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from —
- Connor C. (Welfare Fund User)
- Laura D. (Welfare Fund User)
- Charlene Mc. (Welfare Fund User)
- Peter O. (Welfare Fund User)
- Lana W. (Welfare Fund User)
- Jackie Cropper, Managing Director, Grand Central Savings;
- Nicola Dickie, SWF Development Manager, COSLA;
- Dermot O’Neill, Chief Executive, Scottish League of Credit Unions.

16th Meeting, 2014 (Session 4) Tuesday 04 November 2014
Welfare Funds (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from —
- Karamjit Singh, Social Fund Commissioner for Northern Ireland;
- Jim Martin, Scottish Public Services Ombudsman, Niki Maclean, Director, and Paul McFadden, Head of complaints standards, Scottish Public Services Ombudsman;
- Margaret Burgess, Minister for Housing and Welfare, Stuart Foubister, Divisional Solicitor, and Callum Webster, Bill Team Leader, Scottish Government.

18th Meeting, 2014 (Session 4) Tuesday 18 November 2014
Stage 1 Welfare Funds (Scotland) Bill Report (in private):
The Committee considered a draft report.
Welfare Funds (Scotland) Bill (in private): The Committee agreed a draft Stage 1 report. One change was agreed by division.

In relation to the following section of the stage 1 report Kevin Stewart proposed that option 1 (paras 9-11) be accepted. The proposal was agreed to by division. For 5 (Christina McKelvie, Joan McAlpine, Kevin Stewart, Alex Johnstone and Clare Adamson), Against 2 (Ken Mackintosh and Michael McMahon).

Outsourcing the operation of the fund

9. The Committee acknowledges the benefits that may be drawn from local authorities working jointly to administer the fund. It also takes some comfort from the view of the Minister that the Scottish Government does not envisage the fund being outsourced to a private company.

10. However, in light of the evidence received the Committee recommends that the Scottish Government consider the issue of outsourcing in light of EU procurement laws and thresholds to ensure that private companies are not allowed to undertake the work.

11. The Committee would also suggest that the Scottish Government issue guidance to help steer local authorities through the outsourcing process and to provide consistency in approach.

12. Or

13. The Committee acknowledges the benefits that may be drawn from local authorities working jointly to administer the fund. It also takes some comfort from the view of the Minister that the Scottish Government does not envisage the fund being outsourced to a private company.

14. However, the Committee recommends that the Scottish Government removes the opportunity for local authorities to outsource to a third party and restrict the provision in the Bill to solely joint working with other local authorities.

15. The Committee would also suggest that the Scottish Government issue guidance to help steer local authorities through the joint working process and to provide consistency in approach.
Annexe C: Written evidence

- Aberdeenshire Council (174KB pdf)
- Age Scotland (145KB pdf)
- Argyll and Bute Council (147KB pdf)
- Barnardos Scotland (210KB pdf)
- Capability Scotland (182KB pdf)
- Carers Trust Scotland (153KB pdf)
- Child Poverty Action Group in Scotland (246KB pdf)
- Citizens Advice Scotland (92KB pdf)
- City of Edinburgh Council (76KB pdf)
- Community Resources Network Scotland (227KB pdf)
- COSLA (147KB pdf)
- Crisis (79KB pdf)
- Deafblind Scotland (117KB pdf)
- Dundee City Council (180KB pdf)
- East Ayrshire Council (125KB pdf)
- East Dunbartonshire Council (132KB pdf)
- ENABLE Scotland (174KB pdf)
- Engender (310KB pdf)
- Falkirk Council (93KB pdf)
- Fife Council (134KB pdf)
- Glasgow City Council (120KB pdf)
- Health and Social Care Alliance Scotland (the ALLIANCE) (164KB pdf)
- Highland Council (150KB pdf)
- Homeless Action Scotland (88KB pdf)
- Inclusion Scotland (237KB pdf)
- Moray Council (70KB pdf)
- NHS Dumfries and Galloway (134KB pdf)
- North Lanarkshire Council (186KB pdf)
- Office of the Social Fund Commissioner (97KB pdf)
- One Parent Families Scotland (276KB pdf)
- Perth and Kinross Council (224KB pdf)
- Poverty Alliance (272KB pdf)
- Quarriers (133KB pdf)
- Renfrewshire Council (132KB pdf)
- Scottish Borders Council (147KB pdf)
- Scottish Campaign on Welfare Reform (253KB pdf)
- Scottish Council for Voluntary Organisations - revised submission (181KB pdf)
- Scottish Directors of Public Health (6KB pdf)
- Scottish Disability Forum - Easy Read version (379KB pdf)
- Scottish Disability Forum (226KB pdf)
- Scottish Federation of Housing Associations (152KB pdf)
- Scottish Independent Advocacy Alliance (75KB pdf)
Annexe D: Oral witnesses

1. Minister for Housing and Welfare, Margaret Burgess;
2. Stuart Foubister, Legal Directorate, Scottish Government;
3. Calum Webster, Bill Team Leader, Scottish Government;
4. Susan Donald, Benefits Manager, Aberdeenshire Council;
5. Dave Berry, Head of Service (Finance, Contracts and Welfare Rights), Dundee City Council;
6. Councillor Norman MacDonald, Convener of, Comhairle nan Eilean Siar;
7. Alastair Macarthur, Finance and Operations Manager, Renfrewshire Council;
8. Helen McGreevy, Scottish Welfare Fund Co-ordinator, South Lanarkshire Council;
10. Derek Young, Policy Officer, Age Scotland;
11. Mark Ballard, Head of Policy, Barnardo's Scotland;
12. Marion Davis, Head of Policy & Research, One Parent Families Scotland;
13. Scott Robertson, Operational Manager, Quarriers;
14. Lynn Williams, Policy Officer, Scottish Council for Voluntary Organisations;
16. Beth Reid, Policy Officer, Citizens Advice Scotland;
17. Jules Oldham, National Policy & Practice Coordinator, Homeless Action Scotland;
18. Bill Scott, Director of Policy, Inclusion Scotland;
19. Paolo Mazzoncini, Director of Operations East, Sacro;
20. Duncan Dunlop, Chief Executive, Who Cares? Scotland;
21. Connor C. (Welfare Fund User);
22. Laura D. (Welfare Fund User);
23. Charlene Mc. (Welfare Fund User);
24. Peter O. (Welfare Fund User);
25. Lana W. (Welfare Fund User);
26. Jackie Cropper, Managing Director, Grand Central Savings;
27. Nicola Dickie, Scottish Welfare Fund Development Manager, COSLA;
28. Dermot O'Neill, Chief Executive, Scottish League of Credit Unions;
29. Karamjit Singh, Social Fund Commissioner for Northern Ireland;
30. Jim Martin, The Scottish Public Services Ombudsman, SPSO;
31. Niki Maclean, Director, SPSO; and
32. Paul McFadden, Head of complaints standards, SPSO;
Scottish Parliament
Welfare Reform Committee
Tuesday 30 September 2014

[The Convener opened the meeting at 10:31]

Witness Expenses
The Convener (Michael McMahon): Good morning, everyone, and welcome to the 13th meeting in 2014 of the Welfare Reform Committee. Can everyone please ensure that their mobile phones and other electronic devices are switched off?

The first item of business is a decision on whether to delegate to the convener responsibility for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3, any witness expenses on the Welfare Funds (Scotland) Bill. Is that agreed?

Members indicated agreement.

Decisions on Taking Business in Private

10:32
The Convener: Agenda item 2 is a decision on whether to take agenda item 5, which is consideration of the evidence that the committee will receive on the Welfare Funds (Scotland) Bill, in private at today’s meeting and at future meetings where that issue is discussed. Is that agreed?

Members indicated agreement.

The Convener: Agenda item 3 is a decision on whether to take consideration of a draft report on the Welfare Funds (Scotland) Bill in private at future meetings. Is that agreed?

Members indicated agreement.
Welfare Funds (Scotland) Bill: Stage 1

10:33

The Convener: Agenda item 4 is the committee’s first evidence session on the Welfare Funds (Scotland) Bill. We hope to gain an insight into local authorities’ views on the bill. This session and the other evidence sessions that the committee has planned will be used to inform our evidence session with the Minister for Housing and Welfare, Margaret Burgess, on 4 November and ultimately the committee’s stage 1 report on the bill.

I welcome Susan Donald, benefits manager, Aberdeenshire Council; Dave Berry, head of service, finance, contracts and welfare rights, Dundee City Council; the only elected representative from a local authority on the panel, Councillor Norman MacDonald, convener of Western Isles Council; Alastair Macarthur, finance and operations manager, Renfrewshire Council; Helen McGreevy, Scottish welfare fund co-ordinator, South Lanarkshire Council; and Nicola Reid, team leader, benefit operations and Scottish welfare fund, West Lothian Council.

As this is a round-table discussion, I hope that the dialogue can be free and open. I might come to certain people to ask questions or to keep things moving forward, but if you want to contribute please feel free to indicate to me that you want to ask a question or to comment on anything that has been said. The freer and more open the discussion, the more information we get and the better informed we will be as we consider the bill.

I will show my parochial bias and start with Helen McGreevy from South Lanarkshire Council, since I represent that area. To start the ball rolling, can you give us an opening comment on your experience of the Scottish welfare fund and, looking at the bill, how things will move forward?

Helen McGreevy (South Lanarkshire Council): Since responsibility has moved over to local authorities, I have found that working with the variety of different organisations has been really helpful to the customers and to us. We are building up relationships. Our authority uses a furnishing service. We provide goods that are delivered to the claimants, which is extremely helpful.

Our only concern at the moment is that we might not have enough funding to be able to investigate any fraudulent claims, for example with visiting officers. We do that at the moment but, in the main, we manage our budget well. Our processing times are really good. I think that, in the past few months, the figures are at 93 per cent for community care grants and 98 per cent for crisis grants.

There is one area where our systems perhaps fail us a wee bit. When we receive applications, they are recorded on our system but, if prisoners apply, they apply two months before they are released, which knocks our timescales out.

With crisis grants, it could be that we require some evidence and, therefore, cannot make a decision within two days. That skews our crisis grants as well. We tend to try to process them within 24 hours and it takes longer than that only in cases in which we look for evidence. We are very aware of the vulnerability of the people who we are dealing with and we try to process them as quickly as possible.

Is there anything else? I was caught on the hop this morning.

The Convener: No, that is fine.

Helen McGreevy: Does that give you a wee bit of background?

The Convener: We will try to get some information from elsewhere, too. How about you, Councillor MacDonald? You see it from a different perspective. Will you give us your views on how things have been and on anything in particular that we need to pay attention to as we consider the bill?

Councillor Norman MacDonald (Comhairle nan Eilean Siar): Even though I see the situation from a different perspective—an elected member's perspective—I echo what Helen McGreevy said. We have far better and far more effective relationships at a local level than existed before. I refer to engagement with the third sector and other partners and agencies, such as housing associations. That improvement has a significant benefit for the clients and people who are affected by welfare reform.

The Scottish welfare fund has contributed significantly to the building of those partnerships and our being far more effective and proactive in recognising what the issues are for local people. That is certainly the case within our local authority area. Ours is a small local authority. Some of the issues are the same as elsewhere, but there is a big difference in scale and one of the things that has the biggest impact for us is fuel poverty, which affects people’s ability to heat their homes.

A range of things that are particular to our authority affect that. Those are the things on which we will still face challenges as the bill goes through the Parliament and beyond that. We certainly look for the bill to include measures that will mitigate the impact of fuel poverty. As things
stand, supposing that we were to insulate every property in the Western Isles, there would still be an issue with fuel poverty purely because of the cost of fuel and the climate, which will have an impact on people.

Responsiveness on the targets that are set for dealing with crisis grants and community care grants is much better. We tend to give out five times more goods than cash to people through crisis care. The goods are material things. We know what the money is being spent on and that the goods that go into people’s homes will be there for the benefit of everybody within that setting. That contrasts with giving out the money and then wondering whether it is being spent on what it is intended to be spent on.

The bill is a good, positive move for us as an authority. That may be the case for other local authorities, but there will also be local nuances that have to be taken into account.

The Convener: Talking about those local nuances, yours is a rural authority and South Lanarkshire Council is mixed—it is rural and urban. Is there anything specific that Mr Berry from Dundee City Council wants to bring to our attention from a city council’s point of view?

Dave Berry (Dundee City Council): There are certainly high levels of deprivation in Dundee. We have the opportunity to work more closely with individuals who have applied to the Scottish welfare fund and to build on the work that we already do with a great majority of them. Many of the applicants are already known to social work and housing services. The ability to work in a more holistic way with those individuals allows us to try to get to the root of the problem so that we prevent repeat applications and support those individuals as best we can.

Following a similar theme to that in other local authorities, we have found that we are providing less cash and more goods through the Scottish welfare fund. Many of the goods that we provide are sourced locally, which means that we are able to support local businesses. We support a supported employment workshop through the provision of furniture and we use a social enterprise for carpet fitting. Through a locally based electrical distributor, we can create employment opportunities. We have found the fund to be very positive.

The Convener: Good. It is not that I am looking for conflict or problems, but if there are problems we need to address them. Mr Macarthur, my understanding is that you are not entirely happy about the potential role of the Scottish Public Services Ombudsman. Will you give us a flavour of your thinking on that?

Alastair Macarthur (Renfrewshire Council): In our response to the committee’s consultation and to the consultation on the draft bill, in relation to the dual powers that will be given to the SPSO to not only review a decision but to then direct a council to change its decision, we commented that we do not feel that the nature of our review process sits particularly well with the existing ethos of the SPSO, which relates to managing and ensuring good customer service and dealing with complaints.

We also have concerns that relate to the potential volume of second-tier reviews that it is apparent are being generated. I appreciate that it is still early days with the Scottish welfare fund but, if we project forward using the number of second-tier reviews that have been incurred nationally in the first quarter of this financial year, we find that the overall number will be at the lower end of the range of numbers that have been suggested by the SPSO and in the financial memorandum. We have a question about value for money and using a separate organisation when the existing arrangements for managing second-tier reviews that we have experienced over the past 18 months or so appear to have worked well when they have been managed within each local authority area.

Kevin Stewart (Aberdeen Central) (SNP): I am interested in whether co-operation is taking place between those who administer the crisis grants and community care grants as part of the social welfare fund and those who might be doling out moneys by other means, such as social work emergency grants. Is there co-operation between the teams that deal with the social welfare fund and other funds? Have those teams been integrated into one team in some cases? I am interested to hear what is happening on that.

Susan Donald (Aberdeenshire Council): There is certainly very close co-operation between colleagues across social services. For example, emergency payments have not been integrated with the Scottish welfare fund, because the decisions on those payments have a strong element of care management involvement. An example of our working closely is that, when care managers are implementing, say, a new housing scheme for adults with learning disabilities, they will work with the Scottish welfare fund to provide community care grants for some of the furnishing items in that scheme.

10:45

Dave Berry: In Dundee, the scheme that we set up is integrated between social work and our revenues department in recognition of the fact that different departments have different skills. The revenue department is really skilled in the
processing side of things and social work brings a different dimension to that.

Under the scheme, we employ two welfare rights officers who are based in social work to assist decision makers and liaise with various social workers and housing support officers, for instance, to assist with the decision-making process.

Norman MacDonald: In response to Mr Stewart's question, there is a great deal more co-operation between teams. I hesitate to use the word "informal", but it is informal because there is no formal structure of integration. We have certainly started discussing it in the context of health and social care integration and what happens to what remains of the traditional social work department within the local authority. There will undoubtedly be more formal integration between welfare reform and what used to be the social work department.

Integration already happens informally, and it probably happens more so with us because we are a small and quite compact local authority. Other local authorities will probably be looking at that as well as health and social care integration in general moves forward.

Nicola Reid (West Lothian Council): I agree that it can be very difficult to administer the Scottish welfare fund without the support of our social work teams, which have in-depth knowledge of some of the applicants who present to the Scottish welfare fund and can give valuable advice and assistance when required. Across councils, you will find that there is a very close working relationship between Scottish welfare fund teams and social work departments.

The Convener: Is that everyone's experience?

Helen McGreedy: We have had the same experience. We liaise quite a lot with the authority's welfare rights service. We put in all our standard letters to people and if they are unhappy with a decision, we give them phone numbers to contact. We have a good working relationship with the welfare rights service and with social work for cases in which there are mental health issues and we need a wee bit more information. The service is very supportive and it helps our decision makers come to the correct decision for the applicant.

The Convener: I want to give Mr Macarthur an opportunity to comment on that.

Alastair Macarthur: I echo what my colleagues have said. There is very close working between my service, which administers the welfare fund from a more transactional perspective, and our colleagues in social work and housing.

In a similar way to other authorities, we employ advice services that provide money advice as part of our social work service. We were successful in securing awards from the welfare resilience fund to provide energy advisory services, so we employed two energy advisory officers to provide a more holistic service for those who find that they need to apply to the welfare fund for support.

Linda Fabiani (East Kilbride) (SNP): Something that Helen McGreevy said earlier probably relates to council departments working with other agencies. You said that crisis grants are sometimes held up because of the evidence gathering that is required. Are you having issues with particular agencies in gathering evidence, or are the issues all internal?

Helen McGreevy: We tend to be looking for what we call pink slips from the police. It tends to be lost wallets and lost purses, and we might be talking about cases in which the claimants have lost several wallets and purses. We try to get evidence and that is the only way that we can get it in that situation. I think that that is the only area in which there are delays. When an applicant makes an application, we give them two days from that date to provide us with evidence to enable us to process the claim.

Linda Fabiani: Okay. That is fine.

Alastair Macarthur said that Renfrewshire Council was not totally pleased with having the SPSO for second-tier reviews. That is the main thing that I wanted to ask about. I am interested to know how local authorities deal with their first-tier reviews and the variations among them. The Scottish Parliament information centre said that some third sector organisations were concerned about

"gatekeepers' who refuse applications before full consideration is given to the case."

Can we link the two issues of who makes the initial decision and who does the first-tier review?

Susan Donald: The first-tier review is done by someone other than the officer who made the decision. It is usually done by the team leader. That is partly because the volumes of first-tier review requests, certainly in Aberdeenshire, have been so low that that workload has been manageable.

Following on from that, if a second-tier review is required, we have a panel that comprises the head of housing, a housing manager, social work involvement, the revenues manager and the head of finance, which relooks at the decision. I will be there to advise that panel, based on any new information that has come to light. In the very few reviews that we have had, we have upheld original decisions, overturned others and sometimes we have met in the middle.

Linda Fabiani: What kicks in that review?
Susan Donald: It kicks in following a request from the applicant. The letter that goes out to the applicant explains what has been awarded, why the award was made, what has been refused and why. It then gives the applicant the option to request a first-tier review. After that has taken place, they are advised what they can do next to instigate a second-tier review.

Dave Berry: I want to follow up on the issue of gatekeeping—I will speak about my own authority, in which there is nothing like a gatekeeping process in place. Once the applications come into the local authority, they are allocated, through the Northgate system that we use, to a decision maker who gets the case there and then. The same process that Susan Donald described is then followed for any reviews that are requested.

Nicola Reid: I agree with that process. When our applicants phone to make an application, our customer service centre takes the application regardless of whether it thinks the person would qualify for a grant. Local authorities take a holistic approach to the scheme—the person might not qualify for a grant, but if we cannot help them in that way we can help them to access other services they require further assistance.

As Susan Donald said, the first-tier review is dealt with by someone who is completely independent of the person who made the first decision. That is usually the team’s line manager. The second-tier review is done with people who are outside the service and completely independent of it. However, the number of our second-tier reviews is so low that it is very difficult to keep the knowledge for someone to be able to carry them out.

In the original consultation back in February, we therefore said that we were in favour of the SPSO’s involvement. However, there was an option on the questionnaire about whether the SPSO should have the ability to overturn a discretionary element of the decision. We said no to that, but we thought that it could make decisions on points of law. That does not seem to have been reflected going forward and it now appears that the SPSO can overturn decisions in any part of the decision-making process. Depending on the numbers, that puts in question whether local authority budgets will be under pressure if a number of second-tier reviews are overturned, particularly on the discretionary part of the scheme.

Linda Fabiani: Like the convener, I would be interested in finding out how partisan it is.

Helen McGreavy: I have the statistics with me. As far as first-tier appeals are concerned, many people who apply for grants do so online without speaking to anyone on the phone, and sometimes they do not put a great deal of information on the form. In May, there were 14 first-tier appeals, 11 of which were overturned in the applicant’s favour. That happened after we had spoken to the applicant and got further evidence. We found that a lot of them had put very little information on their application or had provided information after a decision had been made. As far as the overturn rate is concerned, our welfare rights and citizens advice services also support the applicant and, as a result, we get more information that we can use to overturn the original decision.

Ken Macintosh (Eastwood) (Lab): I have a couple of questions about your opening remarks, Ms McGreavy. That is the trouble with opening remarks.

You said that most crisis grants are turned around within a day, even though the deadline is two days. The old Department for Work and Pensions crisis grant system had a one-day turnaround time, and I wonder whether the other local authority representatives can tell me whether they would be able to turn crisis grants around in one day. If so, why did the Scottish Government give you a two-day rather than a one-day deadline?

Helen McGreavy: First of all, the DWP system gave out loans, not grants. As a result, no criteria had to be met; the application was simply taken and processed.

As far as crisis grants are concerned, we must ensure that applications meet the conditions and that the reasons for applying—lost purses or whatever—are not constantly the same. We have a budget that we need to take care of, and we must ensure that the moneys are going to the most vulnerable people. The DWP took the application and paid out the money—and that was it. That money was repaid through deductions from customers’ benefits, whereas with our system people just get a grant. That is probably why we get a lot of applications.

Dave Berry: I agree with that. Under the holistic approach that has been described, we also have extra time to make further investigations, check applicants’ circumstances with social workers and housing support officers and potentially identify the root of the problem. It helps in providing that information.

Councillor MacDonald: The intention with crisis grants is to ensure that they are awarded as soon as is practicably possible after the tests are carried out. However, we are delivering a more holistic service that involves speaking to other agencies, some of which are not part of the council and, ultimately, those discussions might flag up issues that those agencies might need to deal with, whether they be with a tenant in a
housing association property or whatever. The intention is certainly to award the grant as soon as possible, but with the onus on joint working and dealing with the issues in a collaborative way, it is inevitable that the process will sometimes go into the second day. I do not necessarily think that that is a bad thing.

**Ken Macintosh:** I actually had three questions, the second of which relates to Councillor MacDonald’s point about giving awards in kind rather than in cash. Leaving the community care grant to one side and focusing on the crisis grant, I wonder whether the witnesses agree with the voluntary sector which, when it gave evidence on the interim welfare scheme, strongly suggested that, in order to build individuals’ resilience, you are far better to give them cash to allow them to make their own choices and that one of the weaknesses of giving support in kind is the element of distrust and the suggestion of a focus on fraud rather than on resilience. Given the mixture of practice across local authorities, I simply wondered whether the local authority representatives had any views on the matter.

11:00

**Helen McGreevy:** I have to say that this relates more to community care grants, but through the furnishing service that we use we have been able to get more value for our money and help more people. The service also employs a lot of staff and provides work experience, which also helps the community.

I can see where the third sector parties are coming from when they talk about letting people make their own decisions, but not everyone can get that sort of support. We have found that many of those applying for crisis grants are finding it really difficult to manage the small amount of money that they get every fortnight, and we refer people to our budgeting teams. We might well be able to help them out at that point, but we need to try to resolve their problems and ensure that they are able to manage their budget. If they have debt problems, for example, we refer them to debt counsellors. It is all about providing an extra bit of support to applicants, and I think that that is the route that we should be going down.

**Nicola Reid:** With regard to the crisis grant system, which is what you asked about, I am sure that other local authorities, too, have found this, but we have to ensure that the money that we are giving is being used for its intended purpose, whether it be for the buying of food, fuel or whatever. It is right to say that the money is not often used for that purpose. If we go down the route of supermarket vouchers or fuel cards, we know that our money is being spent on what that family needs. Historically, we have found that the £30 that we might have given to buy food for the weekend has been spent on alcohol or drugs if the people in question have an addiction, and we are trying to move away from cash options for crisis grants towards supermarkets providing food to ensure that the money hits home and is used as intended.

**Ken Macintosh:** I certainly recognise that, but has any research been done on or is there any evidence to support the idea that people are misspending this cash? Is there simply anecdotal evidence for that idea, or is it evidence based?

**Nicola Reid:** The evidence can be found in the repeat applicants. When we give cash in good faith that it will be spent on whatever it has been asked for, we sometimes find the same applicants repeatedly coming back and asking for money for the same item. The client group we work with can be very honest and will tell us that they have not spent the money on its intended purpose. There might not be any official information but, operationally, we have seen that that is very much how things are.

**Susan Donald:** As a rural authority, Aberdeenshire faces particular challenges in providing goods for crisis grants, which is why we provide cash or energy vouchers. Given the distances that people might have to travel, there is no predominant supermarket or outlet that we can enter into a voucher scheme with.

As Nicola Reid has pointed out, the clients who misuse the crisis grants system will be repeat applicants. In a couple of instances, however, we have provided goods that have been sold on for cash after the packaging has been removed. It is very difficult to prevent people from misusing a system that relies quite heavily on trust and the assessment of need when they first apply.

**Dave Berry:** Again, this is anecdotal—it is not from formal research. When we started the Scottish welfare fund, we were given cash, because we did not have the fulfilment options in place. When we introduced energy advice officers—which is similar to what was done in Renfrewshire—rather than somebody getting £50 of energy, an energy advice officer would be sent to the house. They would liaise with the energy company so as to review the tariff and negotiate lower tariffs. We found that there was quite a significant drop in the number of people accepting the award, which indicated that the money was not going to be used to cover the energy costs that people had stated required to be paid.

In a similar vein, we started to introduce arrangements to cover travel costs, whereby we would buy the travel ticket, whether it was a bus ticket or a train ticket. Again, a number of applicants declined the offer of that award.
Helen McGrevey: We have statistics on the number of vouchers that are paid out but not redeemed. The figures amazed me when I started with the project. We award energy vouchers after going through the whole process and explaining it to people, but they do not cash them.

The Convener: Is that money lost?

Helen McGrevey: No, it is paid back into the fund. I review that on a monthly basis. The voucher expires after a month, and we pay it back into the system. It is quite a large amount.

Ken Macintosh: Voluntary sector representatives have raised concerns about one of the powers under the bill, which allows local authorities to outsource the whole process to other bodies, and that includes privatising it. What do local authorities think about that concern regarding that power? Do any councils plan to outsource it, or do you already outsource it?

Alastair Macarthur: The answer to your final question is no—Renfrewshire has no plans to outsource our current operation.

We are content to have the flexibility to outsource under the bill. It is not so much about bringing the private sector on board; it is more about looking across local authority boundaries and engaging a bit more with the very organisations that you have mentioned in order to get assistance in administering the fund. That is where we are coming from, as there are opportunities there. Our only concern is that, if we outsource things across local authority boundaries, local knowledge about the available local support services could be diluted slightly. However, having flexibility under the bill is useful given the cash-limited amount that local authorities have, in terms of both the overall fund size and our administration resource.

Alex Johnstone (North East Scotland) (Con): On my reading of the bill, that is the why the section on outsourcing is included. A number of key areas of local authority responsibility are outsourced to the third sector. Does this area lend itself to that approach?

Alastair Macarthur: There is potential for that, but it is not something that we have explored to any great extent. One of the first things that we would need to be content with as a local authority is that the third sector has the capacity and ability to help us in that regard, and we have not explored that yet.

Councillor MacDonald: I do not think that there is any doubt that local authorities are engaging with the third sector and are working in partnership with it. That includes Citizens Advice Scotland and Scottish Women’s Aid. Perhaps elements of the work that requires to be done can be outsourced, but that will come through time—working through the process, seeing what works best for the client and establishing what makes it more certain that the resources are going where they need to go.

We do not have outsourcing as a policy aim, but it is important, in a local context, to engage in the process agencies that have a far longer reach into communities than even we have as the local authority. That very much involves the third sector.

Dave Berry: On a practical level, one of the benefits of a local authority providing goods and services is its VAT status, which affects affordability. The local authority can claim back VAT so the pot—the fund—goes further than it would if it was being delivered by an external agency.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I will continue on that subject, perhaps not so much in relation to formal outsourcing and all that it would entail but more in relation to what is happening at the moment in local authorities. To what extent are local authorities engaged with the third sector on a daily basis to try to deliver for the applicants? There seems to be a lot of capacity out there and it would be a shame, including in terms of value for the public purse, if that capacity was not being called on. What is the current state of play?

Dave Berry: The main link with the third sector is around the local advice services—Citizens Advice Scotland in particular. It is about working with those services, whether that involves signposting applicants on to them or following up with them on some of the issues that individuals are facing.

We have quite a good network in Dundee and we are away to work further with the advice sector on the issue of sanctions from the DWP. It is about focusing on sanctions as a priority. When people present themselves to the Scottish welfare fund because they have been sanctioned, it is about our next step and about how we can use the wider capacity in the voluntary sector to assist those individuals.

Alastair Macarthur: There is a reasonable level of engagement between local authorities and the third sector already, but work can always be done to improve it further. It is helpful in cases where a claimant has already engaged with a charitable organisation. For example, we had the case of an ex-soldier who had already engaged with the Help for Heroes charity; we were able to engage with that charity and get a much clearer picture of that individual’s circumstances and their family circumstances, which helped us arrive at what we think was a better decision and a better outcome for that individual.
It is helpful in cases where the third sector is already involved with claimants to be able to link into that involvement because, as Councillor MacDonald says, some of these organisations have a much deeper reach into the community than the council does. Engagement is helpful in that context.

Annabelle Ewing: It seems to me from the few comments that have been made thus far that there is a recognition that there is probably more scope for that. What do the local authorities plan to do to determine what further scope there is and how to bring that on board? What would the next steps be?

Councillor MacDonald: I refer back to what I said about health and social care integration. That will drive forward that agenda for us to a large extent. We have already indicated to the third sector in the Hebrides that the challenge for it is to be able to step up to the plate to deliver these services, because we believe that working with it will provide a far better service to clients across the board, not just in relation to the social welfare reform agenda.

Across the board, a far better service will be provided across the community as a whole through mechanisms such as service level agreements that are renewed from time to time or other formal processes. The intention is that engagement will become more formal without damaging the independence of the third sector, because that would be counterproductive—people would see the third sector as just another arm of the local authority, which might not be the most advantageous position to be in. However, I certainly think that it is something that will increase across the piece over the next two or three years.

Linda Fabiani: Is it the general view that the services will increase over the next few years, as Councillor MacDonald said? I am aware that there are, for example, advice services in some councils and there are citizens advice bureaux. Is there any view on how the situation might change in the future in terms of outsourcing advice services only to CABx?

11:15

The Convener: Would anyone like to comment on that? You are up again, Councillor MacDonald. [Laughter.]

Councillor MacDonald: It does not have to be a case of either/or. We already have a service level agreement with the local citizens advice bureau, and we have fairly senior people liaising. For example, the head of service in the finance department, who deals with the community services section, liaises on a daily basis with the citizens advice bureau.
knowledge can dissipate quickly. We have found a challenge over the current year in maintaining the level of knowledge in the community. However, the approach appears to have worked well in respect of the number of applications that we have received.

The Convener: Is that the case elsewhere?

Susan Donald: Yes. Aberdeenshire Council has done quite a lot of work to raise the profile of the welfare fund. We have also done a bit of work with the third sector and social work services to change perceptions, because there was for quite a while a feeling that there was no point in applying to the fund; people were prejudging on the basis of how the DWP had administered the social fund.

Now that the third sector and social work have got used to working with us, there has been a significant increase in uptake: the number of applications has risen by 24 per cent compared with the first five months of last year. As well as that increase in the number of applications, there has been an improvement in the quality of the information that we are getting. Quite a lot of work is being done ahead of time—whether it involves a new housing scheme or the homelessness strategy—to see how the welfare fund fits in.

Dave Berry: Dundee City Council’s response to the implications of welfare reform has been to form a partnership arrangement with our local DWP officers, with whom we have worked closely to identify issues around welfare reform, so we have tried to work together to mitigate them. There are a number of projects for which the partnership has successfully obtained funding to get the message across in response to welfare reform, regarding not just the Scottish welfare fund but other assistance that is available. For example, volunteers are being used in the library service and there are some community-based projects being assisted by staff who are themselves based in the community. The whole profile of the Scottish welfare fund comes under that process. The situation is not perfect. There are people who are still not aware of the fund, but we are getting better in that regard.

Annabelle Ewing: What is the general feeling among those who are here today about the necessity and/or desirability of proceeding by way of legislation? One response out of 48 or so to the Scottish Government’s consultation suggested that it is not appropriate to proceed with a bill.

The Convener: I noted that one specific response, and I have been contacted by two or three other organisations whose representatives have said that they are not sure that putting the measures that we are discussing into legislation is the best way to proceed. They want maximum flexibility and think that legislation would be too restrictive. Have you had any discussions around that?

Dave Berry: The proposed legislation would give local authorities assurance. In fact, they will now have a duty that must be done. That can only be good for the continuing development of the Scottish welfare fund.

The interim scheme worked well, but lasted for only two years. Because we have not been able to employ staff on permanent contracts, given the two-year length of the scheme, we have started to have high turnover. Alastair Macarthur mentioned expertise and knowledge; we get into situations of constant training and recruitment of new staff. Certainty that the Scottish welfare fund is here to stay would help greatly in that regard.

The Convener: That is an important response. I had not picked up on that.

As I said, I have been approached by people saying that they are a bit concerned about the proposed legislation being too restrictive, but that is a good counterpoint, which I take on board.

I will come to Councillor MacDonald in a minute, but first Alastair Macarthur wishes to comment.

Alastair Macarthur: I will echo that point, which was picked up in a recent national report by Audit Scotland regarding benefits performance in 2013-14. Audit Scotland highlighted the difficulty that many councils are having in securing and retaining benefits-qualified staff—people who are experienced in making the types of decision that we need to make in order to administer the welfare fund. Dave Berry made an excellent point about statutory backing for the welfare fund doing a lot in terms of security for our existing staff. We hope that it will be useful.

Councillor MacDonald: As I have said, whether there should be legislation is not something that we have discussed in any significant way in the context of welfare reform, but legislation will give certainty not just to local authorities but to the clients about what is in place.

We have noticed that the administration grant does not cover the staff time that it currently takes to work through applications and to build relationships with the other groups on the islands. We can sustain that for a couple of years, but not in the long term. Again, such provision would have to be made either by the local authority or through the funding on a long-term basis; having it in legislation would give confidence that that would be the case. I cannot see any reason why we would not want to give people certainty about something that is clearly very important, as long as the legislation allows flexibility.

The Convener: You have all had a look at the bill. Is there anything that you think is missing? Is
there anything that you are concerned about in its content, or is there anything specific that you would like to comment on in order to get us to focus on it in our scrutiny? Are you all fairly content with the bill? If that is the answer, that is fine—

Councillor MacDonald: On something that was mentioned previously, we would like some kind of loan scheme for people who do not meet the criteria for the community care grant or the DWP budgeting loan, either because they are single adults or because they do not experience exceptional pressures. A loan fund as a backstop would help a number of people. It would not be a huge number of people, but they would likely be people who are quite vulnerable and very much on their own.

Alex Johnstone: As we have heard previously, the bill does not specifically exclude that. [Laughter.]

The Convener: I wonder whether we need to pursue that issue a bit further. It is certainly something that the committee could discuss with the bill team.

Alastair Macarthur: In Renfrewshire, we are exploring exactly that through discussions with local credit unions on setting up loans, essentially for white goods and so on. That is just an observation.

The Convener: This is an area that we need to start exploring a bit as a committee.

Annabelle Ewing: What information might be available that would help the committee in looking at that issue? Councillor MacDonald says that there is a demand for such loans. What is the level of the demand as a proportion of the total? What kind of numbers are we talking about? It would be useful to have an idea of that in order to be able to look at that issue in more detail as a committee.

Councillor MacDonald: We can certainly supply that information. Loans are an issue that has come through from the officers who have been dealing with the funds—they are still seeing people falling between two stools, as it were, who could be helped. We are not talking about huge numbers, but those people are as worthy of support as others.

Linda Fabiani: I would like to explore the credit union aspect. I know that a lot of discussions are going on between credit unions and the Minister for Energy, Enterprise and Tourism, Mr Ewing, about how credit unions can take part. It is certainly worth pursuing linkages between local authorities and credit unions. I am interested in how loans would be paid back, what power local authorities have in that respect and how they can work alongside credit unions.

The Convener: I think that we will come to that later in our agenda. The point has been made and we need to consider the issue during our scrutiny of the bill.

Kevin Stewart: I agree with Linda Fabiani about credit unions. Although I certainly would not be against a loan scheme, there have in the past been difficulties when councils have operated loan schemes in other spheres. If we are going to explore that, we have to take cognisance of the pitfalls that have been experienced in the past. Information on that, too, would be useful.

The Convener: If any witnesses can provide evidence or even just give us their perspectives on the issue, that would certainly inform us as we scrutinise the bill. We can contact the Convention of Scottish Local Authorities to explore the issue further. It would be useful to get a clearer picture. Would anyone like to add anything? Does anyone have any final comments that they would like to make, or anything that they would like to leave us with in relation to their views on the bill?

11:30

Helen McGreevy: On the loan scheme suggestion, I think that some of our customers get confused between the budgeting loans that they get through the DWP and the crisis grants that they get through us. A loan scheme might also confuse people quite a bit, which you will need to take into consideration.

South Lanarkshire Council’s only other concern, as an authority, is that there is nothing in the bill—as far as I am aware—on fraud, such as people misusing the budget. Will there be something in the bill to deal with that? I know that the DWP has a fraud section and we are going on to the one-tier approach for fraud. Should we be considering that in relation to welfare reform?

Dave Berry: I have just one last thing to add. Councillor MacDonald raised the issue about the administration grant. In Dundee, we have been quite frustrated about the level of grant compared with investment in the holistic approach. However, even stripping out what we might call the added elements and looking purely at the cost of processing the applications, we feel that we are still short by around 30 or 40 per cent in relation to the actual administration grant funding, which is a concern, going forward.

The Convener: We always need to look at the financial memoranda that accompany bills to see whether they are adequate. If that is a point that you want us to address, we will certainly take it on board.

Annabelle Ewing: I noted that point in some of the submissions but, again, absent any sort of
analysis of the claim that is being made, it is just one statement. If there is evidence of a shortfall, it would be useful for the committee to see it.

The Convener: We will put that invitation out to the witnesses: if you have evidence on the administration costs and the money that is made available to you, that evidence would be beneficial to us as we look at the bill.

Helen McGreevy: COSLA is currently doing a benchmarking exercise. One area that it is looking at is how people are using their budget and how it is perhaps getting shored up by other departments within the council. COSLA recently sent out a survey to all local authorities; it is meeting at the moment to examine the findings, so the committee might get some useful information from it.

The Convener: That is an area that we need to pursue.

Thank you very much, everyone, for your contributions this morning—they have certainly started the ball rolling for us in our looking at the bill. We will give the bill the maximum amount of scrutiny and consideration.

Obviously, if anything occurs to you after this morning that you want to inform us about, and which we might not have covered so far, or if there is anything that you want to add to the points that have been made, feel free to contact the clerks and we will take on board any views that you have. Thank you, again, for your helpful contributions.

11:33

Meeting continued in private until 11:43.
Scottish Parliament

Welfare Reform Committee

Tuesday 7 October 2014

[The Convener opened the meeting at 10:00]

Welfare Funds (Scotland) Bill: Stage 1

The Convener (Michael McMahon): Good morning and welcome to the 14th meeting in 2014 of the Welfare Reform Committee. Can everyone please ensure that their mobile phones are off or switched to airplane or silent mode?

The first item of business today is the committee’s second evidence session on the Welfare Funds (Scotland) Bill. Last week we took evidence from local authorities on the bill. This week we are taking evidence from the third sector. This session and the other evidence sessions that the committee has planned will be used to inform our evidence session with the Minister for Housing and Welfare, Margaret Burgess, on 4 November and, ultimately, the committee’s stage 1 report on the bill.

I welcome our first round-table panel today, consisting of Derek Young, policy officer at Age Scotland—who will be here soon; Mark Ballard, head of policy at Barnardo’s Scotland; Marion Davis, head of policy and research at One Parent Families Scotland; Scott Robertson, operational manager at Quarriers; and Lynn Williams, policy officer for the Scottish Council for Voluntary Organisations.

Some of you will have taken part in round-table sessions before. The idea is to encourage interaction. You can raise points or ask us questions, and the committee members will try to contribute also with questions or observations. We hope that that will allow us to gain as much evidence and information on the bill as possible.

If Mark Ballard does not mind, I will start with a question to him about Barnardo’s Scotland’s written submission. The first bullet point in your submission suggests one way to strengthen the bill, by

“Placing clear responsibilities on local authorities to promote awareness of and access to the Scottish Welfare Fund.”

I wonder whether such responsibility should be put on local authorities, given that it is a Scottish welfare fund delivered by the Scottish Government and that the local authorities are the agency for delivery. Clearly, they will have a responsibility to ensure that people are aware of where they can go locally. However, surely the primary responsibility for making people aware of the Scottish welfare fund should lie with the Scottish Government.

Mark Ballard (Barnardo’s Scotland): The Barnardo’s Scotland written evidence was born out of talking to our staff, who work with vulnerable young people and families who benefit from the existing fund. The feeling of staff is that knowledge of the fund on the ground is patchy and that it is easier to access the fund in some areas than it is in others.

In particular, we would highlight issues around timescales for the fund, in that some local authorities have done really well in trying to make the turnaround as short as possible so that people can access the fund within a day; whereas in other local authority areas people might have to wait a couple of days or three days. Our staff must cope with the latter situation, for example by working with someone who needs support on Friday but for whom the support cannot come until Monday or Tuesday. When you are talking about a family with children, that is a very long time to wait.

So, there is an issue about access arrangements at a local level and how information at a local level is disseminated through other services that, like Barnardo’s, work with vulnerable families. I agree with you entirely, convener, in that our early experiences showed that there needs to be a strong national framework and strong oversight. However, we cannot miss the issue about how the fund is implemented, how the access arrangements work on the ground and how information is disseminated on how people access the fund on the ground. All of that must be taken care of as well.

So, I fully agree that there are responsibilities for a national framework that lie at a national level, but the experience of our services on the ground is that ease of access to the fund can be patchy.

The Convener: That is totally understandable. Do your panel colleagues have comments? Do you want to add to or detract from what Mark has said?

Scott Robertson (Quarriers): On the issue of the situation being patchy from area to area, a national framework is essential. It is the responsibility of the local authorities to ensure that good practice is shared from area to area and is embedded. Quarriers has worked in a range of local authority areas. In relation to youth homelessness, we have worked in a limited number of areas but we see a difference in how the fund is being delivered in them.

The Convener: We have received anecdotal evidence from people who mistakenly went to the Department for Work and Pensions, because that
is who was originally associated with crisis loans and community grants, and were not signposted to the local authorities, even though the DWP’s officials say that staff are expected to do that signposting. Is that your experience? Was it something that was occurring at the start but which has dissipated now?

**Marion Davis (One Parent Families Scotland):** There is still confusion about where people go to access various parts of the system. There are three channels: online; by telephone; and on paper. We found that there are challenges around online and telephone applications. It can take up to 40 minutes to make a claim. If parents come to our office, our staff will support them to submit the claim over the phone. However, for those who are not supported by organisations, it can be challenging. Some people are in local authority areas where there is no face-to-face support. In Glasgow, for example, people cannot go somewhere and see someone.

There is an issue around the paper-based claims. We would like our organisation to be more involved in dealing with paper-based applications.

With regard to online access, a lot of the parents we work with do not have the internet. It is a bit of a struggle for them to go to the local library with kids under five and spend 40 minutes submitting a claim form.

**Linda Fabiani (East Kilbride) (SNP):** Mark Ballard was talking about different timescales and so on. What are people’s experiences of the way in which the initial application is dealt with—gate keeping would be the catch-all phrase—and how the application moves through the system? Are there great variations between local authorities in that regard? From what I hear locally and from my discussions, it seems that there is a degree of confusion around how people go through the system.

Following on from that, I would like to hear people’s impressions of how the initial contact with the local authority leads on to other departments in the local authority being involved, along with external agencies, if required. I know that the system is fairly new, but we have had two years of it now. Are we starting to see a joined-up approach?

**Mark Ballard:** I think that Marion Davis from OPFS makes a good point about the difference between the young people with whom we work and other young people being the fact that they have someone who is working with them. Barnardo’s has taken on staff who specifically work in welfare rights advice and are supporting some of the young people and families to cope with the increased pressure that they are coming under due to greater benefits sanctions, more delays to benefits and the effects of the recession. Those are the people who are getting support and who have someone to help them and guide them through the gateways that are there. However, Linda Fabiani is right to say that the process is not always clear, particularly if you are not helped by someone from either a voluntary organisation that is specifically focused on cases like yours, such as Barnardo’s and OPFS, or Citizens Advice Scotland.

On a more positive note, Barnardo’s welcomes many of the elements in the draft guidance, particularly with regard to decisions being communicated in writing and the need for greater clarity in the decision-making process. Those elements will help to make the process clearer for everybody because they will act as a good national framework within which we can fit locally appropriate variations. Much in the guidance is helpful already, and we would like to see more of that. The guidance will help us to deal with some of the gate-keeping issues.

**Ken Macintosh (Eastwood) (Lab):** I want to expand on that issue. A number of the submissions mention the variation in the process throughout Scotland. One of the criteria that have been set for administration is a two-day deadline for awarding grants, and a number of submissions picked up on that.

Under the previous DWP system, the grant-processing time was one day—people were experiencing a crisis, and they got their answer immediately. The submission from Quarriers states:

“If an application is received by a Local Authority on a Friday payment at the end of the second working day is not an effective response”.

Can you expand on that, Mr Robertson?

**Scott Robertson:** Again, it varies from area to area. In our experience, an application in North Ayrshire is processed in one day, whereas in Glasgow the time will be equal to two days. Our concern is not the difference between one day and two days, but the fact that an application that is made on a Friday or a Thursday evening may not be processed until late on Monday. The situation is a crisis by definition, but it takes perhaps four or five days for help to be given.

**Ken Macintosh:** Last week, the local authorities suggested that they needed the extra time to make further investigations and check the applicant’s circumstances. They said that it was a grant and not just a deduction from a loan. They also said that they provided a holistic service and that it was therefore more important to take longer about it.

Do you accept that with regard to what is a crisis situation?
Scott Robertson: In our supported youth housing projects in Glasgow, where a support worker is likely to be supporting the young person to make an application, the process still takes two days. We have had very positive feedback from the youth housing managers with whom we met last week on community care grants. The comparison between the new system and the previous system is like night and day.

The timeline for crisis grants is a concern. Indeed, it is putting some of our young people off applying for a grant. As was pointed out, they may have a crisis but may not apply for a crisis grant on a Thursday or Friday because they might, for various reasons, decide that they do not need the grant if they cannot get it by the Friday.

It is a concern that the process can take two days when some local authorities are processing applications in one day. Again, there is a lack of consistency.

Ken Macintosh: I do not know whether other witnesses want to come in on that. Another point is that the bill does not stipulate that awards should be made in cash, and local authorities have expressed a view that there should be no element of choice for applicants. Many of the submissions—from Barnardo’s, SCVO, One Parent Families Scotland and many others—mention the stigma of using a card system or receiving assistance in kind. Does anyone want to comment on that?

Lynn Williams (Scottish Council for Voluntary Organisations): I want to make a few points. First, the point about stigma is something that our members consistently mention to us. As our submission suggested, those who are using the fund are probably at crisis point anyway, and people have to swallow quite a lot of pride to come and ask for help. That is the case for many families, if someone is not able to provide for their families and they are suddenly in a position in which they have to ask for crisis help.

From reading the submissions that the committee received, it seems that the element of choice is critical, partly for stigma reasons but also just in general to ensure that we meet people’s needs. For example, I do not want to steal Bill Scott’s thunder, but I have attended events with Inclusion Scotland and other organisations where there is a lack of choice in what is provided, so it does not meet people’s needs. It is actually more cost-effective to work with a family to work out what their needs are. There is a Fife example, and there are examples from the Child Poverty Action Group in Scotland and other organisations in which a good that is provided does not meet someone’s needs and has to go back, and the person has to reapply. A whole element of time and money is being wasted if the system is not responding to what people actually need.

10:15

I will pick up on a number of issues that have been discussed regarding access to the system and the lack of face-to-face applications, which would be of concern. One issue is around equality of access in general. For people who are deaf and hard of hearing or who have a learning disability, phone access and online access can be difficult, so the face-to-face element is important.

On the issue of gate keeping, a number of members are consistently raising the issue of whether that comes down to training or to understanding what a client actually needs. We were given the example of the provision of a specialist piece of equipment, which would prevent someone from needing to move into care. However, the person was told that it is just a white good that they can apply for under a community care grant. The issue is around that sort of understanding of how the system operates and of what actually meets clients’ needs.

There is still a bit of a hangover from the social fund. Having spoken to activists and others, I think that some people still feel that there is a bit of stigma attached to applying for a crisis grant, for instance. People are genuinely a bit unwilling to apply to the fund, even if they know that it exists, because of the stigma that is attached to doing so.

Lastly, the element of choice is important. A number of members and colleagues in the third sector have mentioned the element of choice around having something that meets their needs. The cash versus in-kind assistance argument is a fresh and live one. Ultimately, just because someone is in crisis, that does not mean that they should be treated any less well or with less respect. If someone needs to buy something, it might make sense for them to have the choice. In some cases, it might be more cost effective for them to go and buy something that actually meets their needs, and which is of better quality.

There are a lot of issues around the matter but, for us and for other third sector members, the main issue is one of giving choice rather than telling people, “This is what you’re having, so like it or lump it—or you go.”

Marion Davis: In our written submission, we touched on some of the points that Lynn Williams has just made. We gave an example of some young parents in North Lanarkshire, for whom the choice of carpet was just blue or green—or was it? It would not be blue or green.

Ken Macintosh: It was blue or brown.
Marion Davis: Yes. That means that, when friends come round, they know that the carpet has come from the welfare fund, and that is a bit demeaning—although it is obviously better than having no carpet.

It is a question of choice. Other submissions from local authorities have said that there is a plus to in-kind assistance, as it can create jobs or make it easier for the person involved. The parents with whom we have worked would certainly like to have the choice, and to have the dignity of being able to make that choice. I support what Lynn Williams said about that.

Derek Young (Age Scotland): In our written submission, we also made the point about cash versus in-kind assistance. We can certainly envisage circumstances in which giving goods might address a very direct need in a very immediate way. As a general rule, however, a voucher system carries with it a great risk of stigma. In our view, that particularly applies to old people, who tend to be quite protective and private about their finances. They are not forthcoming or willing to discuss them openly with other people, and that creates other problems elsewhere in the application process.

On some of the other points that have been made about how flexible people find accessing the system, there are also issues around the application of capital rules, and around whether any flexibility is applied to those. For example, payments of pensions and pension-related benefits such as pension credit, as well as wages, come in at a certain point of the fortnight or the month. People do not know when a crisis will strike but it may so happen that, when it does, they have less money coming in than they expected, but a bill might be going out in two days’ time. That is a crisis situation, but those concerned might not qualify under a strict application of the capital rules. We have some evidence that different local authorities are applying the rules differently in respect of whether they apply any flexibility in taking that type of circumstance into account.

The main issue for us is that older people are simply not applying at the same rates as other age groups or social demographic groups. We covered that in our written submission. We have a number of suggestions for why that might be the case. People might be getting put off, and they might be getting inaccurate advice. It is worrying from our point of view that, although older people might well qualify and might have a strong case to make, the median ages for the awards that are being made are all in the mid-30s, whether for crisis grants or community care grants.

Kevin Stewart (Aberdeen Central) (SNP): Last week, we went over in some depth the cash-versus-goods scenario with councils, some of which had the view that providing goods could often mean procuring stuff cheaper, with the money going further. The funds were therefore manageable over the piece.

I wonder whether common sense should apply in some of these cases. Marion Davis talked about carpet colours. If folk had a choice of different colours for the council’s procured goods, perhaps that scenario would work. To my mind, that would make complete common sense.

One of the submissions mentioned a cooker. Rather than having one cooker that will not fit into a particular space, why can folk not choose?

Beyond that, can folk give their opinions on situations such as that in Aberdeen, where, rather than people using a voucher system, money is loaded on to the Accord card? Thus far, the Aberdeen Accord card has helped to reduce stigma because, for example, every kid uses it for their school meals, whether they get free meals or pay for them.

There are ways of striking the right balance in all those things to maximise the number of awards that can be made. Can we reach the right balance and take a commonsense approach so that there can be a mix, with folk still having choice and councils possibly being able to procure more?

Scott Robertson: I mentioned young homeless people moving on from supported accommodation, and the councils made the point that it was hoped that more furniture could be purchased when the welfare fund was set up.

We have spoken to project managers, and the experience in some local authority areas is that it has been like night and day. Previously, young people were in a catch-22 situation. They either needed to wait until they got their community care grant, which took many weeks and meant that they were unable to move into their new tenancy and got into a lot of rent arrears, or they moved into their new tenancy straight away, got their housing benefit straight away and did not get into rent arrears, but had no furniture.

The current community care grant seems to be enabling young people in some areas to move in straight away with a good furniture package that involves some choice. Kevin Stewart suggested that there could and should be more choice, and choice seems to be greater in some local authority areas.

I will make an important point. In one of our local authority areas, when a young person who is in supported accommodation is passed for housing—if it has been acknowledged that they will be housed—the application for the community care grant can be made straight away. Once they
are housed, they will then get the furniture straight away. In other local authority areas, that the young person has to wait until they sign for a tenancy, so there is still a potential delay.

An advantage of the new system is that applications can be made straight away. Young people may be at Quarriers or in other accommodation, but they will have been accepted as being homeless and will be housed in partnership with the local authority, so applications could and should be made at that point.

Kevin Stewart: I have one further question, which is on the different topic of the care leaver’s situation. Parliament has paid pretty close attention to how we can deal with the often fraught situations in which folk do not have the support networks that many of us have.

Barnardo’s and others have mentioned in their submissions how care leavers are often sanctioned more than others and therefore must access welfare funds more than others. How are care leavers treated in relation to the Scottish welfare fund? Further, how would the Scottish welfare fund and other funds be impacted if the United Kingdom Government goes ahead and withdraws housing and other benefits from young folk?

Mark Ballard: I particularly want to come in on that point. While Barnardo’s Scotland welcomes the bill and urges the committee and the Parliament to back it fully, we are concerned about some of the language.

In particular, section 2(2)(a) says:

“Qualifying individuals’ means individuals who have been or, without the assistance, might otherwise be—

(a) in prison, hospital, a residential care establishment or other institution”.

The term “residential care establishment” is problematic and not in keeping with the vision for supporting young people who are or have been looked after that is set out in the Children and Young People (Scotland) Act 2014.

Under the 2014 act, there is a much greater emphasis on the corporate parenting responsibilities held by local authorities and other public bodies for formerly looked-after young people, whether they were in residential or foster care, in another community placement—such as kinship care with friends or family—or looked after at home. We want to see greater alignment of what is in the bill with what is in the 2014 act because, under the act, all formerly looked-after young people under the age of 26 should be deemed to be qualifying individuals. Such integration between the two pieces of legislation would be helpful in ensuring that formerly looked-after young people do not slip through the cracks.

Duncan Dunlop from Who Cares? Scotland will also make some points about care leavers later in the meeting.

The term “residential care establishment” is not particularly contemporary. We want the vision of the responsibilities that we have for all formerly looked-after young people to be properly reflected in the bill.

Kevin Stewart: What about the effects of further benefit changes on care leavers and young folks without support networks?

Mark Ballard: In previous evidence to the committee, I highlighted that although schedule 5 to the Scotland Act 1998 reserves welfare powers in general to Westminster, it makes a specific exemption for benefits and welfare support given to young adults who were formerly looked-after young people. It is important that that is reflected and that, whatever debate takes place on the extension of further powers over welfare to the Scottish Parliament, that power in the existing legislation, which enables support to be given to formerly looked-after young people by virtue of that status, is recognised. We want to see that awareness in the bill and in how local authorities generally work. That approach is crucial. Whatever happens on welfare, we must recognise that there are existing powers and existing obligations on corporate parents that we want to see borne in mind in all the decisions taken by local authorities.

Lynn Williams: I have a couple of points to make. First, there are a number of concerns across the third sector about the wording in section 2(2) and how it might exclude other groups. Bill Scott, Marion Davis and others have called for amendments to that section in relation to families that are under exceptional pressure and, in particular, people with disabilities.

We need to be careful that the language used in that provision does not, by dint of being so tight, exclude people. The SCVO would support a number of the proposed amendments from third sector colleagues that look at the wording. We need to ensure that how the fund operates does not become so tight that people are not able to access it.

10:30

On Kevin Stewart’s second point about the impact of last week’s announcements, I was going to save these comments for my closing remarks, so I am probably pre-empting myself, but I think that many of us are concerned about those announcements. There is significant evidence of the impact of welfare reform on families across Scotland and the UK—indeed, the SCVO is about to publish some more research on that issue—and our call to all parties, civil society and others is for
a summit to take place immediately or as soon as possible so that we can begin to look at the impact of what has been announced on the Scottish welfare fund and other policies. I think that what we are going to experience will be pretty horrific. The impact already has been bad enough, and collectively we have to look at what the announcements mean, how they will affect families and how they will impact on the fund. We have called for the bill to contain a review provision to ensure that we understand the changing context in which the fund operates.

We need to prepare for what is coming. We think that things are bad now, but they are going to be a heck of a lot worse, and we need to look at what collectively the Scottish Government, the Convention of Scottish Local Authorities, the third sector and others can do. I note that the draft budget is being published this week, but what are we doing collectively? Are there any collective actions that we can take on the welfare fund? Can we increase it? Is there anything else we can do in policy terms to prepare for what we know is coming over the next year or so?

Marion Davis: Although about a quarter of all claims to the community care fund come from lone parents, they are not always made because of an emergency. As has been recognised, benefit rates are too low and people on benefits are living below the poverty line. In addition to emergency costs, people also have to meet intermittent costs. For example, the cooker or washing machine that they have used for a long time might just burn out, and they will not be able to pay for another out of the regular money that they have to live on every week.

The announcements that have been made are, of course, going to have an incredibly detrimental effect on families with children. As the officials pointed out last week, the welfare fund plays a particular role; it is, in a way, a sticking-plaster for a welfare system that is broken, does not provide a safety net and leaves people in severe hardship. Looking ahead, we can see that the situation is only going to get a lot worse and that there will be immense pressures on the welfare fund. What we have at the moment will probably not suffice to meet people’s needs or tackle the child poverty that we know is going to increase massively. It is predicted that by 2020 child poverty is going to increase, rather than reduce, even though the present Government said that it would have eradicated it by that time.

Mark Ballard: As the conversation has been widened out, I want to make a number of other points.

Barnardo’s Scotland and the NSPCC Scotland recently published a report on the experience of Scotland’s family support services. Across Scotland, increasing numbers of families are struggling to cope with extreme levels of hardship that are often linked to benefit sanctions, payment delays, the increased cost of living and the increased cost of basic essentials. Regardless of what might happen after the next UK election, that is the reality now.

I have already mentioned section 2(2) but I think that some improvements could also be made to section 2(1), along the lines that Marion Davis has outlined. At the moment, short-term need is described in the bill as “arising out of an exceptional event or exceptional circumstances”, but many of the families with whom we work are under what I would describe as exceptional pressure. That is a long-term pressure that might have arisen from a benefit sanction of three months, six months or even a period of years for a family member, and we want the wording in the bill to be extended beyond “event” or “circumstances” to cover exceptional pressures. I know that CPAG Scotland has made the same point.

The definition of short-term need also refers to the “risk to the wellbeing of an individual”, but I am sure that Marion Davis will agree that for many families there is also a risk to the wellbeing of an individual’s dependants.

Extending the definition beyond the individual’s wellbeing to include dependants’ wellbeing would align the bill better with the purposes of the Children and Young People (Scotland) Act 2014. That would make a helpful link between the positive vision of wellbeing and of Scotland being the best place in the world for every child to grow up in and the Welfare Funds (Scotland) Bill, which can help to support families at times of exceptional pressure.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): In the submissions, every organisation—except the SCVO, which was a bit more neutral—supported using the Scottish Public Services Ombudsman for second-tier reviews. Last week, we heard concern from local authorities about that approach, although one local authority—I do not remember which one—accepted that it might be difficult for it to have a significant enough case load to allow it to build up expertise; Age Scotland also made that point, which is why it supports using the SPSO. Why do organisations think that the ombudsman should conduct second-tier reviews?

Derek Young: As Mr Hepburn mentioned our submission, I had better respond. The ambition that the Scottish Government stated when the Scottish welfare fund was created on a non-
statutory basis was that the funds should be locally administered but that the approach should be consistent nationally. Our firm view is that, if second-tier reviews cannot be done at a Scotland-wide level, no structural dynamic will ensure consistency.

We accepted that the other option in the consultation paper—a tribunal—could lead to further delay, be more expensive and be more off-putting for applicants if it had formal procedures. That is not the experience of people who contact the ombudsman.

We hope that consistency would be promoted in the same way as it is promoted by the Scottish Information Commissioner, for example. The commissioner has developed a body of decisions, and authorities to which freedom of information legislation applies are encouraged to act in accordance with that body of decisions. A similar possibility exists to develop consistency in relation to welfare funds.

I know that local authorities said that using the SPSO would be an added complicating factor in their appropriate management of funds. However, that is not a problem that local authorities cannot cope with. They must manage the implementation of national legislation with a local budget in many areas. The welfare funds might be no different from other areas in which local authorities have such a responsibility.

Mark Ballard: I fully support what Derek Young said. The most important thing is ensuring that the learning from the SPSO’s reviews is used to improve the practice of local authorities across the board, and not just the practice of the authority to which the review related, as Derek Young said. The great virtue of the overall review structure is that it enhances learning and the dissemination of best-practice models, which can be taken up across the board.

Lynn Williams: I do not think that we necessarily disagree; it is more that we recognise our third sector colleagues’ experience on the issue. Across the board, we agree with and support colleagues on the need for an independent second tier and for authorities to learn from the process, as Derek Young and others have said.

Our point is about accessibility of and timescales for appeals. For example, social care reviews can take a heck of a long time. The process should be as quick as it can be. I understand that SPSO colleagues recognise that issue. Accessibility, the learning points from evaluations and ensuring that we learn from good and bad practice are important. We support our members’ views. If using the SPSO is the best option, we should ensure that that works as effectively as possible and that it is as accessible and easy to use as possible for applicants.

Marion Davis: It is important that claimants can be represented by a welfare rights officer, that they can give further evidence to support their case and that they are given the option of a face-to-face hearing. I add that to what colleagues have said, which we support.

The Convener: I might return to the issue later.

Annabelle Ewing (Mid Scotland and Fife) (SNP): Good morning, everyone. I want to pick up on a point that was made a while back, but I will start with a new point, which we have not touched on yet: the basic ethos of the welfare fund, which is a grant-making fund. I note many comments in the witnesses’ submissions about that. It seems that they welcome that approach but have concerns about some of the language that is used in the bill, which some might interpret as having to do with being able to claw back funds from fraudulent claims. It would be interesting to hear from them on the basic point of grants versus loans and why they have concerns about the language in the bill.

Lynn Williams: From looking at colleagues’ submissions and ours, it seems that the approach that the Scottish Government has taken of making grants is considered across the board to be far favourable to a loan-based approach. As Marion Davis suggested, the people who apply to the fund are in absolute crisis and, for many of them, to have to think ahead about how they will pay a loan back is a very big issue. Therefore, across the sector, there is a view that grants are far preferable. On how we make that award happen, we have already rehearsed the arguments about vouchers versus grants and cash versus kind.

Our concern about the language picks up on the Child Poverty Action Group’s response about the withdrawal or reclaiming of funds. After looking at the evidence from last week’s meeting, my concern is whether we are starting from a position that people will fraudulently claim from the system. We need to ensure that we do not unintentionally give a message that says that people will defraud the system from the beginning. To say in the bill, which some might interpret as having to do with being able to claw back funds from fraudulent claims. It would be interesting to hear from them on the basic point of grants versus loans and why they have concerns about the language in the bill.

The issue is unintentional messages. What are we saying? The fund is the absolute basic of safety nets. People go to it when they are in absolute crisis and need support. Dignity and respect are important. In our submission, we call for the bill to reflect that ethos in some way. In Scotland, we talk a lot about creating a different approach to welfare, so we need to ensure that the language that is used in the bill reflects the fact
that we are taking a slightly different, far more caring approach and that we recognise that people need support and should not be stigmatised for that.

The language that is used in the bill and how that filters through to regulation and operation are incredibly important. I do not know how you do it, but we call for up-front principles around the bill that say that we are taking a rights-based approach and that, because when people go to the fund they cannot afford to provide the most basic of human rights, such as food and shelter, how they are treated is critical. Dignity and respect must be at the heart of that.

Mark Ballard: I go along entirely with what Lynn Williams said. The key point is that, if section 5(2)(f) is going to talk about “circumstances in which” moneys have “to be repaid”, that needs to be balanced by something in the bill that defines the fund as a grant-making fund not a repayable loan-making fund, to clarify exactly what that reference to moneys being repaid means.

The committee and the Parliament have always been supportive of the role of credit unions, which provide a positive model if we are looking for repayable loans to support families. However, as Lynn Williams said, the fund is a crisis fund for exceptional circumstances. It is important to maintain that distinction.

Marion Davis: In our submission, we support the grant model over loans. When witnesses were asked at, I think, the previous meeting what the evidence base for fraud was, it came through to me that there was no clear evidence base. There may be anecdotal cases, which we will probably always get, but there is no evidence of widespread fraud or the reselling of goods on a massive scale. When we met Scottish Government officials, they agreed that that was the case.

As Lynn Williams said, it is important that the feel of the fund is a rights-based approach. We are dealing with people who have been on the lowest level of benefits and, unless there is some evidence of widespread fraud, I think that the rights-based approach is the correct one and should be in the bill.

10:45

Derek Young: I want to make a very short point that reflects some of the points that others have made. We did not address grants versus loans specifically in our submission, but the bill should reflect the culture and the level of expectation for the operation of the scheme, as Lynn Williams said.

In our experience, we have found that older people have what we have described as a propensity for thrift. They will quite often use goods for much longer than other people would consider to be their useful life. Therefore, the point at which they identify something as unusable is a significant point to have reached. At that stage, a grant system makes much more sense, in the sense that it reflects the fact that maximum use is being got out of goods anyway. We are talking about situations that involve a direct, like-for-like replacement, which the fund can support.

Annabelle Ewing: I want to return to an important issue that was raised earlier on access and awareness, on which I did not succeed in catching the convener’s eye. Marion Davis mentioned that it would be useful to have forms issued, in the way that social work departments apparently already do. I would like to explore that further. Is it the case that no local authority issues the forms? Why do they not do so, if that would help the process, given that there is a precedent in other parts of authorities? That is an important point to address, because access is key. Does anyone have any information on that?

Lynn Williams: I guess that the assumption is that, because the form is online, people can download it, but Marion Davis rightly said that we should not make that assumption. We have picked up that there is an assumption that local charities, for example, will just download the form and print out batches of it. I do not know whether anyone can say any more about that.

As we said in our submission, the fact that the third sector is expected to take on those costs and pull these things down will have an impact on the sector. Most front-line organisations think that they will probably do that, but the assumption that, because everything is online, everyone will have access must be challenged. Some organisations have said that they have been timed out, or that the system has frozen when they have been online and they have had to go back in and repeat the whole process. As is often the case with online applications, it does not always work. There are issues. Access generally must be looked at. I know that the Scottish Government is aware of that, but there are wider equality issues that need to be looked at; phone access should be considered, too.

Scott Robertson: Our experience is that the system is working well because we have support workers who are used to supporting young people to make applications. I am talking about young people who are in supported accommodation, so good working relationships have been built up with the relevant local authority department but, as far
as publicity is concerned and people getting access to forms and being able to find them, that would be difficult.

**Linda Fabiani:** I do not know whether I am asking the right people, but a couple of things that have been said struck a chord with me. Lynn Williams talked about assumptions being made. It seems that quite a lot of assumptions are made about the operation of such a fund. One that bothers me is the assumption that people who will try to utilise the fund may, to some degree, already be in the system. I see from Derek Young’s submission that there is a view that not only are elderly people much more reluctant to approach such a fund but some of the language might well be off-putting. I just want to put that on the record so that the committee can look at it. In the language that we all use, is there an assumption that folk are already in the system? What can we do to make sure that those who hit hard times perhaps for the first time in their life and have never been involved with any agencies know that they might be able to tap into something that could help them with that one-off crisis?

**Derek Young:** Thank you for that question. In our experience, quite often older people will not be in ready contact with professionals who are in the habit of giving advice about the availability of funds, the criteria that will be applied and the guidance and regulations.

The state pension is administered through the pension service. Once you attain state pension age, that money can be paid directly into your bank account or accessed through the post office. However, through neither of those routes is there contact with people who have ready knowledge of, or can give advice about, accessing the funds.

Similarly, you might have had no reason at all to contact the local authority social work department, so social workers might be a professional group with whom you are entirely unfamiliar. The people whom you do come across, such as health and social care professionals, might have no knowledge, or only poor knowledge, of the funds, which means that they might give inaccurate advice.

Age Scotland is an information and advice provider. We try to cover some of that gap, but we cannot reach everyone. The point that you made about language is important. I know that colleagues have made specific recommendations for changes in the language of the bill or the regulations, which would certainly help. You gave the example of families suffering under exceptional pressure. That criterion applies to an older person living alone, but that person might not believe that they are a family and they might have a different level of social expectation as to what exceptional pressure constitutes.

It is really important that the information and advice about the availability of the funding that will support the legislation once it is in place is much more accessible, inclusive and approachable, so that it does not dissuade people. As I said previously, the dissuasive effect seems to be significant for older people, given the low numbers of applications that older people are making—even though rates of success for those who do apply are reasonably high.

**Marion Davis:** The point is relevant, given that a high percentage of the children in poverty have one parent who is working and has perhaps never been in the system. Likewise, often the people who are using food banks are in work. As a result of welfare reform, the cuts and other things that are impacting on families, a whole pool of people are being pulled into the system who were never involved in it before.

**Mark Ballard:** I agree with everything that Derek Young and Marion Davis said. There is often a discussion about the role of the third sector in all this. The term “third sector” can mean an organisation such as Barnardo’s, which has staff with specialist knowledge of this and internal systems for it. It can also mean community groups, church groups or sports clubs—a variety of organisations that might have a relationship with some of the people who Derek Young talked about but which are not seen as organisations that need this kind of information. When we think about the role of the third sector in supporting awareness and access, we need to think about the breadth of the sector, rather than simply focusing on organisations such as Barnardo’s, which already have that knowledge. The third sector is much broader; it includes organisations such as sports clubs, which might be the point of contact that somebody needs.

**Ken Macintosh:** Given that the UK Government has devolved crisis loans and community care grants, it is essential that the Scottish Government puts in place a scheme—and puts it in statute—to provide those resources where they are needed. I was surprised that we have not taken advantage of this moment to address some of the failings that we see in the overall welfare system and to adopt some of the principles of a rights-based approach that we have been talking about in recent years.

I would say that there are a few mistakes in the bill. It is not a radical bill; essentially, it just replaces the old system with a very slightly altered similar system. What really surprised me, though, is the section that would allow services to be outsourced or privatised. That is a very strange approach, given that we want local authorities to adopt a holistic approach. Several organisations picked up on that section, and the Barnardo’s
written submission commented on whether an outsourcing provision would be desirable.

Mark Ballard: Our point is that there would need to be very clear guidelines on suitability and that they need to be set out in regulations. Third sector providers might be able to offer support, but they would have to demonstrate very clearly that they understood the vulnerabilities of the people involved.

There is a challenge across the system, though, in that the regulations talk about working days. Scott Robertson and I have both referred to that. If someone makes an application on a Friday and two working days away is next Tuesday, that is a very long time to wait. Barnardo's has started to shift more and more of its services—I imagine that other organisations are also doing this—to offering support seven days a week rather than just in the working week. That is part of our and the third sector’s role in finding ways to deliver support to people outside working days.

As I said, there must be clear guidelines on suitability and they must be set out in the regulations, but there may be areas where third sector organisations can support the effective delivery of some services.

Ken Macintosh: Does Marion Davis from One Parent Families Scotland agree that what is meant by outsourcing needs to be slightly clearer?

Marion Davis: We certainly noted that in our submission. Outsourcing could open the door to contracting out to private companies. The evidence shows that contracting out to the private sector in the welfare system has not been successful. We feel that there is a conflict of interest that has led to poor outcomes. For example, the work programme had a poor outcome. We know the situation with Atos and all that was involved in that.

We feel that, as in other areas of delivery, outsourcing may result in a lack of democratic accountability, so we are not really in favour of the section in the bill on outsourcing. In fact, we recommended in our submission that that section be withdrawn.

Ken Macintosh: Finally, I have a question for Lynn Williams. Your SCVO submission highlighted that

“a high number of decisions are successfully challenged.”

That refers to successful appeals. Your submission showed that there is a higher level of appeals for welfare fund decisions compared with the level of appeals on benefit sanctions. When we heard evidence in this committee on benefit sanctions, we forcefully used evidence of the level of successful appeals to insist that the benefit sanction system was not working. What conclusions can we draw from your evidence on welfare fund appeals?

Lynn Williams: I think that maybe you are comparing oranges with lemons—I do not know. What struck me in looking at the statistics for last year is that, although a low number of people appealed fund decisions, the number of successful appeals was relatively high. It comes back to some of the discussion that we have had about discretion in making decisions. Perhaps people are not getting what they want or need, or they are being gatekeepered out of the system.

Our point is that a turnaround rate of 50 per cent plus for decisions is relatively high. The question is what is happening in the decision-making process. Is it discretionary or flexible enough? Does it recognise people’s needs? The level of reviews is still relatively low. I think that we are talking about a number in three figures, which is lower than that for previous funds. For us, the issue is that decisions are being challenged and a relatively high number are being overturned. We should keep an eye on that. What is going on in the decision-making process? Are the decisions the right ones? Why are so many reviews overturned? Are people being kept out of the system by gatekeepers, or do we need to think about the decisions that are being made by staff on the front line?

11:00

Kevin Stewart: That is an interesting line of discussion. Last week, the lady from Aberdeenshire told us that, often, during the time between the original decision and the appeal, much more information is forthcoming, which ensures that the folks get what is required. Perhaps the difficulty is to do not necessarily with the wrong decision being made, but with a decision being made based on the information that is available at that time. Is there any way in which the system could be improved so that the folks at the front line get all the information that they possibly can at the initial stage, rather than waiting for an appeal?

The Convener: We came across that same situation when we looked at the Atos system. We were told many times that the reason for decisions being overturned later was that information that was not available at the outset had become available. With regard to the work capability assessment, the sanctions and the Scottish welfare fund, clearly it is vital to get information at the outset. How do we improve that?

Kevin Stewart: With regard to Atos, the numerous Harrington reviews have tried to ensure that the situation with information is good. The issue is complicated and I should probably not go
there, as it will lead to me going on a long rant. However, my point is that the process should be much simpler. I cannot remember the exact words of the lady from Aberdeenshire, but perhaps we should ask councils what kind of information is lacking at the point when a decision is taken to refuse an award, and what kind of information is available at appeals that result in awards being granted. If that latter information were available earlier, problems could be resolved quite quickly.

Derek Young: Lack of information is certainly a factor, and it can occur for a couple of reasons. In the case of a crisis grant, the information might not be readily available at short notice. However, since the nature of the need is that it is exceptional and short term, the priority tends to be getting the application in. That means that it is understandable that further information to support the application might become available later.

Another factor is that there is sometimes a tendency for older people to treat a local authority as a single entity that shares information perfectly within it. If they have contact with one individual in a local authority, they might believe that the information that they have given them has been shared with the relevant department already, so it comes as a surprise when that information cannot be relied on as the basis for the making of a decision. It is only at the stage at which a review is undertaken that further information is sought or becomes available and that tendency can be counteracted.

Kevin Stewart: Perhaps one of the things that need to be asked at the initial stage is whether the person is in contact with anyone else in the local authority at that time about any particular issue. That could iron out those difficulties.

Lynn Williams: I absolutely agree with a lot of the points that have been made. The questions that are asked at that stage are important, and that requires people at the front line to have a particular skill set. With my former careers adviser hat on, I can say that knowing what questions to ask and how to ask them is important.

The intention of the fund is to be holistic and to be better linked at a local level. The link between the third sector, in all the guises that Mark Ballard has described, and local authority staff is better in some areas than others. I have seen examples in which there have been joint training and joint sessions, which have ensured that people know what information has to be shared to make the system work perfectly. I would like to see that happening across the board.

I attended a session in Renfrewshire last year on behalf of the SCVO to speak about welfare reform in general, but the third sector and the council talked specifically about what is working well with the fund and how the system can be tweaked. Information was being shared on how to make the fund work more effectively at the front line.

There are opportunities in joint training and information sharing. The Government has brought third sector organisations into practitioner networks to discuss how they can make more effective decisions. There is good practice out there in that respect.

The Convener: I will ask just a couple of questions because we are starting to run up against the clock. The discussion with local authorities last week and my subsequent discussion with Jamie Hepburn at the Finance Committee, on which we both sit, focused on the efficiency of the system and the cost of administration. Have you considered whether the administration costs represent a problem in delivering the service? The point has been made that the fund is £33 million while the present administration costs are approximately £5 million. Some people think that that is excessive and inefficient. Has anyone taken a view on that?

Lynn Williams: It does seem like a lot, yes.

The Convener: Yet the local authorities said that they were seeking additional funding to cover administration costs.

Lynn Williams: I would be slightly concerned. It is a lot of money—a ratio of about 1:5 with the fund overall. The question is how the money is used. There are already examples of inefficiencies in the system and of people having to reapply for something when, if they had been given what they wanted in the first place, it would have prevented a dual process from taking place.

There are clearly lessons to be learned from the first year and a half of the fund. There is a risk that the process becomes overly bureaucratic, as we have seen from some of the case studies. The question is how we use the administration money more effectively and how we ensure that we are not creating a process that costs more in the long run and makes it far more difficult for applicants to get through the system or puts them off in the first place.

Information sharing is one aspect, as Derek Young outlined. As we noted in our submission, there is an assumption that the third sector will pick up additional costs in responding to the scheme. We mentioned that the social fund had been managed down prior to the current situation. Suddenly people are starting to get more involved—as my colleagues have outlined—in seeing people through the application process and in advocacy. Staff are being trained in the new system on existing budgets, so there is a hidden cost to the third sector there.
Going back to the point about administration, we need to ensure that we learn lessons as early as possible with regard to how the fund operates. We need to iron out the nuances in the process. Otherwise, it suddenly becomes more difficult and more costly to apply, and applications are repeated, which seems to be pretty daft.

**The Convener:** Notwithstanding the arguments that we heard earlier, concerns have been raised about the cost of the SPSO becoming involved as the second tier of appeal in order to create a national standard. In the experience of anyone around the table, is the SPSO more efficient or more bureaucratic? Would it add to the level of bureaucracy in terms of timescales? Would the length of time for appeals be extended if the process was undertaken through the SPSO rather than being administrated locally by the local authorities?

**Mark Ballard:** As I indicated earlier, one of the virtues of involving the SPSO is the opportunity for learning from individual local authorities to be disseminated more widely. On reading the relevant papers in advance of the meeting, I was struck by the proportion of the budget that had been spent in 2013-14. There were 10 local authorities that had spent less than 75 per cent of their budgets, but there was no clear pattern or any link between the local authorities that appeared to have an issue in spending that budget.

I have not looked at a breakdown of the £5 million cost to which the convener referred, but I wonder whether there is, again, significant variation between local authorities in spending. The challenge that remains is to have a national framework while ensuring that learning is disseminated effectively to allow local authorities to identify best practice and bring down costs or, if there is a variation in costs, to find out why certain local authorities are doing all this more efficiently and more costly than others. After all, we are talking about a new fund and a new way of doing things, and I hope that this will be a learning phase in which individual local authorities can learn from others about how they can effectively constrain the costs that you have referred to.

The SPSO might have a benefit as part of the learning structure. It might be able to support local authorities to deliver within their local constraints and context and to adapt best practice, where possible.

**The Convener:** Mark Ballard’s reference to the fund being new brings me neatly to what will be my final question before I ask for final comments. In making the same point, the SCVO has suggested that we could be legislating too hastily on this matter, and I wonder whether Lynn Williams will expand on that comment as well as talk about the SCVO’s proposal for a review. The SCVO has been the only organisation to make such a suggestion in its written submission, although others have raised questions about the efficacy of putting this into legislation.

**Lynn Williams:** We put the submission together a couple of months ago; I am not saying that our view has changed, but we have had to take into account last week’s announcements of further changes. When we initially called for a delay, we did so because this is one of the first major welfare funds that the Scottish Government has operated, and when you look at the evaluation and the statistics, you will see significant gaps in, for example, the recording of vulnerabilities. Indeed, colleagues have picked up other gaps in the operation of the fund, whom it is reaching and whether it is working well enough.

The rationale for the legislation was not immediately clear to me. We have an agreement on the operation of the fund but, with regard to delaying the legislation, if it is felt that legislation is required to address concerns about protecting applicants and ensuring that the fund stays in place and is working effectively, we will support that. However, we had a sense that people were rushing into things; they were not looking, for example, at whether the context in which the fund was operating might change and whether it was working well enough before they jumped into legislation and put things on a more permanent footing.

That said, after speaking to colleagues—indeed, I was discussing the issue this morning just before the meeting—we wonder whether there might be a risk to the fund, whether the fund will stay in place or whether local authorities will want to change its operation. The question, then, is whether legislation will protect the fund for applicants. There are a number of questions to be answered so that we are clear about the rationale for the legislation and what we are trying to achieve with it.

Secondly, we feel that if the bill is to go ahead as it is it could contain a review clause. There are a number of clear reasons for such a move. First, we need to ensure that we are getting this right, that it is working and that it is achieving its purpose. Will the context in which it is operating change over the next couple of years? Given that we are potentially in the middle of further powers being devolved to Scotland, would such devolution change things? Would we have to look at what the fund is doing and why it is doing it? Having done some work with the Standards, Procedures and Public Appointments Committee on the operation of legislation in the Scottish Parliament, I know that we do not review the working of legislation enough. As a result, a standard review clause
stipulating a review a year or two years in will allow us to revisit the matter and ensure that the fund is doing what it was intended to do and that people are being supported. We just need to ensure that the scrutiny is there.

In response to your question, I think that we are a bit more ambivalent about delaying the bill. If it is to be delayed, that is fine, but the more important thing is to ensure that, if it goes through, it is being reviewed regularly and it is working on the ground for the people whom it is intended to help.

**Derek Young:** We do not call for a specific review or delay as such in our submission, but we point out that a great deal of the scheme’s detail has been left to regulations. We also note that changes to the regulation are subject to the negative procedure, which slightly hinders proper parliamentary scrutiny in the event of those regulations being subsequently changed. If those regulations are changed, the committee has a clear role in trying to address some of Lynn Williams’s points about the need to reflect on further practice and to incorporate that in the regulations. There is still a need for scrutiny and the committee has a role to play in that respect.

11:15

My second point, which Lynn Williams alluded to in her comments, is that we need to ensure not only that the legislation is right but that the fund is financially viable in the long term. In its first year of operation, the DWP put in £23 million or thereabouts, with the Scottish Government adding £10 million. However, the DWP is considering withdrawing the funding for local authorities under the equivalent system in England and Wales. Since we made our written submission, there have been a number of developments. For example, there was a judicial review in England that has now been settled.

It would aid public understanding if there were an agreement or some formal understanding between the DWP and the Scottish Government about the DWP’s continued contribution to the funds that are available for the Scottish welfare fund. Even if the Scottish Government’s assumption is that it will fund the scheme at its current level whether or not the DWP’s funding comes, I see no reason why the Scottish Government would not want to make that public to ensure that there is an understanding and some confidence that, despite the process of putting the legislation on the statute book and getting it right, there will continue to be a fund at a level that at least addresses current need.

**The Convener:** It strikes me, though, that if the Scottish Government were to say that it was going to maintain the fund regardless, that would be a signal for the DWP to remove its funding. These are things that we have to deal with in politics, but that is the reality of the situation.

I thank everyone for their contributions. If, after you leave, you feel that you want to provide additional information or make other observations, you should feel free to write back to us. After all, the more information we have, the better we can scrutinise the legislation. I certainly found your comments this morning helpful and informative.

I suspend the meeting until we get our next panel ready.

11:16

**Meeting suspended.**

11:25

**On resuming—**

**The Convener:** For our second round-table evidence session this morning, we are joined by Jon Shaw, welfare rights worker at the Child Poverty Action Group in Scotland; Beth Reid, policy officer at Citizens Advice Scotland; Jules Oldham, national policy and practice co-ordinator at Homeless Action Scotland; Bill Scott, director of policy at Inclusion Scotland; Paolo Mazzoncini, director of operations east at Sacro; and Duncan Dunlop, chief executive of Who Cares? Scotland.

I know that you were all in the public gallery during our previous round-table session, and some of you have been here for these discussions before. I genuinely hope that you will be able to make contributions as and when you see fit. Please ask questions, make observations and give us information and we will see where the discussion takes us.

I hope that Jon Shaw will not mind if I kick off by coming to him first. In the two discussions that we have had so far, a major issue has been that of grants versus loans, and you have commented on that in your written submission. Will you give us CPAG’s views on the merits, demerits or otherwise of the dynamic and how it should operate?

**Jon Shaw (Child Poverty Action Group in Scotland):** We have always been firmly in favour of a grants system. The issue with loans is simply that the repayment causes further on-going financial pressure to those on the lowest incomes.

There is also the issue of clarity, which came up in the previous discussion. The provision in the bill could be aimed at recovering funds that have been fraudulently claimed or there could be the possibility of local authorities moving to a loans-based system in future.
In your evidence session with local authorities, one authority—wisely, I think—highlighted the possibility of making arrangements with local credit unions. To me, a holistic Scottish welfare fund service could provide a crisis grant and then signpost the applicant to a credit union that could provide a sustainable form of credit. To us, that would be a much better way of operating the Scottish welfare fund than moving towards a loans-based system.

The Convener: Are there any other comments on that issue?

Jules Oldham (Homeless Action Scotland): We would hate anybody who is in crisis to be put off by the fear of needing to pay something back. They might be a minority, but quite a few people feel that they can go for the grant now that it is a grant system, whereas with the loans of the past, they feared that their crisis would just be put off for two or three months.

Kevin Stewart: We have talked about the costs of administering the fund. I asked about that last week, but I cannot remember whether it was in the public session. Councils have previously administered loan funds in other spheres, but the administration costs have been immense. If there were a move to a loans system rather than grants, would even more money be swallowed up by administration instead of going to the folks who are in need?

Jon Shaw: I definitely agree that that would happen. With the crisis loans system, the DWP had the ability to make deductions at source from benefit entitlement as a way of recovering money, whereas local authorities are simply not in that situation. An administrative mechanism would need to be set up to recover money from people, and that would add to the costs of the scheme.

Bill Scott (Inclusion Scotland): I did a quick, back-of-an-envelope calculation when the £5 million figure was mentioned, and I worked out that that comes to about £160,000 per local authority across the 32 authorities. That is not a lot of money. It might pay for half a dozen staff, and when we consider that they will need cover for holidays, sickness and so on and that the service needs to be maintained five days a week, there is not a lot of leeway there. That is particularly the case for the smaller authorities, because I guess that a lot more money is spent in Edinburgh, Glasgow and the other big authorities. I have to say that I do not see the administrative costs as being particularly high, and they are probably lower than the old DWP costs.

11:30

Linda Fabiani: Last week, we discussed the idea of loans being made available in addition to grants. A couple of local authorities were particularly keen on clawback, but we should make it plain that those things would be separate. The idea of setting up some kind of loans system that would be completely separate from the bill is fine, but the bill talks about amounts requiring to be repaid. In its submission, Citizens Advice Scotland asks for clarification that the provision in the bill is for dealing specifically with fraud and suggests that we look at the wording to ensure that it does not muddy the waters if there is a move back to loans, which should be a separate matter.

Beth Reid (Citizens Advice Scotland): The fact that it is a grant-making scheme is stated clearly in the regulations and in the explanatory memorandum but not in the bill, and I think that the bill needs to state that we are talking about a grant-making scheme. I cannot remember off the top of my head but I think that under the old system the recovery rate of loans was not particularly high. That supports the points that were made earlier, and you need to think about that in deciding whether it is worth trying to recover loans.

Bill Scott: There is evidence that, under the previous loans scheme, people took out payday loans to repay the money to the DWP, which put them in even worse debt and made them more reliant on benefits. Such a scheme rolls what is sometimes a one-off crisis into a long-term obligation on people to pay back money that they do not have, and it just does not work.

Jules Oldham: There is also the possibility that the scheme could be tied to support, and if someone owed the person who gave them support they would be far less likely to turn up to appointments to access that support. Not much would be gained if somebody lost out on a whole support package.

Jamie Hepburn: I think that most of our current witnesses were present for the previous evidence session, so I will ask them the question that I asked the previous panel. It relates to second-tier reviews. All the organisations that expressed an opinion on whether the ombudsman should be the body to conduct second-tier reviews were in favour of such a move, but that contrasts with what we heard last week from local authorities. Why do you think that the ombudsman is the appropriate body?

Beth Reid: The arguments were set out clearly in the previous evidence session. It is important to have a source of review that is independent and is seen to be independent. We would be concerned about some clients being put off the review process because they felt that the matter was going back to the local authority and they were not confident about the process. It is also important to
have national consistency—the points that were
made about monitoring are important—and a
reporting mechanism.

We have been thinking quite a lot about what
the review process should look like. At the
moment, there is provision in the bill only for a
statutory basis for second-tier review. I understand
that that is to do with how the ombudsman is
governed and so on, but we need to ensure that
the second-tier review process is clearly defined
by rules and timescales. Whether that is done
through the bill or in further legislation relating to
the ombudsman’s own legislation, the matter still
needs to be addressed somehow.

**Jon Shaw:** I want to make a small point about
the independence of the review process. In your
evidence session with local authorities, one of the
welfare fund managers said that she would be in
the room with the panel to assist it. I am not
suggesting that that would make the process less
independent but, in terms of the perception of
independence, it would be a real issue if
somebody from the decision-making team were
there but the applicant themselves had no access
to the panel.

For us, there is a big question mark about
quality improvement. One reason why the
independent review service was so respected in
the sector was that it looked at the decisions that
had been made, identified themes and issued
directions that bound everybody. The issue with a
binding decision on one local authority is how the
other 31 become aware of the terms of the
decision to ensure the fund’s national consistency.
Therefore, the unanswered question about the
review mechanism is: how do we ensure the
quality improvement of the scheme?

**Bill Scott:** When we asked disabled people who
have experience of making applications which
scheme they would prefer, their response was not
overwhelmingly in favour of the ombudsman—
there was a marginal majority in favour of it—and
the second choice was an independent tribunal.
However, nobody—not one single disabled person
whom we asked—said that the local authority
should do it. People said that that would not be
perceived as fair. Even if the decision was correct,
the local authority would still be reviewing its own
decision, and that was just felt to be unfair.

That was what we found when we asked people
who had gone through the process what they
would like. They were marginally in favour of the
ombudsman. Unfortunately, I think that the tribunal
service would be expensive and slower. Beth Reid
is right that we need clear guidance on timescales
for the reviews, so that people have expectations
that can be met and are not left living in crisis for
months.

**The Convener:** I am keen to hear Duncan
Dunlop’s and Paolo Mazzoncini’s points of view on
the importance of independence in the appeals
process.

**Duncan Dunlop (Who Cares? Scotland):** As
an independent advocacy provision service for
care-experienced young people, we quite often
have a parallel conversation going on with local
authorities, many of which believe that their
children’s rights services can provide advocacy
services that are independent from the authority.
That comes down to the individuals and the
management framework within which the service
is governed, so it is not foolproof by any manner of
means. Young people who access that children’s
rights service are far less likely to want to use the
advocacy service because it is not independent.
Therefore, with an ombudsman, they are less
likely to even bother asking for a decision to be
reviewed because they will believe that it is part of
the same system and the same management and
hierarchy. Given that it is part of the same
establishment that rejected the first claim, why
would they go through it again? Obviously, people
are very vulnerable emotionally at such times, and
it would be great if they thought that the matter
would be reviewed independently.

**Paolo Mazzoncini (Sacro):** I echo many of the
comments that have been made. The appearance
or perception of independence and transparency
is really important. Sacro works with people who
could, broadly speaking, be described as being in
the justice sector. We have not made a
submission to the committee on the welfare fund
proposal, but we think that most of the individuals
with whom we work will be affected by it in some
way, shape or form.

The SPSO acknowledges that it would face
challenges in doing the second-tier reviews. There
might be issues with developing expertise if there
is a low number of reviews, or there might be a
different challenge if the figure is at the higher end.
Certainly, the feedback that we are getting from
our service users and the people for whom we
provide services is that it would be valuable to
have an independent body or person to look at the
original decision.

**Alex Johnstone (North East Scotland) (Con):**
I will play devil’s advocate. During the discussion
with the previous panel, the convener said that,
when we look at appeals procedures, we
invariably find that they are successful, because
they do all the things that were probably not done
properly in the initial application. As a result, the
quality of the application might be upgraded and
the evidence that had been required might be
provided.

I just wonder whether we are taking a
sledgehammer to crack a nut by going straight
from the initial rejection to a high-level appeals process without there being something in between that provides an opportunity for that correction and review to take place. That often seems to be what the appeals procedure is delivering.

Bill Scott: But there is such a stage. There is the first-tier review, which is carried out by the local authority.

The Convener: The SPSO is the second tier.

Bill Scott: I agree that the best, most efficient way to carry out a first-tier review is for somebody else to consider the decision and ask whether discretion was properly applied and whether all the evidence that was needed to come to a determination was available.

As was made clear in earlier evidence, 40 per cent of the recommendations made by Atos—I was going to call them decisions, but it is the DWP that makes the decisions based on Atos’s recommendations—were found by the DWP to have been based on inadequate information. That means that they should not have been made in the first place. If extra information is needed, it should as far as possible be gathered before a decision is made. If not, the first-tier review stage would be the best place to gather that additional information, if that is all that is really needed. Cases will probably be taken to second-tier review if there is a perceived feeling of injustice about a decision.

Alex Johnstone: Moving on slightly, I wonder whether anybody would be willing to speculate on how efficient the proposed process would be and how many cases—or what proportion of cases—might emerge at the top of the process. That will make a big difference. If 10 per cent of cases make it to the top, that might be acceptable, but if 50 per cent get to the top, it will become an administrative and financial burden.

Beth Reid: At the moment, the number of cases going through the review process is fairly low. If that continues to be the case, the number that we are talking about might not be huge.

The point made in the previous evidence session about the questions that are asked right at the beginning of the process is crucial, and it links into some of our concerns about a few cases where gatekeeping might have been going on. I do not have evidence to back this up but that might happen particularly when people make applications over the phone and speak to a decision maker. There are a lot of benefits in being able to speak directly to a decision maker during the application process, but the right questions might not be asked at that stage or applicants might be told things that discourage them. For example, they might be told that only high-priority applications are being considered or that there was a similar case to theirs the other day in which the application did not go the whole way. As a result, people might not disclose the full information and the application might not be pursued. We have had cases of people thinking that they had made an application only to realise that they had not, and they might find out that their application had not been taken forward only at the review stage.

Because of such things, we must ensure that all the correct information is gathered as early as possible and certainly within the timescales to ensure that any crisis is addressed as quickly as it needs to be.

Linda Fabiani: I have jotted down some things about this subject. I cannot remember who said what, but two things in particular were mentioned in written submissions. The first was a suggestion that the term “application” be defined somehow, and the second was the question whether there should be a legislative duty to accept and record all applications to reduce the incidence of pre-application discouragement. Could we explore those points a wee bit further?

The Convener: Do colleagues have any comments?

Linda Fabiani: Can anyone remember who said those things?

Jon Shaw: I am sure that we made the second point. We are still seeing cases coming up. Because we provide second-tier advice, we will be given case studies by advisers in which they argue the decision maker into accepting an application only for it to be rejected. You have to wonder what happens to unsupported applicants and whether they are put off.

At times your discussion with local authorities seemed to be missing the point a wee bit. For example, I believe that someone said, “Once an application is recorded on our Northgate system, it is passed straight to the decision maker.” However, the point about gate keeping is that you do not get to the point of registering your application, so you do not have the right to request a review. That is still a live issue. Although it is getting better, we are now seeing it in different ways.

A recent case study related to a call to our advice line from somebody who had been awarded a crisis grant because they were in the common situation of challenging an employment and support allowance decision of no benefit in payment, but who had been told that they could not be awarded a repeat application for a crisis grant until they had a qualifying benefit in payment. Even if you read the guidance from end to end, you will not see that information. It was a case of making the award but gate keeping a
future application by putting somebody off from coming back if the crisis had not been resolved.

11:45

Kevin Stewart: Does anyone have any examples of local authorities with specific problems in that area? Local authorities have told us that a combination of staff is now doing that work. In some cases, it is done by revenue and benefits officers; in some, by welfare rights officers; and in others by a combination of those officers and others. It would be interesting to see whether the best practice is coming from areas where there is a specific team make-up, because some of those folks will be more used to applications than others. If we had examples of areas where the process is working particularly well and areas where it is not, we could find out what combination of folks had been moved in. After all, there might already be an example of best practice out there.

Ken Macintosh: I would like to continue with the idea of offering cash versus in-kind benefits, which has been raised previously. A number of organisations represented around the table, including Homeless Action Scotland, have commented on that. We do not seem to be using the bill as an opportunity to end that form of stigmatisation. Do you worry about that?

Jules Oldham: Giving somebody a voucher does not seem to answer all the questions. With a voucher, we are treating people as if they are unable to make their own choices. Some work was done recently by Phil Brown at the University of Salford on individual budget systems. People with complex needs were offered between £2,000 and £3,000 each to help themselves out of whatever situation they were in, and the average spend was about £400 per person. People are really savvy with money, and I do not think that they are enabled to be savvy with a voucher.

With a voucher, people are almost forced to make the best of that voucher and to spend every penny of it at that given time. People do not get money back for the voucher, so they can't say, “I'll come back tomorrow because I can't carry everything today,” although they might end up saying, “I'm not sure that what I'm buying comes to the total amount on the voucher, so I'll come back tomorrow to avoid the embarrassment.”

We seem to be moving away from trust and giving people a whole host of problems instead. As we can see from the figures, not everybody actually uses their voucher, either as a result of stigmatisation or because it just does not work for them. They might not even have the money to get to the place where the voucher can be spent. I could go on about that for hours if you wanted me to.

Ken Macintosh: Last week, some local authorities gave evidence in support of their decisions to use vouchers rather than cash, saying that if bus tickets were offered they did not get used. However, I was not quite sure whether they meant that people declined the offer of an award if they did not want it in the first place. They also said that if people were offered goods in kind, they sometimes sold them on, and that the number of repeat users was evidence that they were not using the money effectively.

I am not sure whether that is evidence that we should not be trying to develop trust. Maybe we should be offering more help to those particular individuals. What struck me was that, if we are basing the entire system on those few individuals, perhaps we are getting things the wrong way round.

Jules Oldham: Absolutely. Can we really base things on such a small minority? People in that minority are likely to have an addiction, so what are they going to do with that voucher or those goods? They are going to sell them on. It is not as if the voucher is going to stop them getting a hit; they might just get less of a hit and need to go shoplifting as well. With money, their child might have managed to get something, and they might also have got their hit but, with this approach, the child might not benefit at all. You are not taking that minority out of the equation and solving everything; in fact, you are almost creating a black market for vouchers. It goes against the interests of the many people who would benefit from that cash, which they would use wisely. It does not really weigh up.

Paolo Mazzoncini: I echo what Jules Oldham has said. Many of the individuals whom we work with have just come out of custody, and anecdotally the feedback that we are getting is that they are likely to feel dissuaded from applying for a loan. That does not mean that they do not have needs that have to be met but, generally speaking, I do not think that they would apply for a loan.

It is reasonable to raise concerns about the misspending of grants. Certainly, some individuals either have addiction problems or cannot budget properly and need assistance to learn how to manage their money, which is part of the work that our staff carry out with them. In summary, however, cash or goods might be preferable to loans.

Jon Shaw: I think that, if goods are going to be provided, there has to be choice. In the evidence session with local authorities, it was suggested that one authority was offering people who needed
support with fuel costs a visit by an energy adviser. That is quite invasive, and to make it a condition of accepting an energy voucher seems to be missing the point, because that is not about someone not having any money to put in their electricity meter.

There is also real concern about supermarket vouchers. As Jules Oldham has pointed out, people might not be able to get to the supermarket to spend them. Moreover, restricting them to certain goods brings us back to the stereotypical idea that people will just spend them on booze and fags. Such an approach will also result in administrative costs for local authorities.

We have heard worrying examples of those taking applications over the phone saying, “Our authority does food and clothing vouchers, but that’s not what you’re asking for.” The issue is not just about whether the person taking the call is clear with the caller that they can also apply for a community care grant and a crisis grant in the same call, but about that individual’s need not fitting into certain boxes, with what the fund can help with in fact being led by whatever books of vouchers are sitting in an office. I think that that is very concerning.

**Bill Scott:** When we asked disabled people about that issue, they were quite divided. A number of them understood that bulk purchasing might make the fund go further and therefore might help more people. However, there was a huge concern about stigmatisation, particularly with regard to the voucher scheme.

This is a real story from a small town in the Highlands. A woman was given a voucher and sent along to a department store. When she went up to the cash desk, handed over the voucher and said, “I’m here to get something with this,” the woman who took the voucher from her said over the Tannoy to the whole store, “Could a supervisor or manager please come to the till? We’ve got one of those welfare claimants in again." You can understand how that woman, who already had mental health problems, felt. Everyone knew her business, what she was there for and so on. Although opinion was divided, most people did not particularly like the idea of vouchers, particularly because of the stigma.

Store cards might be slightly better, but I understand all the problems that have been mentioned. In the Highlands or other rural parts of Scotland, how do people get to the places where they can actually use them? If you live in a city, where the distance between stores is not huge and you can get more with such cards, that is great.

Again, the lack of choice was a really big issue for disabled people. We have heard examples of people being told that they could get only the beds that had been bulk purchased, not the bed or special mattress that they needed for their back. It is just a waste of money to supply something that does not meet a person’s needs, because at some point in the future they might well need to get, say, an adapted bed through the social work department. Unfortunately, people can wait months for an adaptation, but if they could use the grant that they get when they first move into their house, all of that would be done.

It is the same with cookers. A person of short stature could not use the cookers that had been bulk purchased, because they needed a low-level one. If goods are going to be provided, choice needs to be built in, and we need to say, “We understand that you are going to bulk purchase things, but the goods must meet the needs of the individual who is making the application.”

**Beth Reid:** I echo those comments. What is available has to be appropriate to individuals’ needs, and I think that that operates at two different stages. For a start, we have heard one or two stories of people being offered vouchers but the only way they can get them, let alone spend them, is by email or post. If you do not have an email address, that is going to be very difficult, and if you are in crisis, you simply cannot wait two or three days for the post to arrive.

We have also heard stories of people being supplied with goods that are completely inappropriate to their needs. As Bill Scott has pointed out, that is a value-for-money issue. If you have to go to a certain place, pick out the furniture, have it delivered and then get something else delivered, it is just a waste of time and resources.

**Jules Oldham:** I should point out that we are against vouchers, rather than furniture packages. I remember that six or seven years ago Scott Robertson from Quarriers, who gave evidence earlier, and I looked at the Quarriers Drumchapel model, through which furniture packages were made available to young people moving into tenancies. We thought that it would be wonderful if everyone had that option, but the issue is having options and choice; the back-up plan should not be vouchers. I just want to make it clear that Homeless Action Scotland is saying no not to furniture packages but to vouchers.

**Annabelle Ewing:** That was the point that I wanted to try to get to the bottom of. Leaving aside the issue of stigma and all the other very good points that have been made about vouchers but coming back to Bill Scott’s point about meeting individual needs, I wonder whether, instead of purchasing furniture or whatever as an economy of scale, local authorities can be a more powerful purchaser by being able to secure a better deal and therefore allowing more money to stay in the
fund and help more people. Do the witnesses agree with Jules Oldham’s point that, if they meet people’s needs, furniture packages might be a reasonable proposition but that, for some, vouchers are just a step too far? Am I picking that up correctly?

Jon Shaw: Yes. It is all about choice and better meeting people’s needs, and we must recognise that there are examples of good practice. I was speaking to, I think, the head of the Scottish welfare fund in North Lanarkshire—please do not quote me if that is not correct—and he told me that although there are standard goods, the welfare fund budget will be used to pay for adapted goods, if needed, which can be sourced through the occupational therapy department. That is one example of good practice, but the key point is that that authority has decided to go beyond what is actually in the bill. Under the bill, people will choose either cash or goods in kind, but nothing in the bill suggests that whatever they get has to meet their needs. We need to make good practice consistent across Scotland and ensure that before an authority can award anything in kind, whether it be a store card, vouchers or other items, it has to consider whether that is what the person needs.

12:00

Linda Fabiani: I want to reinforce some of what has been said. The point came up in the previous session about local authorities—even staff within one local authority—having dialogue and working together. Jon Shaw’s example—which may have been North Lanarkshire—is one instance of discretion being used wisely.

From my experience of related issues, I know that the theory might be there but the practice is often very different. Separate departments can take a significant length of time to get together and come to a decision, and if separate providers such as the health service and the local authority are involved, working together can take even longer. In the context of the kind of grants that we are talking about, that is very problematic.

It is about good practice modelling and local authorities learning how to do things better.

Ken Macintosh: I am not sure that the correct principles are at the heart of the bill; that is what worries me. I heard Jimmy Wales, the founder of Wikipedia, on the radio yesterday. He said that we should make our assumptions based on the fact that most people are good and decent. Of every 1,000 people, 990 are good, and that should be the founding principle in the bill. However, as Jon Shaw pointed out, all sorts of judgmental decisions are being made in meeting people’s needs. Duncan Dunlop gave an example of a young person who left care, whose social media activities were scrutinised and whose application was declined because of that.

Duncan Dunlop: We spoke to a number of young people, as we always do for meetings such as this, and I would be more than happy to get them in front of the committee. They would be very keen to come, but that is a side issue.

I listened to the conversation about vouchers and goods and what happens to them. There is an issue about care-experienced young people. I looked at the evidence of the vulnerabilities of people who had applied to the fund in the past financial year. It said that 1 per cent were care leavers. It also said that 26 per cent were homeless, 9 per cent were offenders, 54 per cent had mental health problems and 14 per cent had addictions. We know that 20 to 30 per cent of the homeless population are care leavers. At any time, up to 80 per cent of young offenders in Polmont are care leavers. We know that more than half the young people who leave care at 16 will have a significant mental health problem. Therefore, the fact that we have only been able to identify that 1 per cent of those who applied were care leavers means that we did not properly identify the care leavers and the care-experienced people. That is a significant problem. Although people have different issues to contend with, to a degree their behaviour traits are a consequence of being part of the care system.

Kevin Stewart talked about care-experienced people, and it is good that Parliament has sought to do quite a lot through the Education and Culture Committee, the Children and Young People (Scotland) Act 2014 and this type of initiative: scrutinising how the Scottish welfare funds are impacting care-experienced people. We need to make sure that the bill marries up with guidance that is currently being written on parts 9, 10 and 11 of the 2014 act, which is on corporate parenting duties, continuing care and aftercare. Young people can now stay in care until they are 21, and can get significant support until they are 26. Young people may well have severe needs when they leave care, and have a bunch of issues about what care meant to them. There is no point in having a parallel system for the Scottish welfare funds that does not marry up with the support for continuing care and aftercare that will come through the great legislation that was passed at the beginning of this year.

Care-experienced people have two basic requirements that we need to recognise. They need, or lack, a stable, loving and constructive relationship that can help guide them through life. When we give them a crisis grant or a community care grant to set up a flat, we should ask how that is related to their care identity, such as by asking whether they have had a flat already, why that
accommodation broke down and what support has been given to them. The people who administer the grants—local authorities—are the corporate parent. When the corporate parent gets the phone call for the crisis grant, it should not reject the application, but should—as Mark Ballard from Barnardo’s said—treat that as a red flag that makes it say, “Let’s look at giving you support, because you’re not going to be able to go your mam’s house to get your dinner tonight, or be able to get your washing done or sleep there.” Who—someone mentioned local authorities communicating with each other—is making sure that the person is getting support, and that they have a relationship that is going to hold them? If they do not have those, they are extremely vulnerable.

In one case, a young lad—who, in general, had low self-esteem—talked about going through the process. He found out after a bit of investigation, after the authority had rung him back and rejected his application, that it had been on his Facebook page, which he had not updated for some time. He was told that what was seen as grounds for his application being rejected was historical information on his Facebook page.

Our general appeal is that the problem be seen not as being about the 1 per cent, but as a significant headache for us because we are corporate parents. We know that the care-leaver population, which is only 1.5 per cent of our whole population, is significantly overrepresented in all the problems that have been mentioned and in using welfare funds. It is a real demonstration of what we are getting wrong in Scotland that we cannot even identify them. They feel so stigmatised that they will not say that they are care-experienced when they are on the phone with an adviser because they believe—as it has always felt to them—that to do so will not be beneficial to their application.

I hope that that has answered your question.

Ken Macintosh: It has more than answered it. Everyone has spoken very forcefully on that point, and I thank you for it.

I will move on. The second point is about outsourcing, on which a number of witnesses have commented. Is privatisation of the service desirable?

Jon Shaw: We are clearly against privatisation. We think that the welfare funds should be a matter for government, not for the private sector. If the decision is taken to take privatisation forward in the bill, there must also be safeguarding. This is another area where we cannot quite tell what the bill is getting at. It could be aimed at the smaller local authorities, because establishing a joint welfare fund is explicitly permitted, but there is a world of difference between two smaller local authorities such as Clackmannanshire Council and Falkirk Council going in together, and having private sector contractors deliver the welfare fund and profiting from it.

In the evidence session with local authorities, I noted that one of the people talked about the third sector and specifically mentioned Citizens Advice Scotland; as a former adviser, I can say that there is a real issue there. If an organisation is advocating for somebody and supporting them in making an application, it will lose the ability to do that on any level if it is also involved in deciding on that application. That is a real issue because—to come back to what Lynn Williams said in the earlier part of the meeting—the third sector might be expected to pick things up.

There are a number of issues to do with outsourcing. Generally, the welfare funds should be for government to deliver, because they are so vital.

Beth Reid: On the point about Citizens Advice Scotland, we would be very nervous about anything like that.

On the wider points, where the bill talks about administration of the welfare funds, it is not clear whether that is about administering delivery of goods and that sort of thing, or administering the application process. That needs to be much clearer.

Our other concerns about outsourcing are on accountability and transparency, and how it would be ensured that the system works for applicants.

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Our other concerns about outsourcing are on accountability and transparency, and how it would be ensured that the system works for applicants. All too often situations result in which people bounce between the local authority, which is saying, “That’s not our responsibility, it is the contractor’s” and the contractor, which is saying, “Well, we have not had the email from them.” We need a clear and transparent system if outsourcing is to be considered.

Jon Shaw: I will make a tiny point on that. The bill does not appear to include the ability to review decisions, if a fund were to be outsourced to a third party, rather than administered by a local authority. There are lots of issues.

Bill Scott: I want to reinforce what Jon Shaw has just said. I, too, am a former welfare rights worker. It would have destroyed our credibility in the community if we were to have been making decisions on whether people got social fund loans or grants. Nobody would have come to us with problems in other areas because they would have seen us as being part of the problem rather than part of the solution. A person cannot be a determined advocate on somebody’s behalf and then switch off and become an objective discretionary decision maker. That just does not work.
I am also worried about the idea that the third sector might be able to bid for contracts but the private sector would not. Since when does that fit with European law? As soon as we open the door to the third sector bidding to do the work on behalf of a local authority, we are also opening the door for the private sector. Disabled people’s experience of the private sector’s delivery of the personal independence payment assessment—Atos, Capita and so on—is that it has been an absolute disaster area. That is partly because of the public sector’s inability to draw up meaningful contracts. The estimate was that each PIP assessment would take 40 minutes and that 75 per cent of them would take place face to face. In practice, 95 per cent of assessments are face to face and they take an average of two hours. That is bad drafting on the public sector’s part and leads to poor provision by the private sector, because it ends up in a mess trying to sort the situation out. Our experience is that that has been a disaster, so we do not want to see the welfare fund privatised in any way, shape or form.

Jules Oldham: If three local authorities chose to opt out and take another route, how would we signpost people? Would we say, “Everyone else is doing it through their local authority, but let me just check. No. Not yours”? That would make nice and clear signposting difficult. It would also not send out the best of messages to people if we have to say to a person that their local authority did not have the wherewithal to go ahead and run the fund, but many others did. That is not brilliant on the message front and lacks consistency; it will add an extra layer of difficulty to signposting and getting advice quickly to people.

Paolo Mazzoncini: Giving local authorities the power to administer funds jointly may be useful flexibility. It might work well as long as the proper arrangements are in place to scope out the greatest need and to target the resources accordingly. That touches on the point that Ms Ewing made about the greater purchasing power that local authorities have if they combine their resources—notwithstanding some of the earlier contributions that were made about goods versus vouchers and how people might respond to that.

The bigger issue around local authorities administering the fund is that it chimes with a lot of the work that they already do. In terms of the policy imperatives of the bill—providing a safety net and helping individuals to remain in their communities—local authorities already appear to be doing a lot of that work. There is a nice synergy there, which might be lost or interrupted if it is a private or third party were to provide the service.

The Convener: Have you finished your questions, Ken?

Ken Macintosh: I have one more question, but it is on a different subject.

Annabelle Ewing: I want to pick up on a point that was made in the first witness session by the representative from Age Scotland about the overall resources for the welfare funds. I am also looking at the submission from Inclusion Scotland, which states:

“Unless the Scottish Government acquired new revenue sources and/or powers over benefit conditions it is difficult to envisage how this increasing call on resources to meet short term need can ever be ‘fully’ addressed.”

That was a response in the submission to a question from the committee. Could Bill Scott expand on that? Although we have been discussing important points of detail, equally important is the context within which all of this sits, which is a resource issue, too.

12:15

Bill Scott: SCVO would definitely support a review of how the welfare fund is operating in the context of the background changes. The Welfare Reform Committee will be very familiar with the fact that the benefit sanctions regime has become a lot more punitive in the past 18 months than it was before. The number and length of sanctions has increased dramatically; people can now be sanctioned for up to three years. That means that there will be people in the system who are in constant need, but the fund has not been established for people who are in constant need, and will make a maximum of three payments a year. People who are living far, far below what the Government defines as the poverty line are now expected to live on it for three months, a year or three years. That will occur increasingly. Many of the people who are being sanctioned are young people leaving care, disabled people and so on—the people who are least able to negotiate the rest of the system and who are more likely to rely on a local authority for help. That is why we say that we do not think that that need can be met.

Another reason why we would like every application to be recorded is that we need to measure unmet need; we need to find out what the fund has been unable to resource as well as what it has been able to resource. Some local authorities are spending up to and just over the budget that they are getting; other authorities are not. I would like to know why, because we know that need exists. We would like to find out more about who is not having their needs met and why, because of repeat applications and so on, and how we should respond as a society in Scotland to that increasing level of need.

Jon Shaw: One area of massive concern for us is the issue of families under exceptional pressure,
for whom funding made up more than half of the DWP community care grant budget. I know that the figures are not directly comparable, but only 20 per cent of Scottish welfare fund community care grant applicants come under that heading. From personal experience, I know that that group tends to be the people who are most reluctant to deal with the local authority, or who are terrified that any suggestion that they are struggling to pay the bills means social work involvement. I do not see that as a correct perception; it is just the way that people see the system and it feeds into what is contained in the bill with regard to defining the parameters of the scheme.

An example from the guidance is that there is no specific ability to award community care grants for travel costs. We have case studies about people who incur travel costs to visit relatives in hospital, but have been told that those costs are not eligible for grant because they do not fit within maintaining a settled way of life, as it is seen by that decision maker. There is an important point about ensuring that the needs of the groups whose needs the guidance quite clearly intends to meet are met. In the bill at the moment, families under exceptional pressure are taking a back seat, and the statistics appear to show that families with children are applying less than they did for community care grants under the old system.

Annabelle Ewing: A relevant issue, which I do not think that we have addressed in either evidence session, is that of the DWP hardship payments—or whatever the current terminology is. What is the experience of you guys on the front line? Are they happening? Are they happening in the way that they should? Is there signposting? What is the current state of play? It is a relevant issue as we look at the needs of people who are in extremis.

Bill Scott: I was lucky enough to hear David Webster speak last week. He may be familiar to the committee. From looking at the figures and from his freedom of information requests to the DWP, he thinks that only about 25 per cent of those who are currently sanctioned are receiving hardship payments, which means that 75 per cent are not, so they are living on very little if anything at all. There is definitely an issue.

It is said that people are not starving to death in this country, but one disabled person has starved to death and an ex-serviceman has died because he could not keep his insulin cold enough because he could not afford energy for his fridge. Those things are happening. Who will receive hardship payments is strictly defined and not everybody will qualify for one.

Beth Reid: Citizens Advice Scotland did some research earlier this year and one of the questions that we asked bureau advisers was whether people are aware of hardship payments when they come to bureaux. I cannot remember off the top of my head what the statistics are, but the majority felt that people were not aware of hardship payments or the appeals process when they were at the jobcentre.

It is worth remembering that, unless someone is categorised as a vulnerable person, they cannot get a hardship payment for the first 14 days of a sanction anyway, so they will always have a two-week gap.

The Oakley report is due to improve communications on hardship payments. We hope that will work and we will monitor that. However, £71 a week is not a lot to live on anyway and, if that is cut by 40 per cent, people will struggle, particularly if they have any other pressures. We are beginning to see people who are getting into debt because of benefits. That is one of the biggest areas of debt in which we are seeing an increase at the moment. It is a real live issue.

I also flag up mandatory reconsiderations, particularly on employment support allowance. If people who have decided to challenge their employment support allowance decision and cannot get a payment during that period are able to declare themselves fit for work, they may be able to claim jobseekers allowance but, otherwise, they often struggle to get money. We have seen quite a few applications to the Scottish welfare fund as a result of that. In some cases, people are waiting weeks or even months for a mandatory reconsideration decision to be made.

The Convener: Does anyone have anything to add that has not been covered so far or something that was mentioned earlier, perhaps even by the earlier panel of witnesses, to which they want to add or on which they want to comment?

Ken Macintosh: I have a brief question for Bill Scott. You mentioned earlier that 40 per cent of Atos decisions are overturned. We also heard from the SCVO that 59 per cent of the first-tier reviews and 54 per cent of second-tier reviews are overturned. What does that say about the system? I have to say that it concerns me.

Bill Scott: It is difficult to say, because the numbers that go to the first tier and the second tier are so low. However, it indicates that local authorities are prepared to reconsider and do so relatively quickly in most cases. There are some lengthy waits for a review but, in most cases, they are carried out relatively quickly.

It is a difficult question because, obviously, we want to get a decision right first time, but the system is new and one of the advantages of the independent review service was that the directions that were given improved the quality of decision making over time, which is really important with a
discretionary fund. For somebody to have oversight, see where things are going wrong and say how we can sort things out, such as by collecting a particular piece of information from now on, can really help to get the decisions right in the first place.

Of course, the person who is in crisis wants the decision to be made as quickly as possible and for it to be the right one but, if they are not receiving a payment, they will want it to be reviewed quickly and a new decision to be arrived at.

There is a lot of good will among local authorities. There is some bad practice but there is a lot of good practice as well. I have heard of local authorities that are taking a very holistic approach to applications and sharing information with the applicant’s permission, so that other local authority services can come into play and help the person over the longer term rather than just in the crisis that they are in.

Jon Shaw: I absolutely agree with Bill Scott. There is a balance between the need to make a decision and the requirement for evidence. I got the impression from reading the Official Report of last week’s meeting that a lot of the local authority representatives seem to think that evidence is required in every single case, even if it is the first time that someone has applied for a crisis grant. If someone has applied three times in one month because they have lost their wallet, a request might be made to see a pink slip from the police. That seems fairly reasonable. However, why would there be an insistence on evidence in every case?

There is a potential issue with the bill, which discusses deciding on a crisis grant two days after all the evidence required has been received. That is not even a matter of applying on a Friday and getting a decision on a Tuesday, for example; it is more a matter of applying on a Friday, getting all the evidence and having a decision three weeks on Tuesday.

There is a real balance to be struck when it comes to crisis grants. Potentially, local authorities can say that they must have that sort of evidence in order to award a grant to someone, and it might not be available when the decision is taken. The person is then made aware of that—that is why the decision is to refuse the application. The incidence of that could be reduced by thinking more about what evidence is actually required and why somebody cannot get it immediately. That would hopefully allow decisions to be made more quickly and more appropriately with regard to the evidence that people are being asked to obtain.

Kevin Stewart: It would be a bit daft of us to compare the Atos situation and the situation regarding the current grants from the Scottish welfare fund, mainly because Atos and the DWP decision makers normally have a fairly long time to gather up additional information, or pre-information, whereas it has rightly been pointed out that folks need a decision very quickly.

In evidence from local authority representatives last week, we heard some hard points of view about evidence gathering and some soft points of view. We should go back to the local authorities and find out where best practice actually lies. Last week, it seemed to me that two local authorities took a harder line than the others. Perhaps that is just my perception of what was said in evidence.

We probably need to consider the mix of folks who are carrying out the initial stage of all this. We will probably find that there is a right mix of folks involved—in respect of their previous backgrounds—to get things right almost every time.

Alex Johnstone: I take this unique opportunity to agree with everything that Kevin Stewart has just said.

Kevin Stewart: Wow. Maybe I’m wrang, then. [Laughter.]

Alex Johnstone: I think that the secret to success may lie in practice in local authorities. The interim legislation has been in place, and there appears to be mixed practice and experience. I think that we can find best practice if we look hard enough for it.

Bill Scott: On that point about best practice, many public bodies that are operating a gatekeeping system put some of the least experienced, least knowledgeable staff on the telephones. That is the wrong way to approach things. Anybody who runs an advice service would say that giving advice over the telephone is much harder, because people need to ask the right questions and get the right information from the outset in order to determine where to go with a case. People can learn from one another. If experienced staff are put in the gatekeeper role, there is much more likely to be good decision making at the back, rather than having things the other way round, with people being put off before they get to the stage of making an application.

As a disabled people’s organisation, we would like all applicants to get a decision in writing or in an appropriate form of communication for them, in line with their needs, so that they can understand the basis of the decision and so on.

12:30

Duncan Dunlop: I reiterate that the Heriot-Watt research about the fund was done without talking to one care leaver. Care leavers and their use of and access to the fund have gone unnoticed and
unrecognised. I would like that to be reviewed, and I am more than happy to work with civil servants and others on that.

We have given quite a lot of evidence to the Education and Culture Committee, and recently to the Equal Opportunities Committee, using care-experienced young people themselves—people who have actually lived what we are talking about. We can articulate a lot of the issues, but not necessarily from our own lived experience. We are very happy to offer that to this committee, too, or to individual members who may wish to come and speak to people who have been using the fund—however we can get that to work. We wanted to make that offer.

I am sure that that might apply to other groups, too, including people with disability.

The Convener: You will be pleased to know that we are planning to do that on 28 October.

Duncan Dunlop: That is great.

The Convener: Again, consensus breaks out all round this morning, even between the Conservatives and the Scottish National Party.

We have had a very successful evidence session. I have certainly been well informed by everyone’s contributions. Thank you all very much for coming along. As I said to the previous panel of witnesses, if, having taken part this morning, you leave and then think about things that you wish you had said, or if you have more information, please send it to us. The more information we have, the better we can scrutinise the bill and inform that process.

12:31

Meeting continued in private until 12:49.
Welfare Funds (Scotland) Bill: Stage 1

10:08
The Convener: Agenda item 2 is the committee’s third evidence session on the Welfare Funds (Scotland) Bill. In previous weeks, we have taken evidence from local authorities and third sector organisations. This week, we will take evidence from users of the Scottish welfare fund, as well as representatives of non-traditional banking and the Convention of Scottish Local Authorities. We will round off our evidence taking on the bill next week with evidence from the Scottish Public Services Ombudsman, the Office of the Social Fund Commissioner for Northern Ireland and the Minister for Housing and Welfare, Margaret Burgess.

I thank the various organisations that have worked with us to enable us to have our first panel here today. We are joined by Connor, Laura, Charlene, Peter and Lana. We have invited you here today so that you can share your experiences of the Scottish welfare fund. The committee will ask you a range of questions. We are keen to hear about what you think worked well and about anything that you think could be improved in any aspect of the process, from application to receiving the grant and interactions with Scottish welfare fund staff. However, if at any point you feel uncomfortable or do not wish to answer, that is entirely okay. Simply signal that to me, and we can move on to the next question.

I will kick things off with the first question, and you can indicate to me who wants to answer. How were you first made aware of the Scottish welfare fund, and what was your initial impression of it?

Peter O: I heard of it from Barnardo’s, when I moved out of my house. I lived with my big sister at first; then she moved out and I took over the house. That is when I heard about the community care grant.

The Convener: You had already been working with an organisation that was aware of the Scottish welfare fund. Had you heard of the Scottish welfare fund yourself?

Peter O: No.

The Convener: But you were looking for assistance, and Barnardo’s pointed you towards the Scottish welfare fund.

Peter O: Yes.

The Convener: Is that something that all of you recognise, or did you find your way to the welfare fund yourselves?
Lana W: I found it through the jobcentre. It was a community care grant first, and then they said to me, "Apply for it." But I have had a bad experience with it.

The Convener: Okay, we will come to that later when we talk about your experiences.

We have heard a lot of evidence about jobcentres, which administered the fund before it was transferred to the Scottish Government and then on to local authorities to administer. Witnesses have told us that jobcentres did not signpost—as it is called—people to the fund. Your experience, however, is that it was—

Lana W: I got my application through the jobcentre, and also One Parent Families Scotland, which I am with at the moment.

The Convener: Laura, did you want to say something?

Laura D: I found out through a friend. I did not know anything about it—it was a friend who passed the information on to me. I thought that they had done away with help altogether—done away with the community care grant. I thought that was it. My friend pointed me in the right direction, and that is how I came to it.

The Convener: Had you had experience of the community care grant before?

Laura D: Yes, I had experience of the community care grant from when I first took on my house. I knew it had been done away with, and I thought that the help was not there anymore. Then a friend pointed—

The Convener: Someone else told you it was still there.

Connor C: I heard about it from my brother. He had used it for a crisis grant before I used it. I went to him and asked what it was all about, and he explained it to me. I then used it myself. I had lived in care since the age of eight, so I did not have much knowledge of that kind of thing.

The Convener: Only one person has not yet answered. Charlene, how did you find out about it?

Charlene Mc: They gave me the information. I told them that I was moving into my own tenancy from the supported accommodation that I was living in, and they told me that I had to go through the welfare rights service in John Street in Glasgow, if that was what I wanted.

The Convener: I open up the discussion to committee members.

Ken Macintosh (Eastwood) (Lab): Laura, you have experienced both systems. What was your experience of the old system, and how does it compare to the new system?

Laura D: With the newer system, you get stuff, which was really helpful to me. The way people were treated in the old system was not very good. Now you get stuff, and the stuff that I got was really good. They were also really helpful—they brought it to me and fitted it for me, so I found it very helpful.

Ken Macintosh: You were not asking for crisis support—you were asking for furniture.

Laura D: I was, yes.

Ken Macintosh: The old system was administered by the Department for Work and Pensions but the new one is administered by the local authority. Is that right?

Laura D: Yes.

Ken Macintosh: And you find the local authority more supportive.

Laura D: Yes.

Ken Macintosh: That is good.

Lana, you did not sound so encouraging. What happened with you?

Lana W: I applied for the new one—the welfare fund. I applied for that one—I got told about it by my social worker. She applied for the one in Glasgow. I was basically in crisis. I had to fle my house—[Interruption.]

10:15

Ken Macintosh: It is okay. Do not worry.

The Convener: We will come back to you.

Ken Macintosh: Has anybody else applied for a crisis grant as opposed to a community care grant?

Lana W: I have. I have three kids. I lost my purse, phoned up and had to wait for 48 hours for a reply. That was on the Monday; I got a reply on the Thursday, and was given £38 to last me from the Thursday to the next Monday. My youngest son was only six months old at the time. Basically, the £38 had to cover nappies, electricity, gas and things like that. I even had to get a bus fare to go
So you were skint for two days.

**Ken Macintosh:** So you phoned first and there was a big delay.

**Lana W:** Yes. They said to me that they would get back to me within 48 hours. I had to phone up and chase them up to see what was going on. I was finally told that a payment was waiting for me in John Street. When I explained that I could not get up there, they said, “Well, you’re going to have to, because your payment is sitting here.” It was only £38. I said, “Well, that ain’t going to last me from Thursday to Monday to get me everything that I need.” Again, they were not helpful.

**Ken Macintosh:** Did they give you cash, or—

**Lana W:** No. It was a cheque, which I took to the post office.

**Ken Macintosh:** Okay.

Has anybody else applied for a crisis grant?

**Connor C:** I applied for a crisis grant around a year ago because I turned 18, which meant that support from social work, for example, had to end. I had just lost my college place, so I had to sign on with the jobcentre.

I applied for a crisis grant because the jobcentre told me that I would have to wait between six and eight weeks before I would get anything. As I said earlier, I spoke to my brother, who told me to apply for it. When I did so, I did not exactly have a great experience. I got £30, but when I was speaking to the person on the phone, it felt as though they were looking down their nose at me and judging me quite a lot. I also felt that I had to lie to them, because at the time I lived in a supported care placement—I still do. Being in a supported care placement just means that you are responsible for yourself. The person needs to be independent with their finances and other things to a certain extent. It is one step shy of being in your own house. I felt that, if I told the person on the phone that I was in that placement, I would not have got the crisis grant, because they maybe would not have seen me as someone in a crisis.

**Ken Macintosh:** How quickly was the application dealt with? Did you apply by phone?

**Connor C:** I applied by phone. Like Lana, I waited for 48 hours. I had to phone. The person said that they would go and speak to the decision maker and see what the decision was. I did not get a phone call until 48 hours later. I then had to go and collect the cheque and take it to my post office.

**Ken Macintosh:** Right. You got the cash then. So you were skint for two days.

**Connor C:** Yes.
Ken Macintosh: Connor and Lana talked about being judged. You felt that the conversation that you had when you applied was cheeky, intrusive or whatever.

Lana W: Yes.

Ken Macintosh: Does anybody else feel similarly about the way that they have been dealt with?

Charlene Mc: You are stigmatised all the time with that kind of stuff. If young people need help with the jobcentre, crisis loans or anything to do with furniture, they are stigmatised all the time. If you go for a crisis loan, people see you as jakebells and all that kind of stuff, but they do not know the circumstances and why you need crisis loans to get furniture for your flat.

I share Lana’s feelings about how she cannot get a welfare fund grant for her flat, because I was denied funding for white goods, carpets and other stuff for my tenancy. I had to save up for months and months when I got my job. I was living with nothing at the time. I totally see her point.

I see the welfare fund as a negative thing and as a positive thing. It seems that, if your face fits, you get what you want but, if your face does not fit, you do not get it. That is the issue that some of us face. We have that stigma held against us. It should not be like that. We should all be entitled to have furniture in our house, but we do not have that and we cannot get it. I find that strange.

The Convener: Did the people who were making the decision give you an explanation that you understood? You obviously feel that they judged you, but did they give any explanation as to how they arrived at their decision, so you could assess whether they had judged you properly?

Charlene Mc: Because I was starting a job in September, they told me that they could not help me. They said that, once I started the job, I would be able to fund my own furniture, but bear in mind that it was a 16-hour-a-week contract. How am I meant to fund my bills, rent and furniture? It is impossible for somebody to do that on 16 hours a week. I was able to save up money and I got the furniture that I needed—it was not great, but it was something to live with.

I just feel that it was my local authority and the Government that put the fund into place, so it should be available to us, no matter what. It was partly because I had put in for a community care grant two years ago that they told me that I could not put in for the welfare fund. Obviously, I want to get furniture for my flat. I find it a bit strange that they are denying young people who have maybe not had the best experience of life but who are trying to move on and make a home for themselves. We do not get help and support—that is lacking. As Lana says, it is frustrating when all you want to do is make your home a home but you cannot because people are denying you help.

The Convener: You are entitled to form that opinion. I do not have an issue with that.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): The Scottish welfare fund is being administered by local councils. Lana talked about contact with other parts of her local authority. Have the other witnesses had contact with other parts of your local authorities? I do not need to know the details; that is your private business. However, if you have had contact with other parts of the local authority, have they sought to make you aware of the welfare fund that they are administering in your area? It was quite striking that none of you said that you became aware of the welfare fund through the local authority, so maybe the answer is that no one has made you aware, but I want to put the question out there. When you have been dealing with another part of the local authority, be it housing or whatever, have they said to you, “By the way, there is this Scottish welfare fund which another part of the council administers”?

Lana W: No. I was not made aware of the fund.

Jamie Hepburn: Is that the case for everyone?

Peter O: I heard about the fund from Barnardo’s when I moved in. Barnardo’s helped me with it all—it helped me to fill in the claim form because I could not do it myself.

Jamie Hepburn: The council did not tell you anything about the fund.

Peter O: No.

Jamie Hepburn: Is that the case for everyone? I wonder whether each of you would tell me what council area you live in.

Lana W: I live in Glasgow.

Peter O: I live in Airdrie, in North Lanarkshire.

Charlene Mc: I live in Glasgow.

Laura D: I live in Glasgow.

Connor C: I live in North Lanarkshire.

Jamie Hepburn: We have two from North Lanarkshire and three from Glasgow. That is helpful.

I have a wider question. Obviously the arrangements that have been in place thus far have been temporary. There has been an agreement between the Government and the local authorities on administering the Scottish welfare fund, but now we have a bill that Parliament will consider so that we can put the scheme in place permanently. Witnesses have already hinted at
this, but it is an open question. From your experience of the welfare fund so far, what has worked well and what could be done better?

Peter O: I was going to have new lino fitted in my kitchen, but the people said that they could not do it because I had a cat that they could catch a disease or something from, so they went away. I just said, “It’s a house cat. You won’t.” I had to phone and make another appointment for them to come back out.

Charlene Mc: I think the fund is a good thing. We used to get community care grants paid into our bank accounts. Let us be honest. I am young. If I get hunners of money paid into my bank account, I am not going to spend it on furniture if I have an addiction or whatever. In that sense, the welfare fund is fantastic because they come out and put the goods into your house or put the carpets down. I see that as a really high positive rather than a negative. On the other hand, I am frustrated because I did not get what I applied for because I did not fit some of the criteria that they wanted to tick off.

Jamie Hepburn: That is an interesting perspective. Some people have been critical of that aspect. What do Lana and the others think? Is it a positive thing that the council comes out and installs goods?

Lana W: Yes it is, because that is sometimes difficult to do. I could get a new cooker, but who is going to install it? Who will lay carpets? In that way, the welfare fund is good, because people are helping us to do all that stuff.

Jamie Hepburn: Okay. Thank you.

Annabelle Ewing (Mid Scotland and Fife) (SNP): Good morning, and thank you all very much for coming. It really helps to inform the work of the committee to hear from people who have direct experience of applying for the community care grant and the crisis grant.

I want to pick up a couple of points that have already been raised. First, on the mechanics of actually applying, did you do that on the telephone, was there a big long form, or was it a mixture?

Lana W: I did it by telephone.

Laura D: I did it online.

Connor C: I did it by telephone.

Peter O: I used the application form.

Charlene Mc: I used the telephone.

Annabelle Ewing: At least one previous witness suggested that there should be a facility for face-to-face meetings along with telephone, online and paper applications. What do you think about that? Would that have made a big difference to you or were you quite happy with doing it online or on the phone?

Lana W: I would prefer to do it face to face. I get stuttery when I am on the phone and I get frustrated when I cannot explain myself. If I was to sit down with someone, they would be able to see that I am being genuine and not just phoning up to make a claim. I would probably find that a lot more helpful and beneficial.

10:30

Annabelle Ewing: What about you, Peter?

Peter O: I am the same. I like face-to-face contact.

Charlene Mc: I do not think that the application forms are good, because when you go online there are pages and pages. Filling all that in can be quite disturbing for somebody, especially if they have writing or reading problems. I also find it difficult to talk to people on the phone, so I think that face to face is definitely how people should apply.

Laura D: My experience online was quite good, but I also applied on behalf of someone else and I think that it would have been much easier for that person to have done it face to face, which would have given them the chance to do it themselves. That person has hearing difficulties, so they could not apply over the phone. My experience of applying online was quite good, but other people have different capabilities and will see things differently. It might be more difficult for them.

Connor C: I would say that applying face to face would definitely be better. I applied over the phone, and I felt quite a lot of the time as though the person did not recognise me as a person. They just saw me as a voice on the phone looking for money. If they were to meet face to face with people, they could see the reality that you are a human being who has nowhere else to turn, which is why you are applying for a community care grant, crisis grant or whatever. For both sides, face-to-face meetings would be good.

Peter O: I have the form here. I had to get help to fill it out because I would not do it myself.

The Convener: You had to have assistance.

Peter O: Aye. A Barnardo’s worker helped me to fill it in, because I would not do it all myself. There were far too many questions.

Annabelle Ewing: I will pick up a point that my colleague Jamie Hepburn alluded to. I am not asking each of you to go into your personal circumstances—that is your private information. If you already had involvement with, as Lana mentioned, the local council’s social work...
department or whatever, would you be happy if there were a mechanism that would allow the information that that department already had on file to be passed to the people who deal with the welfare fund?

Lana W: Yes—definitely.

Annabelle Ewing: There are important issues of confidentiality and so on, but do you feel that there might be a way for the information to be passed on so that you would have to spend less time giving information that people could already access?

Lana W: Yes—definitely. It would make it a lot easier if they could see that people are telling the truth—if another person could verify everything that an applicant is saying. If they had the information already and just needed to confirm everything with you, that would be beneficial.

Annabelle Ewing: Would anybody have any concerns about that information being passed to other officials in the council?

Lana W: Obviously, people should be able to say yes or no to that information being shared, but if the person wants that to go ahead, it should be allowed, especially if it will help to get the things that the person needs.

Peter O: It should be very much the individual's decision about how much they get to know. I have been in the care system and would not necessarily want my entire family background to be passed on, but there are a lot of circumstances that the person dealing with me would need to understand. I felt that I had to lie when I was on the phone. I did not say that I was in care; I said that I lived with my auntie, because I felt that if I had told them that I was in care, I would not have got anything. It would help if they knew those bits of information about a person's circumstances, but that person should be very much in control of how much they get to know.

Annabelle Ewing: You all talked about how you came to be aware of the possibility of applying for a community care or crisis grant, and none of you said that you found out directly from the local authority. What would be a better way of communicating the availability of the fund to people like yourselves? Can you think of an approach that would be more directly accessible to you and more meaningful in your lives?

Lana W: Maybe when people take on a new tenancy, the housing association or landlord could give them information about funds. There could be notices in the housing association office to let people know that the help is there.

Annabelle Ewing: That is a very practical suggestion.

Charlene Mc: It is about getting the information out there. You find out about the funds only if you get your own flat. It is about figuring out whether there is a certain way to get the information out. I had a social worker when I got my own flat, but my social worker never told me about welfare rights. The local authority should know that stuff. Local authorities are our corporate parents and they should be looking out for our safety and wellbeing. If they do not know what is available, how are we meant to get the information? How we get the information out to young people—and people in general—is a difficult question, but social workers and so on should definitely be promoting that kind of stuff.

Annabelle Ewing: We have had two very practical suggestions. Thank you.

The Convener: Before I bring in Jamie Hepburn, I will say for the record that the form that Peter had to complete for North Lanarkshire Council runs to 25 pages, if anyone was wondering how much information is asked for. It is way more than is required for a passport application.

It is a matter of judgment whether the information that the council asks for is essential. The form asks a lot of questions up front about ethnicity and so on, but those things could be checked after the form has been completed, so that the council could get additional information that might be useful to people who make applications. Is it off-putting to be asked such questions up front? Did you wonder what difference those things made when you were filling in forms? I see a few people nodding.

Charlene Mc: I just think that that is none of their business. We are applying for stuff for a flat and for money to help us make a better home, so that information should not matter. The forms really need to be looked at, because it is just not right. Twenty-five pages! Come on! Who wants to sit and fill in 25 pages, just to get furniture for their flat? It is ridiculous. They could break it down to two or three pages. They could take out all the personal stuff that does not need to be in there and the stuff that they do not need to know, which would make the forms better for the people who actually have to fill them in.

The Convener: I see Laura nodding. Do you agree?

Laura D: The form is a bit long. They could take the important information that is to do with what you are applying for. A lot of information is asked for in the form that is really—

The Convener: Just personal information?

Laura D: Yes. It does not really have much to do with what is being applied for. If the council
wanted a wee bit more information, they could contact you in some other way.

**The Convener:** Do you mean after the process has been completed?

**Laura D:** Yes. The forms are a bit off-putting. People like me look at them and think, “Oh, God”, and are put off.

**Kevin Stewart (Aberdeen Central) (SNP):** I agree. I really do not understand why the forms ask about ethnicity, religion and so on, which should have nothing to do with the application. It would be interesting to see whether forms from other local authorities are the same.

To return to the point about getting information out there, in some places there are posters galore that people do not pay much attention to. You could probably spend a week reading all the posters on a doctor’s surgery wall.

At the very beginning of your tenancies, did you get a handy-facts handbook from your landlord, whether that is the council or a housing association? If so, should the information about the welfare fund be in that sort of handbook?

**Charlene Mc:** I did not get a handbook.

**Peter O:** I cannot remember. I do not know.

**Lana W:** No. I did not get anything.

**Laura D:** No.

**Connor C:** I have never been in my own tenancy, so I could not say.

**Kevin Stewart:** Those of you who are in your own tenancies never got any real information from your landlord when you moved into the property. That is very interesting, convener. We should probably look at best practice across the country, because such little things can often help. A booklet that can be put away and taken out as necessary is always helpful.

Charlene mentioned corporate parents and Connor said that he comes from a care background. How do you think your corporate parents—that includes us, by the way—perform in helping you start off in life?

**Charlene Mc:** They are lacking. The problem is that a lot of people do not know that they are corporate parents. I have spoken to people from the national health service and when I mentioned corporate parenting, they said, “Eh? What’s that?” I told them that they deal with people every day, look after their safety and wellbeing and make sure that they are all right. It all comes down to the lack of information for people.

**Kevin Stewart:** As corporate parents, are we failing you in not providing you with the information that you need to get on with life?

**Charlene Mc:** Yes—and not just me but the hundreds of other kids and young people out there.

**Kevin Stewart:** Do you feel the same way, Connor?

**Connor C:** Charlene and I have slightly different experiences of corporate parents. I have experienced both barrels. In times gone by, I had quite a lot of different support from corporate parents, but the older I got, the less support corporate parents provided. I am just 19. When I turned 18 a year ago almost all forms of support from my local authority were taken away from me, just because I had turned 18. I had been within the local authority care system for 10 years. Those people had been looking after me and had been responsible for me, but they just pulled the plug.

Not everybody is ready at 18 to make the huge step to having their own tenancy. There is a lack of information. There are networks out there for after you turn 18, but people do not know that they are corporate parents and young people like Charlene and I do not know who their corporate parents are, so they do not know who they can turn to.

I echo what Charlene said: there has to be better communication, but at the same time there has to be better preparation from corporate parents, because they do not phase you out; they just pull the plug. It is like turning off a light switch. I had lost the support that I needed and I had just lost a college placement. Things were not exactly great and I did not have anything going for me. The support was then pulled from me and I was left wondering, “Where do I turn now?” It is about preparing people and gradually phasing them to a point where they are ready.

**Kevin Stewart:** I am 46 and I still run back hame to mummy and daddy to get advice and information at some points, but you did not have that after that cut-off point.

10:45

**Connor C:** At a certain point you stop getting the support. I still have a social worker, but I receive the bare minimum of support. As you said, in normal family life people can still go back to the family at the age of 46. My uncle is 59 and still lives with my granddad. Do not get me wrong: he looks after my granddad. However, “corporate parent” is just another term for “parent”, essentially. Corporate parents are supposed to be like a family, but when you get to a certain point they are just not interested any more. To me, that is just not fair.

**Kevin Stewart:** It is all about information and communication, and we are not getting that right.
Connor C: Yes.

Kevin Stewart: I have a final question. You are all here today because organisations that have helped you have put you forward as witnesses. What would it be like coping without the organisations that help you and point you in the direction of the right places to go, including to the welfare fund?

Charlene Mc: To be honest, I do not know where I would be if it was not for the organisations that have helped me to get to where I am now in my life. It is pretty good for me to be sitting here today, because I have moved on with my life. I have got my flat sorted and I have had all the support, and I now work as a peer housing support worker. I give out the welfare rights information that a housing association should give out, so for me that is a privilege. I sit and study it all the time—I am always printing stuff off. So, it has been good for me to work with the organisations and be supported and now to be on the other side of that and give out the right information to young people and people in general.

Peter O: I would not have my own house if it was not for Barnardo’s and everybody else. I would still have been living my sister if I had not had anybody else, so that is good.

Lana W: At the moment, I am doing training with One Parent Families Scotland to be somebody who helps other lone parents and tells them what their rights are for benefits and things like that. Without that organisation, I would not be able to help other people. For me, the organisation has been really good, because it has helped me a lot. Particularly at the moment, with the circumstances that I am in, the organisation is extremely helpful.

Laura D: At the moment, I am working with One Parent Families Scotland and I have recently done a welfare reform course. That has been really good for me because it has given me information that I can pass on to other people who are maybe in a situation that I have been in and that One Parent Families Scotland helped me out of. I can now pass on information that will help other people. I can tell them the right direction to go in to get help.

Connor C: I currently work with Who Cares? Scotland. That organisation is a big reason for me even being able to be here today in front of the committee. One of the great things about what I do there now is that I have the chance to go out and speak to different types of corporate parents and try to influence change, even if it is just small change. For me, if I change one person’s mind, that is good enough and change enough.

One of the other things that I get to do and that I love doing has happened only in the past three or four months since my job role changed. It is linked to what we were saying about information. Part of my job is dealing with some of the more complex bits of information that young people maybe cannot understand—for example, the 25-page application forms, which are just nonsense. One of my tasks is to take forms like that and change them into simple terms and something that is easier for young people to understand. I love doing that—I can relate to the situation, because I have been there, where you read or see something that is just total jargon, and you think, “What exactly am I supposed to do with this?”

Kevin Stewart: Complete gobbledygook, basically.

Connor C: Yes. I am sure I would probably understand half the forms better if it was gobbledygook. [Laughter.]

Kevin Stewart: Thanks a lot, folks.

Ken Macintosh: I just have a couple of other questions. Have any of you ever been offered vouchers or cards when you have been looking for crisis payments? You are all shaking your heads.

Charlene, you said that when you were given community care grant furniture, you were pleased that they fitted it for you. Were you offered a choice?

Charlene Mc: No. I was just speaking about how it is good that they bring the furniture out to your flat. I have never had that, but I know of people who have had that, and how they fit things for you and make sure that it is all set up for you. I find that quite good, and the fact that the furniture comes to you and the money does not.

Peter O: I have had my carpets fitted, and they plugged in my washing machine and everything else. It is pretty good.

Ken Macintosh: That is good. It goes back to earlier comments about the way that you are treated and whether you are made to feel respected as individuals, and given choices or a say. It is a tricky balance. When it comes to the furniture packages and so on, it is the support that you want as much as anything else. The make or model of the machine makes no difference to you; it is just the support.

Some of the evidence that we have heard suggests that there is a lack of choice or respect. For example, you are given vouchers or no choice in furniture, or you are made to take furniture that is inappropriate. You are all shaking your heads again. It is good that none of you have had that bad experience.

Annabelle Ewing: I have a technical question following on from your evidence. For those of you who had your applications turned down, were you
informed by the local authority—in most cases that would be the councils in Glasgow and North Lanarkshire—that you would have, at least in theory, a right to appeal? Did any of you appeal the decision to reject your applications?

Peter O: I was rejected the first time. I did not know until Barnardo’s—my work and that—told me. My couch and my freezer were broken. I sent in photos. They looked at it again and then I got the furniture.

Annabelle Ewing: Okay, so in your case it was a new application.

Peter O: Yes, but I sent in photos of my stuff.

Annabelle Ewing: And that was enough to change their minds.

Has anybody considered an appeal or had information that an appeal was possible?

Charlene Mc: I had filled in the form and been on the telephone to them. They said that there was some information on the form that needed to be filled in. It was denied, so I sat down with one of my support workers and filled it in again. I sent in an appeal, got denied again and sent it in again. I just kept on getting denied. I applied and got rejected three times.

It is quite upsetting to be rejected for furniture, especially if you have been in care and stuff. All you want is furniture to make your house a home. Whether you have been in care or not, in general all people want is furniture. They do not care where it is from or what it looks like. If I have got a cooker and I can cook a meal on it, and if have got a sofa that I can sit on, happy days—but I never got one bit of that.

Annabelle Ewing: Lana, I am not quite sure of your current situation in relation to the application to West Dunbartonshire Council.

Lana W: I had mine denied straight away and they did not tell me that I could appeal it. If it was not for my training, I would not have known. When I knew, because of my training, I said that I wanted to appeal it. I am just waiting to hear.

Annabelle Ewing: So you are in that process at the moment.

Lana W: Yes. Just do not know what is happening with that yet.

Alex Johnstone (North East Scotland) (Con): Thank you very much for coming along. I think that we have covered most of the subjects, but I want to go back and ask questions about a couple of things. Some of you had experience of the previous scheme and have now had experience of the new scheme. We have talked a lot about knowledge of the fund and its availability. How much have the problems relating to accessing the fund and knowledge of the fund been caused by the fact that there was a change?

Is it a situation in which everyone knew about the predecessor fund and what they could do to apply for it, and it was the change in the name and the administration of the fund that left people not knowing that it existed? Would that be fair to say?

Laura D: That is where the problem lay for me. I did not know that the fund existed anymore. It had changed, and I thought that it had been taken out and that was it—there was nothing to replace it.

Lana W: I thought that as well—that it had been abolished.

Alex Johnstone: We have already heard that at least a couple of you are training up to pass on information on the new funds to other people. Do you think that, if we get continuity for a year or two, knowledge of the availability of the fund will widen and people will not be left in a position in which they need something and qualify for it but simply do not know that it exists?

Lana W: I hope so. We have to get more information and more training so that people do know and can apply.

Alex Johnstone: There is a new fund coming in with this bill. I hope that it will not be too different from the one that we have been working on for the past year or two. However, there is a danger that if there are radical changes—if we give it a different name or if we have a different process—we might find ourselves back at square 1 as far as knowledge of the scheme is concerned.

Lana W: Yes. Quite a lot of the people that I talk to still, to this day, do not realise that the fund is still in place but under a different name. They are happy to learn that it is still in place. There are different ways to get to it, obviously—but it is still in place, which people did not know.

Alex Johnstone: The other issue that interested me as we were talking earlier is the 48-hour wait. One difference between the scheme that we have now and its predecessor is that the earlier scheme had a 24-hour waiting limit, which has been extended to 48 hours. We have heard various explanations for why it was extended. Do you feel that it took the full 48 hours to process your claim, or were they just waiting for 48 hours because that is what is said in the scheme?

Lana W: To be honest I cannot answer that, but in my circumstances it was ridiculous. I have children, and I had lost my purse—to wait on a decision for 48 hours was just ridiculous. I think that the limit should be changed back to 24 hours, if not a bit less, because, at the end of the day, you can be sitting with children for two to three days waiting for a decision, and you do not have
anything because they are waiting to see if you are going to meet the criteria to get anything.

Alex Johnstone: The reason for extending the limit to 48 hours may be valid, but, even if the limit is 48 hours, if they can turn a claim around in an hour, they should.

Lana W: Definitely. That would be less time that you are sitting around waiting to see if you are entitled to get anything. It is ridiculous. The 48-hour wait is terrible.

Connor C: I totally agree with Lana. There is no way that it takes 48 hours for them to make the decision. I applied for a crisis grant, which meant I was in crisis. How could anyone expect me to wait 48 hours, knowing that I was in crisis?

At the same time, I think that this is a level-of-crisis type of scheme, in the respect that, if they do not see you as being in as much of a crisis as the next person who calls, they will prioritise that person, and your application can just wait for 48 hours. I do not think that processing takes the full 48 hours. I think that they leave it that long just because they can, more than anything else.

The problem is not just that but the fact that, during those 48 hours, you do not know. You do not get any kind of contact from anybody for those 48 hours. In some cases, as Lana has said, you have to go and chase up your application. That should not be happening. If I apply, I expect somebody to pick up a phone and call me to let me know what is going on in the processing of my application—not to have to chase them about for it.

Alex Johnstone: Thank you.

The Convener: I think that we have exhausted all our questions. Given that all of you have come all the way here to Edinburgh, and you have a line-up of politicians sitting in front of you, is there something that you want to make sure we are aware of, before you leave? Is there something that you thought, when you were coming through today, “I am definitely going to tell them”? Get it off your chest. [Laughter.] Is there anything that you feel that we have not covered yet and that you wanted to make sure that we were aware of when you were coming here?

Alex Johnstone: I hope that you gave them 48-hours’ notice. [Laughter.]

The Convener: Is there anything that you have not had the opportunity to tell us that you wanted to tell us when you were travelling here this morning?

11:00

Lana W: You should make the system a bit easier, especially for lone parents. We are in these circumstances for a reason. When we apply for things, especially using the forms and over the phone, the people—especially the people who are actually speaking to us—should be given more training to understand our position. We are in certain circumstances; do not sit and judge us because we are in these circumstances. We need your help.

It should be made clearer to people, and it should be made easier for us to apply for things instead of us having to hear, “No, you are going to have to wait to see if you are entitled to this.” You should make it a bit easier. People should be able to give an answer within 24 hours about whether we will be entitled to something instead of us having to wait two to three weeks to even hear if we are going to get furniture.

The system should be changed in some way, especially for lone parents and for people like Connor who are just coming out of care. I do not mean this in a bad way, but the alkies or junkies can come off the street and get help with everything—that is the way that we see it—while we are having to sit and wait. It is annoying. You should make it a lot easier for people who actually are in crisis and who actually need the help that they do, instead of for the people who do not need it as much as we do.

The Convener: Thanks, Lana. Connor, you wanted to say something.

Connor C: When you are making an application and speaking to people, they should be clearer about what information they can check and how they can check it.

I did not realise until a couple of weeks ago, when a couple of people from the Parliament came to our office and spoke to us about the welfare fund, that the people can check our Facebook accounts to confirm the information that we have given them. It should be made crystal clear to applicants that that type of information can be checked. I also want to say that Facebook is not exactly the most reliable source of information, nor is any kind of social media. There are things on Facebook that are not true. It happens: my Facebook page said I was 50 a week ago—I am not 50. [Laughter.] It is one of these ridiculous things.

It is about letting people know, but about making it easier for them to disclose things as well. I had to hide the fact that I was in care. I should never have had to do that. Someone should have asked me if I was in care. That should have been one of the first questions. It is just that whole kind of—

The Convener: The issue of what they can find out.
Connor C: Yes, what they can find out, and why and how.

The Convener: On behalf of the committee, I thank you very much. You have all been very open with us, which has been very helpful from my point of view—and I am sure that my colleagues share the view that the information that you have given us has given us an understanding.

We have spoken to professionals and people who are on the other side of it—the administrators—but to hear from people who are on the receiving end, if you like, has helped us to get a greater appreciation of how the system operates. The time you have spent with us this morning has been really beneficial, and I would like to thank you on behalf of the committee for the information that you have provided.

I suspend the meeting until we have changed to our next panel.

11:03

Meeting suspended.

11:13

On resuming—

The Convener: We come to agenda item 3. I welcome our second panel, which consists of Dermot O’Neill, the chief executive of the Scottish League of Credit Unions; Nicola Dickie, Scottish welfare fund development manager at the Convention of Scottish Local Authorities; and Jackie Cropper, managing director of Grand Central Savings.

We have heard evidence that there are some people who, although in need, might not meet the agreed criteria for the Scottish welfare fund or qualify for a DWP budget loan. Given that evidence, the committee felt that it would be useful to explore what other options might be available to those people—options that are not in the bill but which, according to the information that we have had from Government officials, are not excluded from the bill.

The panel has been invited to allow us to explore what alternatives to grants from the welfare fund might be available at present. I will start with Dermot O’Neill. You will have looked at the bill. Do you see any scope for credit unions to be involved in that system? If they wanted to do so, where would they fit in?

11:15

Dermot O’Neill (Scottish League of Credit Unions): There is limited scope for credit unions to be involved as an alternative to what has been proposed. We have approached the subject from four main perspectives: reputational impact, commerciality, responsible lending and borrowing, and operational capacity.

The key point for us in reputational considerations is that a credit union’s membership must be balanced. To be healthy, credit unions need to attract a broad section of society. Just now, they are saddled with an unfortunate and damaging misconception that they are a poor man’s bank. We would be concerned that any servicing of a welfare fund type of payment directly from credit unions would reinforce that misconception and further tip the balance of our membership profile.

The Convener: Jackie Cropper’s organisation was mentioned to us specifically. What is your take on what Dermot O’Neill just said and the question that I posed to him?

Jackie Cropper (Grand Central Savings): Grand Central Savings works with the most vulnerable people out there, from homeless people and single parents to families who are struggling. The need for Grand Central Savings has just been demonstrated, so I do not need to demonstrate that.

Even for the most vulnerable people, who I work with, I am not sure that facilitating loans is the best way forward. We are keen on working with people to address their issues. The service is not just about money in and money out; we are working with people to ensure that they manage their money, as difficult as that can sometimes be.

I was very impressed by the people who spoke earlier, who echoed a lot of the views that I would have expressed. People need to be managed better around the welfare fund and much more communication is needed. We are working alongside other organisations to ensure that our customers get a fuller service. We are working to ensure that they can apply for help to address their needs.

I am not so sure that small loans are the answer; I think that they would put the people who I work with further into debt. That approach might be misused by other people, too.

The Convener: Nicola Dickie approaches this from the local authority side of things. Given the client group that you work with, what is your view on some of the downsides of considering going beyond the Scottish welfare fund?

Nicola Dickie (Convention of Scottish Local Authorities): When local government in Scotland took on this responsibility, loans were part of the original consultation. Given where we have got to with the welfare fund and the evidence session that the committee just had, I—like Jackie
Cropper—am not convinced that giving people more credit is necessarily the way to help them. It does not fit with the fund’s enabling nature.

The way in which local authorities have approached the fund is to provide assistance, whether in cash or in kind, and wraparound support. Including the provision of loans would create difficulty for decision makers. The fund is already discretionary and we have heard some of the good and bad examples of the exercise of that discretion.

Adding an element to the decision-making process so that decision makers had to decide whether someone qualified for a grant, a payment and a loan would make things difficult. It would be difficult for customers and decision makers to understand how the decision-making process worked, particularly if customers asked, “Why do I have to pay it back but my next-door neighbour doesn’t have to pay it back?” We have worked hard to get away from the concept of loans being available from the Scottish welfare fund for crisis. Including loans might start to muddy the waters again.

Kevin Stewart: I refer folks to my entry in the register of members’ interests: I am a member of St Machar Credit Union, which should be put on the record.

We heard from the previous witnesses and have heard throughout our discussions about signposting and information. Would it be wise for folks handling these things in local authorities to give further financial information as well as to deal with the crisis or community care grant? They could say that folks might want to consider joining a credit union, because it might help them get to a stage where, if they hit a future crisis, they had something put away for a rainy day. They could say that, if folks want more choice than the Scottish welfare fund offers, they can put a little aside and they might be entitled to a loan from a credit union later.

Dermot O’Neill: That is a pertinent point. The credit unions are best placed to serve members not at a point of crisis but in developing the habit of saving. We are talking about the need for immediate help in a crisis, but few credit unions are positioned to receive, process and turn around that crisis loan type of need.

Every credit union is absolutely positioned to accept a new member and educate them in the wise use of money, but that is a long-term process. That education needs to be fostered with the individual and based on their ability to save and their ability and inclination to repay what has been borrowed.

Kevin Stewart: That is extremely useful. I give credit to the credit unions throughout Scotland for the information that they give out on how to handle cash. I am not ashamed to say that I previously had a loan from a credit union to tide me over at a point that was not so good. There is the back-up of previous saving and all the rest of it beyond that.

We are missing a trick in some regards, as many difficulties are created because there is no stability. Stability can be provided via credit unions. As well as people dealing with the crisis or community care grant, it would be useful for all if further information were given to folks to direct them to credit unions. People might be on a sticky wicket at points in their life, but they might well be able to put even more into their credit union account in the future and thus create the balance that Dermot O’Neill talked about.

Dermot O’Neill: It is important that credit unions manage the expectations of those who approach them. It would be wrong to give the impression that credit unions can help in all circumstances; they can help only when the member has the capacity to self-help. That involves the capacity to save and, in the event of borrowing, the capacity to repay.

There is an interesting point about the commerciality of credit union loans. The commercial viability of credit unions engaging in such activity is very dependent on the value and term of borrowing. For example, should a credit union lend £100 to a member over three months, it would earn £2 in interest from that transaction. The estimated cost of processing that loan is about £100, so for every £100 loan that is issued to a member over three months, the credit union effects a net cost of £98. That is sustainable only if the credit union has a breadth of membership. For every £100 loan that is issued, a higher-value, longer-term loan is issued.

That feeds back into the original point. Credit unions can help people, but they need to help all people and not focus only on a section of members who are in more desperate need of help.

Jackie Cropper: Most of the people with whom Grand Central Savings works—we work with about 3,500 people—live chaotic lifestyles. They are homeless, on the street and in crisis every day. We try to manage them out of their crisis, educate them and get them ready for a credit union. That is a success story for Grand Central Savings. We are not around to give out loans, and I hope that we are certainly not around to be here for ever.

I absolutely 100 per cent agree with Mr Stewart that a lot of people out there could take advantage of a credit union. If people come to us and we feel that they are ready and have work, we have a meeting with them and advocate that as the next step.
We are doing a joint piece of work with the 1st Alliance (Ayrshire) Credit Union. I am keen to see how we can work together and move people on. Credit unions should focus on the people who are not in crisis at the moment, but they should work with us closely, because we can help through what we do. We need a seamless way of working with credit unions, so that we can move people on when they are ready and are educated on how to manage and how to save.

Kevin Stewart: I have a slightly different question for Nicola Dickie. Some local authorities have formed good partnerships with credit unions, but it seems that welfare rights officers in certain places are not quite as good at signposting folks on to other places or advising them on what might be best for them in the future. How can we improve that?

Beyond that, some local authorities have good partnerships in that they encourage their staff to join credit unions and create the balance that Dermot O’Neill talked about. However, other local authorities do not do that. How can we ensure some uniformity in signposting and education about the benefits of credit unions?

Nicola Dickie: A lot of what is happening on the welfare fund is iterative—it is an improving process. You are absolutely right that some local authorities have formed strong links with credit unions. For example, South Lanarkshire Council has spoken to the credit unions in its area and worked out exactly what is available from them. The council has then been able to manage the expectations of customers who it refers to the credit unions.

COSLA has spent a significant amount of time considering payday lenders and alternatives to high-cost credit. One thing that has come through in some evaluations is that a quick turnaround time is expected—customers want cash to be available to them that day—but few credit unions can service that demand.

I suppose that we need a halfway house. Credit unions will never be the solution for customers who are in absolute chaos, which is why we see credit unions as separate from the welfare fund. The issue is more about signposting. Once we have built up a relationship with a customer and have dealt with their crisis or community care grant application, we can work out whether the local credit union can service them.

To improve the situation across Scotland, we need to share good practice and ensure that all local authorities work with their local credit unions. Other stuff is going on in relation to what is available elsewhere in Scotland. The sharing of good practice continues across local government in relation to not just credit unions but all the other things that we have all learned so far on the welfare fund.

Alex Johnstone: We heard from the previous panel that some people who apply are turned down, for various reasons. It is reasonable to consider what alternatives we might provide for people in those circumstances. A short-term crisis loan seems like a sensible approach. I think that there is a demand for that, but we are trying to establish who might meet that demand.

Payday lenders were mentioned. Anybody who is driven into the predatory world of payday lenders is getting into a difficult set of circumstances. There probably is demand from people who wish to secure a loan at a reasonable cost to achieve their objectives, but there seems to be a vacuum. We have heard that it is not appropriate to steer everybody in the direction of a credit union. Is there an unmet demand that needs to be met?

11:30

Dermot O'Neill: Your colleague Kezia Dugdale often talks about there being too much month left at the end of the money, which absolutely gets to the notion that, when someone has insufficient disposable income to live on, their natural reaction is to seek credit to bridge the gap. That solves one problem but creates another.

There is an inherent danger for credit unions in extending credit, however affordable the terms, because doing so makes the member further indebted, which runs contrary to the principle of being a responsible lender. Credit unions—indeed any lender—must be able to demonstrate that the person who borrows has the capacity and inclination to repay. If there is no capacity to repay, no form of credit should be extended.

Alex Johnstone: I will ask you a straight question. If there is the demand that you described, should we try to prevent it from arising in the first place or should we provide a means to satisfy it?

Dermot O'Neill: Prevention rather than cure is key. We can apply any number of solutions, each of which might have short-term benefits and long-term consequences. If the problem is a lack of disposable income, the solution comes at the other side—that is, we must think about how we can maximise income and reduce expense or otherwise rebalance a person’s moneys, so that the crisis is prevented rather than solved when crisis point is reached.

Alex Johnstone: The approach is about managing, not satisfying, demand.

Dermot O'Neill: We suggest so.
Jamie Hepburn: COSLA said in its submission:

“we are making some head way with customer perception of what the Scottish Welfare Fund will provide ... COSLA would have concerns if the Bill had a provision to make loans as it would leave customers unclear over exactly what was being provided from local authorities and the Welfare Fund in general.”

Will you talk a little about your concerns?

Nicola Dickie: We spent a significant amount of time trying to rebrand what the Scottish welfare fund does. As the committee heard from the earlier panel, there is some way to go if we are to ensure that local authorities are the first places to which customers turn when they are in crisis.

As I said, putting loans back into the system would muddy the waters for customers. A previous witness commented that we are corporate parents. The idea of local government handing out loans sits uneasily with our being social workers, tenancy support workers and corporate parents for people. We come up against that issue whenever we sit down to think about loans.

We realise that there is demand, but we think that the solution is very much to help to prevent that demand. Across local government, we need to manage customers’ expectations and how we deal with customers. We need to look at the issue holistically, so that people are not pushed towards the high-cost payday lending that we know is many people’s first port of call. We want people to speak to all the statutory agencies and look at everything that is on offer in their area before they go elsewhere.

Jamie Hepburn: A reason for our having this meeting is that the leader of the council in the Western Isles suggested that there should be a mechanism for providing loans. The council said in its submission:

“In the Western Isles we have found that there are a number of people who do not meet any of the Community Care Grant criteria but have no way of settling themselves in a tenancy properly.”

How can local authorities help people in such circumstances? It has been interesting to hear you express the concern about payday lenders that we all share. I am a great supporter of the credit union movement and I have heard it suggested that credit unions are the alternative to payday lending, but Mr O’Neill seems to be suggesting that that is not really the case—I might have picked you up wrongly. I think that you said that solution is better than cure, but what is the solution?

Nicola Dickie: I think that that is a question for someone a lot more educated than me.

Loans are still available under English local welfare provision. According to the evaluation published by the Local Government Association down there, loans in England were provided by credit unions but underwritten by local government, and statistics show that only £6,000 of the £31,000 that had been borrowed had been paid back. That does not appear to me to be a sustainable model for local government with regard to safeguarding the finances that are potentially available to the fund.

Jamie Hepburn: I get that. My question was perhaps too rambling and too long, so I will go back to the fundamental point. According to the Western Isles Council, people who do not meet the criteria for the community care grant are still facing problems with settling into their tenancy, but it strikes me that the local authority must still have a role to play here. If the answer is not loans and the Scottish welfare fund cannot be used, what is the answer?

Nicola Dickie: A lot of local authorities have many other discretionary funds available through their housing or homelessness colleagues, and perhaps the answer is to find a way of joining up that support and trying to make the best possible links. We are also working with the reuse sector to get as many schemes as we can off the ground and allow customers to get alternative furnishings instead of their using payday lenders to buy brand-new furniture. We are trying to firm up that work and ensure that we get local solutions, but, again, the situation is not the same across the country. We need to think about services and match up what local authorities can do at the moment and what we can start to think about in the future.

Jamie Hepburn: You mentioned better linkages between various elements of local authorities. I know that you were here for the previous evidence session, and I want to ask you a question on the back of it. I was really struck by the fact that not one of the individuals who came before us in that session—who, I should add, have all gone through the Scottish welfare fund process and some of whom have had contact with other parts of the local authority, be it housing, social work or whatever—said yes when I asked whether any part of the local authority had made them aware of the Scottish welfare fund. That is a clear failure in the system, and it would be remiss of me not to ask you as COSLA’s development manager of the fund how we ensure that we do not get the same answer if, in a year’s time, I or another member of this committee ask an equivalent group of people the same question.

Nicola Dickie: I should point out that, in the previous session, only two local authorities were mentioned. I think that you will find that, across Scotland, there are varying degrees of knowledge of the welfare fund.

Jamie Hepburn: But you will appreciate that as I and the convener represent one of those local
authority areas we are particularly concerned about the situation.

**Nicola Dickie:** I should say in North Lanarkshire’s defence that the application form is a standard one and that all the paper application forms are that long. It is not that North Lanarkshire is asking for anything different.

**Jamie Hepburn:** The application form is a separate and, I think, pretty straightforward issue to deal with; to me, the issue that we are discussing about what various parts of the local authority are doing is more serious. When constituents contact me, they do not say, “I contacted the Scottish welfare fund”; they might talk about housing, social work or other departments, but they think of it all as the council. They think that the council is one entity, as well they might. I understand and appreciate your point that only two local authorities were mentioned in the previous session, but my question is how we get different parts of a local authority talking about these things?

**Nicola Dickie:** When we were preparing our submission for the committee, we met housing associations and the Scottish Federation of Housing Associations, and it was flagged up to us that knowledge among registered social landlords was not where it should have been. We also know that we need to work to bring on board housing officers in local authorities that have their own housing stock.

Similarly, a lot of work is going on in social work departments on the idea of the corporate parent and ensuring that the welfare fund is foremost in people’s minds. That is what COSLA will be doing over the coming months. We still regularly see and brief the decision makers who make Scottish welfare fund payments and try to make them aware of the issues that customers are coming up against, but as part of that wider group we are working with stakeholders, if you like, to ensure that we are getting the Scottish welfare fund on their radars as best we can.

**Jamie Hepburn:** I do not think that, with the best will in the world, it should be difficult to achieve that. After all, you are not asking these people to process anything; you are just asking them to say, “There is also the Scottish welfare fund, and this is where you go to apply for it.”

**Nicola Dickie:** We have identified lots of good practice. Some local authorities have briefed specific groups of people. We have to share that practice where it is producing good results. Some local authorities have briefed health visitors or people who provide tuck-in services for the elderly. We have to make sure that all local authorities know what good practice is and what is going on elsewhere. As you say, it should not be difficult to crack this.

**Kevin Stewart:** Our previous witnesses in the main accessed the fund when they became new tenants—I think that happened in almost every case. Some local authorities and housing associations provide tenants with a welcome booklet with information about when their refuse collection is and how they access this, that and the other service. Why is that not happening all over the place? That good practice has existed in some places for a very long time. How can we make sure that it spreads throughout the country? How can we ensure that the welfare fund is advertised in those booklets?

**Nicola Dickie:** When I listened to the previous evidence session, I noted down that point to take back to local authorities to make sure that as many of them as possible get that information out to their new tenants. There is still a lot of good will in local government about the Scottish welfare fund; it is still very high up the agenda. We will take that issue around the housing groups to make sure that we can get it on the agenda.

**Ken Macintosh:** I have questions for Jackie Croomer and Dermot O’Neill. To what extent are you already being approached by clients who have applied for a crisis grant or a community care grant but have been turned down? To what extent are those people already on your doorstep and to what extent are you meeting that need?

**Jackie Cropper:** We try not to duplicate a service that is already out there. There are not enough funds out there to fund everything in duplicate, so we work with other organisations. For example, we work with the Govan Law Centre in Glasgow, which runs surgeries once a week for us and does appeals for people. We get a huge number of people coming in. We have some customers coming in who I would say are near suicidal. They do not know what to do or what path to take. We have to intervene when people come to us in crisis at such times. We work alongside an organisation that already knows what it is doing to make sure that people get the help that they need and have someone to advocate on their behalf.

I am working with more and more people who are not only confused about what they are entitled to but feel that they are excluded from the system. We have a lot of people coming in who have private landlords. They might have a property for six months and then move to another landlord. We have a lot of people who are homeless in the sense that they are moving between different flats. Those people require other things.

As naive as it may sound, I do not understand why we are talking about loans when people are desperate for a washing machine or a sofa—I do...
not understand why those people are not getting a grant. There is something wrong with the system. We have single parents in crisis sitting there waiting for what they need. I do not get it. I do not get what we are trying to do. We should look again at how the grant system works. If someone in crisis is just going into a house, why are they getting rejected for a grant? Why are we even considering loans?

**Ken Macintosh:** I suppose that I am just trying to get a feel for the numbers. Have the people who approach you already been to the local authority? Have they received a crisis grant or community care grant or have they been turned down?

11:45

**Jackie Cropper:** Some people have not gone anywhere. We signpost, obviously, and we work with organisations such as the councils and housing associations to ensure that that does not happen. Other people have attempted to apply for money from the welfare fund and have been rejected, which is the point at which we hear about it. At that point, we step in and put in an appeal. Often, we know that the rejection was wrong. It could just be that, because they had no assistance, they filled in the form wrongly. That is a common thread.

There are people who end up in crisis because they have been rejected. They feel pretty desperate and become quite suicidal. That is what we should be thinking about. What is wrong with the system that means that people get to that point? I am not talking about people who are on drugs or are abusing alcohol—that is a different issue. I am talking about single parents and large families who are really struggling and cannot see how they are going to get through the next again day.

I can provide some statistics and information to the committee about what we have done, how much money we have saved and how some of the people have moved on—some of them, like the people you heard from earlier, are training to help others who have been in the sort of crisis that they have been in.

**Ken Macintosh:** That would be useful. Could Dermot O'Neill answer the same question, from the credit union point of view?

**Dermot O'Neill:** Before I do that, I want to add to Kevin Stewart's point about the welfare pack. As well as containing information about local refuse collection, the pack should say where the local credit unions are. That would help to establish that relationship at the point of entry, which would be useful should a crisis situation occur.

To answer your question, it is important to clarify that the typical credit union member is a typical citizen and is not necessarily someone from the specific group that we are referring to today.

We are not yet seeing any significant increase in the number of inquiries, either through referral or from members, in relation to a substitute or an alternative to welfare fund payments. That is primarily because those stakeholders who work with credit unions understand what credit unions are and, although the organisations that are supporting individuals are looking for solutions, they might decide that a credit union might not be the right solution for that person at that time. It might be the case that the movement is not being exposed to that group, as opposed to that group not being there.

**Ken Macintosh:** To be honest, I am not even sure whether credit unions would gather that kind of information.

**Dermot O'Neill:** There is no standardised gathering of that information. There will be localised management information about the purpose of loans, but there is no Scotland-wide gathering of those numbers.

**Ken Macintosh:** But you are not aware that people are being referred to you inappropriately, as it were.

**Dermot O'Neill:** That is not our experience.

**Ken Macintosh:** Do you ever say to people who approach you for a loan that they should go to the local authority?

**Dermot O'Neill:** The fourth object of credit unions, as defined by legislation, is the promotion of the wise use of money by members. That can be done either internally or, where that capacity does not exist, by referring them to money advice organisations that support credit unions. That approach is built into what credit unions are.

What will determine a credit union’s appetite to lend is, simply, the member’s capacity to repay. Nicola Dickie made an interesting point about the experience down south of the likelihood of repayment. COSLA and the Western Isles Council both reference the low rates of repayment. It is worth using the example that I used earlier, which is that, if £100 loaned by a credit union over three months is written off, 43 other loans are required to offset that one loan. That demonstrates the extremely narrow margins that credit unions operate within. Even if credit unions made use of the legal maximum limit that we can lend at—3 per cent per month, or 42.6 per cent annual percentage rate—it would still require 14 other loans to offset a £100 loan that is written off.

Those are some of the pressures on credit unions. One potential solution is a loan guarantee.
fund. However, credit unions would be nervous about a loan guarantee fund’s purpose. Yes, it would insulate the lending credit union from a direct financial shock, but we would be nervous about the unquantifiable damage to reputation from avoidance bragging, for want of a better phrase. The shift of risk from credit union resources to whoever underwrites the loan guarantee fund would minimise the financial risk but would not in any way minimise the reputational risk.

Ken Macintosh: I will return to that in a second, because I wanted to ask a question about that very thing.

There is loan defaulting in the current system among those who qualify for crisis grants. However, we are talking about people who do not qualify for crisis grants; as described in the Western Isles submission they are on a low income and have some means, but they are not vulnerable and do not meet any of the criteria to qualify for crisis grants. Such people are not necessarily high risk; they are in difficulty but they are not necessarily loan defaulters.

Dermot O’Neill: Sure. Loan repayment is ultimately determined by a member’s capacity and inclination to repay.

The DWP undertook a study in 2012 that was a precursor to the credit union expansion programme. It identified that there were 1 million potential new members for credit unions across the UK in the “lower income groups”. The same report said that of those 1 million potential new members, around 50 per cent had difficulties maintaining existing credit agreements.

If we are looking at a potential target market of 1 million new members and one in two is currently experiencing difficulty in maintaining credit agreements, we suggest that it would be irresponsible for credit unions—or any lender—to extend more credit to those people, which would further indebt them and exacerbate the cycle of debt.

We should go back to the start and ask why someone’s income is insufficient. Let us address that. As much as we want to help everybody all of the time, it is simply impossible. Credit unions are not a panacea for the financial ills of society. More deep-rooted questions need to be considered before we look at using credit unions as a potential sticking plaster.

Ken Macintosh: I entirely agree. I have a couple of other questions about the potential of credit unions, Grand Central Savings and other such organisations to help. I am conscious that geographically you do not cover the whole of Scotland. Are there issues with that?

There are other steps that the Government could take. A loan guarantee fund would be a step in the right direction and perhaps could be supported by other expansionary measures. If credit unions could be helped to expand so that they were available to the whole population and offered similar services to banks, I am sure that many people in Scotland would love to move from their bank to a credit union.

Is there a package of measures that would allow credit unions to expand simultaneously to cover both the general population and the particularly vulnerable section of our community?

Dermot O’Neill: A DWP initiative to inject £38 million into the UK credit union sector is already under way, under the remit of modernisation and expansion. One of its outputs was to encourage credit unions that were so minded to sophisticate and expand their products and services. Some credit unions are engaged in that exercise.

Whether credit unions will be an alternative to banks is a longer-term process. Just now, every credit union is a savings and loans co-operative and, as you will know, every credit union is an independent, autonomous organisation, so there is no way in which we can mobilise credit unions collectively in one direction. It is up to each credit union to determine in which direction they want to move.

The key point is that credit unions can become more involved in this space only at the same time as they are providing high-value, long-term loans. I have laboured that point because, if credit unions were to grow their business through short-term, low-value loans, they would unintentionally foster an unsustainable business model that would lead to grant dependency, weaken the organisation’s financial resilience and inhibit what credit unions can be.

It is really important that any activity that credit unions undertake has a balance and a spread of membership.

Ken Macintosh: We had an interesting presentation from an American credit union a few weeks ago, and we heard in particular about competing commercially with car loans as a model for expansion.

I ask Jackie Cropper to comment on the geographical limits that apply to credit unions. It is clear that you offer a vital service, but it does not cover the whole country, does it?

Jackie Cropper: Certainly not at the moment. We are open in Greenock and in three areas in Glasgow. We are moving into Midlothian, and we are going to move into Clackmannanshire. The
idea is to widen the scope in Scotland over the next five years.

We do not charge our customers but work alongside housing associations and councils and get them to buy in our service, which we then deliver. However, the money that councils and housing associations have to buy into the service has been more restricted, so it has taken a lot longer for Grand Central Savings to develop—that has been the stumbling block.

We would like to get out to as many people in Scotland as possible. Grand Central Savings is about people, and as long as people need this service, we need to get out there and provide it.

I would really like to do some work on remote areas. Some research is needed on that, and on how we could operate a different model there.

Another thing that we added at Grand Central Savings recently is what we call the HomeGuard account, whereby we can directly pay for people before they actually get the money into their account. We can pay for things such as rent arrears, but we work with the person on the whole package. It is a bit like a jam-jar account.

We are trying to expand that service, and to let councils and housing associations see its value, particularly if universal credit comes in, because we can prevent the money from going straight into people’s hands. I know from the people I work with that—believe me—there is going to be a lot of debt in the councils and housing associations.

At the moment we are supported by the lottery and we are going to the Scottish Government—we may as well warn you—to see if we can get some additional help. However, the councils and housing associations also need some help. They are keen on working with us and on us being out in their communities, but it is a question of getting the funding package together.

We try to keep the cost as low as possible and we have changed our model to make things easier, because getting the service out is what I am more interested in.

I hope that I have answered the question.

Ken Macintosh: Yes, you have. Thank you.

The Convener: Alex Johnstone wanted to ask a supplementary question.

Alex Johnstone: We have sort of moved on, but I will drag us back because I want to ask the question anyway.

When Jackie Cropper said that people who are in need and who apply sometimes get rejected, it brought me back to a comment that a member of the previous panel made. She appeared to have established that she would qualify for support under the fund in one local authority area, but was told that she did not qualify in another. Hopefully, the fund that we have in place is national and the one that will replace it will be national. How is it possible for someone to qualify in one local government area and not in another?

Nicola Dickie: I was here during the previous panel’s evidence and I heard the girl make that comment. I suspect that the issue was more to do with the flow of information. We have standard guidance, so the fund should not be different across the 32 local authorities in Scotland. Someone might qualify under a certain qualifying condition in one council, and the same qualifying conditions will be used by other councils. I suspect that the issue is not that the customer did not qualify; perhaps the information had not been passed from one council to another, or the second council might not have been aware of the customer’s circumstances. Although the fund is discretionary, the qualifying conditions are standard and are applied as standard across the country.

12:00

Alex Johnstone: Should that work better—and will it work better in future—or should we be looking into the matter as we scrutinise the bill?

Nicola Dickie: It is improving all the time, and we continue to meet local authority representatives. Both COSLA and the Scottish Government meet local authority representatives on a bimonthly basis. We get round the table and consider practical issues, such as customers moving across boundaries and customers needing assistance from one authority because they are moving to another authority area and they need help with their removal costs. That is the sort of stuff that we are improving, and we are sharing practice on that as we go along.

Annabelle Ewing: My understanding of that scenario was that the question was not whether the person would qualify for the welfare fund per se, but whether the second local authority was the relevant local authority to receive the application, because of issues around where domestic abuse policy meets and overrides housing policy considerations. That is where the issue lies, and I hope that there are ways of resolving it. I am sure that the person concerned will, with help, see what can be done.

As far as the issue of loans versus grants is concerned, it seems to me from what has been said today and from the evidence that we have received thus far that it is really only the Western Isles Council that has sought an extension of the bill to include loans. I do not get the sense that anybody else is clamouring for that, for all the
reasons that have been stated today and on previous occasions.

Let us consider the specific problem that the Western Isles Council has to deal with. Jackie Cropper mentioned remoteness and so on. We have discussed the coverage of credit unions generally, and I refer to Jackie Cropper's Grand Central Savings organisation. It may be that, over time, there will be possibilities to extend the coverage of both kinds of opportunities across other parts of Scotland, where they are currently not prevalent or do not exist at all.

At the moment, a number of people are affected—although it is not clear from the Western Isles Council's submission how many. They do not qualify for the fund but, nonetheless, they have problems obtaining affordable finance. As the submission makes clear, the issue relates specifically to the funding of white goods.

I note from Nicola Dickie's submission on behalf of COSLA that there is an interesting pilot project, which is part of the Scottish Government's resilience fund in Inverclyde, called the smarterbuys scheme. It will allow customers who are unable to access the social welfare fund to apply for new white goods at a lower APR. It has credit union buy-in, and it sounds like a very interesting scheme.

First, could Nicola Dickie tell us a wee bit more about it? Secondly, could Dermot O'Neill and Jackie Cropper comment on what they see as the opportunities for similar such schemes in other parts of Scotland, particularly remote areas, to deal with the particular problem that Western Isles Council has identified?

**Nicola Dickie:** The smarterbuys idea came from the north of England: a consortium there put the scheme together. Interested parties such as housing associations and local councils will put in some funding, which allows the scheme to be present in an area so that customers can access it. Those will not just be customers who have accessed the Scottish welfare fund. In Inverclyde, registered social landlords are leading the initiative, as they have had an issue with tenancy sustainment. The scheme forms part of their tenancy sustainment process, and the welfare fund people are piggybacking on it, because they think that it is a really good idea that they could get involved in.

Do you know a bit more about the set-up of the scheme, Jackie? I know that you guys were involved.

**Jackie Cropper:** We have been working with the initiative, which we think is a good one. We are working alongside the housing association and the council, and we are part of the financial inclusion group. It is an excellent initiative, which could be expanded. We are treating it as a pilot at the moment, but I think that there will be a bigger take-up. As the other witnesses said, it is much better to be given the washing machine than to be given the money for the washing machine, because sometimes we cannot be 100 per cent sure—I could tell you some stories—whether the money will go towards the washing machine. Do you know what I mean? I advocate that project and Grand Central Savings as part of it.

Can I answer the question about rural areas?

**Annabelle Ewing:** Yes.

**Jackie Cropper:** I am a true believer in different solutions for different areas. I looked at the paper from Western Isles Council, and I believe that although it is all right for those of us who work in city centres to come up with a view with the people that we are working with, there need to be different solutions in rural areas. I am doing some research work with Dumfries and Galloway Council at the moment, and that is the sort of area that we would be looking at. One day, I might come back and say that Grand Central Savings believes that there is a need for a loan scheme in rural areas, so I would not dismiss what has been proposed. I am aware that, at the moment, I am talking from a city-centre perspective, but there will be different solutions for different areas.

**Dermot O'Neill:** On geographic coverage, there are few patches of Scotland that do not have a credit union option. The challenge is not whether a person has access to membership but what that membership brings in terms of the products and services on offer.

I was also at the meeting in the Parliament when the US representative was here. The advantage that the Americans have over the Scottish movement is that they have a 30-year march on us in terms of experience, but it was certainly great to have that reference point and that aspiration.

Credit unions have been involved in white goods schemes for about three years, primarily under the Co-operative Group. However, there are some significant challenges with the continuation of that arrangement, because the arrangement between borrower, lender and supplier is deemed to constitute a debtor-creditor-supplier arrangement, which, unfortunately, means that it is regulated by the Consumer Credit Act 1974. Credit unions are currently exempt from that act and so are exempt from the burden of regulation that comes along with it, therefore an increasing number of credit unions are opting out of white goods schemes as a result of the increased regulation attached to compliance with the Consumer Credit Act 1974. In fact, the recent UK Government consultation on the maximum interest rate stated that, should the
rate increase—which it did, from 2 per cent to 3 per cent—the exemption rate of the Consumer Credit Act 1974 would also lift in line with that, so that credit unions would remain exempt from the act in respect of the burden that it would place on credit unions. It is a significant challenge for credit unions to remain in or opt into such white goods schemes because of the regulation around such arrangements.

The Convener: I thank everyone for their evidence. Before we close, could Ken Macintosh tell us what meeting he was referring to, because I think some people might have thought that he was talking about something that was said at a meeting of this committee?

Ken Macintosh: I beg your pardon. It was a meeting hosted by John Wilson MSP, with visitors from Ventura County Credit Union in California and from both national credit union organisations.

Dermot O’Neill: It was in recognition of international credit union day, which was on 16 October, and representatives from Parliament and from the credit union movement attended.

The Convener: I wanted to clarify that so that anyone following the discussion would know what was being referred to. It was not anything that this committee has looked at specifically.

Thank you all for the information that you have given us. It has been interesting to explore that area; it is not something that we looked at initially but it became relevant because of evidence that we received, and your information will help us in our consideration of the bill.

12:10

Meeting continued in private until 12:24.
Scottish Parliament
Welfare Reform Committee

Tuesday 4 November 2014

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Michael McMahon): Good morning everyone, and welcome to the 16th meeting in 2014 of the Welfare Reform Committee. I ask everyone to make sure that mobile phones and other electronic devices are switched off or at least set to airplane mode.

Linda Fabiani has sent her apologies for today and the next few weeks. I do not know how many meetings she will have to miss, but she has been replaced this morning and during the period when she will not be available by her colleague Kenneth Gibson MSP. I welcome him to the committee.

Kenneth Gibson (Cunninghame North) (SNP): Thank you, convener. It is good to be back at the Welfare Reform Committee.

The Convener: Our first item of business is a decision on whether to take item 3, which is consideration of the evidence received on the Welfare Funds (Scotland) Bill, in private. Do members agree to do that?

Members indicated agreement.

Welfare Funds (Scotland) Bill: Stage 1

10:01

The Convener: Our second item of business is our final evidence-taking session on the Welfare Funds (Scotland) Bill. This week we will take evidence from the Scottish Public Services Ombudsman, the Office of the Social Fund Commissioner in Northern Ireland and the Minister for Housing and Welfare, Margaret Burgess.

I welcome our first panel. Karamjit Singh is the Social Fund Commissioner for Northern Ireland, Jim Martin is the Scottish Public Services Ombudsman, Niki Maclean is director at the SPSO and Paul McFadden is head of complaints standards at the SPSO.

I do not think that any of you have indicated that you want to make an opening statement. If you do not mind, Mr Martin, I will open up the discussion by going to your paper. In the second paragraph, you point out:

"the Bill ... is proposing to give the SPSO not simply a new area of jurisdiction but a new function, that of reviewing decisions."

Will you give us an idea of the type of change that that will involve, from your perspective?

Jim Martin (Scottish Public Services Ombudsman): The cases that will come through from the social welfare fund will differ from the standard complaints that we currently see. We will be looking at cases that require a decision to be made very quickly, particularly for vulnerable people.

The standard work that we do involves bodies under our jurisdiction going through a complaints process, the work coming to us and there being an investigation process thereafter. The bill will require us to work in a different way. We will need to look at whether local authorities have handled cases properly, whether the decision was correct and whether we should put another decision in place, in which case that decision will be binding. Different skills will be required by my team. The turnaround times will be different, as will the relationship with local authorities. We will need to get them to give us information more quickly.

As you will have seen from our submission, one issue is that it is difficult to plan for the new work because we do not have a clear idea of the numbers that will come through. Some of our current people will have to take on the work, but if the numbers reach the volume that the Scottish Government thinks, we will create a special unit within our office that will operate separately from the other work of the ombudsman’s office, dealing
specifically and only with these cases, so that we can get a fast turnaround and build up expertise and learning. A different kind of work will come.

The Convener: Another issue that you have raised, which has also come up in the evidence that we have taken before today, is the potential within the ambit of the bill for a local authority for whatever reason—it could be to reduce costs—to outsource the processing of the Scottish welfare fund. You highlight that that would have implications if you take responsibility for appeals.

How would you manage that? Everyone understands your role in adjudicating on decisions that are made by local authorities, but if a local authority passed responsibility for the administration to another agency, how problematic would it be for you to fulfil the role that you will be given?

Jim Martin: We would engage at the point at which a decision had been taken, and we would set out clearly the rules by which we would undertake the reviews that we would intend to do. In my view, people should not be disadvantaged in any way by any decision to outsource or not to outsource any function. We would therefore expect local authorities to ensure that we received material in the timescales that we would set for them and that the review process would apply as if the decisions were being taken by the local authorities. Our aim at the review stage would be to ensure that the people who required a decision to be taken quickly got that decision taken as quickly as possible. Therefore, we would require whoever had been involved in the first stage of decision making—regardless of who they were—to ensure that we had the information that we needed as quickly as possible so that we could arrive at a decision.

The Convener: You currently undertake investigations into decisions that are made on behalf of local authorities by agencies.

Jim Martin: Yes.

The Convener: That does not create any particular difficulties.

Jim Martin: No, it does not. We have to be aware, and bodies under our jurisdiction—it is not just local authorities that use arm’s-length organisations—have to be aware, that the fact that a function has been outsourced does not mean that the citizens who use their services should be disadvantaged in any way. We expect bodies under our jurisdiction to ensure that the complaints processes that those arm’s-length organisations use are the same as or better than the ones that the local authorities or other bodies use.

The Convener: Okay. That is pretty clear.

Another area that you highlight in your submission is article 6 of the European Convention on Human Rights. Rather than ask a specific question on that, I invite you to explain why you included it. Why is that a consideration in respect of the review process?

Jim Martin: It is an issue that has been raised in relation to that process. We have taken legal advice, and we are advised that it is likely that article 6 requirements are covered by the processes and procedures that the ombudsman’s office currently has and would be covered by the processes that we plan to put in place. Article 6 includes a provision to enable hearings to be held if that were appropriate. We want to ensure that, when we put in place the processes and procedures for the review system, they are compliant with article 6 and we will not have to waste time at some point in the future with anyone testing, through judicial review or in any other way, whether they are compliant. We have had discussions with the Government, the third sector and lots of lawyers in order to ensure that whatever review process we put in place will be, as far as we can make it, article 6 compliant.

The Convener: Okay. I open up the meeting to members’ questions.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): My first question is for the Social Fund Commissioner for Northern Ireland. Thank you for your submission. You say:

“Our independent status is important in giving confidence to customers who have already received two Agency decisions on their application which they are dissatisfied with.”

You perceive that the people you work with feel that it is important that you are independent of the decision makers. Can you set out why that is your perspective?

Karamjit Singh (Social Fund Commissioner for Northern Ireland): That is based on my experience. In 2012, the Westminster Parliament passed the Welfare Reform Act 2012, which, as you know, abolished the social fund across Great Britain. Up to then, for three years I was the social fund commissioner for both Great Britain and Northern Ireland. My experience since then, as the Social Fund Commissioner for Northern Ireland, has been the same as it was during that three-year period. When I engage with community groups and representatives of applicants, and when I look at the survey of the people who have applied to my office, which we carry out every six months and in which we ask them what it is about our office that they like, they often talk about our impartiality and perceived independence.

At the root of all this is the question of what we are looking for in any review process. I suggest
that the citizen is looking for timely decisions, high-quality decisions and decisions that promote confidence, and it is important that we have a process that is seen to be separate. It is interesting that, in the last complete year of the Great Britain social fund, which was the financial year 2011-12, 6,258 review cases came to my office from Scotland.

The following year, we moved into an abolition situation. In Northern Ireland, for 2013-14, my office received approximately 1,650 cases, give or take four or five. I accept that your interim welfare fund is different and does not cover loans, and that we had loans in the social fund, but nevertheless that is quite a significant difference in the numbers. I appreciate that, as the ombudsman said, you have challenges in thinking about the number of cases that you are likely to get in any process.

I am sorry for that long-winded answer.

Jamie Hepburn: Not at all—I appreciate it. I have two follow-up questions. First, it is for the Parliament to legislate for these matters in Scotland, but would your recommendation be that any second-tier review process should involve an independent organisation?

Karamjit Singh: I ought to declare an interest, in that, as well as being the Social Fund Commissioner for Northern Ireland, I am a part-time ombudsman in Northern Ireland. My view is that any review process should be user focused. Certainly, that is what we find when service users are actually asked what they want. Obviously, they want to use a review process because they are dissatisfied with the initial decision. The question that arises from that is: what will give them the most confidence? I suggest that an independent process is more likely to give confidence than one that rests within the same organisation, even though it is a different part of it. A large part of the issue is about perceptions.

Jamie Hepburn: You talked about the number of complaints that you receive in your current capacity and the complaints that you received in your former capacity when you had the role for Great Britain. You made the point that there was a bit of a difference because loans were involved. How many of the complaints pertained to a request for a loan? Do you have that information?

Karamjit Singh: Do you mean in terms of the Scottish cases?

Jamie Hepburn: Yes, and the Northern Ireland case load.

Karamjit Singh: To give some blanket figures from Northern Ireland, in the past year, just under 350,000 applications were made for grants and loans to the Social Security Agency—that was the first line. Around 78,000 were refused and 16,000 then went for internal review, of which 1,650 came to my office. The breakdown was that 1,406 of them related to community care grants, so only the remaining 220 or so related to loans. The cases were skewed very much towards grants. I am aware that your interim welfare fund and the proposed process will focus on grants rather than loans.

Jamie Hepburn: I have some questions for the ombudsman. Mr Martin, you state in your submission that your experience of the system in which council processes had multiple complaint stages was that it did not improve outcomes for the people who went through that process. Can you tell us a little more about that?

Jim Martin: The Parliament asked us to set up a simple and standardised complaints process for local authorities and all other public service bodies in Scotland. Paul McFadden has led on that. We found that, in the old system, some local authorities had four, five or even six levels of appeal against decisions on initial complaints and a lot of people dropped out or could not find their way through the system. Very little change was happening in the complaints system.

We have introduced a new two-stage system in local authorities, which simplifies and standardises the process and applies to all 32 local authorities in the same way. We are finding that more people are prepared to see their complaints through that process. The feedback that we have from local authorities is that it improves their contact with their customer base—the people who pay their council tax and to whom they provide services—so, all round, it appears to be improving the service.

Taking out as many layers as we possibly can and de-bureaucratising the systems seem to enable people to get through them more quickly and to improve the relationship between the body and the citizen.

10:15

Jamie Hepburn: You also speak of the need for an independent arbiter.

Jim Martin: Once we have the two-stage system, people can come to us. We are independent of local authorities, health boards and other public bodies. The fact that the numbers coming to us are increasing year on year—I think that, this year, we are looking at a 14 per cent increase on last year’s figures, which were up on the year before—means that people are increasingly aware of that independent route and making use of it.
Karamjit Singh is correct. The people who come to us tend to say that they are looking for impartiality. Paul McFadden and I were involved in creating the Police Complaints Commissioner for Scotland and, in that body’s first period, the question most consistently asked by people who came to us was, “Are you, or have you ever been, a police officer?” People were really looking for independence in the decision making.

Jamie Hepburn: In your submission, you say that the bill “will be the first time we will be able to specifically review a decision and to make a direct and binding change to that decision. While this is unusual for us, the Ombudsman role has proved a very flexible one and powers vary around the world. Such powers do exist elsewhere.”

Will you tell us a bit about the international comparison?

Jim Martin: The standard for ombudsmen generally throughout the world is that they make recommendations. In some countries, within certain jurisdictions, the ombudsman will take on, for example, a local government or health complaint that is about administration but will not take on a health complaint that concerns clinical judgment. In some cases, the powers and their impact differ. When some of my international colleagues make a decision, it tends to be a recommendation, but some—I am thinking particularly of ombudsmen in Australia—can make binding decisions in certain circumstances.

On the other side of the work that we do, I have always shied away from making binding decisions because I believe that the recommendation process that we have works. However, the kind of case that would come to us under the bill would be quite different. It would be about specific requests for specific sums under specific legislation. At that point, it is important that the decision that is made is final and binding.

Jamie Hepburn: So it would be fair to say that what the bill proposes is not without precedent and is manageable.

Jim Martin: It is certainly manageable. I would not want it to be read across to the rest of our work because we have been clear to say that, under the bill, we have been asked to consider and take on a separate area. In that area, binding powers are appropriate.

Ken Macintosh (Eastwood) (Lab): Will you expand on whether hearings are required to make the new service article 6 compliant? You say that you will provide complainants with the ability to have hearings but that you do not expect there to be many. Will complainants have a right to a hearing or will it be your decision to grant them one? How would that compare to other similar systems?

Jim Martin: If the Parliament decides that the matter should come to the ombudsman, we will, after consultation, publish rules in which we set out our obligations, timescales and processes. Within those rules, there will be an element that will allow people to request a hearing.

The decision as to whether a hearing would take place would be for me. I can foresee circumstances in which it might be appropriate to have one to test evidence, but my understanding of the experience of the independent review service for the social fund and the way that things operate currently in Belfast is that hearings are few and far between. We are trying to make provision to enable us to have the powers to investigate, as appropriate, when things come through. We are putting a new system in place so we need to allow for all eventualities.

Ken Macintosh: Mr Singh, is a hearing a right under the system as practised in Northern Ireland?

Karamjit Singh: No, it is not. We have worked on the basis that, ideally, we might want to have face-to-face contact between the applicant and a member of staff on every occasion but, obviously, that is not practical. One has to think about value for money and so on.

The question for us is how we ensure that we have a high-quality process for getting the right information and taking the right decision. We do that by getting the file from the agency so that we see everything that has gone before; we then have one case worker to deal with the entire case. They will pick up the telephone and have a telephone interview with the individual. We send a record of that telephone interview out to the individual.

We have a target for completing cases of 12 working days. In 2013-14, we took an average of 6.7 days to complete our cases so, clearly, we have managed to reduce that figure quite a lot. What is important here is that if we want to give confidence to people who are applying—certainly to the social fund and, I suggest, to your welfare fund—we have to think about the background characteristics of the people who apply. Many of them have multiple disadvantages. Poverty is certainly a key issue as well as vulnerability. Therefore, we have to think about having a system that is user focused. It seems to me that certainly what people want is a quick decision.

What is interesting for us is that, in 2013-14, we have had 1,650 cases in which people have sought a review— in other words, they have asked us to look at the decision again—whereas, just to put that figure in context, we have received only five complaints about our service and 81 other requests to look at cases again. Again, I stress that we have not found a lack of hearings to be a
problem. There is in theory the possibility of going to judicial review after our stage.

Ken Macintosh: You have 1,600 cases in a year. Roughly how many hearings have there been?

Karamjit Singh: We have had no hearings.

Ken Macintosh: No hearings at all?

Karamjit Singh: No, we have used telephone interviews. That is my point. We have not used hearings.

Ken Macintosh: Do you have the ability to use hearings if you want to?

Karamjit Singh: We do not have anything in statute, but in theory we could arrange to go to see the individual applicant. The provision that we have, interestingly, is that we could make home visits if we felt that that was appropriate. However, we would do that only if we felt that there were some serious inaccuracies in what was being said and we needed to make that visit. That tends not to be how we undertake what we do. However, we think very seriously about how we can promote confidence on the part of the people who are applying and their representatives.

Ken Macintosh: Just to clarify, is it your understanding, Mr Martin, that access to a hearing has to be written into the legislation to make it compliant with article 6 of the ECHR? How will it work? Do you intend to use telephone interviews?

Jim Martin: We intend to follow a lot of what has been happening in Belfast. We have been to see what they do in Belfast and Birmingham. On the point about article 6, the issue has been raised with us and we want to try to future proof the processes that we put in. Putting enabling powers in the legislation to have a hearing would certainly future proof it, but I can also see circumstances in which it might be useful to have two people in a room who have two different versions of what happened and to test that out between them.

Ken Macintosh: Just a quick point—you said in your submission that you want the ability of the SPSO to make rules to be in the legislation. You can draw up rules anyway, but you want that to be in the bill. Why does it have to be in the bill?

Jim Martin: Third sector bodies are strongly of the view that the bill should state clearly that there is a duty to do something. It would help to build confidence in the system if that is there. It should not simply be left to me to determine whether there are rules and whether the rules are published. It is important that the system is transparent and open and that everyone can see what the rules are, and whoever comes after me must be as committed to that as I am.

Ken Macintosh: I have a couple of other questions on a different issue—about complaints, appeals, timelines and so on—but maybe other members should come in first.

The Convener: We will go to the other members first. If they ask those questions, that will save us from having to come back to Ken Macintosh.

Kevin Stewart (Aberdeen Central) (SNP): My question is for Mr Martin. Mr Martin and I have come across each other on a number of occasions, because he has appeared before the Local Government and Regeneration Committee at least on an annual basis.

It would be fair to say that there are a number of critics of the ombudsman service, and I can imagine that some of them will be wondering why you feel that your service can take on additional workload. How do you foresee the service handling that additional workload? You mentioned some numbers earlier, and you talked about flexibility and about the possibility of setting up a stand-alone team. How do you foresee that happening?

Jim Martin: We can either have our annual spat now or have it in front of the Local Government and Regeneration Committee in January.

The Convener: I suggest that you wait until you are before the Local Government and Regeneration Committee.

Jim Martin: I was going to suggest that we do that. Like any other public body, we have our critics. I am sure that this committee will have its critics once it comes to a decision, because the evidence that you have heard so far has been quite polarised. An ombudsman tends to deal with cases that are purely polarised, so there are critics on either side. However, we can deal with that in January, and I look forward to it.

On the additional workload, I should make it clear that it is not a case of the ombudsman's office going looking for something. We were asked to set out how we would handle that workload if it were to come to us. It is different from the work that we do, it is additional and it will require some resourcing. I agree with the view of the Finance Committee, but my worry is that until we see the numbers that are coming through, it will be very difficult to plan for the resource base that will be needed to handle that workload.

If, for example, the number of reviews requested falls below 400, which is a reasonable low benchmark figure, setting up a separate unit within my office is not viable, is not a good use of public money and is not something that we would do. We would try to look at using some of the resource that we had to retrain people and get them aligned...
with the demands of the workload. We will need some funding and support to do that, but we will have to wait and see how much.

At the top end, a figure of 2,000 has been suggested and, given that Karamjit Singh has mentioned the figure of 1,650 for Northern Ireland, that does not seem to be such a wild estimate. If the figures were at that end, we would look at what we need in terms of fixed costs—Niki Maclean can answer any questions about how we arrive at those costs—and what we need in terms of people to deal with that workload.

I hope that the Welfare Reform Committee will support the Finance Committee’s position that the issue should be reviewed. To do so six months in might be too soon, but certainly after a year we should review whether the funding is adequate, too much or too little. I agree with the Finance Committee recommendation that, in our 2016-17 submission to the Scottish Parliamentary Corporate Body, we should show not only how many cases we have dealt with but project forward what we are likely to deal with.

We are just going to have to start it, to find out what the impact will be. We could talk for ever about what might happen, but once we see what happens on the ground we can go ahead. I assure the committee that it is not my intention to put in place anything that cannot be collapsible should the numbers not come, and that, if I find that I have insufficient resource, I will talk to the corporate body and ask it to raise the matter with the Government.

10:30

**Kevin Stewart:** That is extremely useful. The Finance Committee report, which is also useful, shows that, according to the evidence that it has taken from Argyll and Bute Council and the civil servants, there were only 144 second-tier reviews in the first year, although we all know that these things can change. Are you privy to any information about those second-tier reviews and how long the processes took? What costs of those reviews were borne by local authorities?

**Jim Martin:** You will see from the evidence that you have got from the local authorities that the 32 councils are operating by and large in different ways to suit their own circumstances. The minister is on the next panel, and she will undoubtedly have better information than I do. The information that I have heard is that, in the first quarter this year, there were probably around 75 second-tier reviews. If that is correct, it will take us to a bottom end of around 300 or 400 during the course of the year.

You would have to ask the local authorities about the costing element of that. I see in some of the evidence that the committee has had that some councils are quite clear about how much it is costing them, but I do not see any numbers for others. The committee is probably in a far better position to get that number from local authorities than I am.

**Kevin Stewart:** Thank you.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** I have a few questions that pick up on what has gone before. Mr Martin, from the discussions that have taken place thus far what do you expect the grounds to be for the second-tier review?

**Jim Martin:** Paul McFadden has been working on that.

**Paul McFadden (Scottish Public Services Ombudsman):** Jim Martin outlined our existing role in relation to Scottish welfare fund complaints. Our current role is to look at issues to do with maladministration—for example, whether Scottish Government guidance policy has been applied correctly, whether Scottish decisions have been made in the way in which the Government had set out, whether factual errors have been made, and whether decisions have been made clearly. The key difference with the new role is that we will have a legal power to remake the decision about what to award based on the merits of that decision and guidance. We will continue to look at all the things that we look at now—whether the guidance and criteria were applied correctly and whether the decision was explained clearly—as well as at whether the discretionary decision that the local authority made was correct.

**Annabelle Ewing:** That is helpful. The discretionary nature of the fund begs the question of how you can look at an appeal without considering the key test of whether any reasonable council could have reached that decision. That test tends to be used quite often in areas of discretion in administration in public life.

I am just trying to get at where the need for a hearing comes in. You talked about whether discretion has been properly exercised, and on page 4 of your submission you talk about how hearings may be necessary “in circumstances where there are critical facts in dispute”.

I am looking further down the line and taking into account the fact that there would have been a first-tier review in the council, so I wonder to what extent critical facts would still be in dispute at the second-tier level, which begs the question of why there should be a hearing.

**Jim Martin:** I will take a practical example of where discretion would be used. Each local authority may determine for itself the criteria that it applies when looking at a case to decide whether
it is high, medium or low priority. That may vary from council to council.

You might also have councils that are taking decisions on relatively similar cases but which are in different financial positions. In some cases there might be funds available, but in others the fund might be exhausted. We will have to consider each case that arises against the legislation. Where there is discretion for local authorities and others to apply their own judgment, we will have to consider whether that judgment is reasonable and fair. If we get a case where the fund is exhausted, the fact that the local authority does not have the money will probably be an issue for discussion between local government and central Government, rather than between local government and the ombudsman. There might be a situation in which a case is declined in a period when funds are available but by the time the review takes place the funds are exhausted. At that point, we would get into pretty interesting territory.

Annabelle Ewing: I appreciate that it is difficult at this stage to anticipate all circumstances, but I felt it important to make the point about discretionary decision making and appeals.

Jim Martin: One of the things that I am committed to doing—if it is agreed that the SPSO should be the body that deals with this—is engaging with the third sector and local authorities about the practicalities of how it should be administered.

Annabelle Ewing: I will come to Mr Singh in a moment, because I know that he is keen to get in. A moment ago, I understood him to say that there is no formal provision for hearings in the system that he is in charge of in Northern Ireland but that that would not preclude telephone conversations, home visits and so on where necessary. Would that be a possible approach for the SPSO?

Jim Martin: Yes, where appropriate.

Annabelle Ewing: So there would not necessarily need to be a procedure for formal hearings to comply with article 6. It seems that in Northern Ireland they manage quite well without that.

Jim Martin: I think that the article 6 point is assuming greater significance than it possibly deserves. Based on the legal advice that we have had, we are trying to put something in that would future proof the process against challenge under article 6. In our view, making provision for hearings would do that. It could be a useful tool to have in our toolkit.

Annabelle Ewing: I invite Mr Singh to comment. I have another question to ask after he has done so.

Karamjit Singh: The thing to remember about the social fund legislation in Northern Ireland is that it is derived from legislation that the Westminster Parliament first passed in 1988, which was before article 6 issues were being thought about. The legal advice that I received as the commissioner some years ago was that the fact that someone who was dissatisfied with the external review process and the work that my office had done could make an application for judicial review made us article 6 compliant. That was the advice that we had, although it was never tested in court.

The word "discretionary" really refers to the fact that you have a finite sum of money and, therefore, you have to take decisions looking at the individual circumstances of each case. It is quite interesting that in 2013-14, in the cases that we received, we found fault in 25 per cent of the decisions that the agency took. There is also an internal review process within the agency. The first thing that my inspectors do when they receive an application is ask themselves whether the law has been interpreted correctly in the decision-making process and whether the decision that has been arrived at follows the principles of natural justice. If we are satisfied that that is not the case, we go on to the next stage. At that stage, we review the merits of the case. If we think that it has complied with the process and meets the guidance, we will not uphold the decision. Last year, we overturned 36 per cent of the cases that came to us.

At the second stage, we look at the merits of the case. The first question that we ask ourselves is whether there is any new evidence or change in the circumstances. We might well come to a view that the guidance has been misinterpreted and, therefore, we will overturn the decision.

Finally, we ensure that the decisions that we communicate are always a maximum of two sides in length. They always have the actual decision at the top, so that the applicant understands the decision that is being made, whether it is positive or negative from their point of view. We send the same letter to the agency and, at the bottom of the letter, we will also say if we have found an error with its reasoning. For example, it might not have asked the right questions, in which case we might say that there has been an inquisitorial error. We might say that there has been a qualification error: it might not have interpreted the guidance appropriately. Those are the things that we do.

I turn to the question of the budget, which Jim Martin has just touched on. The Department for Work and Pensions was responsible for the social fund across Great Britain from 1988 until 2013. It used to divide up the annual budget for the social fund among the 12 regions of Great Britain. Here in Scotland, there were offices in Springburn and
Inverness—there were two budgets here. I recall giving evidence to the Westminster Parliament’s Public Accounts Committee in 2011 when it was considering the operation of community care grants. One of the points that I made was that, depending on where in Great Britain people lived, they could end up with a different resolution despite having the same case, in theory. The question was raised whether that was appropriate. Secondly, different levels of complaints came from different parts of Great Britain.

There are issues about awareness of the review process and about how the operation of first-line decision making is undertaken. The really interesting thing is that the DWP tried to ensure that each of the 12 regions was aware that its budget had to carry it through the whole 12 months, so that there was never any question of the budget running out. That meant that the various high, medium and low priorities would alter during the year. Third sector representatives and applicants found that particularly difficult to understand and appreciate.

A lot of issues arise in that regard, and I would imagine that you might have similar emerging issues with your 32 local authorities.

Annabelle Ewing: Thank you for that background information.

I will ask about the opportunities around your judicial review processes. What is the incidence of judicial review? Has there been none? You say that it is a rare occurrence—it does not happen in practice—but has it happened at all?

Karamjit Singh: Judicial review is about process and not the decision that has been taken. It is about whether the process has been undertaken. The experience from 1988 until 2013 was that my office dealt with more than 600,000 social fund cases. I was the fourth social fund commissioner in that period.

I will put that in context. In GB, there were more than 6 million social fund applications at the front line. Against that background, there were 25 judicial review applications over the 25 years. Interestingly, 19 of those were in the first five years. Essentially, they were what I would call testing the system. They tested, for example, whether the social fund inspectors were interpreting the law correctly. Were the social fund inspectors demonstrating their independence appropriately? Those cases were ground setting. Interestingly, we then moved to having about six judicial reviews over about 20 years. That may or may not be your experience in the future.

10:45

Kenneth Gibson: Mr Martin, I will follow on from Kevin Stewart’s questions. You spoke about the viability of the process with regard to the SPSO’s ability to deal with second-tier reviews and mentioned that there were approximately 75 such reviews in the first quarter of this year.

North Ayrshire Council stated in its submission that, if there were 400 reviews a year, the costs involved would “not demonstrate value for money when compared to the cost of this service being provided by Scottish Councils.”

What happens if the number goes above 400? Perhaps you can tell us what the number might be.

According to the financial memorandum, the SPSO “may have to physically expand their estate to accommodate the expected number of staff required to undertake reviews.”

It seems that, at fewer than 400 reviews, there is an issue with the viability of the process and the cost per review. Once the number goes up to a certain level, however, there is almost a diseconomy of scale, because we may have to consider providing additional premises and staffing resources. At which point does the process cease to remain a workable prospect?

Niki Maclean (Scottish Public Services Ombudsman): I am happy to take that question. The information that local authorities provided to the Scottish Government when it undertook its original comparison of tribunals, local authorities and the SPSO suggests that a local government panel would cost approximately £520 per case, a tribunal would cost £420 and SPSO involvement would cost £200. That relates to the figure of 2,000 reviews. Obviously, it is for the committee to consider the matter but, even at the lower end of the spectrum, with 400 cases, the costs would probably be relatively similar to the estimated costs that local authorities gave.

As for the viability of the SPSO’s involvement, if the numbers fell below 400, we would need to consider whether it would be possible to absorb those cases in some way in our current operation. We would look at whether, rather than establishing a separate unit in the organisation, we could absorb the work in our current structures and management systems to keep costs to a minimum. It is difficult to say where the tipping point would be, but I believe that we are in any event talking about comparative costs at the level of 400 cases, given the predictions by local authorities.

Jim Martin: We are not free agents on accommodation, as we operate under the direction
of the Scottish Parliamentary Corporate Body. We lease part of our office to the Scottish Human Rights Commission as part of a shared services initiative to save cash, and that is working quite well. However, the building has physical constraints. If we tried to put another six or seven people in there, they would not fit. That throws up the issue of what happens then. Do we take some of the new work into our building and put some current SPSO work elsewhere? Do we move to new premises with other people? We have to think about that stuff.

The corporate body will need to grapple with those issues, because they are bigger than the simple question of how the SPSO can find a place for four people. There are better and smarter ways of addressing the issue, and there are economies of scale to be had in that calculation.

Kenneth Gibson: That is why I was talking about diseconomies of scale.

Jim Martin: It is worth flagging it up to the committee that discussions are going on with different parts of Government about other future increases in our jurisdiction, which might come along on roughly the same timescale. That might bring the matter to a head even before the issue that we are discussing arises.

Kenneth Gibson: How realistic is the possibility that you might get 2,000 cases? You have mentioned that there were 75 in the first quarter. It seems unlikely that there will be a huge surge to anything like 2,000 cases. Where is the analysis that suggests 2,000 as a potential figure?

Jim Martin: That has been baffling most of us—we have been trying to get our heads round it for a few months. I know that the minister is coming before the committee next, and I am sure that, with all the back-up that she has, she will give you a better answer than I can.

When the change was first mooted, we decided to go to the Birmingham office, before it was abolished. At that point, as Karamjit Singh said, there were about 6,200 Scottish complaints a year, so we thought that we would get about 6,000 cases a year. However, we then went to Belfast in Northern Ireland, which is roughly similar to but smaller than Scotland, and we found that the figure there was about 1,600. That kind of makes the figure of 2,000 viable.

The mistake that has been made—no, that is wrong; it was not a mistake. One thing that has not been given sufficient weight is that, under the welfare fund in Scotland, local authorities have taken a different approach to the solution to people’s problems. There has been effective signposting of people and pick-up by other parts of local authorities and other bodies, which has alleviated some of the problems that people have. Because the scheme is so young, we do not yet know whether that will reduce the number of people who want to go through the process and come to us for a review, or whether the issue is that there is not enough signposting of the processes and the number will grow in time.

Our experience has been that, when we have taken new areas into our jurisdiction, the number of cases has almost doubled. The two best examples of that are prisoner complaints and water complaints, on which the numbers coming to us doubled. That was also the case in 2005, when further and higher education complaints were brought into the SPSO, although that was before my time.

We might face a doubling of the numbers or more than that, but we just do not know, as it is not an exact science. That is why I urge the committee to build in as many reviews as possible in the first couple of years, to ensure that we do not build a big edifice when there are insufficient people for it and that we put in enough resources to give people the fast turnaround that they need.

Karamjit Singh: Jim Martin makes an important point—clearly, your local authorities might well be signposting people to other activities. We should not lose sight of the fact that, with any review process and particularly an independent one, we want not only to deal with individual cases for the customers and applicants as quickly as possible but to evaluate what is going on and learn the lessons. We want the organisations that take the original decisions to get it right first time and to learn the lessons on the processes.

At the end of the day, what matters is not how many cases come through, although that is of course relevant to the viability of any review process. The ultimate aim surely has to be to learn lessons and to consider how the original service providers—in this case, your local authorities—can learn lessons.

In my annual report, I publish data on the decisions by the various offices of the Social Security Agency that we have overturned, and I have meetings with the regional directors to discuss the issues that arise. It is in everyone’s interest that they learn the lessons and that their decision making becomes better.

Kenneth Gibson: You said that having appeals going to someone who is independent of the local authority is more palatable for applicants. Will that alone cause a significant increase in the number of people who put their case forward for review?

If I heard you correctly, you said that about 36 per cent of cases are upheld. Will that cause a surge in cases? You might not be able to say exactly, but how does that figure compare with the
figure for appeals being granted in local authorities?

Karamjit Singh: My difficulty is that I do not know too much about what is happening in Scotland. All that I can talk to you about is my experience from the Great Britain perspective. You might be interested to know that my Birmingham office overturned decisions in 42 per cent of cases. In Belfast, in the office for which I will have responsibility until the social fund is abolished in the welfare reforms in Northern Ireland, the figure is 36 per cent, although the figures differ for the various offices. In some offices the proportion is lower and in other offices the proportion is higher, so that raises questions about consistency or a lack of it in decision making, and it must raise questions about how people are learning lessons and applying the legislation.

It is also important that I go out and have discussions with third sector bodies. I talk to them about their experiences, because their representatives are assisting people who are making applications, so it is in everyone’s interests to get focused applications coming forward.

Kenneth Gibson: Could a high level of successful appeals encourage even more people to come forward with appeals, leading to a significant increase over a period?

Karamjit Singh: I bring you back to a figure that I quoted at the beginning. In Northern Ireland in 2013-14, we had just under 350,000 applications that went to the Social Security Agency, of which 41,000 were for community care grants, 131,000 were for crisis loans and 161,000 were for budgeting loans. The figures are in my evidence to the committee. Of those applications, just over 78,000 were refused, so the remainder were upheld.

It has not been my experience that the people who make such applications do so frivolously. People might have an incorrect sense of what they are entitled to under directions, but the overwhelming majority of applications are made because people are in difficult economic circumstances. That has certainly been my experience, and I have been the social fund commissioner for Great Britain and Northern Ireland and then for Northern Ireland since December 2009, so I have seen that picture for nearly five years.

It is inevitable that, in any complaints or review process, a number of applications might well have to be turned down because of conflicting evidence, but I do not think that we should work from the premise that people are making applications simply because, to put it bluntly, they are trying it on.

Kenneth Gibson: I was not suggesting that. Perhaps people feel that they are more likely to succeed if they know that other people have succeeded. It is not that they are trying it on but that they feel that they are due a fair hearing.

Karamjit Singh: I see where you are coming from. Whether high levels of cases in which decisions are overturned encourage more people to come forward is an interesting question. What I think encourages people to make an application, and something about which we get positive feedback from people, is the feeling that they are treated well during the review process. What encourages me most is that, when we have turned people down and said that we are sorry that the legislation does not allow us to make the grant, people nevertheless respond to our surveys by saying, “Although I didn’t receive a grant, I still felt that the way I was treated was fair and I appreciated the fact that you listened to me.”

That is important. The issue is not about acceding to every request but about how applications are dealt with. Ensuring that front-line decision makers, such as people working in your local authorities, respond positively is important, as is signposting. We all understand that we are operating in a process where public sector finances are under pressure, and we must ensure that we get high-quality decisions using finite resources. We all have to think about that, whether we are on the first line or part of an independent review process.

I do not know whether that answer was helpful to you.

Kenneth Gibson: Yes, thank you.

The Convener: Ken Macintosh indicated earlier that he has some further questions.

Ken Macintosh: There are two issues that I would like to raise. The first is a question for Mr Martin about review timelines. Mr Singh has indicated that the deadline within which his staff work is 12 days and that they have got it down to seven. What sort of timescale is the ombudsman working to and is that something that he will consult on or that he would expect the Government to regulate?

11:00

Jim Martin: I think that that is something that we would consult on. With great respect to my good friend Mr Singh, I point out that the actual time is calculated once all the papers in the case have been received.

Karamjit Singh: Absolutely.

Jim Martin: You have to add another four or five days at the front end. At the moment, we
calculate the time from the day the case arrives in our office.

Our aim is to set targets that take us at least to the level of the best practice that I have seen in Belfast—and, I hope, better than that—but whether we can achieve that will depend on volume, resource and all the other things that we have talked about. However, there will be an initial period in which we have to get people up to speed. You must remember that the people who operate the fund have been doing so for 25 years, have been using tried and tested processes and have not been dealing with 32 local authorities. Over the initial period, we will need to feel our way. We have a record of setting pretty challenging targets, and we would consult not just local authorities but the third sector and others about what the timescales should be.

Ken Macintosh: Are you trying to do this quickly because, as Mr Singh has made clear, speedy decisions ensure robust confidence in the process, or because you want to deal with the crisis that an applicant is in?

Jim Martin: We are trying to do both, but we want to ensure that the quality of the decision making is right.

Ken Macintosh: So the process will be driven more by quality and is not going to be crisis driven.

Jim Martin: No—although we will put in place a process that is designed to get the right answer as quickly as possible because we recognise that the people who are bringing cases to us are in need. The process might also require local authorities to work slightly differently with us, and I hope to do as much as I can with local authorities electronically to reduce that four or five day period at the front end.

Ken Macintosh: You already have a process and system for dealing with complaints about local authorities’ handling of applications, and now you are bringing in a new system. As you have flagged up, you will have a system for dealing with complaints and another for dealing with reviews of decisions, with different powers for your staff and different powers of adjudication. Who makes the decision? It strikes me that the decision whether to treat an application to the ombudsman as a review or as a complaint seems to be entirely yours. Is that your understanding?

Jim Martin: Yes.

Ken Macintosh: Is it also your understanding that any separate unit that you set up will deal only with reviews, or will it deal with reviews and complaints? Do you want to ensure that every case is treated both as a complaint and as a review?

Jim Martin: I know that you are against the clock, convener, so I will not go through the whole process. Our process enables us to get back to people very quickly about whether their complaint falls within our jurisdiction, whether it is competent for us to look at it and whether we can achieve the outcome that they want. At the front end of our organisation, we have people who are trained to look at whatever arrives either by telephone or on paper and to determine immediately whether it should go through the complaints process, the review process or, in some cases, both. Given that we do that all the time just now, that particular element does not give me any sleepless nights. The bit that worries me is getting the right amount of resource to deliver the service.

Ken Macintosh: You do not have the power to review decisions at the moment.

Jim Martin: No, but we have different jurisdictions coming in. If, for example, you were to write to me today on a social care issue, we would have to look at the social care element, the health element and what have you, so we train our people to do that.

Ken Macintosh: If you set up a special unit, will it deal with complaints and reviews?

Jim Martin: No. It will do the reviews.

Ken Macintosh: The unit will not look at complaints. As I understand it, if a case turns out to be a complaint, your decision has to be referred to the local authority for its view, which will, again, add time. Someone who applies for a review of a decision might do so because they do not agree with it, but they just want a quick decision and their money. However, the local authority wants—

Jim Martin: The review and the complaint that come to me can be either two separate things or interrelated. Under sections 7, 9 and 10, I think, of the Scottish Public Services Ombudsman Act 2002 someone who brings a complaint to me has to have gone through either a complaints process or a review process, and we are pretty confident that that enables us to move speedily on such matters.

Annabelle Ewing: I return to an important point that Mr Martin mentioned a moment ago, about hoping to work electronically. I hope that that is more than a hope, to be frank. The documents for an appeal of a first-tier decision should be sent using email and communicated immediately. Four or five days are not needed, I respectfully suggest. You could propose a deadline of 24 hours—subject to exceptional circumstances with computers crashing or whatever. We need to focus on speeding things up nowadays because administrative processes take far too long. We do the public a disservice if we do not actively examine how to speed things up.
Jim Martin: I agree whole-heartedly with that, and I hope that a lot of people read the Official Report of this meeting and see that written down.

Karamjit Singh: I will take up a point that Jim Martin made. We had an agreement with the DWP. Because we were dealing with paper files, largely, we would receive those files within four days, and our experience was that more than 90 per cent of the files came within four days. If a file took longer than 10 days, the practice in my office was to write to the applicant and tell them that the file was still at the DWP. We usually found that the matter was expedited.

I will follow up on a point that Mr Macintosh made. I note that you have crisis grants and community care grants here in Scotland, and I assume that the crisis grants deal with very urgent cases. For us, under the social fund, we have crisis loans, whereby people seek expenses for food and fuel. The target that we set in our office is 24 hours for those cases. I am happy to say that, in the 177 cases that we have had during the year, we met the target for all of them. My office has a clear receiving process that distinguishes on the ground of urgency, so that we can prioritise cases.

The Convener: We are up against the clock, but I must ask this question, as I am getting more and more confused by the information that I am getting on estimated numbers. Reference has been made to the numbers in Birmingham under the old system—I think that there was a figure of 6,000 appeals. The figure for Northern Ireland, which is in the documents, is about 1,650. The indications that we have had from local authorities so far are that there would be about 400 or 500, if we work from one quarter and the figures remain reasonably stable. You have both said that a figure of 2,000 in Scotland would not appear to be too far away from the mark. The population of Northern Ireland is about a third that of Scotland, but its figure is 1,650. The whole of the United Kingdom had 6,000 appeals. How do we arrive at a figure of 2,000 being a reasonable estimate of the number of appeals that we will have here?

Jim Martin: Others who will give evidence after me will be able to explain how we arrived at the number, but 6,000 is the number of appeals from Scotland that went to the independent review service.

The Convener: That is within the UK figure, right?

Jim Martin: The figure was 6,000; we are currently seeing about 400. We know that the number for Northern Ireland is 1,650. For planning purposes, we have had to arrive at numbers in order to think through what the implications would be if we reach a certain level of appeals. What the actual numbers will turn out to be is anyone’s guess at the moment. That is why, as I have said three or four times, building in a review will be very important.

Karamjit Singh: For the last complete year at the Birmingham office, which covered all of Great Britain, we had just over 48,000 cases, of which 6,250 were from Scotland.

The Convener: That is helpful for clarifying where the 6,000 figure comes from. However, if the figure was about 6,000 under the old system, if it is around 1,600 for Northern Ireland, and if Northern Ireland has about a third of the population of Scotland, it is very difficult to see how you can extrapolate that to a figure of 2,000.

Jim Martin: We have to be careful not to compare apples with pears. The local authority system in Scotland may well be directing people to routes where they were not previously being directed by the DWP. There might be a better qualitative response in Scotland, which is lowering the numbers that come through. I do not know that that is the case, but I suspect that it is. I do not know what impact that has on volume.

Considering the position of a manager having to think the matter through—as Niki Maclean will have to do pretty soon—it is very difficult to plan if we do not know what the actual numbers are going to be.

The Convener: That is a helpful answer.

Karamjit Singh: You should not forget that this is the 26th year that the social fund has been in operation in Northern Ireland. Here, you are dealing with an interim welfare fund that has been in place for less than two years, as I understand it. It is a case of ensuring that we do not compare apples with oranges.

Jim Martin: Or pears.

The Convener: That is always worth remembering as a good rule of thumb.

Thank you all very much for your contributions this morning, which have helped to clarify a few points. They have also raised further questions, which we will have to pursue elsewhere.

11:10

Meeting suspended.

11:21

On resuming—

The Convener: I welcome our second panel of witnesses, who are Margaret Burgess, the Minister for Housing and Welfare, Stuart Foubister from the Scottish Government legal directorate and Callum
Webster, the bill team leader. Good morning to you all, and thanks very much for coming.

I will start the ball rolling by asking a question that relates to the Delegated Powers and Law Reform Committee’s report on the bill. That committee queried why it has been considered appropriate to frame section 4(1) as being permissive, in that it allows the Scottish ministers to regulate to require local authority reviews, rather than requiring regulation that will put the review process in place. Why was that decision made?

The Minister for Housing and Welfare (Margaret Burgess): We have had a letter from the Delegated Powers and Law Reform Committee asking us to respond by the 25th of this month, and we are preparing our response to that. Stuart Foubister will deal with the technical issues.

Stuart Foubister (Scottish Government): As we indicated in a letter to the Delegated Powers and Law Reform Committee, there are various ways to draft the bill that would produce, in effect, the same result. The Delegated Powers and Law Reform Committee has expressed a wish for us to take a slightly different approach. From our preliminary analysis, we do not see difficulties with that, so I suspect that we will come more into line with what that committee is looking for.

The Convener: The Delegated Powers and Law Reform Committee said that there is “no good reason why there should not be a requirement to provide for the matters ... rather than this being discretionary.”

Do you think that it was on the right track when it raised those issues?

Stuart Foubister: The approach in the bill is to say that regulations can create a right of review and can say that not absolutely every decision is reviewable. That is still the policy, but there are different ways of achieving that. The bill could say that there shall be a right to review every decision except such decisions as are set out in regulations, which is the direction that the Delegated Powers and Law Reform Committee is pushing us in.

The Convener: We have been in this territory before in considering other aspects of legislation in relation to new powers that have been given under the welfare changes. The Delegated Powers and Law Reform Committee went into the same issues, and it has said:

“the regulations should be subject to the affirmative procedure, unless there is good reason why that procedure would not be suitable.”

Will the subordinate legislation be subject to affirmative procedure, or can you tell us the “good reason” why it will not be?

Stuart Foubister: As the minister said, we have not finalised our response to the Delegated Powers and Law Reform Committee, but I would be surprised if we were to see difficulties in moving to the affirmative procedure.

The Convener: In the evidence that we have taken, in particular in the evidence that we heard earlier this morning, questions have been raised about the costs of the Scottish Public Services Ombudsman becoming the appeal body for the SWF. The SPSO submission states that “other options” were considered for dealing with appeals. What were those other options and why was the SPSO considered to be the most cost effective?

Margaret Burgess: We looked at a number of options. One was to set up a completely new tribunal system, which would have been extremely costly for the fund. We also considered whether local authorities should provide the second-tier review service. The other option was the Scottish Public Services Ombudsman. It was clear early on from the committee and from what the Government said that we would look for independent review—review has to be independent of the Government. There was little support, outwith local authorities themselves, for local authorities providing the service. That option also came out as being more costly than using the ombudsman. The cost of setting up a full tribunal system simply to look at the Scottish welfare fund was prohibitive.

The Scottish Public Services Ombudsman is used to dealing with local authorities, albeit that it deals with complaints at present. In our discussions with the SPSO, it said that it felt that it has the skills and is willing to train its staff to review Scottish welfare fund decisions. That will certainly be cheaper than a tribunal and, in our view, it is a cheaper and better option than using local authorities, which would not be perceived as being an independent review system. We have said from the outset that independent review is the one thing that the interim fund lacks.

The Convener: In some of the evidence that we have received—in particular from local authorities, although we have heard it from other sources—concerns have been raised about the administration cost of the Scottish welfare fund. Some of the complaints are in opposition to one another. When the Finance Committee scrutinised the financial memorandum, concerns were raised about a cost of £5 million for administering a total fund of £33 million. Some people think that that is disproportionate, whereas local authorities and others said that the current funding for administration is insufficient. Local authorities feel
that they have not been provided with adequate resources to administer the fund, which indicates that they believe that £5 million will be too little to administer it. Do you have a view on either of those positions?

**Margaret Burgess:** At the outset, we made it clear that £5 million is sufficient. It is about 15 per cent of the total fund, which is more than would normally be allocated in a procurement exercise. The figure for administration costs is normally about 10 per cent, unless there are real complexities. The Convention of Scottish Local Authorities has said that 15 per cent is insufficient to administer the fund and it is conducting a benchmarking exercise. The Deputy First Minister has said that once the benchmarking is complete, if there is compelling evidence that demonstrates that the fund cannot be administered for the costs for which we believe it can be administered, she will look at the issue again. However, she will not do so until that evidence is placed in front of us.

**The Convener:** Such discussions always take place between local authorities and the Scottish Government—we understand that and we do our best to try to get to the bottom of the issues. At least there is agreement that the figures are not agreed to. We will have to wait to see how the discussions play out.

In the evidence earlier this morning, we heard that some of the additional costs of the new system that is proposed in the bill come from the fact that the Scottish Public Services Ombudsman will take on responsibility for an aspect of it. There are questions about how much that will cost—the accuracy of estimates is being queried. Ultimately, the SPSO is funded not by local authorities but by the Scottish Parliamentary Corporate Body. What discussions have taken place between the Scottish Government and the SPCB about additional costs to the SPSO?

**Margaret Burgess:** A number of discussions have taken place between the Scottish Government and the Scottish Parliamentary Corporate Body, which are the basis of our planning assumptions on how much we will transfer for administration costs and how much will be given to the SPCB to allow the SPSO to operate the system. Obviously, there is a cost to run the system over and above the cost of the reviews. That discussion with the corporate body has taken place.

11:30

**The Convener:** Are the figures that have been discussed and agreed in the public domain? Has the information been made available to the committee so that we can assess it?

**Margaret Burgess:** I am not aware of that. Perhaps the information has gone to the Finance Committee.

**Callum Webster (Scottish Government):** The figures, which came mostly from discussions with the SPSO in advance of the bill’s being introduced, are in the financial memorandum, so they have been made public.

**The Convener:** It is a question of knowing where to look for them. I am a member of the Finance Committee, as are other members around this table, and that issue never came up in the discussions that we had. However, it has come up now, so I wanted to know where we could look for the figures.

**Jamie Hepburn:** Notwithstanding Mr Foubister’s point that the Scottish Government will look sympathetically at the request from the Delegated Powers and Law Reform Committee to use affirmative rather than negative procedure, I wonder how widespread that concern is. I am looking at the Delegated Powers and Law Reform Committee’s report and I do not see it referring to much evidence that it has gathered, and nor can I recall any of the witnesses that have come to the Welfare Reform Committee suggesting that it is a burning issue. Has it been raised as a burning issue with the Government by anyone other than the Delegated Powers and Law Reform Committee?

**Margaret Burgess:** No. The issue has been raised only by that committee, and we have been asked to respond. We gave an initial response and we will complete our response, as requested, by 25 November. As Stuart Foubister said, we do not see any problems with what has been requested or how we can take it forward.

**Jamie Hepburn:** Okay, but the context is that only the Delegated Powers and Law Reform Committee has made the request, and not the Welfare Reform Committee—although to be fair, I say that we have not yet made our report.

**Margaret Burgess:** That is right. Only the Delegated Powers and Law Reform Committee has made that request.

**Jamie Hepburn:** The convener said that some members of this committee also sit on the Finance Committee. I am one of them, so I know that when Mr Webster came to give the Finance Committee evidence on the financial memorandum he was helpful in pointing out the specific cost differentials between the ombudsman taking on second-tier review and the tribunal service or some other body doing so. Could we have that set out again for the record? I know that you have said that there are considerable differences, but it might be helpful to quantify them.
Margaret Burgess: Do you want us to put that in writing or would you like us to go through what we have in our papers? We could certainly send that information to the committee. We looked at the costs per case, if that is what you are talking about.

Jamie Hepburn: Yes. I should make it clear that that was the context in which the information was provided to us before, so a per-case cost would be fine, from my perspective.

Margaret Burgess: Right. We reckon that the cost per case for the Scottish Public Services Ombudsman will be about £202, based on a planning assumption of 2,000 cases. We needed to make a planning assumption in order to calculate the cost. The tribunal cost would be £413, with much higher set-up costs, and the cost were local authorities to review would be anything from £420 to £500 per case. It will certainly be cheaper to use the ombudsman service.

However, I point out that we were looking not only at costs but at the integrity of the whole scheme, in order to ensure independent review that the public, users of the service, the third sector and local authorities would have confidence in. Once the system beds in, everyone must have confidence that we have a truly independent review process.

Jamie Hepburn: That point has been well made by a number of people who have given us evidence. However, we deal with financial realities and it seems to be clear that there is a substantial difference between what is being proposed in the bill and what the alternatives were, so that is helpful.

We heard some compelling evidence from individuals who have gone through the welfare fund process. I hope that it is not too patronising to describe them as young people. They came to the committee last week and I was struck by their evidence. A number of them had been in contact with various parts of their local authorities. The witnesses' evidence referred to two authorities: Glasgow City Council and North Lanarkshire Council. I was disappointed to hear that during contact with the housing department and social services they were never referred to or made aware of the Scottish welfare fund internally—that is, within the local authority.

We were able to explore the matter with witnesses from the Convention of Scottish Local Authorities who attended a subsequent evidence session, and they gave a commitment that things would improve. Is the Scottish Government aware of that issue? Only two local authorities were mentioned, but is that an issue, and are things being examined and improved upon in that regard?

Margaret Burgess: That is certainly not an issue that has been raised with me. I spent a lot of time during the recess going round local authorities and speaking to Scottish welfare fund teams, including those who are in the front line delivering the service and making the decisions. One thing that arose from that is that those teams have built up better relationships with other local authority departments.

We do not want to ignore the point that the young people made last week. We should address it, and we should ensure that the matter is addressed not just between the Scottish welfare fund teams and other council departments. We have to ask whether things are working between housing and other parts of the council, for example. Things should not just be going in one direction. I would be keen to examine that point.

As COSLA does, we wish to ensure that things that are not happening as they should do so in the future. We will certainly take up the matter in the guidance and among the practitioners group, which meets regularly. The Scottish Government funds a Scottish welfare fund officer to co-ordinate things between local authorities. We could certainly consider that matter. When relationships are getting built up in a certain way, we want to be absolutely sure that things are happening in both directions.

Kevin Stewart: The Finance Committee received evidence that there were only 144 second-tier reviews last year. That information came from Argyll and Bute Council and, I think, from one of your civil servants. However, there is an assumption that up to 2,000 cases could go to the SPSO. Are those assumptions based on the fact that not many folk, once they have gone through a first-tier review at local authority level under the current system, and with the second-tier review also going to local authorities, currently go to the ombudsman, even though they may do so, because they have already gone through the council and they do not think that they will get any further the second time around?

Margaret Burgess: That is perhaps one of the reasons. People feel that they have already asked for a first-tier review through the local authority, so going back down the same avenue for another review would perhaps not provide the result that they seek.

I anticipate that once we have an independent review service more reviews will take place. Third sector organisations will also assist people with reviews, which would be for the good of the scheme—it would be useful.

When we still had the social fund system under the DWP, the number of reviews in Scotland was more than 6,000. There is a huge difference
between 144 and 6,000—I absolutely accept that point—but we had to consider a planning assumption on which it was reasonable to base the costs in order to proceed. That is why we came to the figure of 2,000. It was not just plucked out of the air by the Scottish Government; it went through the reference committee, which includes local authorities, COSLA, the third sector and stakeholders. They felt that it was a reasonable assumption to plan on. That is how we arrived at that figure.

Kevin Stewart: We heard about 6,258 Scottish cases being handled at Birmingham previously, and about the 1,652 cases in Northern Ireland. As the earlier witnesses said, that can be like comparing apples with oranges. Furthermore, because the system is administered by local authorities here, it is possible to signpost people to other services if things are done right. That assumption takes into account the different way in which we are currently doing things here. The review group has obviously taken that into account as well.

Margaret Burgess: Absolutely. An assumption was made, and the figure will be reviewed again before the fund goes on to its permanent footing. The SPSO is aware that it is not a tablets-of-stone figure of 2,000. If it seems that the total will be less than that, the figure will be reviewed down the way.

Kevin Stewart: The ombudsman talked about having a constant review after the fund has been established. Is that in the Government’s plans? Beyond that, will you allow for flexibility, in case the numbers go up or down? Will there be that constant review?

Margaret Burgess: That is the point that I was trying to make a moment ago—but not very well, obviously. It is an assumption, and the figure can go up or down, according to what we see happening within the scheme, how the decision making takes place, and the number of people involved. The figure is based on the number of people who will be turned down for the scheme—that is where the reviews will come from. I repeat: that figure will be reviewed constantly by the Scottish Government.

Kevin Stewart: Will resources follow?

Margaret Burgess: Absolutely.

Kevin Stewart: I turn to the additional evidence that we have received from COSLA. Members received it this morning, which is not particularly helpful, but I understand that the minister has also had sight of it.

You said earlier that you want to ensure that administration costs are fair and set at a reasonable level. If we have a fund that is established to help those with the greatest need, it would be a great shame to see a large portion of that fund swallowed up by administration costs if that was not necessary. You have said that you think that 15 per cent is a reasonable figure. That is above what it would be under a normal procurement.

We have written evidence from COSLA saying that, under the old DWP system, the percentage going on administration was much higher. Is that partly down to the fact that, under the former DWP systems, a number of the payments were loans rather than grants, loans often being much more costly to administer? Would it be fair to say that?

Margaret Burgess: That would be part of it. To administer a central system, like the old DWP system, it is more costly to set up a loan system under which repayments have to be collected. That is very much part of the reason why the DWP system had such costs—at 20 per cent. We are not comparing like with like.

The Scottish Government topped up by £400,000 what we got from the DWP for local authorities to administer the system. We did that for the first year. Local authorities made representations that the top-up should continue for the next year, and we provided for that—we listened to what they said. We topped up what we got from the DWP for administration costs for local authorities.

If the benchmarking that is being carried out shows compelling evidence that it is costing more to administer the scheme, the Deputy First Minister will, as she has said clearly, examine the matter again. However, there is no additional funding this year—the Deputy First Minister has made that clear to COSLA.

Kevin Stewart: Some of the bits and pieces within the COSLA submission contradict what we have heard in evidence. Part of the submission says that it is much more costly for authorities to provide cash payments to customers. It says that the DWP was previously able to use Post Office accounts, and COSLA seems to think that that is not now possible. At the same time, we heard from some of our young witnesses last week that they sometimes had difficulty getting to the post office to deal with the cheque or voucher that they were getting.

Have you had involvement with and input into the benchmarking that COSLA is currently undertaking? Will you carefully consider what COSLA is saying? The experiences of individuals who have come before the committee seem to be different from what COSLA has come up with thus far.
Margaret Burgess: We are waiting on COSLA’s complete report, which I think it is going to send in the first instance to the Deputy First Minister. We will look at the report very carefully, but we want to drill down behind some of the issues that you mentioned in terms of the costs of paying out loans in cash as opposed to the DWP paying it out in different ways. If there is compelling evidence that there are costs attached to that, that is something that we would consider. However, we need to see the evidence and so far we have not got it.

Kevin Stewart: Okay. That is useful to know.

My final point is on best practice. Obviously, the COSLA benchmarking will find areas of good practice and areas of less good practice or even bad practice. How does the Government ensure that, to maximise the amount of money that is going to those folk in need and to put money to best use in helping poor folk, best practice is exported throughout the country?

Margaret Burgess: We constantly look at best practice in terms of practitioners’ meetings and where good practice is coming out. We fund the Scottish officer in COSLA to look at best practice across the board for the Scottish welfare fund to try to get the consistency and the sharing of best practice that we are looking for. We also have the reference group, which is constantly looking at sharing out good practice where it finds it.

When I did my tour of the welfare fund teams, I found out that those in the front line have benefited a lot from that work. Participation in the practitioners’ meetings is really important to them because it is a great way of people sharing experiences, learning about good practice and taking it back to their own teams; and we then have the officer looking at the practice overall.

I am not saying that we are where we should be yet, but all that work will continue. When the benchmarking report comes into the Scottish Government, we will look at how best practice is being shared across the board, what variance there is and generally how the fund is administered and what it costs.

Kenneth Gibson: I want to pursue the issues of drilling down and consistency. In drilling down, as well as looking at best practice you will look at comparative costs between local authorities. COSLA is talking about costs of 20 per cent across the board, but I would imagine that some would be considerably less than that and that some might even be more. In the benchmarking exercise, are you going to be looking at variabilities and variances to see why there might be such differences between local authorities?

Margaret Burgess: We certainly will be looking at that in terms of the benchmarking report, which we are waiting on COSLA to provide. We are also looking at whether costs for some local authorities might be more than for others, perhaps because some might have a higher demand on their fund and others might have a lower demand.

The current agreement on administration costs and the funding for awards to each local authority area was based at the outset on historical DWP applications. As we move into the permanent fund, we will discuss with COSLA having a more needs-based approach, which might spread costs in a different way.

Certainly, we will look across the board, and if there were huge discrepancies with or without demands on the scheme, we would look at the reasons for them. We might look at them and say “Well, wait a minute.” Presumably, when COSLA is doing its benchmarking, it will take that approach as well before it submits its final report to the Government.

Kenneth Gibson: That is very helpful, and it leads on to my next point.

Let us take administration out of the picture and look at the actual award of funds. The Finance Committee took evidence that suggested that, although some local authorities are under very severe pressure for the fund, others are not. There are differentials in terms of the promotion within each local authority, but I do not know what the Scottish Government is doing to encourage consistency of approach. Some local authorities are being much more prescriptive about who they make awards to. There is a postcode lottery: someone might get a grant in authority A but not authority B.

Are you looking for more consistency in how awards are made? If a local authority has a surplus towards the end of the year, will you look at reallocating the budget to an authority that is under pressure? How do you make those judgments, given that one local authority might reach its maximum simply because it is being more generous about which groups get priority, whereas another authority might have narrower criteria? How do you square the circle?

Margaret Burgess: We expect local authorities to manage their budgets for the scheme, which have historically been agreed by the COSLA distribution group. Some authorities will pay out only to high-priority applicants, because there is more strain on their budget. In another area, an authority might be able to make awards to medium or even low-priority applicants.

As I said, as we move into the permanent scheme, we must consider, in discussion with local authorities and COSLA, a more needs-based
approach to the funding. A finite amount of money is available in Scotland, and we want to ensure that it goes to the people who are most in need. We have to work towards that.

Kenneth Gibson: Mr Karamjit Singh, the Social Fund Commissioner for Northern Ireland, told us that there are potentially inconsistencies within the calendar year, because of the way in which budgets have to be allocated. Towards the beginning of the year an authority might be more cautious; towards the end of the year it might be less cautious about using up the budget.

What can be done to allow a bit more flexibility? It seems to me that some people are getting awards because of where they live and because of the time of year when they apply. If we cannot iron out the inconsistencies, surely there will be more appeals and second-tier reviews—and we have talked about the costs of that.

Margaret Burgess: There will always be differences between local authority areas. The scheme is a flexible one that allows local authorities to use discretion. I very much accept that in the first year local authorities exercised an element of caution as they looked at their budgets, particularly in the first six months of the scheme, because they anticipated that demand would increase. That meant that they had more money to distribute at the end of the year.

As the scheme goes on, authorities will learn about the peak points in their areas, when they are likely to get more applications—those points might come in the holidays and at Christmas, when family budgets are under strain. Authorities will be able to plan their spend over the year accordingly.

Under the previous DWP social fund, there were always local authorities who used up their budgets and could no longer pay out, while other authorities operated differently. I am not going to say that we can absolutely resolve the issue; I can say that we will look at a more needs-based approach as we go forward with the permanent scheme, to reduce the inconsistency that you are talking about.

It is important that we allow local authorities flexibility in how they operate the scheme. They know the issues in their areas and they will start to know when demand for awards might be high, for example if there is a problem to do with sanctions or if a factory shuts down at a certain time of year—as still happens in some parts of Scotland—and temporary staff are paid off. The ability to manage budgets to address demand at such periods is all part of the flexibility of the scheme.

Kenneth Gibson: In its report, the Finance Committee said: “it is vital that administration of the fund is supported by the appropriate resource levels and that growth in demand for assistance be recognised.”

The budget has been stable over three years, but more and more people are getting to know about the fund and more and more people will apply for it, so pressure will increase. As pressure increases, all else being equal, only more serious cases will be awarded grants, which could lead to more appeals. What examination is the Scottish Government undertaking of how the fund is resourced over the long term, given the rising demands?

Margaret Burgess: As you will be aware, the Scottish Government can plan how much is going into the fund only in the current spending review period. There will always be a finite amount of money to spend on the Scottish welfare fund, but some of the other preventive things that the Government is doing will, we hope, reduce some of the demand on it. However, it follows that, if the demand for the fund grows and grows, we will have to consider how it is resourced.

Any Government considers its priorities and, if the fund reduces inequality and assists those who are in poverty, we will have to examine the amount of money that is in it. The Cabinet Secretary for Finance, Employment and Sustainable Growth has been clear about what has been set aside for the fund until the end of the spending review period, but it does not just stop there. As the fund goes on to a permanent footing, we have to consider whether there will be more demand on it and whether there will be more reviews, which will mean more money being paid out. The Government will monitor that continually.

Kenneth Gibson: Okay. Thank you, minister.

Ken Macintosh: Thank you for coming along, minister. The Government has made various statements at various stages about its approach to welfare, not only about treating people with dignity and respect but about rebuilding trust in the welfare system. Is that an aim of the bill, or is it simply a technical bill? I think that the policy objectives stated that it is simply a bill to put the interim SWF arrangements on a statutory footing.

Margaret Burgess: That is the high-level aim of the bill. The operation of the system will come out in the statutory guidance and regulations.

As you say, the high-level aim of the bill was not about principles; it was to mirror what the section 30 order under the Scotland Act 1998 said. The regulations and the guidance will set out how the system operates. That links to the principles that you talked about: dignity, treating people in local communities with respect and ensuring, as best we can, that people are not destitute. That is what the teams on the ground do every day.
Ken Macintosh: Does it mark a different approach to welfare from that pursued by the UK Government? The UK Government’s Welfare Reform Act 2012 is intended to treat people with dignity and respect. Is there something different in the bill to which we should look and which marks a different approach to welfare?

Margaret Burgess: It is specifically about the Scottish welfare fund, which replaced the social fund, which the UK Government abolished. It is different from what is happening south of the border, where there is no national scheme like the welfare fund and some areas have no scheme at all.

The bill is about protecting vulnerable citizens, which is very much part of what the Scottish Government is about. The bill—initially, the section 30 order—was introduced to protect vulnerable people who were not being protected elsewhere in the UK.

Ken Macintosh: The Government’s expert group on welfare made a number of welcome suggestions, including to empower people to take control of their own lives and offer them choice in the way that they receive benefits. Has that influenced your approach to whether to offer people cash or awards in kind under the bill?

Margaret Burgess: We are clear in the bill that how local authorities administer the fund that they get is up to them. Although, in some instances, cash is the solution, the committee heard a lot of evidence to show how much those who make an application to the fund appreciate goods.

I will be honest and say that I had reservations at the outset about providing goods and other methods of payment but, after speaking to users of the fund and social fund teams, I concluded that, in many instances, they are the solution for people.

However, I would say that the vast majority of crisis grants are paid out in cash, to address the crisis at the time. We are very clear in the guidance, and we will be looking at it again to ensure that there is absolutely no stigmatisation of people if local authorities decide to pay out by voucher and that there is a good reason for doing so.

12:00

Ken Macintosh: But ultimately it is the local authority’s choice whether to pay out in cash. The Government is not saying that grants should be paid in cash or in kind; it is leaving the decision entirely to the local authority. You are not providing any guidance on that.

Margaret Burgess: We have guidance in terms of the expectation that crisis grants will be cash payments, unless local authorities have the option to pay out in vouchers. We are consulting on the guidance. The formal consultation on the guidance and the regulations will be taking place very shortly, and that is one of the areas that we will be consulting on. We will be looking at the number of grants that are paid out currently in vouchers and the reasons why they are paid out in vouchers, and we will consult again those who use the service and get financial help from it.

Ken Macintosh: Can you clarify that? Can we expect the regulations to suggest that crisis payments should be made in cash?

Margaret Burgess: Sorry—I did not say that. I said that at the moment local authorities have the discretion to pay in cash or vouchers. That is in the draft regulations—I think I am correct in saying that.

Ken Macintosh: So you are not going to recommend cash.

Margaret Burgess: We will be consulting on the draft regulations and the guidance on when payments should be made in cash and the reasons why in most instances payments should be made in cash—they are at the moment.

Ken Macintosh: That is fine. They are at the moment because it is the local authority’s choice. What I am asking is: does the Government have a view on whether the crisis payments should made in cash?

Margaret Burgess: The Government has a view that the crisis payments should be made in the way that suits the individual when the local authority is administering the fund, as long as the individual is getting the best service and getting the help from the fund that they require. That is the view; that is why that flexibility is there.

Ken Macintosh: So payments should be made in the best way possible, but it is entirely up to local authorities whether that is in cash or vouchers.

Margaret Burgess: It is up to local authorities to pay out in kind or vouchers if they wish to do so. However, we have made it very clear that stigmatisation is an issue that has to be considered.

Ken Macintosh: Okay. I will move on to another issue. The old DWP system used to have a one-day deadline for turning around decisions. The interim arrangements for the new welfare fund appear to have a two-day deadline, but we have heard quite worrying evidence from recipients and the voluntary sector that that deadline is quite damaging. If people are in crisis, they need the money right there and then—they do not need a two-day turnaround.
Margaret Burgess: I think that the majority of local authorities and teams work to a one-day deadline if all the information is there. The evidence suggests that 67 or 68 per cent of all grants are paid out on the same day. You are absolutely right that if people are in crisis they should expect money as soon as possible. There is no presumption of a two-day deadline; the presumption is to get things done as quickly as possible, if all the information that local authorities require to make the decision is there. I am certainly willing to look at that again.

I would be reluctant to change things, as that might force local authorities to make rushed decisions. For example, if we say that things must be done in 24 hours, a rushed decision might be taken, and the case might end up in a review. We need to get the balance right, but we have to be clear that decisions should be made as soon as possible. If all the information is there, the decision should be made on the same day, and I have found that that is what has been happening when I have talked to the teams. I have found that decisions have taken longer when another piece of information is required but perhaps the applicant has not come forward with it so it is not there. However, in a crisis, the presumption is that it should be a same-day decision.

Ken Macintosh: I quote Connor C, who gave evidence last week:

“I totally agree with Lana”—

Lana having said that the limit should be one day—

“There is no way that it takes 48 hours for them to make the decision. I applied for a crisis grant, which meant I was in crisis. How could anyone expect me to wait 48 hours, knowing that I was in crisis?”—[Official Report, Welfare Reform Committee, 28 October 2014 c 19.]

Are you suggesting that it takes longer because the applicants are not providing information?

Margaret Burgess: No. The teams I have spoken to around the country have given me examples of where they have been knocking their socks off. The people who deliver the Scottish welfare fund are much closer to the community that they represent. They see the real issues that people face on a daily basis, whereas perhaps before there was not that kind of contact with people in the area. They make every effort to pay out as soon as possible.

I am willing to look at any evidence from the committee and at what its report says on whether the deadline should be reduced to 24 hours. I am not saying that it must stay at 48 hours. If evidence suggests that the system would operate better with a shorter deadline, without that causing rushed decisions, I am more than willing to look at that evidence.

Ken Macintosh: Let me clarify that. You say that local authorities are closer to the community. The DWP had a 24-hour deadline. It is the Scottish Government that introduced a 48-hour deadline. Why have you increased the amount of time taken, if local authorities are closer to the communities involved?

Margaret Burgess: We consulted widely on the guidance for the current interim scheme with this committee, all our stakeholders and previous users of the DWP’s scheme. The figure of 48 hours arose from that.

We are not asking local authorities to work to 48 hours; we are asking them to process claims in a crisis as soon as possible. In most instances, that is done on the same day. When we consult on the guidance, we will look at the deadline. If there is evidence that anyone is dragging their heels and stretching processing time to 48 hours when the decision can be taken in 24 hours, I am willing to look at it.

Ken Macintosh: Let me put it to you the other way. Is there anything to suggest that, when the DWP managed to do this within 24 hours, it was rushing its decisions?

Margaret Burgess: No. What I would say, based on my experience—the years that I worked to help people apply for crisis and budgeting loans from the DWP—is that on many occasions the decision was not made within 24 hours. The DWP often did not have all the information—not because someone deliberately did not provide it, but because something was missing off the form.

At least when Scottish welfare fund teams handle claims, they are proactive in trying to get any missing piece of information. In many cases, they phone and get the information, and then the decision is made. The DWP’s 24-hour deadline for decisions applied only once all the information was there. Sometimes such a decision could take three weeks because the DWP said that it did not have all the information. I am simply saying that that is not happening now. We are trying to get those decisions taken as quickly as possible. We and local authorities are working to a same-day deadline. Going forward, 48 hours is the maximum that we are looking at.

Ken Macintosh: You are suggesting that the Scottish Government, with a 48-hour deadline, is doing better than DWP, with a 24-hour deadline.

Margaret Burgess: I think that we are doing better in getting the awards out to people. I say that from personal experience of 20-odd years working in the advice sector and working with the DWP. We are doing it better.

Ken Macintosh: Thank you. I think we will follow up by finding statistics on how well the
Government is doing compared to the DWP. I am not sure that what you suggest is backed up by the official figures.

Why have you put in a provision suggesting that you want to outsource or privatise the service?

Margaret Burgess: The provision was put in because local authorities and COSLA felt that they required the flexibility. At the time, I thought that any outsourced work would be outsourced to the third sector or a social enterprise. That is what we were looking at. I know that the provision has engendered a lot of interest in the committee. I have looked at it again, and I am waiting to see what the stage 1 report says on the matter. The provision was put in because it was felt that the potential for outsourcing would provide flexibility. I assume that any outsourcing would be to the third sector and not to anywhere else. Indeed, I do not assume that work will be outsourced at all.

COSLA and local authorities wanted that provision in the bill, but I am not precious about it, and it does not have to remain in place. I will simply look at the evidence in that regard; I have followed the committee’s discussions on the subject throughout the bill process.

Ken Macintosh: At present, the bill does not say that local authorities will have the power to outsource that work to the third sector or share it out among the public sector. The provision just mentions outsourcing.

Will you take this opportunity to rule out privatisation? Will you take that provision out of the bill?

Margaret Burgess: I certainly do not envisage privatisation taking place. I will look at the stage 1 report. I have never envisaged that the Scottish welfare fund would be privatised; that is not something that I would seek.

Annabelle Ewing: To pick up on a point that Ken Macintosh raised, I am looking at the Official Report of our meeting on 28 October, at which we heard from a lot of young people who were users of the system. It was a fantastic evidence session.

Mr Macintosh asked one of the young people whether she thought that the new system was more supportive than the old one, and she said that she thought that the new system, operated by local authorities, was indeed more supportive than the one operated by the Department for Work and Pensions.

On the subject of the 24-hour and 48-hour processing times, one issue that came up in last week’s evidence session concerned the desire for and possibility of a face-to-face interview. Obviously, getting into that territory could impact on turnaround times and so on, and there are competing priorities. At present, what facility is there—if any—for folk to have a face-to-face meeting? Some people feel much more comfortable with that.

Margaret Burgess: There is nothing at present that prevents a face-to-face interview from taking place. One of my colleagues may correct me on this, but I think that we said at the outset that local authorities had to offer two methods of receiving application forms. Am I correct?

Callum Webster: Yes.

Margaret Burgess: Some authorities take telephone and online applications, or applications from the third sector. There is nothing to prevent face-to-face contact, but that could slow the process down.

There is some evidence that the most vulnerable people are making their application with the assistance of another agency, so they have a face-to-face interview at that point.

You will never hear me say that I do not think that anybody should get a face-to-face interview. I believe that, if someone feels that one is required, the option should always be there.

Annabelle Ewing: That is encouraging to hear.

You made the point that a person may already have dealt with another service in the council, which brings me on to my second question. Some of the witnesses at the meeting last week felt that there were issues in that regard.

First, none of them had found out about the fund through the local authority. Secondly, some of them were already involved with other departments, and information was not being passed on. The witnesses accepted that there was a consent element in that respect; nonetheless, even if they consented, none of the information seemed to be passed on. It seemed that each department was working in isolation, and there was no joined-up working.

There would probably be an effect on administration costs if local authorities engaged in the preventative, joined-up holistic working that we all—including, I am sure, councils themselves—hope to see. That would presumably reduce administration costs.

Margaret Burgess: I do not know whether it would reduce administration costs, although it may well do. That point takes me back to my response to a previous question. There is very good communication flowing from social work Scottish welfare fund teams to other council departments, but I will look at—and bring to the practitioners group—the question whether there is communication coming back the other way.

It seems nonsensical that someone who is dealing with one department of the council has to
go elsewhere to find out about the Scottish welfare fund and then go back to the council to make an application. If something that should be happening is not happening, we will take that issue to the practitioners group.

12:15

Annabelle Ewing: That would be important, because addressing that issue would presumably assist in speeding up decision making in some cases. The council is already sitting on most of the information that it needs, but that information is not getting from department A to department B.

In the paper that the committee received just before the start of the meeting, one of the points that COSLA makes relates to furniture. It notes that it is receiving reports of "around 20% more staffing resources deployed in dealing with"

the aspect of the fund that relates to the provision of furniture. As an example, it states that "resources need to be deployed to manage supplier relationships".

I would have thought that, in all councils, those relationships would already exist with respect to other council activities.

Again, perhaps a change in culture is required so that the council provides various services across the piece to its citizens as one entity. Departments should be actively working together. If a large council already has a managed supplier relationship, it would be difficult to see why such an increase in resource would be required simply to deal with the provision of some furniture under the welfare fund scheme.

Margaret Burgess: I will say two things in response to that. First, it is obviously up to the local authority to decide whether it wants to supply goods in that way. The committee has heard from many people that that is the way in which they want to get their goods under the Scottish welfare fund.

Secondly, I go back to what I said to Kenneth Gibson about drilling down into the figures that COSLA has come up with. Are the figures the same across every local authority, or is one local authority saying that it costs more? We need to look behind the figures and ask why it costs more when the council in question has probably been working with those organisations through its social work department or its housing department for many years.

Alex Johnstone (North East Scotland) (Con): Excuse me, minister, if I go over some things that we have discussed already, but I want to make a couple of points. The first concerns the issue of local authority discretion. I am very supportive of that provision being in the bill, but the more I look at it, the more concerned I am that we need to know where the dividing line is between the virtue of diversity and the vice of inconsistency.

Are you confident that the structure that the bill will put in place is strong enough to allow that diversity to be part of the process without destabilising the scheme and leading to inconsistencies between one local authority and another?

Margaret Burgess: I think that we can arrive at that consistency and that the bill as it is structured can get us there. I appreciate that there is still a concern about consistency across local authority areas, and we have to look at that. We are trying to achieve consistency through the guidance and regulations that we are developing.

When the second-tier review process is in place and is effective, it will help to promote consistency. Good practice will be disseminated and decisions that are made will be binding on a local authority, so other local authorities can look at that process. As I understand it, the Scottish Public Services Ombudsman has set out clearly that it will be very transparent about how it will conduct reviews and what will happen.

That will all form part of the training so that we get a consistent approach across local authorities while still allowing them the flexibility that they need to operate the scheme effectively in their area.

Alex Johnstone: When Kenneth Gibson asked his questions, he went into the issue of how funds are divided between local authorities and how they may be divided in future. How do you envisage changes taking place over time? How do we avoid a situation in which a local authority that manages its funds less well is able to appeal for additional funds at the expense of authorities that manage their funds more appropriately? Can we be confident that that will not happen?

Margaret Burgess: As I said, we are moving into discussion with COSLA on implementing the permanent scheme by taking a needs-based approach. We will also look at how local authorities apply that approach to the scheme. It will not be a free-for-all: councils will not just be able to use up all their money in the first two months of the scheme and then apply for money, which would come from somewhere else. The scheme will have to be implemented on the basis of need, and we will have to discuss issues with COSLA, local authorities, social work teams and other stakeholders to produce a scheme that we are all confident will work and is based on need.

On speaking to local authorities about the scheme, I find that there is a real willingness to
work on it and make it work. The input of people working on the front line is critical, because they are the ones who deal with the issue daily. I think that we can come to an agreement on how it will operate. The Government will monitor the situation and as we approach the needs-based allocation I am sure that the committee will also not be slow in telling us if anything should go wrong.

**Alex Johnstone:** We touched on the subject of outsourcing. Do you see the outsourcing of the responsibility as one of the ways in which local authorities might work together? Smaller local authorities could pool resources across their boundaries and larger authorities that have a geographical or population synergy might also work together. Is outsourcing a means to enable that to happen?

**Margaret Burgess:** There is provision in the bill for local authorities to work together across boundaries without outsourcing. I will pass the question over to Stuart Foubister.

**Stuart Foubister:** There is specific provision in section 3 of the bill, which says:

“Two or more local authorities may make joint arrangements.”

**Alex Johnstone:** But would outsourcing be an option to enable that to happen? For example, there could be a joint contract involving more than one local authority and a single third sector organisation.

**Margaret Burgess:** The provision allows local authorities to work together to deliver the Scottish welfare fund, with one local authority taking the lead. Is that correct?

**Stuart Foubister:** There is a specific provision to allow a joint committee, but the powers to make joint arrangements are quite wide.

**Margaret Burgess:** That provision is there. Does Stuart Foubister want to comment further? The question is whether the provision allows for outsourcing to a third sector organisation.

**Stuart Foubister:** Outsourcing on a joint basis would be possible.

**Alex Johnstone:** I have a final point. Often the thing that seems most superficial or trivial is the one that causes individuals the biggest problem. The size of the application form that people are being asked to fill in is a problem that has been brought to our attention on a number of occasions. Do you envisage the change in the legislation providing an opportunity to remove complexity from the application process?

**Margaret Burgess:** I am more than happy to consider the application process. Most applications are made online; applicants do not have to fill in lots of pages. I appreciate that if someone was using a paper form, the number of pages could be quite daunting and might prevent them from going through the process. I know that the forms are lengthy, but most people do not have to fill in every part, as only some parts are relevant to their application.

Having heard some of the evidence from people who have to use the form, I am willing to look at the issue. If we can simplify the form or take anything out of it, we will do so; we will consult on that when we consult on the guidance.

**Jamie Hepburn:** I want to return to the exchange you had with Ken Macintosh in relation to the 48-hour target for processing applications as opposed to the 24-hour target that the DWP operates. From what you said, it seems that it is fundamentally false to compare the two targets. I just want to clarify that you are saying that, under the DWP scheme, the 24-hour target kicks in only once the DWP has all the available information that it thinks necessary.

**Margaret Burgess:** That is correct.

**Jamie Hepburn:** Therefore, it is meaningless to compare the two targets if it takes a week for the DWP’s 24-hour target to kick in. Would you argue that any comparison is fundamentally false?

**Margaret Burgess:** What I am saying is that in any application to the DWP, timescales are based on the point from which the team has all the information on the form—when the form is filled in and accordingly complete. In many instances, the team is not proactive in going to the applicant to get any missing information. The Scottish welfare fund teams are proactive: if a piece of information is missing, the teams go out to try and get that information from the applicant, a third party or another council department. Applications are being dealt with, and in that respect it is a better service for individual applicants.

**The Convener:** Okay. That concludes the committee’s questions. Thank you, minister. We will go away and consider our report, and we look forward to your response to that. You and your officials have been very helpful in trying to clarify some of the points that have been raised. Thank you for your evidence.

12:25

*Meeting continued in private until 12:33.*
Aberdeenshire Council thanks the Committee for the opportunity to put forward a submission on the Scottish Government’s Welfare Funds (Scotland) Bill and has responded as detailed below to the questions asked.

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Aberdeenshire Council is broadly in favour of the Bill and its provision. However it is noted that whilst paragraph 1 of the Bill imposes a duty on local authorities to maintain a “welfare fund”, the use of the word “may” in paragraph 2 (1) does not impose an absolute duty on local authorities to use the fund for the purposes stated thereafter.

Aberdeenshire Council is of the view that the wording in paragraph 2 (1) should be as follows:

A local authority shall use its welfare fund only in order…..

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

The Bill does appear to have taken on the learning from the interim scheme for example it recognises that individuals as well as families can be subject to exceptional circumstances.

3. Is there anything else that you feel should be included in the Bill?

It would be helpful from the point of view of access to administrative justice if the bill or the regulations arising from the Bill were to contain details of the minimum information to be included in the decision letters.

4. Will the Bill and its provisions have a particular impact on equalities groups?

Aberdeenshire Council is not aware of any particular group who will be advantaged or disadvantaged by the provisions of the Bill.
Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Aberdeenshire Council is of the view that there should be provision for local authorities to work across boundaries as this would provide economies of scale and reduce software costs.

There are however some risks in relation to outsourcing, in particular the possible loss of the ability to take into account local needs and conditions. There would also be costs associated with procuring and monitoring such contracts.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

Aberdeenshire Council shares COSLA’s view that the SPSO review option provides the majority of characteristics of an independent review. The concern is that the transfer of responsibility for 2nd tier review will also see SPSO decisions binding on local authorities, which if the volume of reviews increases may cause potential difficulties in managing SWF budgets in year. How this works in practice needs careful consideration to ensure budget management is not compromised.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

In terms of fulfilling the Scottish Government’s objective of having an independent review process the SPSO is an appropriate body to conduct such reviews. However there will need to be detailed discussions between local authorities and the SPSO on the processes involved and the liaison arrangements in order to ensure that the review process is as accessible as possible for applicants.

Further provision – regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The level of detail that will be contained within the Regulations is reasonable however it would be helpful from the applicants’ perspective for either the Bill or the Regulations to specify the minimum amount of information required for the decision letters.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?
Although the Financial Memorandum (FM) reflects that provision has been made for the administration funding for local authorities for 2015/16 the FM assumes that the Bill will result in no additional costs for local authorities. It would perhaps have been useful to include local authority data on the costs of administering the existing scheme.

The savings referred to in the FM may not be capable of being realised if the number of applications to the Fund increase as this would result in additional administration costs for local authorities. For example based on the number of crisis grant and community care grant applications received in the first quarter of 2014/15, Aberdeenshire’s crisis grant applications are forecast to increase by 10% on the previous year and the community care grant applications by 22%.

It also does not seem appropriate to expect savings in administration costs from the removal of the second tier review function as this has been a very small part of the Scottish Welfare Fund workload to date.

**Other provisions**

10. *Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?*

No

Alan Wood  
Head of Finance  
Aberdeenshire Council  
28 August 2014
1. Introduction

Age Scotland aims to help Scotland’s people enjoy a better later life. We believe that everyone should have the opportunity to make the most of later life, whatever their circumstances, wants and needs.

That’s why we work to make later life the best it can be. We think Scotland can and should inspire, engage, enable and support older people to change their later lives for the better and ensure there is support for those who are struggling as they live longer to achieve better, happier and healthier lives.

Age Scotland works in partnership with other charities within the Age Network – Age UK, Age Cymru and Age NI – across the UK. Under these arrangements, responsibility for research, influencing and campaigns on welfare issues is usually delegated to Age UK by the other organisations. However, given that the draft Welfare Funds (Scotland) Bill is within the legislative scope of the Scottish Parliament, given the exception to the general reservation of social security in the Scotland Act 1998,1 Age Scotland welcomes the opportunity made available by the Welfare Reform Committee to comment on the Bill. We also responded to the consultation on the draft Bill held by the Scottish Government before the Bill was introduced.2

Since the creation of the Scottish Helpline for Older People more than a decade ago, and now through Silver Line Scotland, Age Scotland and its predecessor charities have supported older people on welfare issues. Our trained advisers receive calls from older people, their carers and relatives; and we give information and advice both over the telephone and through a range of factsheets, which are also available on the Age Scotland website, www.agescotland.org.uk.

2. Long-term viability of the welfare funds

Since the demise of parts of the Social Fund, the operation of crisis grants and community care grants in Scotland has depended not only administrative and legislative competence, but also financial viability.

In April 2015, the Department of Work and Pensions (DWP) will be withdrawing Local Welfare Provision Grant support for local authorities in England.3 This is the

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2 A copy of our response is available here: http://j.mp/AgeScoRespWFSB1.
funding which enables those authorities to provide crisis loans and community care
grants, equivalent support to that contained in the Scottish Welfare Fund.⁴ There is
therefore a legitimate and obvious concern that the equivalent funding from the UK
Government, on which the scheme relies, will also be withdrawn, putting the
scheme’s future at risk.

We have asked the Scottish Government about this concern. Their response so far
has been to insist that the Scottish Welfare Funds remain in the Scottish
Government’s budget. From this, it seems to us, either the Scottish Government
continues to expect that funds will remain forthcoming from the DWP, or the Scottish
Government is committed to finding the funds from within its budget, even at the
expense of other possible expenditures. However, it is not clear which, if either, is the
case. If the former is correct, we think that the Scottish Government and the
DWP should confirm that continuation of this arrangement for Scotland has been
agreed, and for how long, to put the matter on record. If, however, the latter is
correct, we cannot see why the Scottish Government would not wish to clarify that
either. We hope the Committee would seek to explore this further with both the
Scottish Government and the DWP.

The nature of the Welfare Funds, even once put on a statutory basis, is that they are
discretionary. Even if the Bill is passed, the obligation on local authorities is to
maintain a fund and to consider applications and make decisions upon them,
applying the statutory criteria either in the Bill or in regulations, and having regard to
the guidance. That obligation would be met even if the amount kept in the fund were
a token amount (say of £1) and if all applications were refused. Accordingly, the Bill
as drafted offers no real protection against a winding down of the funds in practice.
That would be a huge concern to vulnerable people and organisations seeking to
represent and support them. Fears have been expressed that, in the absence of
such funding being available, people in fraught circumstances might be driven
towards highly risky forms of finance, such as payday lenders and loan sharks.⁵
This is why we feel the question of viability and funding is so important.

It is also worth noting that it is cost-effective to the public purse to have low-cost
interventions at an early stage that meet low-level need rather than greater needs,
suffering, complexity and cost arising later. The welfare funds are a very good
example of the preventative approach which the Christie Commission implored our
public services to adopt.

We note that this issue could well, in the longer term, be affected by the outcome of
the Scottish independence referendum, or indeed if the Scottish Parliament acquires
additional powers within the United Kingdom; though it would be regrettable if the
issue of welfare funds was to become politicised via the constitutional debate.

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⁴ See, for example, “Crisis Loans Funding Axed”, Local Government Chronicle, 4 January 2014,
⁵ See for example www.manchestereveningnews.co.uk/news/local-news/rochdale-councils-
discretionary-crisis-fund-6478621
3. Number of applications by older people

Older people are among the groups which the Welfare Funds are intended to be targeted. However, older people are not applying for Welfare Funds in large numbers. The latest available statistics reveal that:

- In **only 3%** of households which applied for either a Crisis Grant or a Community Care Grant was the principal applicant aged 60 or over.
- Over half of grants awarded are to those aged **44 or under**.
- The median age of principal applicants for both types of grant, and across both genders, is consistently around those aged in their **mid-30s**.

The irony is that older people may be in greater need and on long-term fixed incomes; so applications from them might stand a better chance of succeeding. There is therefore a risk that a large amount of need is not being considered by authorities as they make decisions about how to allocate the welfare funds.

There could be, and are, a variety of reasons for this. Age Scotland’s information and advice services for older people, including the national telephone helpline (now Silver Line Scotland) have detected a few, though there may be more.

Mostly, it may be because older people who might qualify are **not aware** of the existence of the welfare funds; they believe the funds are **not relevant** to their situation; or because they are **put off** from applying, either based upon information and advice available to them or upon an initial enquiry. We examine these in turn.

a. Public and professional awareness

- Public awareness of the existence of the welfare funds seems to us to be limited. This may be related to the legacy of the abolition of the Social Fund and devolution of emergency/occasional welfare support to local authorities and the devolved administrations, and it no longer being accessed through the JobCentrePlus network. In such a context, a partnership of information and advice needs to be developed and supported by a variety of groups and organisations.

- This issue may be particularly acute for older people, who do not routinely have any contact with, or need to attend, Benefits Agency or JobCentrePlus premises in connection with the payment of pensions. Payment of pensions is typically arranged through the Pensions Service remotely, increasingly by direct payments into pensioners’ bank accounts, or by collection at Post Offices where it is not common for welfare advice to be made available. There is also no privacy in a post office counter queue, so few people would want to discuss personal or financial matters in such a context. An older person who has no

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6 Explanatory Notes, para. 8.
7 See Chapter 7, Table 5 and Charts 2 and 3 of the Scottish Welfare Fund statistics 2013-14: http://j.mp/SWFstats13-14
formal care support in place may have no need to be in regular contact with any health and social care professional, and may not be in regular contact with the local authority social work services department either.

- We would welcome evidence from the Scottish Government to the Committee about various forms of information and advice, and/or a public information or marketing campaign, which may be used to spread awareness. We feel certain that the third sector would be a willing partner in such an effort.

- Welfare advisers and local authority contact staff may not be appropriately trained to advise members of the public about the availability of the funds. We have heard reports of people calling local authorities and being advised that the Social Fund has been abolished, but not being advised that the welfare funds have replaced it. Similarly, older people have reported to us that sometimes local authorities exhibit “departmentitis” in which members of staff may be keener to refer someone making an enquiry to a colleague or different department rather than taking details and taking ownership of the enquiry to ensure it is responded to appropriately. Of course, if the colleague is not available then the enquiry might reach a dead end and lead to a sense of bureaucracy being difficult or impenetrable. This could have the effect of deterring enquiries, applications or preventing advice being obtained.

- Our experience with Silver Line Scotland and its predecessor helpline mean we know that dealing with issues and queries raised by older people appropriately is a distinct skill. Local authority call handlers may lack those skills or lack confidence in dealing with older people, especially as the pensions system does not promote regular contact between authorities and older people on financial matters. Age Scotland is developing contacts with some authorities through COSLA so we can help to ensure call handling staff are aware of distinctive issues for older people, but a more systematic and comprehensive solution would be preferable.

- Similarly, health and social care professionals (including care staff) visiting older people in their own homes, or arranging discharge from hospital, might be providing inaccurate information (sometimes known colloquially as “bus stop” advice). Training for such professionals, who may also be able to spot evidence of need, would also be welcomed.

b. Public being put off from applying

- Any welfare benefit which is related to financial circumstance suffers from a dissuasive effect. Many people are instinctively private about their financial circumstances and do not wish to share that information readily with strangers, even in their capacities as officials of public authorities. We see this effect regularly among older people with means-tested Pension Credit, where there is a large and persistent problem of underclaiming. This sense may be more acute among older people who have retained a different set of social expectations about what information is or should be private, which may be
different from younger generations among whom personal information is shared more freely.

- The language employed in the Bill, regulations, guidance and associated information and advice may be unhelpful, and act as a barrier. For example, one of the criteria expressed is “families facing exceptional pressures”. Older people living alone or with a carer may not believe that they qualify for the official definition of a “family”. Similarly, they may not believe that they are “facing exceptional pressure”, even if by the regulations and guidance an official view may be taken that they would be so considered. Similarly, “depression” is identified as one criteria which may affect eligibility. Our Silver Line Scotland advisers find that more often than not, older people are willing to discuss feeling “low”, feeling “different” or “withdrawn” than they would be willing to discuss feeling depressed, especially in the absence of a formal diagnosis to that effect. Older people may also be worried about being questioned about their mental state by someone who would not be well-qualified to assess mental health issues. Under the Social Fund, for example, it was not unknown for applications to be turned down because it was considered that the applicant could not be experiencing depression as they were not in receipt of prescribed medication.

- There is an overriding concern among some older people with support needs that any contact with a local authority social work services department may lead to an official view being taken that they are not coping with living independently and could then be forced or pressurised into a care home, which they strongly wish to avoid. This frequently has a dissuasive effect about any kind of contact with officialdom which acknowledges a need for support in looking after oneself. This sense may be heightened if an older person is concerned about their ability to make themselves understood.

- The key test of eligibility for a community care grant is “retaining or establishing a settled way of life in the community”. Both the Scottish Government and COSLA have indicated to us that to be able to satisfy this, social workers may have to prove that someone is “at risk of going into care” unless the CCG would rectify this. If this type of language were employed in any public information or communication, it could exacerbate the worries some older people have about social workers having a power to move them into care against their will.

- There may be unhelpful local variation in the ways in which the welfare funds are administered, which could add to confusion. For example, we have heard of variations in the ways in which the capital and savings rules are described in different authorities.

- We have also found that some older people treat local authorities as single entities. Accordingly, they may be under the impression that if they have given information to someone within the local authority (such as a social worker) this will be communicated to all other relevant people within the same authority automatically. Therefore, there is a risk that the applicant will think that, if such support existed, someone they deal with would have told them already. We have also found that this is one of the causes of reviews, if an
application is made but insufficient information is provided, it may be because the older person will assume that the staff who are dealing with their community care grant or crisis loan application will have all relevant information already, even if it was known by or provided to someone else.

4. **Form of the Bill**

We believe that the approach of trying and testing the Welfare Funds on a non-statutory basis first is an interesting and useful one, and noted as much in our response to the Scottish Government’s consultation on the draft Bill. We hope that this will allow the Government and Parliament to reflect on and learn from the experience of operating the Funds before placing them on a statutory footing, alongside the more traditional approaches to consultation and legislative scrutiny.

However, we also noted that this experience should also allow more of the scheme’s provisions to be placed on the face of the Bill itself rather than left to regulations. We understand that placing much of the content in regulations allows for greater flexibility and responsiveness. We accept that putting the various topics listed in regulations rather than in primary legislation allows for flexibility and speed should circumstances change.

However, the *quid pro quo* of this is that this approach makes both scrutiny and the opportunity to comment on and influence the detail of the scheme more difficult. That is particularly true for regulations which are, as in this case, subject only to the negative resolution procedure. The Parliament’s Delegated Powers and Law Reform Committee may also be willing to consider this point.

It is the details of regulation which will affect how people are directly affected by the Fund, and will have a knock-on effect on how advisers (such as those within Age Scotland and our partners Silver Line Scotland) inform and advise those older people who come to us with queries.

However, in the absence of greater detail on the face of the Bill, we suggest that there should be an obligation on the Scottish Ministers, before issuing or updating regulations under section 5 of the Bill, to consult interested parties and more widely. A negative resolution procedure also limits the ability of interested organisations, as well as parliamentarians, to scrutinise and improve the content of regulations in the context of a proper debate.

5. **Forms of assistance**

Section 2(1) of the Bill entitles local authorities to provide financial “or other assistance”. Other assistance could be in the form of providing goods for which there is an essential need, either directly or via an intermediary (for example, some charities source, fix and restore second-hand furniture for use by homeless people).

However, this could be in the form of vouchers. A voucher system may be similar to the Azure Card made available to some asylum seekers. A voucher of necessity restricts the items which may be purchased with it and almost certainly also restricts the outlets where items may be purchased. Over half of those using Azure Cards
report that they are not able to use it to buy what they need. Worse still, the experience of Azure Card use suggests that people using it are subjected to stigma, which exacerbates senses of loneliness, isolation and anxiety, as well as technical difficulties, such as the card not working. The Azure Card system has been strongly criticised by charities such as the Refugee Councils.\(^8\) We would prefer the Bill or the guidance to specify that financial assistance would be strongly preferable to a voucher system.

We believe that a further element of discretion around the list of items which are considered essential would be appropriate. Items which are essential for any one individual may be different from another, and will not necessarily be universal. In order to be able to continue to live at home independently, the items which a person will need in their home may depend upon their age, infirmity or frailty, mobility, sensory impairment, cognitive impairment, or other factors. The priority ratings need to provide sufficient flexibility to respond to individual need based on their circumstances rather than on universal assumptions, while ensuring best use of public funds to avoid or recover quickly from crises.

We also consider that older people’s needs may be different from those in other age groups. For example, it is often the case that, to be able to continue living independently in the community, an older person may have to move home to more suitable accommodation. In the context of such an older person, one of the basic building blocks of independent living would be the capacity to make, and afford, such a move. We therefore see no reason why removal costs should not be considered a relevant expense which the welfare funds could assist with, and several reasons why they should. Allowing this would enable more savings to be made if it avoided the need for more intensive forms of care, including home visits, sheltered housing or even residential care.

Older people also often tend to have a propensity to thrift, and to extracting the last possible uses out of goods that are clearly deficient and possibly also dangerous. Health and social care professionals visiting people in their own homes can testify to this, with some items even being held together by bits of string and sticky tape to allow them to keep working. Fire officers conducting home fire safety visits might notice if goods are sufficiently deficient to represent a fire hazard, and if appropriately trained and equipped with information leaflets could help older people to replace deficient equipment. However, there is a case for the Committee and the Government considering this propensity even when there is no fire hazard, but where there is a risk of goods falling into disrepair, exacerbating need and prompting crises.

6. **Criteria relating to care**

The guidance for the interim welfare funds currently sets out a range of exclusions applying to crisis grants, community care grants, or both. The consultation document proposed that these be translated into regulations in terms of the Bill. One of these (at paras 6.12 and 6.13 of the current guidance) provides that a local

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\(^8\) Time to cash in the Azure card, Jonathan Ellis, Comment Is Free (guardian.co.uk), 6 November 2010. See www.theguardian.com/commentisfree/2010/nov/06/asylum-seekers-azure-card.
authority need not consider an application for a Community Care Grant if the applicant is resident in a care home, unless there are plans to discharge him/her within the next 8 weeks. However, the guidance then specifies that the applicant should have received care either for a period of three months or more, or a pattern of frequent or regular admission.

Firstly, it is not clear if a person who has been resident in care for less than three months and is due for discharge would be able to apply for a Community Care Grant or not. Secondly, if they are not, there would seem to be no convincing rationale for such a rule. It would have the effect of disadvantaging a person who recovered too quickly from the circumstances which caused them to require care in the first place. We do not consider that a qualifying period of care is either necessary or materially relevant to a person’s need for welfare support.

7. Cross-border issues

We are aware from calls to Silver Line Scotland that there frequently problems with cross-border issues (where, for example, a person is connected with both Scotland and other parts of the UK, or with different local authority areas within Scotland). There is an obvious parallel here with financial support for care: the Older People’s team within the Scottish Government’s Reshaping and Integrating Care division are frequently called upon to resolve these cross-border issues where different local authorities cannot agree about their responsibility towards a person who needs support. Especially where (as here) the Scottish Welfare Fund may be following a different approach than local authorities in England, or may have more secure funding from the DWP, it would be reasonable to anticipate that people may have an interest in ensuring that one authority rather than another had jurisdiction over any claim they might make.

We consider that it may be helpful either for the Bill or the regulations (though ideally on the face of the Bill itself) to set out what process will be followed, and what principles will apply, in resolving these issues.

8. Limits to number of awards

We believe that the proposed limit on the number of awards to an applicant within a rolling twelve-month period should be reconsidered. Although it may seem on the face of it to be reasonable to impose a limit, this could have the unintended effect of being unfair to potential applicants. Applicants to the Scottish Welfare Fund may experience repeated crises which they have not created or exacerbated. Crises may occur not only because of the applicant’s lifestyle factors and choices, but possibly also due to long-term conditions they have, or external factors (e.g. extreme weather events).

For example, a person with cognitive impairment could experience episodes of distress during which they unintentionally destroy some of their own property, which they need to live independently. Similarly, someone who is still in employment – whether older or not – may find that his or her wages are paid inconsistently or late – this may be much more likely for someone who is employed on a “zero hours” contract or as casual labour. A limit of three awards per year may therefore create
unfairness and distress for someone who faces more than three genuine crises in a twelve-month period, even where one or more of these crises was partly or wholly due to factors outwith their control.

Accordingly, we recommend that any rule limiting awards per year should be expressed as a default position, but allowing discretion to consider more in exceptional circumstances especially where one or more previous awards were wholly or mainly due to factors outwith the applicant’s control.

9. Financial considerations

The financial eligibility thresholds are not specified in the Bill and are due to follow in regulations, so we cannot comment on these in detail at this stage. However, we strongly believe that, when these are devised, they must take account of the complex and often confusing range of factors which affect older people’s incomes and capital.

The issues which affect older people specifically include the increasing State Pension Age for women between 2010 and 2016, and then the increases for both men and women until 2028 (including the potential effects of the Pensions Act 2014). This also has a knock-on effect in terms of Pension Credit and, in areas where it has been rolled out, Universal Credit.

There is a reasonably widespread perception that the recent welfare reforms do not affect those who have already attained their State Pension age: this is incorrect. Under Universal Credit, a “mixed-age couple”, involving one partner has attained State Pension Age and another in the same household who has not, could lead to the one who has attained State Pension Age being deprived of Pension Credit or being subject to the social housing under-occupancy penalty (or “bedroom tax”), where otherwise they would not be.

There is also a persistent unfairness for those who develop, or are assessed as having, mobility needs over the age of 65, at which point they no longer qualify for the mobility component of Disability Living Allowance or Personal Independence Payment. This may in turn affect need and exacerbate crisis points among older people.

Similarly, financial considerations are different for older people who have long-term health conditions, and maybe therefore a lower earning capacity, whose savings are not immediately accessible, or who have responsibilities caring for others.

10. Decisions made and communicated in writing

Where decisions are communicated in writing, we strongly recommend that the formats of written responses should be inclusive and accessible, and we commend the advice available through the Scottish Accessible Information Forum. We believe that this will not only meet the obligations of the Public Sector Equality Duty, but will increase the likelihood that applicants will understand decisions affecting them and be more likely to seek effective advice which will allow any review or appeal process to be better informed.
11. Reviews

We supported the use of the Scottish Public Service Ombudsman (SPSO) as the most appropriate route for second-tier reviews and welcome the inclusion of this approach in the Bill as introduced.

A decision by a panel of the local authority would, in our view, lack the appearance of independence and impartiality necessary to give confidence to applicants and others that the review had reconsidered the applicant’s case in an objective way. In our view, this outweighs the considerations of speed and cost-effectiveness.

A tribunal approach would certainly meet the test of appearance of independence and impartiality. However, we believe that concerns about the formality of a decision-making process before a tribunal may be off-putting or intimidating for applicants. The cost to the public purse of an additional tribunal mechanism also cannot be ignored.

In our view the SPSO option is the strongly preferred outcome. The SPSO and his/her office could develop expertise in dealing with SWF reviews, thus allowing them to identify the issues quickly and apply a consistent approach, whilst giving independent feedback both to applicants and local authorities. The office of SPSO already exists so this would allow a process to be established more quickly than a new tribunal. There may be staffing and budgetary consequences, though we believe these are likely to be far less than those connected with a new tribunal.

We also felt that the SPSO should have the ability, at second-tier review, to review both discretionary decisions on the merits of the case; and also to make an alternative decision which would be binding on the local authority. This has implications for the management of the funds, but in our view the absence of the ability to make an alternative decision would be to discredit the review process and make it seem tokenistic, largely futile or unattractive. It would also undermine the potential of second-tier review to ensure greater consistency across Scotland. We anticipate that, over time, as authorities become aware of and reflect on decisions made and announced by the SPSO at second-tier review, they could develop more consistency in their decisions naturally, making the system more robust and reliable and reducing the need for as many second-tier reviews.

12. About us

We listen to older people to understand what they need to transform their lives for the better. We work to empower older people to use their own voices, and speak out on their behalf. We have a positive, forward-looking vision of our ageing society and the opportunities it brings.

Our community development team supports over 900 member groups, run by and for older people, around the country. We conduct and support research into issues affecting older people and ageing, and campaign and lobby for positive reform. And through Silver Line Scotland, we run the national telephone helpline for older people, giving them access to information and advice from 8 am – 8 pm every working day, and contact and friendship over the phone 24 hours a day, 365 days a year.
We are a registered charity (no. SC010100) and a limited guarantee company (no. SC153343). Our registered office is the address noted below.

13. **Contact**

If you have any queries about this response, or are looking for more information about the ways in which Age Scotland and the Silver Line supports older people on welfare issues, please contact:

Derek Young  
Policy Officer  
Age Scotland  
5 September 2014
WELFARE REFORM COMMITTEE

WELFARE FUNDS (SCOTLAND) BILL

SUBMISSION FROM ARGYLL AND BUTE COUNCIL

Preamble to consultation response

Argyll and Bute Council welcomes the opportunity to respond to this consultation. The Council considers that the interim scheme has provided an effective source of support to some of the most vulnerable in our communities. However it notes that many applicants are not eligible for support from the Scottish Welfare Fund as their hardship often reflects a delay in processing their benefit application and they have to be referred back to DWP for a short term benefit advance. Others were initially not eligible as their hardship stemmed from a benefit sanction and they were excluded from the scheme until April 2014. With the introduction of the new claimant commitment, the incidence of claimant sanctions is expected to rise. The council is aware that this is in line with UK government policy but is concerned about the impact on the welfare of some of the most vulnerable members of our community.

The Council considers that the introduction of SWF has worked well. Although volumes of applications have reduced from those experienced by DWP, this is in part due to the reduced reliance on cash for support and the increased use of goods and vouchers. Whilst undoubtedly less popular with claimants, this means that assistance is much more targeted. The new national contract from Scotland Excel has also meant that better value can be obtained through increased purchasing power. The council considers these aspects to be a major improvement. The council has also welcomed the fact that grants do not have to be repaid and would be keen to see this element enshrined in legislation.

One of the key differences between Scotland and England is that a national scheme has been introduced in Scotland and it has not been left to individual local authorities to introduce different schemes for each local authority area as in England. This means that there is consistency of decision making. It should be noted that in Wales the decision was taken to have a single scheme operated by an outsourced company – Northgate – rather than by individual local authorities. It is disappointing that the consultation provides no information about how well each of the different approaches taken in England, Wales and Scotland is working. Such a review would be welcomed before the new guidance and detailed regulations are drafted.

Because of the short time for introduction, the opportunity was lost to commission a single national computer system to support the scheme and each local authority had to make its own arrangements. There are 4 main systems in use. There is now an opportunity to commission a single hosted national system to support the new permanent scheme, with a single set of parameters and interface facilities. This would be consistent with the national public sector ICT strategy.

This Council cannot sustain the current high cost of administering Scottish Welfare Fund payments. This council has serious concerns about the administration costs of
the current scheme which is currently very expensive to administer for small authorities with relatively low volumes despite making use of the Scotland Excel contract. There is an opportunity to consider the efficiencies of a single consolidated team to support telephone and on-line applications with the benefits of economies of scale. It would be much easier now to build in local variations in referrals, as this has all been worked out and is now known. This would be one way to improve its cost efficiency. The opportunity should be taken to ensure that the new permanent scheme is designed with key improvements in efficiency in mind.

General

Q1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Response:

The Bill enshrines in legislation the interim arrangements for the delivery of the Scottish Welfare Fund and is to be welcomed.

It is clearly aimed at meeting the stated objective of providing assistance for short term need. It is framed potentially more widely than the definition in the current interim scheme which covers short term need in an emergency or crisis where there is an immediate threat to health or safety. The current scheme does not provide assistance in other situations where short term need might also arise. If there is an extension to the scheme (which will not be clear until the regulations and guidance are drafted), this would need to be matched by the provision of commensurate funding.

The community care provisions are restricted to qualifying individuals, unlike the provisions relating to short term need. Whilst this is presumably essential in order to meet the requirements of The Scotland Act 1998, they are quite restrictive. A local authority might wish to support other disadvantaged groups in a similar way but is unable to do so under this scheme.

This council would like to see a more detailed section specifically on the purpose of the Scottish Welfare Fund. The current section mirrors what is included in SI 2013/192 The Scotland Act 1998 (Modification of Schedule 5) No. 2) Order 2013, but does not include anything additional which would set these arrangements apart from those enacted in England and Wales. Whilst this provides more latitude for future regulations, it does not reflect some of these distinctive differences which we think are valuable and should be retained. The main differences are that it is a national scheme and that assistance is by way of grants and not loans. It has not been left to individual local authorities to introduce different schemes in each local authority area and this provides some consistency of decision making. Whilst the bill makes reference to the need to have regard to guidance issued by Scottish Ministers, it does not enshrine the principle of a national scheme with local delivery.
Q2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

Response:

The bill is framed at a high level and does not contain any detailed regulations which might reflect the learning from the interim scheme. The main change that it makes from the interim scheme is to create a formal second tier review process to be undertaken by the SPSO – see comments on Q7 below.

Q3. Is there anything else that you feel should be included in the Bill?
Response:

See comments made under Q1 above.

Q4. Will the Bill and its provisions have a particular impact on equalities groups?
Response:

The guidance on the fund will influence who is successful by specifying eligibility criteria. These are not set out in the Bill so we can make no comment on the potential impact on equalities groups. The current guidance does highlight certain vulnerabilities which may align with protected characteristics. The guidance for the interim scheme was broadened to now include people subject to DWP sanctions, and the definition of families has been widened to include families without children. These changes should be carried forward to the permanent scheme.

Administration of Welfare Funds

Q5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?
Response:

Yes. Local authorities should have the flexibility to determine how best to administer the scheme including outsourcing the scheme administration. The Bill provides no details on how the administration of the scheme will be funded. The interim scheme has proved expensive for smaller authorities to administer costing well in excess of the funds provided for this purpose. Local authorities should therefore have the flexibility to join together to achieve economies of scale should they choose to do so.
Review of decisions and the SPSO

Q6. What are your views on the proposed internal local authority review process?

Response:

The proposals allow local authorities to review decisions in certain as yet unspecified circumstances. Under the interim scheme, all applicants have had the right to request a review of their decision by a different decision maker within a certain time period in a broad range of circumstances. The reviewing officer cannot reduce or remove an award. This type of review is in line with the review mechanism for housing benefits and council tax reduction scheme applications and has operated in tight timescales. It is an appropriate mechanism.

Q7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Response:

The main advantage of having second tier reviews carried out by SPSO is in consistency of decision making and perceived impartiality. However this is at the expense of added cost. The current arrangements of having such reviews carried out at local by individual local authorities appear to have been working well and do not need replacing. The financial memorandum suggests that the cost per second tier review by SPSO could range from £625 per case (if review numbers continue to be low) to c £200 per case if they quadruple from current levels. These costs are considered disproportionate to the average value of a claim which is £88 for 2013/14. They represent an increase on current admin cost funding of 8% for less than 0.2% of the case load.

The SPSO is not currently equipped to be able to handle second tier reviews in the tight timescales needed for the Scottish Welfare Fund. There is concern that applicants and local authority staff would be required to attend appeal hearings in person at some distance which would be time consuming and costly for all. Currently second tier reviews are handled at local authorities and contact make with the relevant participants by telephone which is more convenient for all and much less costly.
Further provision – regulations

Q8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

Response:

The content of the regulations as described by section 5 in the Bill appears comprehensive and appropriate. There are advantages in this detail being in regulations in order to allow these to be updated more easily should the need arise. As already stated in the response to question 1, we would prefer to see the decision that the scheme is to be one of grant payments rather than loans to be included in the bill and not left to regulations because of the fundamental nature of this decision.

Financial Memorandum

Q9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

Response:

No – the costs incurred by local authorities in running the fund have been understated. There has been no attempt to collate actual costs of operating the Scottish Welfare Fund in its first full year of operation by local authorities. The costs incurred by this council have been well in excess of the funding provided. This has had a detrimental knock-on effect on other services provided. In 2013/14 this authority processed 2,310 applications and made 1,638 awards and received funding of less than £24 per case. This included making the decision, recording applications and decisions, reviewing decisions where necessary, fulfilling the awards and providing data to Scottish Government. The administration costs are possibly reasonable where the volumes allow for some economies of scale, but they are understated for smaller local authorities due to the complexities surrounding the provision of goods as opposed to cash.

In contrast, the budget for SPSO of £400,000 for reviewing up to 2,000 cases per annum appears realistic.

Other provisions

Q10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Response:

Section 1(b) should be removed. Local authorities already have powers to make welfare payments under the Powers to Advance Wellbeing and there is no need to
confuse monies specifically provided by Scottish Ministers for this welfare fund with other monies provided by local authorities. Any additional monies provided by local authorities should not necessarily be restricted by the terms of the statutory guidance and the detailed regulations which will be laid in future.

Section 6(3) has been revised from the earlier draft and no longer requires Scottish Ministers to consult every local authority to which the guidance relates before issuing, varying or revoking guidance. This omission should be rectified. Individual local authorities operate the scheme and their views and learning should be taken into account.

Judy Orr
Head of Customer and Support Services
Argyll and Bute Council
25 August 2014
About Barnardo’s Scotland

Barnardo’s Scotland is Scotland’s largest children's charity, running over 100 projects around Scotland and working with over 10,000 children and families every year. We work with some of the most vulnerable and disadvantaged children and families in Scotland for whom the interim Scottish Welfare Fund (“the Fund”) arrangements are an important lifeline. Furthermore, we also work with young people making transitions, whether leaving care or a young offender’s institution, for whom the Community Care Grant element of the Fund is a vital means of support to establish a settled way of life within their communities.

Summary

Barnardo’s Scotland has supported the establishment of a Scottish Welfare Fund, and supports the policy intention of putting the Scottish Welfare Fund onto a statutory footing.

However we would like to propose a number of ways in which the Bill can be strengthened, including:

- Placing clear responsibilities on local authorities to promote awareness of and access to the Scottish Welfare Fund.
- Research by Barnardo’s Scotland and NSPCC Scotland has shown that there are increasing numbers of families who are struggling to cope with extreme levels of hardship and poverty, and this should be recognised in the Bill.
- Eligibility for the fund should include the protection of the wellbeing of children and dependents.
- The face of the Bill should ensure that the Scottish Welfare Fund continues to be a grant making fund, rather than distributing loans.
- The Bill should make it clear that all young people who have been in the care of a local authority can benefit from the Fund, not only those who have been in residential care.

Responses to the specific questions of the Committee:

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?
Barnardo’s Scotland works with some of the most disadvantaged children and families in Scotland, for many of these families the Scottish Welfare Fund (SWF) arrangements are an important lifeline. Since the Westminster Government announced, through the Welfare Reform Act 2012, that elements of the welfare system would be devolved into the competency of the Scottish Government, Barnardo's Scotland has been calling for a distinctive approach in Scotland to the administration of welfare funds. Barnardo's Scotland has welcomed the Scottish Government’s establishment of the SWF on a non-statutory basis, and its on-going investment into the SWF.

However, we believe that the early experiences of the administration of the SWF by local authorities suggest the need for a strong national framework and independent oversight. Barnardo's Scotland therefore welcomes the Welfare Funds (Scotland) Bill and supports the policy intention of putting the Scottish Welfare Fund onto a statutory basis.

In addition, we believe that the Bill creates an opportunity to learn from the SWF’s implementation so far, and strengthen its operation, in order that the Fund can work more effectively and efficiently for Scotland’s most vulnerable children and families. On this basis, we also propose in this evidence a number of ways in which the Bill can be strengthened.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

The draft regulations, supplied with the Bill, address some of the issues that Barnardo’s Scotland believes have been apparent in the administration of the interim SWF scheme.

In particular we are pleased that the draft regulations include a requirement that decisions on applications are communicated in writing to applicants, and that timescales for decision making are given a legislative basis by their inclusion in the regulations. Barnardo's Scotland had previously voiced concerns that there was significant variation across Scotland in the time it is taking different local authorities to process applications.

However, we have also stated previously a concern that there is a great deal of variation in the proportion of welfare funds that local authorities have spent. Whilst this has improved recently and there is a great deal of existing good practice, particularly in working together with third sector and community organisations, we believe that one way to address this would be through a more consistent approach across local authorities in Scotland to the promotion of the SWF. We believe that the Bill could still do more to address this issue, perhaps as part of the Ministers' power to publish guidance. We suggest that there should be clear requirement for local authorities to promote access and awareness of the Fund at a local level, and to provide an application service online, over the phone, by post and face-to-face.
3. Is there anything else that you feel should be included in the Bill?

**Families under extreme final pressure**

As we mentioned in our earlier response to the Scottish Government’s consultation on the draft Bill we are concerned about the terminology in section 2(1)(a)(i) of ‘exceptional event or exceptional circumstance’ with regards to qualifying individuals. We suggested the additional terminology of ‘an emergency or disaster’ and are disappointed to see that this was not included in the final Bill introduced to the Parliament.

As we have recently reported in our joint research report with NSPCC Scotland, *Challenges from the Frontline*, our services are increasingly reporting that the families they work with are finding themselves under extreme financial pressures, resulting from benefit sanctions and the increasing cost of living. These families are struggling on a day to day basis, they are not experiencing an exceptional event or circumstance, this is simply their normal, everyday life. We are therefore concerned that the categories as they stand in the Bill may be too restrictive, leaving those with a legitimate need unable to apply for the Fund. As CPAG suggest, we believe that there is a need to include a third category of qualifying person, ‘families experiencing exceptional pressure’, under article 2(2) of the Bill. We would urge the Committee to support this call and to consider those families who struggle on a regular basis to make ends meet.

**Dependents of individuals**

Section 2(1) of the draft Bill sets out which individuals are eligible for support from welfare funds. However, we suggest that this section is expanded so that it explicitly includes, in addition, the needs and risks to the individual’s dependents or children. We suggest that one way this could be achieved would be through the expansion of section 2(1)(a)(ii) to include the dependents of individuals.

**The Welfare Fund as a grant making fund, rather than loans**

It is clear, from current guidance and paragraph 5 of the explanatory notes that the Scottish Government intends for the SWF to provide assistance through grants, rather than through loans. This is welcome to Barnardo’s Scotland. However, in response to the previous consultation, we proposed that the face of the Bill should clearly state that support from the SWF should, under no circumstances, take the form of a repayable loan. This proposal has not been addressed by the Bill, as introduced, and we believe that this is one way in which the Bill could be strengthened.

We also share CPAG’s concern that section 5(2)(f) of the Bill as introduced gives a power for Scottish Ministers to create regulations about circumstances in which paid funds can be required to be repaid or recovered. Whilst there should of course be mechanisms to deal with fraudulent claims, there is very little explanation available of

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how the Scottish Government intends to use this power. On that basis, we support CPAG’s call that this power should be removed from the Bill.

4. Will the Bill and its provisions have a particular impact on equalities groups?

Care leavers

Barnardo’s Scotland works extensively across Scotland with young people who have been in the care of a local authority, and these are one of the groups of young people who often have recourse to the Scottish Welfare Fund. However, we believe that the Bill could go further in supporting this particularly vulnerable group of young people.

Both the Bill, as drafted, and the draft regulations make reference to individuals who have been or who, without assistance, might otherwise be in ‘a residential care establishment’, as being eligible for financial support from the Fund. We would welcome clarification and confirmation from the Scottish Government that, as drafted, this will include those children and young people who are looked after and accommodated by a local authority.

However, we would also like to highlight that Scots Law, including the recently passed Children and Young People (Scotland) Act 2014, identifies a much broader group of looked after and formally looked after young people as being vulnerable and in need of greater assistance from their local authority. In particular, both research and recent inquiries by the Education and Culture Committee have shown that young people who were formerly looked after at home by the local authority are the group who, on average, have the poorest outcomes of all formally looked after young people, and who have specific need of additional support.

We believe that the Bill would be stronger if it was amended to make it clear that all young people who have been looked after by the local authority are potentially eligible to support through the Fund.

Whilst most of the responsibility for welfare and social security is currently reserved, the Scotland Act 1998 makes some exemptions, including for young people formerly looked after by local authorities, welfare can therefore fall within the competence of the Scottish Parliament:

(…) sections 22 (promotion of welfare of children in need), 29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.
(Schedule 5, part II, Section F1, Scotland Act 1998)

The existing Fund guidance makes it clear that the Fund may be used to support people who have been subjected to sanctioning by the DWP. However, the guidance

http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/scottishwelfarefuindguidance
also makes it clear that SWF Grants are normally intended as one off forms of support and cannot normally be used to provide a regular source of alternative income.

However, we believe in the context of this Bill that the Scottish Government should consider how, given the exemption in the Scotland Act we have outlined, they could support local authorities to fulfil their aftercare responsibilities to formally looked after young people by providing them with an alternative source of income, in the event that they are sanctioned by the DWP. This would mirror the support that it is clearly expected families would give to young people in this kind of situation, however because many formally looked after young people lack this family support, corporate parents should consider their role.

For example, as one step, the Scottish Government could include young people who are eligible for throughcare, as defined in the Children and Young People (Scotland) Act 2014, in section 5(2) of the draft regulations of the Welfare Funds (Scotland) Bill.

**Administration of Welfare Funds**

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Whilst in principle we understand that outsourcing provision of the Fund to a third party may on occasion be necessary or beneficial, in order to address the specific needs of the applicant or their family, we remain concerned that this should only be the case in specific situations and where the case is appropriate. We believe that this should be set out in regulations and as highlighted in our original response to the draft Bill we suggest that section 2 (3) be replaced with:

“Except in such circumstances as may be prescribed in legislations, a local authority must exercise its power under subsection (1) by providing financial assistance to the applicant”

In addition to this we would also like to see suitability for third party providers laid out in regulations. We support the view of CPAG that regulations should lay out the specific criteria the third party provider must satisfy in order to be considered suitable. This is to ensure the needs of the applicant are met and their dignity and individuality considered. Third sector providers must have knowledge of the scheme and be aware of the specific vulnerabilities of the applicants they will be dealing with.

**Review of decisions and the SPSO**

6. What are your views on the proposed internal local authority review process?

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7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Yes, we agree that the SPSO are best placed to conduct second tier reviews. We believe that this level of external scrutiny will encourage a culture of reasoned, well-documented decision making within local authorities. We also believe that the inclusion of SPSO in the second tier of decision making would promote a perception of the review scheme as entirely independent and impartial, making the process more transparent and attractive to those wishing to apply to the Fund.

There may still be a need to further consider whether the SPSO should take on a role similar to that of the previous Independent Review Service in terms of being able to issue guidance and recommendations to decision makers, in order to promote consistent interpretation and understanding of the relevant guidance and legislative provisions.

We envisage that the second tier review process would act as a means with which to proactively identify problems in delivery of the Fund and thereby be able to shape policy, best practice and provide a feedback mechanism to local authorities. We would hope to see this covered in guidance.

Mark Ballard
Head of Policy
Barnardo’s Scotland
28 August 2014
1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

1. Capability Scotland is in favour of the Welfare Funds (Scotland) Bill. The Scottish Government has heeded our call to legislate for a national framework for the Scottish Welfare Fund and now has the opportunity to establish a welfare fund which is accessible, accountable and transparent to disabled people across Scotland.

2. The SWF is an important mechanism for mitigating some of the worst effects of welfare reform on disabled people in Scotland. By increasing investment and ensuring that the fund is accessible, the Scottish Parliament and Scottish Government have the opportunity to prevent many disabled people and those using community care services from reaching crisis point. This preventative measure may prevent their costly reliance on public services such as the NHS, residential care or homelessness services.

3. However we have concerns that disabled people experiencing crisis or instability may have difficulty accessing the fund as a result of certain provisions of the Bill.

4. Under the UK discretionary social fund families experiencing exceptional pressure were listed amongst the categories of applicant eligible for community care grants. The term ‘exceptional pressure’ was not defined and included pressure resulting from a range of factors including disability. The Bill does not currently make provision for families under exceptional pressure. This is particularly concerning given that families with children where one or more members of the household are disabled are disproportionately affected and face ‘the highest total reduction in income as a result of reforms announced during 2010-2015, at £1,900 per year on average by 2015. In terms of percentage of annual income, this is around three times the average reduction in income faced by non-disabled households generation’. We would therefore ask that a third category be added under article 2(2) to include amongst qualifying persons (currently limited to those facing or leaving prison, hospital, residential care or homelessness) ‘families under exceptional pressure’.

5. Disabled people in Scotland are disproportionately disadvantaged by welfare reforms, to the extent that Disabled Person’s Organisations in Scotland state that current reforms may ‘represent the single greatest threat to disabled people’s’ right and ability to live independently in over a generation’. Households containing a disabled person are being subjected to over half of the total of £22 billion of benefit

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1 Scottish Government, Financial Impacts of Welfare Reform on Disabled People in Scotland, August 2014
2 Bill Scott The Broadest Shoulders? Disabled People and “Welfare Reform” CONCEPT Vol. 5 No. 1 Spring 2014
cuts already announced\textsuperscript{3}. Capability Scotland believes that it is imperative that the Scottish Government take every legislative means at its disposal to mitigate against this. Given that the alternatives to the SWF for disabled people are often high interest lenders, ‘loan sharks’ or choosing which essentials to go without we would ask that section 2(2) of the Bill should also include “disabled people who would otherwise be unable to maintain their ability to live independently, pertinent to their individual circumstances.” amongst the categories of individual eligible for the SWF.

6. The Bill should also make it clear that where an award is made under the scheme that it is a grant rather than a loan and that no repayment of awards will be required.

7. We have argued in evidence to the committee before that in order to ensure that the Scottish Welfare Fund is sufficient to meet the demands of disabled people in every area of Scotland that funds be ring-fenced so that disabled people across Scotland do not experience a post-code lottery in terms of provision. While section 1 of the Welfare Funds (Scotland) Bill will allow the funding for the SWF to be ring-fenced, it does not oblige the Scottish Government to do so. Given the increasing pressure on the SWF Capability Scotland does not believe this provision is strong enough.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

8. The Scottish Government’s own statistics show that in the first year of the interim scheme, more than 80% of Community Care Grants were made in kind. We believe this to be a worrying development as payments in kind potentially remove choice and undermine the dignity of disabled people. It is also essential that, where assistance is given in kind, the goods allocated meet the applicant’s needs - for example in cases where disabled people require specific equipment by reason of medical need (for example a particular type of bed). In such situations it is essential that an appropriate supplier is identified or that a cash payment is made.

9. We are concerned that local authorities may be hampering their own discretion by refusing applications from disabled people who are not considered to be ‘vulnerable’ or at crisis point. Given that refusal to accept an application undermines the transparency of the scheme by depriving the applicant of their ability to request a review we would argue that the bill should place a duty on local authorities to accept all applications made to the fund then consider alongside award criteria. This would not only prevent local authorities from hampering their discretion but would also allow the Scottish Government to collect accurate and comparable data about levels of demand for the SWF across Scotland.

10. Following concern in regard to allocation and spending patterns of the Scottish Welfare Fund as identified in SPICe Briefing, Welfare Funds (Scotland) Bill, August 2014, further analysis and consideration needs to take place to ensure that full and appropriate use and administration of the Fund.

4. Will the Bill and its provisions have a particular impact on equalities groups?

11. We have a concern that multiple vulnerabilities experienced by disabled applicants to the SWF may not be properly recorded due to software failure. The Scottish Government’s own Equality Impact Assessment in relation to the current Bill states “It would appear that some systems are recording default responses rather than real responses or that they offer limited options for recording, due to the design or configuration of the software”. According to current Scottish Government guidance, the vulnerabilities which local authorities should be recording are those characteristics or circumstances which should be considered by decision makers in prioritising awards. Many of these vulnerabilities are more likely to be experienced by disabled people, and in many cases, multiple vulnerabilities - mental health problems, learning difficulties, physical impairment or other disability, including sensory impairments, chronic illnesses and terminal illnesses. Failure to consider these multiple vulnerabilities creates a risk that applications from disabled people will not be given sufficient priority in relation to the SWF.

12. Given that applications to the SWP to date have predominately been via telephone, in writing and in person, there is a need for continued review of the application process to ensure the accessibility needs of disabled people are being met in what requires to be an expedited process.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

13. We have concerns about section 3(1) which states that “A local authority may make arrangements for another person to administer its welfare fund on its behalf.” No mention is currently made as to the suitability of this ‘person’. Regulations should set out the criteria that third parties must satisfy in order to be considered suitable – for example an ability to deliver the scheme fairly and effectively as well as an awareness of the specific needs and requirements of disabled people.

14. There should be due consideration given to any potential additional costs involved in the devolved administration on the SWF that would reduce the amount of fund directly reaching the intended beneficiaries. There should be no additional cost implications associated with this should a local authority decide to implement this arrangement.

15. Should local authorities decide to devolve administration to ‘another person’, consideration needs to be given to data protection and information sharing.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

16. Yes, we are very pleased that the SPSO will take on the role of hearing second tier reviews as we have always called for an independent review of social fund decisions. We are, however, keen to ensure that the procedure for both requesting a
review and making a complaint to the SPSO are clear and straightforward to disabled applicants and that review rules are made available in alternative and accessible formats.

Susie Fitton
Senior Policy Advisor
Capability Scotland
28 August 2014
1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government's aim of providing assistance for short term need and community care?

Carers Trust Scotland is in favour of the Bill and its provisions, but we are concerned about whether the Bill will achieve its aims. There are issues currently in the way that the SWF is administered, with significant disparity between local authority areas. There needs to be consistency in the guidance and criteria for applying, as well as sound reasoning behind the decision process, particularly when applications are being denied. The local authorities that have shown significant underspend (based on the 2013/14 annual statistics) should also be doing more to promote the existence of the Fund to people within their communities. As the only substantive difference between the current arrangements and the proposals in the Bill is the introduction of an independent review, we believe that consideration needs to be given to the current disparities in fund access and grant awards to ensure that there is equity of experience across Scotland.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

Aside from independent second-tier review, the Bill does not propose any functional changes to the current arrangement so it is not clear how the Bill can take on any learning. The independent review undertaken by Heriot-Watt University identified a number of issues with the interim SWF scheme, many of which were echoed by carers and carers’ services who have experience of applying for a grant or supporting service users to do so. Some issues that were identified include:

- Generally there is not enough information about how to access funds from the scheme, both individually and via third sector organisations. The Heriot-Watt review identified that awareness amongst individuals is low and often incorrect, with people aware that the Social Fund had ended but not sure what had replaced it. Third sector organisations will signpost relevant service users to the scheme, but we know that organisations’ experiences of publicity and promotional materials in their own area is mixed. It is also important that people who are not in touch with services know about the Fund. Combined with the issues mentioned in the next paragraph about incorrect information on local authority materials, it is important that inconsistencies are dealt with through provision of clear information and a continued public awareness campaign.

- Local authorities have conflicting information about criteria on their websites – some state that qualifying benefits are an essential requirement to access the
Fund. Scottish Government guidance is clear that qualifying benefits are not a requirement, but there needs to be more public information – particularly on local authority websites and materials – that the purpose of the Fund is to alleviate crisis or maintain independent living for those in need who are on a low income, whether or not they receive income replacement benefits. To ensure that guidance is nationally consistent, we would like to see it made clear in the legislation that the Fund is open to people who do not receive qualifying benefits but whose situation is such - either experiencing crisis and not having sufficient resources to respond to such a crisis or who needs a CCG to return to or remain living in the community - that a grant is appropriate. Whilst eligibility is mentioned in Section 5 (2) (c) as part of the Regulations accompanying the Bill, including this information in primary legislation would perhaps be more suitable.

- We know anecdotally that carers are struggling to access the funds, particularly for things like travel to hospital that were covered under the former arrangements but which is generally not provided now unless directly linked to the qualifying criteria (such as an emergency admission to hospital.) Whilst guidance specifies that carers are an identified group of potential applicants, this does not seem to filter through to local authorities.

- We are aware of carers trying to apply for a grant and being told that no further applications are being accepted, only for other carers in similar situations to have applications accepted days or weeks later. This causes confusion and ill feeling amongst communities and may discourage people from applying for funds when they are in crisis.

- We have heard anecdotal evidence of lack of written confirmation of decisions (despite this being assured in literature and on websites by many local authorities) – and difficulties with staff on the phone, which can be confusing for carers and disabled people. There is a great deal of similar evidence contained in the Heriot-Watt review. These issues will continue unless local authorities are provided with clearer and consistent guidance and directions on how to process applications and particularly how to support vulnerable people who may struggle with completing applications, using the website, using the telephone, or understanding the reasons for a decision on their application.

- We have heard that in some areas, applicants are being told that their need does not meet local priorities, but these priorities seem to change very frequently. It may be that these areas are attempting to control the flow of applications through setting and resetting of priorities and aligning these to specific groups. Whilst we appreciate that prioritising need is a way for local authorities to control funds, doing this on the basis of prioritising specific groups confusing for applicants and does not seem to fit with the intentions of the Bill to support those in greatest need. Applications should be considered on the basis of need and the severity of that need. If groups rather than people are prioritised there is a risk of leaving people facing severe crisis with no support.
3. Is there anything else that you feel should be included in the Bill?

We would like to see Carer’s Allowance included as one of the listed benefits, as it is an income replacement benefit and recipients of Carer’s Allowance will always be on a low income. Even if receiving a particular benefit is not an essential requirement for receiving a grant, the inclusion of a carer-specific benefit in this list gives a clear message to carers that they are an included group.

As mentioned above, we would like to see a statement about eligibility criteria in the primary legislation rather than the Regulations, to avoid continued confusion about the need to be receiving income-replacement benefits in order to qualify for the fund.

4. Will the Bill and its provisions have a particular impact on equalities groups?

It will have a particular impact on disabled people and their families, including unpaid carers. This has been identified to some extent in the EQIA from June 2014 and we are pleased that this disproportionate impact has been noted, as well as the disparity in the average CCG award to applicants with a disability. Steps to monitor and rectify these disparities must continue.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

This approach may benefit many people, particularly if the outsourced organisation has the resources to support applicants through the process and through any further review of the application, additional support and signposting to other services. There could be some concern about the services and business of any third sector or private sector organisation who delivered the fund, and whether this would lead to any unintentional bias or exclusion towards a group – for example, if the fund was delivered by a carers’ service, people who are not carers may feel discouraged from applying because they are not familiar with the service or organisation. We know that people are more likely to be aware of the Fund if they are in touch with third sector services (as noted by the Heriot-Watt review) so it is important to harness this reach, but at the same time consider the potential difficulties that might arise.

We are in favour of local authorities administering their welfare funds jointly if they wish. Many local authorities work closely together, and the increase in joint working in an integrated health and social care environment will be conducive to this. As ever, the most important aspect of delivery is that clear and concise information is provided to the public, and joint working arrangements or outsourcing must not place additional barriers or difficulties on applicants or potential applicants.

6. What are your views on the proposed internal local authority review process?

As mentioned above, under the current arrangements there have been issues with local authority reviews where applicants have not been informed of the decision in
writing. The statistics released in July 2014 show that a very large number of applications for both types of grant are successful following first tier review – this indicates that the current review process is robust and operating well, but raises questions about why the number is so high and if this indicates an issue with the initial decision-making process, perhaps in an attempt to control distribution of funds too zealously.

7. **Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

It would seem to be the most appropriate of the proposed options from the Bill consultation. However, given the circumstances of need for this kind of support, it is important that both first tier and second tier reviews take place in a timely fashion so that successful applicants are not kept waiting for a long time, and so unsuccessful applicants can begin to seek alternative support.

8. **What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?**

As regulations are generally easier to modify than primary legislation, it is good that provisions which may need to be altered quickly in the future are contained in the regulations. The detail in the regulations seems appropriate. As mentioned above, there has been inconsistencies noted in local authority materials regarding the requirement for applicants to be receiving certain benefits, so eligibility criteria may be better included within the primary legislation.

9. **Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?**

As mentioned under the response to Question 2, whilst local authorities may be managing the fund by varying priority levels for specific groups, this can cause confusion and frustration amongst applicants whose needs have not changed, but may find themselves unsuccessful if they are not a current priority. Whilst we appreciate that funds are limited, the underspends and inconsistency between local authorities noted in the statistics published in summer 2014\(^1\) may indicate that local authorities are being too cautious at the expense of those in need and that controlling grant awards to specific groups is not the best way to meet need. We would urge the Scottish Government to continue to monitor these statistics on a quarterly basis and welcome the commitment to match the £33m funding until 2015/16.

Carers Trust Scotland
28 August 2014

\(^1\) [http://www.scotland.gov.uk/Resource/0045/00456027.doc](http://www.scotland.gov.uk/Resource/0045/00456027.doc)
WELFARE REFORM COMMITTEE

WELFARE FUNDS (SCOTLAND) BILL

SUBMISSION FROM CHILD POVERTY ACTION GROUP IN SCOTLAND

CPAG in Scotland evidence for the Welfare Reform Committee Call for Evidence on the Welfare Funds (Scotland) Bill

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

1. CPAG is in favour of the Welfare Funds (Scotland) Bill and the legislative underpinning it will give the Scottish welfare fund. The fund provides an important means of protecting vulnerable households from reaching crisis point and/or being deprived of their ability to live independently. As well as promoting the wellbeing and sustainability of low income and/or vulnerable households the fund is an important means of reducing pressure on costly public services such as residential care, homelessness services and the NHS.

2. In some respects, however, the current Bill falls short of ensuring that assistance is provided to those in need. Particular areas of concern include:

Families under exceptional pressure

3. Under the UK discretionary social fund families experiencing exceptional pressure were listed amongst the categories of applicant eligible for community care grants. The term ‘exceptional pressure’ was not defined but included pressure resulting from a range of factors including disability, low income and relationship breakdown.

4. This category of applicant is not referred to in the Welfare Funds (Scotland) Bill as currently drafted. CPAG is concerned that this will lead to a situation in which families experiencing exceptional pressure will only be eligible for a community care grant if they are also able to show that their ability to live independently is at risk in that they are facing prison, hospital, residential care, homelessness or an unsettled way of life. This will exclude many families who are at risk because they are struggling to pay for basic household essentials and provide a safe, warm environment for their children.

5. This is particularly concerning given that families are likely to face increasing financial pressure over the coming years. Research conducted by CPAG shows that the minimum necessary cost of raising a child has risen by 7.7 per cent since 2012, while the minimum wage rose by only 1.9 per cent during this period and the real value of child and family benefits fell by 2 per cent. It is therefore likely that some families will find it increasingly difficult just to feed and clothe their children and heat their home.
7. CPAG therefore believe there is a need for a third category of qualifying person, ‘families experiencing exceptional pressure’, be added under article 2(2) of the Bill.

8. The need for such a provision is particularly pressing given that families do not currently appear to be receiving an adequate proportion of the Scottish welfare fund. SWF figures for 13/14 show that 20% of those applying for a community care grant are categorised as being a family under exceptional pressure\(^\text{iii}\). This compares with UK social fund figures for 12/13 which show that 53.6% of CCG budget was spent on families experiencing exceptional pressure\(^\text{iv}\). While these figures are not directly comparable, they highlight a serious concern that families are finding it increasingly difficult to access support.

10. We believe one of the reasons for ‘families under exceptional pressure’ being under-represented amongst those granted CCG is because their eligibility is not given as much emphasis in the current guidance as other categories of qualifying person. We have brought this concern to the attention of the Scottish Government which has made several very welcome amendments to the guidance in order to address this issue. We are therefore concerned that failure to mention families under exceptional pressure in the Bill could undermine efforts to date.

11. CPAG are concerned that the Scottish Government’s main reason for not including families under exceptional pressure in the current Bill is to ensure that the legislation is in-keeping with the Scotland Act 1998, as amended by a section 30 order giving the Scottish Parliament the power to legislate for a Scottish welfare fund\(^\text{v}\). The section 30 order does not mention ‘families under exceptional pressure’, despite this group previously being covered by the discretionary social fund and both Governments’ apparent intention that they should now have access to the Scottish welfare fund\(^\text{vi}\). If the insufficiency of the section 30 order is the reason that families under exceptional pressure have not been included in the current Bill then we would call upon the Scottish and UK Government’s to work together to pass a second section 30 order.

Grants v Loans

12. It is clear from current guidance and paragraph 5 of the Bill’s explanatory notes that the Scottish Government intends for SWF assistance to be provided by way of grants instead of loans. CPAG in Scotland therefore believes that the Welfare Funds (Scotland) Bill should state clearly that where an award is made under the scheme no repayment of awards can be required.

13. We are concerned by section 5(2)(f) of the draft Bill which will give Scottish Ministers the power to pass regulations “about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided.” We presume this provision is intended to allow local authorities to recover awards which have been fraudulently obtained. However, paragraph 27 the Explanatory Notes (which relate to section 5) provide absolutely no explanation of the provision or clarification on when such as power might be used. We therefore believe section 5(2)(f) should either be further clarified or removed from the Bill.
14. Section 1 states that ‘a local authority may use its welfare fund only in order to provide occasional financial or other assistance’. The Bill places no limitations on the circumstances in which it is appropriate for the award to be provided by means of goods or services rather than by way of financial assistance.

15. CPAG is concerned that there is an increasing tendency on the part of local authorities to make awards in kind. In 2013/14 under the interim scheme just under 20 per cent of CCG awards were made by way of cash, cheque or direct bank transfer\textsuperscript{vii}. The rest were provided by way of goods, store vouchers or travel warrants.

16. We are concerned that this may be having a negative impact on applicants in terms of their sense of dignity, ability to exercise choice and the quality of goods/service supplied. CPAG’s welfare rights workers have come across instances where applicants have been supplied with white goods which do not fit into their kitchens and which are of sub-standard quality. In one case a washing machine was supplied without a user manual. A contact of the applicant researched the machine online, and discovered it was only available for sale in Eastern Europe.

**Case Study:** The applicant was offered a cooker which she knew wouldn’t fit into her kitchen. She was told that this was the standard cooker that was offered and that she would have to take delivery of it and subsequently refuse it if it weren’t suitable. The cooker was then delivered and it was obvious to the delivery men that it could not be installed. It had to be removed and another delivered and installed instead.

17. CPAG believe ‘other assistance’ should only be provided where there is good reason not to provide the award as a cash payment (or bank transfer). Section 1 should therefore be amended to state,

‘a local authority may use its welfare fund only in order to provide occasional financial or, where it better meets the need of the applicant, other assistance’.

18. The assumption would then be in favour of cash payment or bank transfer. Instances in which non-financial assistance might be preferable could then be outlined in guidance. This might include, for instance, cases in which there is a high risk that a member of the applicant’s household may misuse the funds and the applicant is concerned that a cash payment is not appropriate.

19. It should also be made clear in regulations that applicants have the right to state their preference for financial assistance and local authorities have a duty to take this preference into account. These safeguards would help to protect the dignity and choice of applicants while avoiding the waste and expense created by poor quality, inappropriate goods.
2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

20. Several concerns about the operation of the SWF that have been identified over the past 12 months are not addressed through the Bill or draft regulations. These include:

**Concerns about gate keeping**

21. The Bill does not address concerns that some individuals who might be eligible for an award from the Scottish welfare fund are being discouraged from putting in a formal application. While we do not believe that local authorities are intentionally rejecting applications from eligible clients in need, there is a concern that some applicants are being dissuaded from making applications because local authority staff make a premature judgement about the individual’s likely eligibility and put her/him off making a claim. This prevents a full consideration of the applicants circumstances and denies them a right of review of any subsequent decision.

22. We have come across numerous cases suggesting that many people are being turned away before they make a grant application. Examples of this include the following:

**Case Study:** The relevant client had been in and out of hospital with mental health issues. He and his wife are both in receipt of ESA and he has to attend a clinic every day. The couple were in debt and struggling to cope financially. Medication was causing the husband to gain a lot of weight and he was at the point where his clothes were digging into his skin causing him great discomfort. The local authority informed him over the phone in a matter of minutes that he was not eligible for an award.

**Case Study:** An extremely vulnerable client (who had multiple disabilities and was illiterate) did not realise that his contribution based ESA would end after 12 months. The DWP notified him of this but did not send him the form which would allow him to make a claim for income related ESA. The client applied for a short term benefits advance (STBA) from the DWP but was refused on the basis that he did not count as a new claimant. The local authority repeatedly refused to take application to the welfare fund as it was the DWP's fault for not sending right form (ESA3). The client had to access food bank in the interim.

23. One way of overcoming this problem would be by requiring local authorities to keep a record of all inquiries relating to the Scottish welfare fund which do not progress to the point of application, along with any vulnerabilities of the inquirer and the reason for non-continuation of the application. This need not be a time consuming or resource intensive process but it would allow for accurate information to be gathered showing which groups are not making applications despite initiating inquiries. It would also encourage local authority officers to be more conscious of the procedure they follow and manner in which they deal with initial inquiries.
Concern about requirement that applicant be in receipt of means tested benefits

24. Another aspect of the scheme which has been problematic has been the requirement (which some local authorities appear to still be imposing) that all applicants must be in receipt of a means tested benefit before they can access the Scottish welfare fund. East Dunbartonshire’s website, for example, still states that, “For both grants you must be aged 16 or over and in receipt of Income based Jobseekers Allowance, Income related Employment and Support Allowance, Income Support, Universal Credit or Pension Credit.”

25. This is problematic because, in many cases, the reason applicants are experiencing a crisis is because there has been some kind of disruption to their means tested benefits. Common examples include being subject to a benefit sanction, experiencing a delay in relation to their claim for benefit (this is increasingly common in relation to ESA) or being in the process of requesting a mandatory reconsideration in relation to an ESA decision.

26. People falling into these categories often experience extreme hardship and financial pressure. In some cases they may be entitled to alternative support from the DWP by way of a short term benefits advance or hardship payment. However (as has recently been confirmed by the Oakley Reviewviii) in reality these payments can be difficult to access and are not available to everybody.

27. Households subject to delays and sanctions of this kind should not be precluded from accessing the Scottish welfare fund (either in respect of a crisis grant or community care grant). Cases CPAG has come across in which this has occurred have included the following:

**Case Study:** The individual concerned had made an application for employment support allowance which had been rejected. He then went on to request a mandatory reconsideration and was told to make an application for JSA in the interim. He felt he was unable to claim JSA because his health problems made it impossible for him to take steps to look for work. The mandatory reconsideration process took more than 8 weeks. The man’s application to the Scottish welfare fund was refused on the basis that the client was not in receipt of a qualifying benefit.

28. The draft regulations currently state that,

“a person is **not ineligible** for assistance by virtue of paragraph (1)(a) if that person is receiving—
- an income-based jobseeker’s allowance (payable under the Jobseekers Act 1995);
- income support under the Social Security Contributions and Benefits Act 1992;
- income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007;
- universal credit under Part 1 of the Welfare Reform Act 2012; or
- state pension credit payable under the State Pension Credit Act 2002.”
29. We are concerned that this provision could easily be interpreted to exclude any person not claiming one of the means tested benefits listed. We believe that this reference to means tested benefits should be removed from the regulations altogether. Reference could then be made in subsequent guidance to the need to take the receipt of means tested benefits into account when considering available resources. As well as allowing for further clarification this would allow for any changes to social security benefits to be quickly reflected in guidance.

30. In the event that regulation 5 is retained it should be changed to state that a person is to be treated as on a low income if they are ‘entitled to’ any of the listed benefit rather than ‘in receipt’ of them. This would ensure that people who were experiencing a sanction or delay in relation to their benefits were not excluded from making an application to the fund.

31. We are also concerned that the benefits listed in the draft regulations do not include contributory ESA. Contributory ESA is often claimed by individuals whose income and available resources are similar to those claiming the listed means tested benefits. It is therefore essential that applicants whose sole source of income is contributory ESA are not excluded from accessing the fund.

32. The regulations also fail to provide scope for essential outgoings of the applicant (such as disability related expenditure) to be taken into account when considering the applicant’s resources. The regulations should state that applicants can ask that their outgoings be taken into account where they feel they have additional, essential costs.

33. The regulations also fail to make clear that any capital taken into account for the purpose of calculating the applicant’s resources should be available to her/him immediately. Having savings or a pension fund that s/he cannot access should not preclude applicants from accessing a crisis grant.

**Timeframes**

34. The limit placed on the number of awards an individual can receive in a given period has proven problematic for many applicants in need of (and otherwise eligible for) support from the fund. Paragraph 6.15 of the current guidance states that, "If a person has applied for a Community Care Grant or a Crisis Grant for the same items or services within the last 28 days, a decision has already been made and there has not been a relevant change of circumstances, then the Local Authority is not required to make a decision on the application."

35. This is problematic because increasing numbers of benefit claimants are facing extended benefit delays, particularly in relation to ESA. This means that many people experiencing mental or physical health problems and/or disabilities are going for extended periods of time with much reduced support or, in some cases, no support at all. There is evidence that, despite having no access to any other support, individuals are being turned away from the welfare fund because of part of the guidance which states that,
Case Study: Due to an extended delay awaiting the outcome of a mandatory reconsideration in relation to an ESA decision, the client had insufficient funds to pay for electricity. He was refused a crisis grant on the basis that he has already been awarded one within the last 28 days (due to the same mandatory reconsideration delay). Only after several attempts and intervention from a welfare rights advisor did the council permit him to submit a second application.

36. We are strongly against a limit on the number of applications within stated time frames contained in the draft regulations. We believe there is a degree of discretion required in relation to repeat applications which the regulations as drafted do not allow for. The draft regulation 7 currently state that,

(1)(a) A local authority need not consider a fund application made by or on behalf of a person who has made another fund application within the previous 28 days.

(2) Paragraph (1) does not apply where—
(a) the second application is different in its nature from the first application;
(b) no decision was taken on the first application; or
(c) it appears to the authority that the circumstances of the person by or on whose behalf the applications were made have changed in a relevant respect.

37. This provision fails to differentiate between applications for a crisis grants and applications for community care grants. Furthermore, the draft Bill states that local authorities “need not consider” a repeat application made within the stated time frame unless it fits within a list of specific exceptions. Surely identifying such exceptions within an application is likely to be difficult – if not impossible - without consideration?

4. Will the Bill and its provisions have a particular impact on equalities groups?

38. There is a serious concern that local authorities are not recording (and therefore unlikely to be adequately considering) the vulnerabilities of applicants. The vulnerabilities which local authorities should be recording are those characteristics or circumstances which should be considered by decision makers in prioritising awards. Many of these vulnerabilities are more likely to be experienced by individuals or households with protected characteristics. They include, for example, frailty or old age, learning difficulties, mental health impairments, physical impairment or disability, including sensory impairments, chronic illnesses and terminal illnesses.

39. Failure to consider these vulnerabilities creates a risk that applications from vulnerable households and/or those with protected characteristics will not be given sufficient priority in relation to the welfare fund.

40. There is also a concern that the software used by many local authorities to process applications is preventing them from recording multiple vulnerabilities. The Scottish Government’s own Equality Impact Assessment in relation to the current Bill states. “It would appear that some systems are recording default responses rather
than real responses or that they offer limited options for recording, due to the design or configuration of the software.”

41. In particular there is a concern that some software only allows local authorities to consider one vulnerability per application. As well as potentially discriminating against applicants with protected characteristics, a failure to capture multiple vulnerabilities could also be discriminating against applications from families under exceptional pressure. Again, families under exceptional pressure are likely to have more than one of the listed vulnerabilities and failure to capture this information could mean their applications are not being given sufficient priority. Relevant vulnerabilities include being a lone parent, children living with young parents aged under 25, children living with a disabled adult, children living in a large family with three or more children, experiencing family breakdown, being pregnant, recent childbirth or adopting a child.

42. CPAG therefore believe that local authorities should have a duty to include a list of the vulnerabilities they considered when making a decision on an application in each decision letter. This will ensure that applicants – and those monitoring the administration of the fund - will know when local authorities are failing to take relevant vulnerabilities into account.

43. Another concern relating to the software used by some local authorities is that it won’t allow an application to proceed unless all fields are completed, including the field requiring the applicant to supply his/her National Insurance number. This impacts particularly on migrant groups, including those with indefinite leave to remain, refugee status or discretionary/humanitarian leave who may not yet have been allocated an NI number.

44. Cases have also highlighted numerous failures to make reasonable adjustments on the part of local authorities when dealing with disabled applicants. For example,

**Case Study:** A crisis grant was awarded to a vulnerable adult with learning and physical disabilities on Friday afternoon. He was told that he needed to come and collect it but given directions to the wrong office. He was then told he would need to get across town to the right office within the next 20 minutes if he wanted the grant. He did not have money for parking and was not able to get there. For this reason an advisor with mandate went to the correct office on his behalf. The staff at the ‘correct’ office knew nothing about the award but gave advisor £10 out of petty cash in the meantime.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

45. We are very concerned about section 3(1) which states that “A local authority may make arrangements for another person to administer its welfare fund on its behalf.” We believe administration of the welfare fund generally should be a function of government.
46. Allowing third parties to administer the fund is likely to affect the quality of decision making, undermine public confidence in the scheme and put the accountability, and transparency of the fund at risk. Applicants to the Scottish welfare fund should be aware that they are entitled to make an application to the fund, that the decision-maker is subject to the principles of administrative law and that any decision made can be subjected to review. There is a risk that outsourcing to a third party may give the applicant the false sense that they are asking for charity, rather than exercising a legitimate right.

47. There is also a need for clarification within the Bill that any arrangements to outsource specific aspects of the fund such as sourcing and delivery of goods should only be made where that other ‘person’ is suitable. Regulations should set out criteria the third party must satisfy in order to be considered suitable. Relevant third parties should, for instance, have an awareness of the purpose of the scheme and an ability to deliver the scheme fairly and effectively as well as an awareness of the specific needs and requirements of vulnerable groups.

48. Cases received through CPAG’s Early Warning System highlight the problems that can arise when third parties involved in delivery of the scheme are not adequately trained.

**Case Study:** A vulnerable man had been awarded goods as part of a community care grant. The goods were delivered earlier in the day than the applicant had arranged and he wasn’t in when they came. He contacted the company (which had been contracted by Glasgow City Council) to schedule a redelivery and was told that he would need to make another application to the Scottish welfare fund as he had “missed his chance”. The issue was resolved after intervention form a welfare rights advisor.

49. There is also a need for regulations to ensure scheme users have a way of holding third party providers to account and that local authorities are made aware of complaints relating to the service provided by a third party.

50. The committee should also consider that allowing third parties to administer the scheme could complicate the relationship between the right holder (applicant) on one hand and the duty holder (local authority) on the other. This complication could result in confusion amongst applications about how to challenge decisions and make complaints.

51. The Bill also creates confusion as to how decisions made by third party decision makers could be challenged. Section 4(1) states that Scottish Ministers may, by regulation, require local authorities to review decisions made by them in pursuance of section 2. There is a need for further clarification to ensure that decisions made by third parties are also challengeable.

6. **What are your views on the proposed internal local authority review process?**

52. We are happy for first tier review to be conducted internally by local authorities. This allows for reviews to be conducted quickly. There is, however, a need for the
Committee to consider why rates of review are currently so low. Review rates have increased very slightly over the first year of the interim scheme\textsuperscript{ix} but we are deeply concerned that low rates of review will become a feature of a devolved system.

53. This might be addressed by the increased independence of the review system that will be supplied by the SPSO’s potential role. Consideration should also be given to whether low rates of review are symptomatic of:

- A delay between the decision being made and notification of that decision to the applicant. A failure to provide time limits for notification may mean that by the time the applicant hears about the decision and receives a written explanation of it, the relevant crisis has passed.
- A lack of clarity about the fact that the nature of the award (amount, type of good etc.) can be challenged, as well as refusals.
- Difficulties resulting from the complexity of the relationship between the individual and the local authority. Where, for instance, the applicant relies on the local authority to provide essential care or support at home, s/he may be unwilling to challenge that local authority due to a misplaced perception that there will be negative consequences. Similarly, where a family has had previous interventions from social work or child protection, they may be fearful of drawing attention to themselves by challenging the local authority. Applicants with council tax arrears may feel that they are in a similar position.

54. Hopefully, some of these concerns will be resolved through oversight from SPSO, but local authorities should take reasonable steps to ensure that applicants are encouraged to challenge decisions and that they can access any support, information or assistance they need in order to do so.

55. Regulations should place a time limit on the period between a decision being made and notification of that decision being provided to the applicant. This might be achieved by amending regulation 10(1) to state that “Every decision on a fund application is to be communicated to the applicant in writing on the day on which it is made or as soon as is reasonably practicable thereafter, unless the applicant requests otherwise.”

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

56. Yes. We believe the SPSO’s independence and experience of dealing with complaints puts it in a strong position to take on this role. We are also of the opinion that the SPSO should be added to the list of organisations under section 6(3) of the Bill, who must be consulted on any proposed changes to guidance or regulations.

57. There is also a need to consider whether SPSO should be enabled to issue recommendations and guidance to local authorities, thereby fulfilling a role similar to that performed by the Independent Review Service. The IRS’s publications were very highly regarded amongst welfare rights professionals.
8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

58. There are several changes which we believe should be made to the regulations as currently drafted to ensure the Scottish welfare fund operates fairly and effectively in practice. These include:

- Regulation 5(2) should detail that a person is to be treated as on a low income if they are ‘entitled to’ any of the listed benefit rather than ‘in receipt’ of them. This would ensure that people who were experiencing a sanction or delay in relation to their benefits were not excluded from making an application to the fund.
- Regulation 5 should expressly state that if an applicant appears to have a level of income similar to that of a person entitled to the listed benefits they should be treated as having a low income.
- Regulation 11 should clarify that review decisions (as well as initial decision) must be notified in writing to the applicant as soon as is reasonably practicable.
- There is a need for further consideration of Regulation 10(3) and (4). As drafted, the time limit on decisions only runs from the point at which ‘the authority has received all information allowing a decision to be made.’ There may be a need for guidance relating to what can be considered sufficient information in order to prevent this provision causing unnecessary delays.

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

59. Our main concern is that the financial memorandum does not appear to include a budget for monitoring and evaluation of the permanent scheme. We would welcome further clarification as to whether this is a role that will be performed by the SPSO and, if so, how this aspect of its role will be financed.

Hanna McCulloch
Policy and Parliamentary Officer
Child Poverty Action Group in Scotland
28 August 2014

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1 SF Dir 4
5 www.legislation.gov.uk/uksi/2013/192/article/2/made
6 Paragraph 5 of the Explanatory memorandum for the current Bill states that the SWF should be accessible to families experiencing exceptional pressure. http://www.scottish.parliament.uk/S4_Bills/Welfare%20Funds%20(Scotland)%20Bill/b51s4-introd-en-bookmarked.pdf
Introduction
Citizens Advice Scotland (CAS) and its member bureaux form Scotland’s largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres. Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2012/13 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.

In 2013/14 Scottish bureaux dealt with over 7,400 advice issues relating to the Scottish Welfare Fund, including 2,860 relating to Community Care Grants and 4,550 Crisis Grant issues. This compares to some 8,300 advice issues relating to Social Fund Community Care Grants and Crisis Loans in the final year of their operation.

Since the inception of the Scottish Welfare Fund, Citizens Advice Scotland has been involved in discussions about the delivery and operation of the Fund, and has provided regular feedback of bureau and client experience of the Scottish Welfare Fund to the Scottish Government and CoSLA since its implementation.

We welcome the opportunity to respond to this call for evidence on the bill for the permanent scheme, as well as the publication of draft regulations. In our response we comment on both the draft primary legislation and the draft regulations.

We welcome clause 6(3) which requires consultation before issuing or amending guidance. There should be a similar provision for consulting local authorities, third sector bodies and other relevant parties on the draft regulations.

General
Question 1: CAS supports the permanent arrangements for the Scottish Welfare Fund, and its establishment as a statutory scheme.

In relation to achieving the aim of meeting short term need, it needs to be recognised that the impact of changes to the benefit system have yet to be fully experienced in Scotland. Most notably, the limiting of the uprating of benefits will substantially increase the gap between the value of benefits and everyday living costs. In that context, there is likely to be increasing pressure on families in receipt of benefits over the next few years, and greater numbers of people in need of support through the Scottish Welfare Fund. This will require careful management of the Fund by local authorities and monitoring of the operation of the Fund by Scottish Government.

Clause 5 (2) (e) of the bill allows regulations about circumstances in which amounts may require to be repaid or recovered. The Bill itself does not specify that assistance will be provided in the form of grants (although the regulations do). We
would like clarification that this point is specifically dealing with fraud, and will not enable a shift back to repayable awards.

CAS would like to see further clarity about the types of assistance that might be provided. Currently awards are made through financial or in-kind assistance. It should be clear that awards should be appropriate to the needs of the applicant.

A North of Scotland CAB reports of a client who received a Community Care Grant, which was awarded in the form of goods. The client felt that they had no say in the decisions regarding their furniture and were ending up with unsuitable items. The client had requested a table, but as his flat is extremely small would prefer a coffee table to a table and four chairs. The CAB called the Welfare Fund and with some difficulty organised the changes. However, it will have to be a new order so the table and chairs may be delivered and then uplifted and the coffee table will come later.

Question 2: There is some anecdotal evidence of gatekeeping in the interim arrangements, where applications are not accepted as such. The evaluation of the interim scheme flagged the importance of recording any attempt to make an application. If applications are cut off at too early a stage, the applicant may not have opportunity to present the full facts of their situation. It will skew data about the scheme. Consideration should be given to defining an application in regulations.

A West of Scotland CAB reports of a client pursuing an employment tribunal with his former employer and who had been refused Jobseekers Allowance in the meantime. He made an application for a Crisis Grant by telephone and was refused. In attempting to ask for a review it transpired that although the welfare fund team acknowledged receipt of his call they did not consider him to have submitted an application.

Ongoing monitoring of the scheme and its operation will be important. For example, case evidence from bureaux suggests that in some cases bureau advisers and potential applicants are struggling to get through on phone lines, are not receiving responses on applications within the required timescales, or who are receiving awards in unsuitable formats. For example, some clients have been told that their Crisis Grant will be received as a voucher, sent either by email or post. For clients in crisis who do not have an email address this is not appropriate. We welcome the Scottish Government’s commitment to monitoring and quality improvement through the appointment of a member of staff with this responsibility. We are not clear whether this cost is contained in the estimates for the ongoing administrative costs to the Scottish Government of the Scottish Welfare Fund.

A North of Scotland CAB reports of a client who called her local authority to apply for a Crisis Grant for travelling expenses to visit the father of her children who is very seriously ill in hospital in another part of the country. She was told she could not receive a Grant to pay for travel expenses. The CAB

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adviser then spoke to the Welfare Fund person, who explained that if the client could get the funds to pay for travelling expenses and this caused her to be in a bad financial position, on her return she could apply for a crisis grant. The client decided to use the money she was going to spend on paying her bills to cover the travel costs, and reapply for a Crisis Grant at a later stage.

An initial focus of thinking around the scheme was to ensure that by localising the scheme, effective links to a wider and more holistic range of support could be made. The evaluation of the interim scheme suggests that these links could benefit from being strengthened. As the permanent arrangements are put into place this commitment to holistic support needs to be borne in mind.

A South of Scotland CAB reports of a client who came to CAB having lost money. She had gone to her local council for help, who had told her there was nothing they could do and referred her to the CAB. The CAB helped her apply for a Crisis Grant from the local council.

Question 3: Families under exceptional pressure: The current guidance for the scheme allows for Community Care Grants to be made in circumstances where families are considered to be under exceptional pressure. This is an important area of support, which was added into the guidance of the interim scheme following recognition of its importance. However under the regulations as currently drafted, only families under exceptional pressures who require the support to maintain a settled home will be eligible for assistance. CAS would like to see families facing exceptional pressures beyond the maintenance of a settled home included in the scope of the arrangements.

Administration of Welfare Funds
Question 5: If local authorities are to share or outsource the administration or delivery of Welfare Funds, there must be clear procedures for who has responsibility at each stage and dealing with problems, including both complaints and first and second tier reviews.

Reviews of decisions
Question 6: Clause 4(2)(a) allows for all decisions to be reviewed, or for particular types of decision to be reviewed. This is not currently clarified further in the draft regulations. CAS understands that the purpose of this clause is to allow specification of what aspects of a decision may be reviewed, for example to exclude decisions about local authority policy from scope. We would welcome a further clarity on what this might mean.

Question 7: CAS strongly supports a second tier review process which is fully independent of local authorities. On this basis we support the option of the Scottish Public Services Ombudsman (SPSO) to carry out second tier reviews, and we believe there are benefits to one body being able to handle both second tier reviews and complaints.
We welcome the new powers for the SPSO at clause 4(4) to allow the Ombudsman to quash decisions and direct local authorities to reconsider applications or to provide assistance through the welfare fund. We believe these powers are necessary to ensure the effectiveness of second tier review carried out by the SPSO.

However, it is not clear what the statutory basis for second tier reviews will be. The Bill contains no detail, and explicitly states at clause 5 (4) that regulations will not make provision regarding this.

CAS does not have strong views as to whether the statutory basis for a review carried out by the SPSO should be in this Bill or in consequential amendments to legislation regarding the SPSO. But CAS believes that there needs to be a statutory basis for details of second tier review, including the time limits for making review decisions and notifying applicants of the decision, and reporting requirements. There should be a full public consultation on these rules.

A North of Scotland CAB reports of a client who made an application for a Scottish Welfare Fund Community Care Grant in December 2013. It took 23 days to receive a decision refusing them the award, rather than the 15 days in guidance. A first tier review decision confirming the refusal was received within nine days (guidance states 15 days), and the second tier review took 50 days, 20 days longer than the timescale of 30 days. The client was awarded a grant at second tier review, six months after the original application.

 Regulations
Question 8: See also response to question 1 on families facing exceptional pressure and question 7 with regard to the statutory basis for second tier review.

CAS would like to see further detail in the regulations about the requirements on local authorities to provide information about the operation of their schemes (see clause 5 (2) (e) of the Bill). We would also like to see a regular reporting requirement on Scottish ministers.

CAS believes the drafting of some aspects of the regulations could be clearer. In particular the drafting of regulation 5 concerning income and capital could be much clearer. Part (3) about guidance on the assessment of income and capital, should immediately follow part (1) which says that someone with income or capital may be deemed not to be eligible. This could be interpreted to mean that an individual with any income or capital whatsoever may be ineligible.

An East of Scotland CAB reports of a client whose application for a Crisis Grant was refused on the basis that her husband was working, without consideration of that fact that the previous week he had only received statutory sick pay of £38, and the couple were unable to afford food for themselves and their two children from this.
Part (2) of regulation 5, which states that a “person is not ineligible for assistance” by being in receipt of particular benefits, could be clearer. Effectively, it creates a permissive clause, i.e. a person who is in receipt of those benefits may be eligible for the scheme, whereas the current guidance states that receipt of these benefits means that the applicant will meet the qualifying criteria in relation to income. We would also be concerned if the phrasing of this regulation was interpreted to mean that receipt of these benefits was the only income criteria for the Scottish Welfare Fund. The phrasing of the regulation should be amended to cover people who are eligible for these benefits, rather than specifically in receipt of them, so that people who are experiencing sanctions or delays in the receipt of benefit are clearly covered.

Similarly, regulation 6 could be clearer in making explicit the relationship between 6 (4) (a) and 6 (5); for example, regulation 6 (5) could be made a subparagraph of 6 (4) (a).

Regulation 10 on the detail contained in decision letters is helpful. (2)(e) should be more specific, not just specifying details of any financial assistance, but of any award, whether financial or otherwise, and what form the award takes. (3) and (4) should be clear that the local authority must not only make its decision with the specified timescales but also notify the applicant within that timescale.

Financial memorandum
Question 9: As discussed at question 2, it is not clear whether ongoing costs to the Scottish Government of monitoring and quality improvement for the scheme.

Beth Reid
Policy Officer
Citizens Advice Scotland
28 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM CITY OF EDINBURGH COUNCIL

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes to both. The City of Edinburgh Council is of the opinion that the Scottish Welfare Fund has been very successful in providing assistance for short term and community care. Given that the current scheme is included in the provisions of the Bill the continued success of the fund is assured.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

There have been a number of changes to the scheme which reflect learning from this time, these have in the main reflected recommendations made by Local Authorities. However, City of Edinburgh Council is of the opinion that a number of other changes could be included. These suggestions are detailed at 3 below.

3. Is there anything else that you feel should be included in the Bill?

The Bill does not include a provision for dealing with Fraud. Whilst financial penalties are unlikely to be appropriate for this customer group a form of sanction could be introduced where fraud is proven. Fraud may occur where a false declaration of need is made or the customer attempts to sell goods provided. In these cases no further claim could be considered for a period of time as prescribed in the Bill. The Bill should also clarify the position regarding removal costs or alternatively remove them from the Bill and advise that they should be dealt with through Discretionary Housing Payments.

4. Will the Bill and its provisions have a particular impact on equalities groups?

Given the Bill reflects the current welfare fund scheme it is unlikely the enactment of the Bill will have a significant new impact on equalities groups.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Yes the Council agrees with this proposal. The benefits are that this would help support smaller local authorities achieve adequate processing and delivery times
which may not be achievable because of the lack of resilience eg sickness, holidays, within a small team. Also unit costs could be less by administering across local authority boundaries. The drawbacks include: the dilution of local knowledge, conflicting staff priorities and potential issues around the setting of staffing levels. These drawbacks could be addressed by a lead authority having an SLA agreement with the other participating authorities.

**Review of decisions and the SPSO**

6. What are your views on the proposed internal local authority review process?

The Council agrees that the process allows for another opportunity to review a case, taking into account any new evidence to ensure that the correct decision was made according to the guidelines contained within the Bill.

Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

No, the Council is of the opinion that the opportunity to introduce local knowledge into the review process will be lost. Also, it is likely that the time to set up and undertake the review will increase leading to a potentially unacceptable delay for a vulnerable client group. In addition, the cost of undertaking an SPSO review is likely to be higher given that local authorities are currently undertaking reviews from within current resources.

**Further provision - regulations**

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The Council is of the opinion that the level of detail reflects the requirements of the fund. As stated at 3 above the Council is of the opinion that Fraud has not been addressed within the Bill.

**Financial Memorandum**

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

The Council is of the opinion that costs attributed to the grant fund are realistic and proportionate. The Council is of the opinion that the current level of administration funding provided by the Scottish Government is not sufficient to provide the service level processing times required for community care (15 days) and crisis grants (2 days). Since the commencement of the Welfare Fund on 1 April 2013 the following have occurred all of which have increased the number of applications to the fund: awareness of the fund has increased, a number of changes have been made to the guidance all of which have led to increased demand, the numbers of customers who have had their benefit sanctioned has increased leading to more applications to the fund. The Council believes that the administration funding requires to be increased by 20% to ensure the provision of good customer service. Alternatively, the Scottish
Government should allow Local Authorities to move funding from the grant fund to the administration fund to ensure good customer service is delivered.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The Council is of the opinion that a clearer definition of what constitutes low income should be included within the Bill, eg should this be stated as the same income level as a person on out of work state benefits.

Cliff Dryburgh
Benefits Manager
City of Edinburgh Council
11 August 2014
A. Background to CRNS

1. Community Resources Network Scotland (CRNS) represents re-use, recycling and repair organisations across Scotland on issues of sustainable community resource management.

2. The majority of members of CRNS are social enterprises managing waste resources at a local level through recycling, re-use, composting, waste reduction and waste education activities.

3. Members prevent tonnes of valuable product and materials from ending up in landfill, create local jobs and other economic opportunities, and typically work to help those on low incomes or who are disadvantaged.

4. The CRNS State of the Sector survey for 2014 shows that:

   a) Third Sector re-use and recycling activity was reported in all 32 local authority areas. The greatest concentration of activity was in Edinburgh and Glasgow.

   b) The Third Sector diverts in excess of 46,000 tonnes per year from landfill or other final disposal routes. Recycling tonnage is the largest proportion of that figure at 31,575 tonnes (68%) followed by re-use tonnage at 13,695 tonnes (29%) and community composting at 427 tonnes (1%).

   c) Third Sector re-use and recycling activity generates in excess of £24 million turnover per year. There is an uneven distribution of turnover across the third sector: Five organisations (4%) reported a turnover of over £1 million whilst 21 organisations (19%) reported a turnover of less than £25,000.

   d) Fifteen organisations reported that they had experience in winning tenders to deliver re-use and recycling activities with 41 organisations reporting they had not considered tendering at all. Twenty three organisations reported that they currently had at least one service level agreement in place to provide re-use and recycling services.

   e) The finance data shows a trend towards more earned income and less grant income for Third Sector re-use and recycling organisations: 51% of gross income was reported as earned income for 2010-11 and this figure had risen to 64% for 2012-13. CRNS has seen an increase in diversification among members as a matter of necessity and views this as an opportunity for the sector seeing diversification into recycling bike, jewellery and other such items. This shift appears to be driven by economic necessity for the sustainability of member organisations.

   f) Third Sector re-use and recycling organisations reported employing 685 full-time equivalent staff, involved 3,448 volunteers and supported 682 placements annually. Twelve organisations employed over 50% of the
In response to the invitation to give evidence to the Scottish Parliament’s Welfare Reform Committee’s call for written evidence on the above Bill, CRNS has consulted members and provides a summary of collated responses below.

Specifically evidence with regard to the Welfare (Scotland) Bill, the consultation sought views on the following questions:

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?
2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?
3. Is there anything else that you feel should be included in the Bill?
4. Will the Bill and its provisions have a particular impact on equalities groups?
5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?
6. What are your views on the proposed internal local authority review process?
7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?
8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?
9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?
10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The Committee welcomes views on all of the Bill’s proposals. In particular, the Committee would like submissions to address the following questions:

**General**

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes the Bill and its provisions, as it stands provides a wide scope for Local Authorities to authorise and pay grants to those in need.

CRNS believe that the Bill could go further in how short term need and community care is provided. There currently is no provision to ensure that a Local Authority or its agency makes use of a community based organisation for the provision of furniture or ‘starter pack’ goods for the relief of immediate and short term needs.
CRNS’ view is that giving clients’ sustainable choice between new and re-use could help break the cycle of poverty currently being exacerbated by providing only new furniture.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

No. While CRNS support the provision of furniture for those in need there are a number of key aspects to the current arrangements that could be improved if local community re-use organisations were more fully engaged in the process.

These improvements include:

a. The use of re-use community organisations to provide a choice in the type and style of furniture made available to those in need.
   a. CRNS evidence shows that providing choice to those in most need enhances their self-esteem, brings an element of dignity to individuals in need, creates a sense of ownership of the furniture provided and increases the likelihood of a reduction on continued welfare support. In effect providing choice though re-use organisations in the community creates a virtuous cycle of upward mobility and increases the chance of moving people from poverty.
   b. Use of the Scotland Excel Procurement Framework has had a negative impact on community based organisations and upon the number of recipients of grant funding from the welfare fund.
      a. CRNS fear that the use of new furniture as a main route to addressing welfare needs engenders behaviours that the re-use community and the zero waste agenda seeks to break. CRNS and its members actively seek to create an environment where the re-use option is valid while seeking to reduce impact on landfill and increase resource recovery.
      b. While CRNS does not wish to burden Local Authorities with unnecessary administration we do seek to ensure that at the heart of procurement there is a serious consideration given to the re-use sector. Developments in the re-use community utilising electronic point of sale technology can provide a valid and reliable alternative.
      c. Comparative cost data shows that buying new (via Scotland Excel) reduces the amount of money available and so reduces the spread of funds to impact on addressing the welfare needs of those across Scotland. Additionally, the potential for those in need to be drawn into a vicious downward spiral of debt is high. Managing expectations is a key part of behavioural change and provision of an only new option reinforces the notion that only new is acceptable. This approach can lead to unnecessary costs being incurred by those in need and draw these individuals into interactions with organisations such as WONGA or Brighthouse. For example to buy as a one off purchase a basic MDF 2 door 2 drawer wardrobe from Brighthouse would cost (at 1/7/2014) £322.68 or £3.97 per week for 156 weeks = £619.32 with an APR of 64.7%. Buying a similar product on line would cost a little as £115 or one fifth of the price. Using a re-use community store the likelihood is that such a purchase would be in the region of £40 - £50.
d. Focusing on new furniture creates a culture of ‘I want it new and I want it now’. This does not address the long term need to break the poverty cycle and undermines the zero waste agenda that so much of Scotland and its people are trying to implement. Exposing people to the re-use option has shown that people value the choices given, see this as value for money and increases the re-use sectors’ impact on resource recovery. Offering re-use as a viable alternative to new items provides a sustainable option for clients, reduces the feeling of entitlement and generates a virtuous cycle.

e. Recent CRNS research by the National Furniture Co-ordinator shows that 50% of clients in the Midlothian Council area choose to buy re-use goods with their SWF voucher because they had been exposed to re-use and could see that it was good value. Of this 50% a large number returned to buy more re-use goods. Additionally those individuals who choose new goods also returned to the MARC store having been exposed to the re-use market to make purchases. This is a clear indicator of behavioural change and if replicated could provide a route to long term sustainability across Scotland.

3. Is there anything else that you feel should be included in the Bill?

CRNS would welcome the provision for greater use of re-use outlets within the procurement process. This would serve to facilitate a key Government objective: zero waste, engender behavioural change, improve the human rights position within the Bill by increasing personal choice and help to break the cycle of need that leads or maintains people in poverty.

4. Will the Bill and its provisions have a particular impact on equalities groups?

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

CRNS believes the option to outsource the provision of the funds to a third party or to jointly administer the funds across local authority boundaries would have to firmly focus on the needs of the end user of these funds. Were the outsourcing to be viewed as a business opportunity for a third party CRNS would firmly oppose such a move. Cross boundary working between local authorities could, if well managed, alleviate geographic discrepancies, where a person may wish to move from one area to another.

a. CRNS considers that any third party administrator of the funds would need to be competent in welfare rights, have the client interests at heart and firmly focus on increasing personal choice, education of recipients about money management and advice and be able to support clients in making well informed choices. Additionally we would, as previously stated, actively encourage the engagement of the re-use community to maximise the purchasing value of the welfare grants provided.
b. Given the above comments CRNS would be supportive of an organisation such as Citizens Advice Bureau (CAB) as an independent third party organisation should local authorities be given the right to opt for this distribution route.

c. CRNS would not be supportive of a private sector approach to distribution of welfare funds.

d. The benefits of cross boundary arrangements for the distribution of funds would allow movement of people without loss of access to welfare grants. However, CRNS would seek to ensure that the distribution of funds in such an arrangement was fair, transparent and monitored for equality.

e. The benefits of using a third party such as CAB would, in the view of CRNS, focus on client need, reduce administration costs and bring additional benefit to clients with multiple needs. CAB has long championed welfare rights and has highly skilled staff and volunteers who can bring additionality to the client, not least of which would be the speed of assistance provided and knowledge of the wider social context in which welfare clients find themselves.

f. The disadvantages of cross boundary operations for local authorities would include closer monitoring of the distribution of grants in a fair and equal manner. This may increase the need for additional administration and affect the value of the funds available to those in need.

g. The use of a third party would also have disadvantages if not properly monitored. However if the third party was CAB, CRNS would be confident that funds would be well managed and that clients would gain additional benefit from engagement with skilled and professional welfare rights personnel.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

CRNS considers that a request to review decisions regarding the provision of funds should be automatic and not subject to internal judgements. A simple case review should be the automatic right of an individual to ensure equity, transparency and validity of decision making.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

CRNS welcomes the involvement of SPSO in the secondary review process, however if automatic review is built into the system it should reduce the need for SPSO involvement. CRNS would advocate that monitoring of the level of requests for review should form part of the overall monitoring process.

a. Wording in the Welfare Funds (Scotland) Bill Explanatory Notes (Page 3 Para 4) states: ‘The intention is that the legislative package will allow for these arrangements to continue, notwithstanding a change in how second tier reviews will be undertaken.’ CRNS considers that this wording implies no change to how the Scottish Welfare Fund works in practice i.e. who supplies the furniture and that the systems works perfectly well as it is currently established. As noted in the responses above CRNS’ view is that substantial gains could be made if new approaches were adopted and that a greater
emphasis was placed on providing choice and encouraging greater interaction with the re-use sector.

b. Page 12 of the Explanatory Notes provides a breakdown of the cost of reviews. Based on an assumption of a £500 award being reviewed at second tier the figures provided show that the value of the funds available would allow for 120-200 grant awards in year 2014/15 and between 620-1000 grant awards in years 2015/16. CRNS has recently noted a large increase in the use of the Scottish Welfare Fund, where 60% of the 141,700 users of re-use organisations were deemed to be on low incomes. Given these figures CRNS would express concern that the availability of a second tier review would not be a financially viable option and/or that only a very few would be able to access this option.

c. CRNS’ view is that access to the fund should be the priority and that second tier reviews should were possible be avoided, ensuring that in the first instance local authority decisions are robust and valid.

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

While CRNS accepts the level of details contained within the regulations is reasonably comprehensive it is clear that timescales for responses to how applications for assistance or review of such decisions should be made clear. Where an individual or family is in need time is imperative for action to be taken. CRNS would welcome the addition of timescales for responses for each of the component parts of the process and see this as adding value to the regulations.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

CRNS Response

There is a cost established for, but no cap on the cost of administration of the fund and should third party engagement for the distribution of the fund be implemented CRNS would maintain that a cap would be needed to ensure the majority of funds go to people in need and not on the management of the processes involved to ensure effective allocation and distribution of grants.

a. CRNS would be concerned that in an attempt to save money some local authorities may join forces or outsource the administration of the fund without undertaking a Cost benefit analysis prior to committing to this route. CRNS would ask that such an analysis is part of any outsourcing of the grant administration.

b. CRNS responses at Question 7 above detail additional concerns about the costs of second tier reviews.
Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

CRNS welcomes the opportunity to have made comment of the provisions of this Bill and would add the following:

c. One supplier – CRNS understand the principle of working with one supplier it is in our members interests and in the interests of those individuals in need for local authorities to work with a number of suppliers including our members who could collectively deliver the work across a local authority area

d. Outsourcing – CRNS has no direct objection to outsourcing the administration of the grant however we strongly advocate in favour of CAB or a similar welfare rights type organisation as the preferred route should this option be selected. The use of a private sector supplier for the administration of this grant would be a backward step and CRNS would not support this.

e. Re-use versus new – CRNS and its members are actively engaged in the zero waste agenda and would strongly advocate for the inclusion in the Bill for re-use to be made a preferred route for clients to engage in personal choice in how awarded grants are used.

f. Speed of decision making and arbitration – CRNS understands the need for high quality decisions to be made in regard to grant provision and would actively support agreed guidance on timescales for decision making and review to be established and monitored.

g. Page 15 Para 40 of the Explanatory notes states: ‘…the ability of local authorities to offer holistic support…facilitating access to other services. This approach should help to ensure that applicants can find a way to avoid crisis in the future.’ Again, CRNS would emphasise that the use of new furniture as the only or first option exacerbates the poverty cycle and does not educate clients in different approaches to money management, does not engender behavioural change and does not bring about change on the scale needed to provide a sustainable welfare support system to those in need.

Mary McLuskey
Chief Executive
Community Resources Network Scotland
1 August 2014

1 State of the Sector Report 2013. A study into the activities of the Scottish Third Sector re-use and recycling organisations. CRNS; March 2014
1. Introduction

COSLA welcomes the opportunity to provide written evidence to the Welfare Reform Committee on the Bill and its likely impact. This written evidence complements the submissions of member Councils and reflects the views of Scottish Local Government Leaders. COSLA will also be sending comments on the financial aspect of the Bill to the Finance Committee.

2. Background

COSLA is the representative body for all 32 Councils in Scotland. Councils are already administering Crisis and Community Care Grants on an interim basis, using jointly developed guidance, under an agreement between COSLA Leaders and the Scottish Government.

COSLA has worked closely with the Scottish Government Bill Team and local authorities around the content of the Bill and the accompanying Welfare Funds (Scotland) Regulations.

3. Consultation Response

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes, COSLA is in favour of the Bill and the provisions it contains. COSLA welcomes the action to place the Scottish Welfare Fund on a statutory footing and is satisfied the content of the Bill builds on the collective experience of local authorities. The package of regulations and statutory guidance will provide national consistency whilst allowing local authorities to react to local challenges through discretionary decision making.

COSLA welcomes the intention contained within Section 6 of the Bill, which includes statutory consultation with bodies representing local authorities when any changes to the guidance are planned. This will ensure the already strong partnerships, which have made the implementation of SWF interim scheme a success, continue.
2. **The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?**

Yes, the Bill and the accompanying Regulations reflect the current interim guidance well. The interim guidance for Scottish Welfare Fund has evolved through time, the changes made around qualifying benefits and assistance for those customers subject to DWP sanctions, are examples of how the learning from the interim scheme has shaped the Bill and accompanying draft Regulations.

Local authorities continue to meet regularly with the Scottish Government to discuss the interim arrangements. These meetings are chaired by COSLA and provide the opportunity to discuss how the interim scheme is working in an operational setting. These discussions ensure the interim guidance, associated draft Bill and Regulations not only reflect the policy intention but also achieve consistency across Scotland around administration.

Case sampling completed during visits by the Scottish Government’s Quality and Improvement Officer, accompanied by COSLA’s SWF Development Manager, has shown how the interim guidance is being applied day to day and has highlighted areas of the interim guidance which would benefit from further clarity or inclusion in the Bill.

The Scottish Welfare Fund Reference group, established and chaired jointly by COSLA and the Scottish Government includes representatives from third sector partners, the Scottish Prison Service and Scottish Public Services Ombudsman, also regularly provide information on how the interim scheme is performing both locally and nationally, again ensuring learning from the interim scheme is reflected.

3. **Is there anything else that you feel should be included in the Bill?**

Yes, Section 6 (3) has been removed from the earlier draft published during the consultation which closed in February this year. The Bill as drafted no longer requires Scottish Ministers to consult every local authority before issuing, amending or revoking guidance. This should be rectified. Individual local authorities operate the scheme and their views and learning should be taken into account.

4. **Will the Bill and its provisions have a particular impact on equalities groups?**

COSLA worked with Scottish Government Officers during the Equalities Impact Assessment update, completed in May 2014, which took account of the progression from the interim scheme to the statutory scheme. COSLA is satisfied that the key areas of activity highlighted in the Policy Memorandum accompanying the Welfare Funds (Scotland) Bill will minimise impact on equalities group.
COSLA agrees with the notion that the regulations and the statutory guidance will have a greater impact on equalities groups than the actual Bill itself and will work with the Scottish Government during the further EQIA planned.

**Administration of Welfare Funds**

5. **Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?**

COSLA is supportive of the flexibility this option allows, whilst mindful any such arrangements should recognise the benefits associated with the provision of holistic support to customers through facilitating access to other local services.

**Benefits**
- Economy of scale
- Increase consistency across neighbouring councils
- Opportunity to share best practice

**Drawbacks**
- Potential loss of local proximity and knowledge of the local area
- Capacity to react to local events e.g. fire, disaster, quickly potentially impacted
- Difficulties could arise trying to signpost to other services within local authority

6. **What are your views on the proposed internal local authority review process?**

The proposed internal local authority review process contained in the Bill replicates the existing arrangements councils complete to review 1st tier SWF decisions under the interim scheme.

If a customer is unhappy with the decision, they can ask for a first tier review to the council who made the original decision. This 1st tier review provides the council the opportunity to ‘remake’ the original decision having looked at the evidence and any new information that has come to light. The case is considered by a decision maker not involved in the original decision and the case reconsidered on the merits of the case.

The current process is low in costs, quick and the decision is examined and changed if appropriate at the earliest opportunity. There is no evidence to suggest the 1st tier internal review arrangements currently in place the under the interim scheme are not working.

One concern is the ability of councils to meet the timescales for 1st tier review should these increase dramatically. The level of 1st tier review requests needs to be monitored closely to determine whether the level of resource available within councils can sustain the demand for review, without compromising the overall administration of SWF.
7. **Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

Whilst the SPSO review option provides the majority of characteristics of review identified in the original consultation paper, COSLA Leaders are of the opinion it would be more consistent with the principles of local self-government for secondary review decisions to be made at a local level and would provide a proportionate and timely solution.

With regard to the SPSO the points below are as a result of the Bill’s publication and the briefing note published by the SPSO on the subject. The Scottish Government and SPSO both acknowledge this role as an unusual extension of powers. COSLA is keen to stress that whilst assessing discretionary decisions and considering the merits of the case local policies are taken in to account e.g the way SWF payments are actually made differs significantly across local authorities.

The transfer of responsibility for 2nd tier review will also see SPSO decisions binding on local authorities. The interim SWF operates on a discretionary, budget-limited basis with applications being prioritised according to need. COSLA has concerns that if the number of reviews rise and the number of cases being overturned by SPSO increases councils may encounter potential difficulties managing their SWF budget in year. How this works in practice needs careful consideration to ensure budget management is not compromised.

COSLA worked closely with the SPSO and Scottish Government around the subject of reviews during the initial consultation on the Welfare Fund (Scotland) Bill. COSLA supports the view that review numbers will rise as the process becomes more widely known but that number will not rise to the numbers dealt with by the Independent Review Service previously. COSLA agrees with the costing model and estimated costs based on the upper and lower number of reviews. The cost case would be £625, if review numbers continue to be low, or £200 per case if review numbers rise to the upper level. These costs would be considered disproportionate when compared to the average value of a Crisis Grant of £88. If the number of reviews were to stay at a low level we would have to question whether the costs associated with this option were proportionate to the number and level of grants involved even when compared with the higher awards associated with Community Care Grants.

The SPSO briefing note on SWF reviews includes the SPSO’s intention to look at complaints and reviews together as there appears to be considerable overlap between the two. Whilst COSLA recognises the potential benefits for the customer from this approach COSLA will seek to ensure during detailed discussions that processes are in place to prevent the artificial complaints being generated. Detailed work through of the examples contained within the SPSO briefing note and other examples from local authorities and stakeholders will be necessary to understand how this will work in practice.
Target times for SPSO to deal with cases need to recognise the role Councils will have in the process. Councils will have to divert resources from determining SWF applications to respond to SPSO requests for information. The timescales need to be realistic and achievable, whilst recognising the urgent need customers are experiencing.

COSLA notes the intention of SPSO to report on cases reviewed and believes this will assist in driving forward improvement, consistency in decision making, staff understanding, and inform local and national policy however it must be clear the cases reported are reviews and not maladministration or service failure. Failure to make this distinction could adversely impact the reputation of councils.

COSLA welcomes the SPSO’s intention to work with Scottish Government, local authorities and other stakeholders, to address these and other issues as part of their preparations.

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

COSLA has worked closely with local authority practitioners, stakeholders via the SWF Reference Group, and the Scottish Government Bill Officers, and is satisfied that the level of detail in the Bill accurately reflects the policy intention.

The accompanying Regulations and statutory guidance provide consistency without eroding the ability of local authorities to make discretionary decisions that reflect local priorities.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

The administrative funding provided to councils falls someway short of the actual costs associated with the service being delivered. This inadequate funding is causing significant concern within local authorities.

COSLA accepts the Scottish Government topped up the administrative funding transferred from Department for Works and Pensions (DWP) for 2014/15 to 5 million, following discussions with COSLA, and that provision has been made for this within budget plans for this to be maintained for 2015/16. Even with this top up, the funding still falls some way short of the 6.8 million originally requested, following work completed with COSLA members.
The level of funding provided to local authorities to administer the scheme is the level of administrative funding DWP allocated to achieve the previous transactional discretionary elements of the Social Fund scheme. The DWP provided a ‘typical’ loan system under the Social Fund, the amount of administrative funding allocated was around 20% of the total fund available for distribution.

The Scottish Government is of the belief that 15% of the programme budget is adequate to administer SWF in the context of typical administration grants procured being in the region of around 10%. However the Welfare Funds (Scotland) Bill, the accompanying Welfare Funds (Scotland) Regulations and the jointly agreed interim guidance all make it clear that councils should provide additional support and assistance over and above the administration of any award.

Discussions on administrative funding will continue to take place to establish the costs and benefits associated with administering the funds under the permanent scheme. COSLA continues to actively engage with local authorities around the costs of administration to provide evidence to form the basis of these continued discussions.

With regard to the set-up of the SPSO to administer secondary reviews, COSLA supports the Scottish Government view that the review numbers will rise as the process becomes more widely known but that numbers will not rise to the numbers dealt with by the Independent Review Service, due to the differences in the way SWF is operated by local authorities. Local authorities provide a holistic service with other outcomes where a payment from SWF is not available.

COSLA agrees with the costing of the SPSO model and the estimated costs based on the upper and lower number of reviews and welcomes the fact there is provision in the Welfare Reform Mitigation Budget to meet the initial set-up costs for the SPSO review function and the running costs in years 2014/15 and 2015/16. However, as mentioned, should the number of 2nd tier reviews received by the SPSO be at the lower end of the scale this option will be expensive for the number and value of awards involved.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

COSLA
1 September 2014
Crisis is the national charity for single homeless people. We are funded by the Scottish Government to increase access to the private rented sector in Scotland for vulnerably housed individuals and those on low incomes through the use of Rent Deposit Guarantee Schemes, and we work to facilitate shared tenancies.

Crisis is pleased to respond to this call for evidence on the Welfare Funds (Scotland) bill. We welcome the bill and the Scottish government’s decision to put on a statutory basis the interim SWF arrangements. We have some comments on the operation of the SWF and recommendations for how local authorities can ensure they are using the funding in the most effective way. We are particularly concerned that awarding grants for rent in advance is explicitly outside the remit of the SWF and we call on the Scottish government to give further thought to this.

We particularly welcome the Scottish government’s commitment to continue to fund emergency welfare assistance long term. Similarly, we strongly support the decision to ring-fence the funding.

Prior to the abolition of the social fund, Crisis Loans acted as a lifeline for people on low incomes who needed money for rent in advance to secure a new private rented sector (PRS) property. They were vital to the important work of Deposit Guarantee schemes, which work to support vulnerable people into PRS accommodation. We have heard anecdotal reports from the schemes we work with in Scotland that there has been an increase in landlords asking for several weeks rent to be paid in advance. We are disappointed therefore that local authorities are not allowed to meet this need through their SWF programmes and that this prohibition will be continued as part of the Welfare Funds (Scotland) bill.

It is crucial that people on low incomes, including those in receipt of benefits, can access money to help them pay rent in advance on new accommodation. For people who have been homeless, being able to access a stable home is vital in enabling them to move on in their lives. Although Discretionary Housing Payment (DHP) is available for rent in advance, these budgets are under a great deal of pressure due to cuts to housing benefit. In Scotland, 72% of DHPs have been used to support people affected by the bedroom tax.¹ This means it is unlikely that there will be much funding available for people who need rent in advance.

If people cannot get financial help with rent in advance, they will be less likely to be able to access the PRS and their homelessness is likely to be prolonged. Homelessness is a devastating and isolating experience, with grave consequences for the individual as well as the public purse. The Scottish government have made significant steps in reducing rates of homelessness in recent years - 36,000

¹ DWP (2014) DHP statistics
households applied for homelessness assistance in 2013/14, 8% lower than the previous year\(^2\) — but this could be set back if homeless people are not properly supported into permanent accommodation.

There is also a very real risk that people will turn to loan sharks and unscrupulous lenders if they cannot obtain financial help for rent in advance, leading to problematic debt.

Crisis strongly recommends that the SWF regulations are amended so that grants are available to assist with rent in advance. As a minimum, we would like to see councils encouraged to use part of their DHP allocation for rent in advance. This could involve new guidance being drafted and disseminated. Crisis would be very happy to play a role in this.

We are also concerned that the interim SWF did not generally allow people who had their benefits sanctioned to be awarded a grant. In Scotland in 2013, almost 100,000 people received a JSA or ESA sanction, some of these lasting over a year.\(^3\) Crisis’ research has shown that sanctions are often applied inappropriately or unfairly. They can leave people with little or no money at all, with our clients reporting turning off their heating, borrowing money, visiting food banks and even begging to get by.\(^4\)

Whilst we recognise that hardship payments are available and that the primary purpose of the SWF is not to support people who have been sanctioned, we believe that consideration needs to be given to how the Scottish government and local authorities can best help people who are experiencing hardship due to their benefits being stopped. If people apply to the SWP for assistance with expenses that are not related to their sanction, such as costs involved with moving to a new house, they should be treated like all other applicants.

Finally, although we generally support the continuation of the interim SWF arrangements subject to the points made above, we do believe that better guidance is needed to help local authorities deliver support that meets a full range of needs. The feedback we have received from charities and community groups we work with in Scotland is that there is often low awareness of the help that is available, with councils not promoting or signposting to their schemes properly. There are inconsistencies between the support offered in different areas, even for applicants with very similar circumstances. Most support is offered in the form of vouchers or goods in kind rather than cash grants — we believe that the latter should be available as it would empower people to make choices and manage their money as well as avoiding stigma. It is very welcome that the bill enables local authorities to administer their schemes jointly across local boundaries, and it is essential that this provision is made use of.

We recommend that new guidance is drafted to accompany this bill to support local authorities to further develop and improve their schemes. Crisis would be very happy to feed into such guidance. Work should be undertaken to source and disseminate

\(^2\) Scottish government (2014) Homelessness statistics
\(^3\) DWP (2014) 2013 sanctions statistics
\(^4\) Crisis (2013) Dashed hopes, lives on hold: single homeless people’s experiences of the work programme
best practice between local authorities. Organisations like COSLA would be very well placed to support this.

About Crisis

Crisis is the national charity for single homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help people to transform their lives.

As well as delivering services, we are determined campaigners, working to prevent people from becoming homeless and advocating solutions informed by research and our direct experience. Crisis has ambitious plans for the future and we are committed to help more people in more places across the UK. We know we won’t end homelessness overnight or on our own but we take a lead, collaborate with others and, together, make change happen.

Sarah MacFadyen
Policy and Parliamentary Officer
Crisis
28 August 2014
Regarding the current Welfare Reform Report, the point I would wish to make on behalf of deafblind people is that we have been proposing the same small number of measures to help deafblind people for the past 12 years or so, and the same difficulties re-appear with each new government policy. In short what works for a person with a single impairment does not necessarily work for a person with the dual sensory loss. This is in the main due to the fact that their “compensating sense” has been lost.

There is a need to recognise that deafblindness is a unique disabling condition and special measures need to be in place to ensure the inclusion of deafblind people. In particular deafblind people need to receive one to one communication and guiding support to be able to participate in any meaningful way. And they need that specialist support not to be classified as “Care”, which it can sometimes be, it is not. Communication support for deafblind people is the equivalent of BSL interpreting for Deaf people.


In England and Wales Section 7 Guidance is in place to ensure deafblind people receive the necessary communication and guiding support. This has never been implemented in any meaningful way in Scotland.

Instead the DLA regulations have become more stringent, making it almost impossible for deafblind people to qualify for the higher rates, and this was very much the intention when these benefits were first introduced, and severe dual sensory loss became one of the qualifying conditions. Today only fully deafblind people who use deafblind manual qualify for the higher rates, the other deafblind people who may be registered blind but retain a little hearing receive the same rate of benefit as those who have a single sensory loss.

And as pointed out by the deafblind people whom the Welfare Reform committee met in Lenzie, deafblind people are now required to substantially contribute to their guide/communicator costs, where these are funded by social work, due to the fact that this communication support is now classed as “care” and is therefore chargeable.

Deafblind Scotland
9 September 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM DUNDEE CITY COUNCIL

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes we are in favour of the Bill. It builds on the experience to date of the interim scheme and provides the legal underpinning to ensure the continuation of the scheme. The Bill itself provides the legal framework to achieve the Scottish Government’s aim, however they key to success will be in the administration of the scheme and guidance for local authorities to follow.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

While there hasn't quite been two years of experience of running the scheme in its current format, changes have been made to the guidance relatively soon after the scheme commenced following feedback from practitioners around issues of concern (eg in relation to issues around qualifying benefits). There have been a number of practitioner events and opportunities to feedback over time which highlights the process has been responsive to thoughts, comments and needs of the fund administrators. Therefore we do feel that the learning has been reflected over this time.

3. Is there anything else that you feel should be included in the Bill?

The explanatory notes highlight the needs of families however this is not reflected in the Bill and regulations with the focus much more on the qualifying individual. Therefore within the definition of a qualifying individual we feel there is a need to take families needs into account.

4. Will the Bill and its provisions have a particular impact on equalities groups?

The Bill will impact positively on all equalities groups – particularly those with low socio-economic status. In May 2014 statistical monitoring reports from all Scottish Councils revealed that 50% of the SWF Funds spent in Scotland has been awarded to applicants living in the 20% most deprived areas in Scotland. This indicates funds are making it to those customers most in need.
Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Generally we feel these options should be available if suitable for local circumstances however within Dundee we do not consider the outsourcing of the provision of the fund to a third party to be beneficial. Difficulties anticipated include the process of regularly reviewing priority levels, potential additional cost of fulfilment due to the inability to recover VAT, potential lack of bargaining power with suppliers in relation to fulfilment options and possible barriers to accessing the services of Social Enterprises in terms of fulfilment provision. With regards to jointly administering the fund with other local authorities we feel there would be benefits such as potential economies of scale and shared services with opportunities for reduced administration costs. Difficulties would include agreeing priority levels with neighbouring authorities who may have very different social and economic demographic challenges within their areas.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

We feel that the existing arrangements have worked well and we are pleased to see this reflected in the proposals. This arrangement provides the opportunity for a quick response to applicants particularly for those in a crisis situation.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

The current process of 2nd tier reviews managed internally within the council works well with costs absorbed within the overall running costs of the organisation through a volunteer panel of employees. We do have concerns about the additional costs of running the SPSO which alternatively could be used to partly offset the administration costs shortfall experienced by many local authorities. We are also concerned with the potential further administrative burden on local authorities in providing information/representation to the SPSO.

However we do recognise there may be some benefits in the SPSO through potential achievement of consistency of decisions nationally which may also lead to clearer principles to be applied.
Further provision – regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

We feel that some consideration around fraudulent claims or reference made to common law/other legislative powers in relation to fraud should be reflected on the face of the Bill, particularly around possible sanctions for those who carry out fraudulent activity. Currently this is an area where local authorities have little if no power to act upon even though they are fully aware that this happens regularly. While there is provision in the Bill at Section 5(2f) regarding circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been provided, this should be more specific in relation to fraud. There does not appear to be any provision within the regulations for this.

We note that while the Bill specifically states under Section 4(3) that if dissatisfied with the outcome of a first review, the individual concerned may apply to the SPSO for a further review however no such provision is made within the Regulations or direction for local authorities to provide information or representation to the SPSO to assist the decision making process.

With regards to the limitation on award of crisis grants as outlined in Section 8 of the regulations we are unaware of any mechanism which would allow a local authority to know that a previous application had been made in another local authority area.

We note that Community Care Grants and Crisis Grants are not referred to in the Bill with reference made consistently to “welfare funds” however the distinction between these different grants is not noted. We are unclear if this is to provide flexibility for the future i.e. to reflect the Scottish Government’s aspiration to gradually reduce crisis interventions in place of longer term support.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

In relation to the operation of the fund, Dundee City Council has consistently highlighted that the administration costs incurred are considerably greater than the administration funding available.

Dundee City Council believes that providing the desired holistic approach comes with a cost and this should be reflected in the level of funding available. It is noted that the level of administration support grant for 2015/16 is yet to be confirmed – we believe this needs to at least reflect the historical baseline figure and should reasonably reflect the actual cost of administering the fund.
Estimated SPSO costs do not appear to be proportionate particularly based on the level of administration funding provided to each local authority to implement all functions of the Scottish Welfare Fund. Furthermore we would question why there is a potential need for additional estate costs considering the range of mobile and flexible working arrangements which are in place in many organisations, including local authorities and other public funded bodies.

It is difficult to predict at this stage what the future demand and spend for Crisis and Community Care Grants will be given the relatively low, (but rising) initial expenditure baseline position in 2013/14. This is dependent on a number of factors including inflation on the price of goods and services offered as fulfilment options but more significantly will be driven by individuals’ needs, particularly as other Welfare Reform changes such as Universal Credit and the move to PIP start to make an impact. It would be helpful that some estimate was made of the potential increased demand for Crisis and Community Care Grants over the medium term.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

Dave Berry
Head of Service (Finance, Contracts & Welfare Rights)
Social Work Department
Dundee City Council
28 August 2014
Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government's aim of providing assistance for short term need and community care?

Yes, it places the interim scheme, which is working well, on a statutory footing.

The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

Yes – it will however, remain important to keep learning as the scheme is still, at 18 months old, in its infancy.

Is there anything else that you feel should be included in the Bill?

No

Will the Bill and its provisions have a particular impact on equalities groups.

No

Do you agree with the proposal that LA's have the option to outsource the provision of the fund to a third party or jointly administer the fund across LA boundaries? What are the benefits or drawbacks to this approach?

Yes – decisions around service delivery models should remain within the control of the LA. This is particularly important given the findings of the Christie Commission in relation to shared services.

What are your views on the proposed internal LA review process?

The interim scheme currently provides for an initial interim review – this works well. The Bill will not change this approach.

Do you agree that the SPSO is the appropriate body to conduct secondary reviews?
This will represent a challenge to the SPSO, and will be very different to their current role. It will also be difficult for LA’s who will require to consider the potential for SPSO intervention. When considering an appeal the SPSO will require to recognise local peculiarities in reviewing a decision. Cognisance will also need to be taken of budget availability should decisions be overturned.

What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

It appears appropriate and proportionate. There, as always, remains a need for guidance but this needs to be in the context of a differing needs for locally provided schemes.

Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

Adequacy of administration funding remains a concern for the Council, particularly where subsidisation is taking place from other budgets.

The expectation that savings will be generated from SPSO taking on 2nd Tier appeals is unrealistic and not evidence based.

There remains a risk of additional cost in service delivery arising from clients previously unknown to the Council becoming service users. While the holistic approach to dealing with vulnerable individuals is beneficial, there can be an associated financial impact on service delivery budgets.

The SPSO costings look reasonable but care must be taken to ensure the costs remain proportionate to the value of applications. The average value of community care grants and crisis grant awards in EAC in 2013/14 was £505 and £76 respectively.

Activity levels at the SPSO stage are unknown, and while the estimated ranges appear reasonable, more work will be required to provide robust cost estimates.

Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

Craig McArthur
Head of Finance
East Ayrshire Council
28 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM EAST DUNBARTONSHIRE COUNCIL

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

The Council is in favour of the Bill and its provisions. The Bill contains the required elements to provide a consistent scheme and decision making process across Scotland, yet simultaneously allow essential local flexibility in the delivery of the scheme. These components will facilitate the achievement of the aim of providing assistance for short term need and community care.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

The Bill appears to encompass the changes debated and suggested by the SWF Practitioners Group and concerns raised by Third Sector Agencies. This is specifically reflected in the allowance for discretion to be exercised for those that are not in receipt of a ‘qualifying benefit’, those subject to sanctions, and a greater emphasis on supporting families.

In addition, the Bill allows for the continuing flexibility of being able to manage SWF budgets according to local drivers, which is ultimately preferable to a prescribed national model.

These aspects are welcomed as they will continue to allow for the maximisation of assistance for the residents of East Dunbartonshire.

3. Is there anything else that you feel should be included in the Bill?

The Scottish Welfare Fund, like any scheme, may be subject to exploitation by a minority of applicants. Although the budgets held by local authorities for the Fund are small in comparison to other functions, there is still a duty to protect the public purse; therefore it would seem prudent to include arrangements for the treatment and recovery of fraudulent Grant applications.

4. Will the Bill and its provisions have a particular impact on equalities groups?

It seems unlikely that the Bill and its provisions would have a particular impact on equalities groups. However, should imbalances arise then they could be redressed by the utilisation and analysis of the diversity information of applicants recorded by local authorities within IT systems.
Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

The Council agrees with the proposal of outsourcing and joint administration. These provisions would allow for ever diminishing resources to be fully utilised, efficiencies to be made, and best practices adopted. However, this would be contingent upon local administrations mutually agreeing joint approaches.

There is an element of risk in relation to local knowledge being diluted; hence the need for the holistic approach may not be readily identifiable, or it may be identified but not entirely addressed for all applicants. However, these risks could be mitigated by the implementation of the relevant safeguards and procedures.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

The review arrangements appear to have worked well for applicants and the Council during the interim period. Reviews have facilitated natural and additional monitoring and review of internal practices, resulting in training and guidance being provided and issued as appropriate.

In addition, the SWF Team has a good working relationship with the local Citizens Advice Bureau which represents many of the applicants who want a review of their decision.

In view of these factors, it would seem sensible to continue internal arrangements as outlined in the Bill and regulations.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

The SPSO will provide the Fund with an impartial body which applicants and Third Sector agencies can have confidence in, akin to that provided by the Independent Review Service in relation to the Social Fund.

Although the Council notes that the SPSO role in the SWF will be distinct from the current jurisdiction in relation to maladministration, the SPSO is traditionally associated with complaints, hence there is perhaps unfair reputational risk associated with this body being used to conduct secondary reviews.

To date, the Council has had only 2 secondary reviews. The Panel within the Council provided an impartial, local and cost effective solution with timely decisions. While we do not doubt that the SPSO will also provide these
functions, it may be that some applicants will be intimidated by the formality of the SPSO if they are not willing to be assisted or represented by a Third Party.

Further provision – regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The Bill contains the required level of information, in conjunction with guidance, to allow practitioners to consistently administer and deliver the Fund. It also provides transparent information to organisations and individuals to support applicants where required.

However, the regulations may be more robust and less subject to differing interpretation by multiple/conflicting parties if the capital limits and the annually uprated daily allowances for living expenses were explicitly detailed in regulation 5.

Although the Bill states in 5(2) (g) that local authorities will have a duty to provide Scottish Government with information, outlining this in the regulations may provide local authorities with greater business cases for IT systems procurement and staffing resources.

The regulation in relation to Reviews (11) may be enhanced by a paragraph in relation to the duty of local authorities to include information in relation to the Second Tier SPSO option with their review decision.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

The significant additional cost burdens as a result of the Bill must be fully funded, recognising the new statutory burden being placed on local authorities.

The nature of the high level of vulnerability of SWF claimants means that local authorities have to prioritise SWF activity, to the detriment of other related activity e.g. housing benefit administration, debt counselling etc.

The experience of local authorities based on a full year’s operations should be used to assess the most appropriate funding levels, rather than the estimates from DWP on their former Social Fund information.

Also, there may be additional administration and training and software implications as the SWF continues to evolve. The cost of these would be contingent upon the nature and complexities of the change(s) involved; therefore it is not possible to quantify these costs.
In July 2014, the Council submitted a response to the SWF Qualitative Monitoring Survey advising that the estimated cost of staffing administration of SWF as an end to end process was £224,232 in total. This figure is comprised solely of staffing costs, of which £166,279 directly related to the service that administers and decides the Fund. In addition, there are estimated annual running costs of £15,561 per annum. These costs are in stark contrast to the annual funding of £43,970 received, which is insufficient to provide salary and on-costs for the 2 full-time members of staff required to just take applications.

In terms of the SPSO administering secondary reviews, the funding seems appropriate for this function on the basis of estimated case numbers. The Second Tier Review Panel function was estimated to cost the Council £5,377; hence the removal of this function will have a negligible financial impact upon the Council.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

The Council has no further comments to add.

Gerard McCormack
Team Leader - Strategic Planning and Place
East Dunbartonshire Council
22 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM ENABLE

About ENABLE:

ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with around 4000 members in 44 local branches and via individual membership.

Around a third of our members have a learning disability. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers. ENABLE Scotland also provides social care services to more than 2,000 people across Scotland who have learning disabilities or mental health problems.

ENABLE Scotland employs a Welfare Rights Adviser providing advice and information across Scotland and two Money Advice Workers providing debt advice in Glasgow and North Lanarkshire.

The Scottish Welfare Fund is a potentially crucial form of support for people with a learning disability and we are as pleased to have the opportunity to respond to this call for evidence as we were to respond to the draft Welfare Funds (Scotland) Bill consultation in January 2014.

Our position on the future of the fund remains the same as in our previous response. We are pleased that the Scottish Government is committed to the continuation of the fund, and we remain concerned that the cumulative impact of welfare reform will lead to an increase in the number of people with a learning disability requiring assistance.

Increased conditionality, poor administration of benefits, cuts to Housing Benefit and the move from Disability Living Allowance to the Personal Independence Payment are all likely to lead to reductions in the budgets of people with a learning disability and their families.

ENABLE Scotland would also like to take this opportunity to renew our call that consideration be given to the accessibility of the fund to ensure that people with a learning disability are able to access it.

Whilst some people with a learning disability will have the support of an advocate, advice agency, friend or family member, it is important to recognise that many others may not have any support and so will be particularly vulnerable to destitution or failure of their tenancies that access to the fund could avoid.

We remain happy to work with the Scottish Government and local authorities on the issue of the accessibility of the Scottish Welfare Fund.
Consultation Questions

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

ENABLE Scotland welcomes the fact that the Scottish Government aims to legislate to confirm the need for the existence of a specific fund to provide help to those with both short term needs and community care assistance.

Many people with a learning disability are reliant on social security benefits as their only source of income and we feel that it is important that alternative sources of funding exist for both crisis situations and to purchase larger items which would be difficult to meet from limited budgets.

Whilst we have made some suggestions for changes we would like to see to the proposed Bill and regulations, overall we are supportive of the intentions of the Bill.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

It is difficult for ENABLE Scotland to respond to this as many of the issues experienced by our members will be localised due to each local authority running its own version of the scheme.

Although we have made some suggested changes to the draft Bill and Regulations, in the main we are happy with the fact that the scheme will be continued and that legislation is being created to ensure a level of uniformity across Scotland.

3. Is there anything else that you feel should be included in the Bill?

In our response to the draft Welfare Funds (Scotland) Bill consultation in January 2014 we made three recommendations for inclusion in the Bill.

We recommended that a section be included within the Bill to make it clear that decisions would be subject to a first and second tier review process. We are pleased that the draft Bill has been amended to include this.

We also recommended that sections be included detailing how a claim to the fund could be made as well as the decision making process. Whilst the decision making process has been covered in the draft regulations, we have noted that no further detail has been supplied surrounding the making of an application.
We would suggest that (both the draft Bill) and the regulations are amended to include this.

Finally, we recommended that the five circumstances where an individual could be considered for a Community Care Grant be listed within the Bill. Although the draft regulations note these circumstances, we would repeat our call that this should be on the face of the Bill.

4. Will the Bill and its provisions have a particular impact on equalities groups? The Scottish Welfare Fund will undoubtedly have impacts on different equalities groups. People with a learning disability can often be potentially vulnerable due to a lack of support when accessing services such as health, education, housing and social security benefits.

ENABLE Scotland believe that higher than average rates of unemployment, the impact of welfare reform and problems accessing statutory services are likely to mean that people with a learning disability require the assistance of the fund more than the general population. We are keen to ensure that the fund is fully accessible across the whole of Scotland.

ENABLE Scotland call on the Scottish Government to ensure that people with a learning disability and other groups are not being disadvantaged by the application or decision making process.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach? ENABLE Scotland do not agree with the proposal that local authorities should have the option to outsource the provision of the fund to a third party.

The Scottish Welfare Fund is a crucial form of support for those experiencing short term crisis or who require assistance to obtain items that would be hard to budget for from limited benefit income.

Although decisions on application to the fund will contain elements of discretion, ENABLE Scotland is clear that the right to make an application to the fund be seen as a statutory right and feel that the scheme should be delivered by a statutory body with third sector input into decision making guidance.
In order to preserve clear lines of accountability we would also prefer that each local authority administered its own system, but recognise that in some cases it may be more cost effective for local authorities to jointly administer the fund to ensure that more of the money is spent on the purpose rather than the administration of the fund.

6. What are your views on the proposed internal local authority review process?

ENABLE Scotland is pleased that applicant’s right to request a review of a refusal decision is made clear in both the draft Bill and regulations.

We would, however, recommend that the time limit given within the draft regulations to request a review be amended to one calendar month. This would bring Scottish Welfare Fund decision review time limits in line with most social security decision time limits making time limiting rules easier for claimants to understand across the system.

We also recommend that the regulations make it clear the ways in which a review can be requested i.e. in writing, verbally or both.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

In our response to the consultation on draft Welfare Funds (Scotland) Bill, we suggested that the SPSO would be our preferred if it were to see the creation of a specific Scottish Welfare Fund unit within the SPSO with the power to change decisions.

We are pleased to note that, alongside the power to change decisions, that the SPSO have stated in their briefing note that their intention would be to create a specific unit to deal with Scottish Welfare Fund reviews (should caseload allow this).

We are also pleased that the SPSO have recognised that the review process must be fully accessible as a large number of applicants will be vulnerable and/or have complex needs. They have gone on to give specific examples (such as oral review applications) of how they intend to ensure that the process is accessible. We fully support these intentions.

ENABLE Scotland is also happy that the SPSO has made reference to the level of service provided by the Independent Review Service when they were responsible for the review of DWP Social Fund decisions. We would agree that this is a model of good practice.
8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

In our response to the Welfare Funds (Scotland) Bill consultation, we requested that both the Scottish Welfare Fund Bill and regulations give clear details on the application and decision making process.

We are delighted that this has been included within the draft Bill (section 5 (2)(a)(b)) and that further detail has been provided within the regulations for the decision making process (section 10). We have noted, however, that no such section has been included within the draft regulations to cover the application process and would recommend that this is added.

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

ENABLE Scotland is happy that the SPSO’s response has identified that, depending on caseload, their preference would be to have a dedicated team dealing with Scottish Welfare Fund reviews. They have also accepted, however, that this work may have to be taken on by established teams should the demand not exist to justify a specified team.

We feel that this indicates a proportionate response to administering a second tier review system.

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

ENABLE Scotland would like to take this opportunity to raise two additional issues.

Firstly, we would recommend that further definition be given to the term “resident” in either the Bill or regulations. It is our opinion that a clear definition of this term in law is likely to lead to a reduced number of reviews or appeals in this area.

Secondly, we would recommend that it is made clear within either the Bill or regulations that income from Disability Living Allowance, the Personal Independence Payment or Attendance Allowance is not to be counted when assessing an applicant’s available income.
Jan Savage
Head of Campaigns & Policy
ENABLE Scotland
27 August 2014
Since 2010, 74% of cuts to benefits, tax credits, pay and pensions have been taken from women. Women will pay 81% of ‘savings’ raised by the Treasury in 2014-15.¹

Introduction

Engender welcomes the opportunity to respond to this call for written evidence on the Welfare Funds (Scotland) Bill. Tackling women’s economic inequality within the social security system is a key pillar of our work and we have called on the Scottish and UK Governments to address the enormous gender impact of ‘welfare reform’, alongside other women’s organisations in Scotland.²

Cuts to public spending on the benefits and taxation system under the banner of ‘welfare reform’ have predominantly been taken from women’s incomes. Analysis by the House of Commons Library shows that of the initial £8 billion raised in changes to taxes and benefits by the UK Government £5.8 billion will be paid by women and £2.2 billion by men.³

However, to date, this context of extremely unequal gender impact is not reflected in the Scottish Government’s response to ‘welfare reform’, including across the interim Scottish Welfare Fund (SWF). This is in spite of its own analysis that recognises the extent of women’s disadvantage and its links with child poverty. The national framework that this Bill underpins provides a clear opportunity for Scottish Government (SG) to reverse this, adopt a gendered approach and provide targeted support for different groups of women currently at risk of harm in Scotland.

Failure to explicitly acknowledge gendered discrimination in the top-level policy response to ‘welfare reform’ makes women’s inequality invisible and risks compounding it. It is imperative that gender issues are reflected in the regulations and guidelines this Bill provides for. Without targeted support for women, patterns of inequality and discrimination that explain the gender imbalance of ‘welfare reform’ in the first place will be further entrenched.

Mainstreaming gender in the Bill is also vital in terms of wider Scottish Government policy. Scottish Government’s broad range of commitments to advance gender equality stand to be undermined by gender-blind policymaking elsewhere. The permanent arrangements must also meet the requirements of the Equality Act 2010.

² Engender (2014) Gender and ‘welfare reform’: A joint position paper
³ House of Commons Library (2012) How have Coalition budgets affected women?
1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Engender is in favour of the Bill and the provisions it makes for statutory regulations and Ministerial guidelines. Its policy objectives are closely related to many issues that are central to guaranteeing women’s rights and safety. In particular, we welcome the aim that community care grants provide a safety net “where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.” With sustained investment the Bill could feed into progress on wider Scottish Government social policy and the prevention agenda, in terms of poverty, inequality, social exclusion and physical and mental wellbeing.

The success of the Bill in providing effective statutory footing for equitable delivery of the Scottish Welfare Fund (SWF), however, is far from guaranteed. For many women, this will hinge on the level of detail within the guidelines and public awareness-raising that explicitly targets groups and communities most at risk.

The guidelines must ensure that different groups of women have the knowledge and means to access the funds, and that relevant local authority staff are trained in related issues. These include the gender impact of ‘welfare reform’ and drivers of gender inequality.

Groups of women that must be supported to access the fund include lone mothers, disabled women, black and minority ethnic women, refugee women, older women, carers, women struggling to access the labour market, women facing sanctions as a result of childcare responsibilities, and women at risk of domestic abuse and other forms of violence. Each of these groups face particular barriers in accessing resources and these must be reflected in the structures of the legislation and understood by those making awards.

We also support calls by the Scottish Campaign on Welfare Reform (SCoWR) for the Bill to make clear that awards are not repayable loans, but unconditional grants, and for funds to be ring-fenced under section 1. At present the Bill allows for funding to be ring-fenced, but in light of increasing need for the SWF and escalating pressures on local authority budgets, guaranteed resources will be essential for its effective delivery.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

As voiced by many third sector organisations since the introduction of the interim scheme, there are serious concerns over the use of ‘awards in kind’ rather than cash payments, as set out in section 2(1) of the Bill. This undermines the agency and dignity of applicants and, in infantalising users of the scheme, contributes to the sense that people at the margins in Scotland are to be blamed for their own disadvantage and inequality.

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Discretionary policies like this, where vouchers for certain shops and standard-issue goods are offered regardless of an individual’s circumstances, run the risk of stigmatising people in receipt of the SWF and contributing to the current framing of benefits as a drain on the public purse. This framing is highly gendered, with lone mothers a particular focus for public critique and can have serious consequences, including social exclusion.

‘In kind’ payments also have significant implications for women living with violence and financial dependency. Women experiencing domestic abuse face considerable barriers when trying to leave an abusive partner. Access to financial support is crucial and many women lack an independent income or access to resources. Ongoing reforms to the benefits system are impacting adversely on women’s ability to maintain financial independence and to be safely rehoused. It is vital that the SWF ensures that women are able to use the payment in line with their specific support needs and to decrease the risk of harm to themselves and their children.

3. Is there anything else that you feel should be included in the Bill?

Engender supports the Scottish Campaign on Welfare Reform (SCoWR) position that ‘families experiencing exceptional pressure’ should be included as a category of eligibility for community care grants under article 2(2) of the Bill.

Further to this, in the resulting guidelines, gender dimensions of these households and linked gendered implications of access to the SWF should be clearly articulated. For instance, lone mothers are particularly likely to be in increased need of support as a result of ‘welfare reform’. 92% of lone parents are women, and women make up 95% of lone parents dependent on Income Support. The broader barriers to equality that women face on account of their gender must be reflected in the provisions of the Bill.

4. Will the Bill and its provisions have a particular impact on equalities groups?

The Bill and its provisions should have a particular impact on the equalities groups most disadvantaged by ‘welfare reform’ and in need of crisis support, including for women. Whether it achieves this or not will depend on how these groups are treated. At present, women are not identified anywhere as having particular support needs, despite the clear gender profile of the eligibility criteria.

The updated EQIA for the Bill identifies a long list of factors that ‘might increase the vulnerability of an applicant’. These include:

- frailty or old age, particularly restricted mobility or difficulty performing personal care tasks.
- people fleeing domestic violence
- looking after children for a relative or friend as a kinship carer
- being a lone parent

5 Engender (2012) *Multiple Jeopardy: The impacts of the UK Government’s proposed welfare reform on women in Scotland*

- Children living with young parents aged under 25
- Experiencing family breakdown
- Being pregnant, recent childbirth or adopting a child
- Having responsibility as a main care giver
- A history of seasonal temporary or insecure work

This list is ‘gender-neutral’, but women make up the majority of each of these groups. We welcome the fact that access has been increased since the first iteration of the EQIA, and that more women stand to benefit as a result of these identified vulnerabilities. However, this also demonstrates how women are made invisible in policymaking, and gender issues are subsequently swept under the carpet. Clearly this could have potentially damaging impacts, where local authority staff and discretionary decision-makers may not automatically see the links with women’s inequality or be aware of the gender impact of ‘welfare reform’.

For instance, the updated EQIA also notes that “[w]omen are advantaged in the SWF in terms of the success rates of their applications and the value of the awards made” (our italics). This is extremely misleading. Women are not “advantaged” by the SWF because they are not applying from a place of equality.

Women have fewer financial assets and less access to occupational pensions than men and there are considerably more women than men in the lowest income decile in the UK. Women make up nearly 60% of care providers within the home and 64% of care providers in the wider community. The gender pay gap in Scotland is 13% for full-time work and 34% for part-time work, signifying persistent and widespread differences in women’s experience of the labour market.

Local authority staff making decisions on applications to the SWF must therefore receive training on these and other gender equality issues, including to ensure that statistics are not taken at face value.

The EQIA also notes that

“[t]here are, however, far fewer single women applying to the Fund than single men. We will monitor this and explore with third sector groups working with women why this is the case, taking remedial action if required.”

We support future monitoring of the fund to establish why single women are under-represented in application figures. Many of the single women in need of support are lone mothers and we would therefore recommend that in addition to data collection, specific action is taken to increase awareness and identify any barriers preventing them from accessing the fund.

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7 The Women’s Budget Group (2013) *The impact on women of Budget 2013: a budget for inequality and recession*

8 Engender (2012) *Multiple Jeopardy: The impacts of the UK Government’s proposed welfare reform on women in Scotland*

9 Ibid

10 Office for National Statistics (2013) *Annual Survey of Hours and Earnings, 2013 Provisional Results*
There is also real concern that some local authorities are not adequately recording the vulnerabilities of certain applicants, as they mandated under current Scottish Government guidance. It is vital that this is reflected in the development of guidelines and that flexibility to incorporate evidence on use of the fund in the future is built in.

5. **Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?**

There is evidence to suggest that public authorities struggle to include equalities in a meaningful way in procurement processes. This results in poorly framed equalities clauses that require the publication of equal opportunities policies and other processes, but rarely incorporate equalities outcomes. Although public bodies cannot ‘contract out’ their responsibilities under the public sector equality duty, in practice it is difficult to see how many services delivered by third parties are fully meeting the Scottish-specific duties.

Should the provision of the fund be outsourced or delivered across local authority boundaries, clear accountability will require to be established for specific equalities outcomes and the operation of gender-sensitive processes. The procurement process must robustly consider the competence of tendering organisations to take a gendered approach and meet women’s needs.

6. **What are your views on the proposed internal local authority review process?**

Our views on the review process mirror our concerns about the visibility of gender issues across the Scottish Welfare Fund’s instruments and processes more broadly, and awareness of women’s existing inequality at local authority level. Understanding of women’s position in Scottish society (in terms of the labour market, access to decision-making and resources and the complexities of violence against women) is essential in order to make informed, discretionary decisions about the extent of a woman’s vulnerability and need.

Those reviewing decisions at local authority level must receive comprehensive training on gender issues, with a particular focus on the gender dimensions of social security and ‘welfare reform’ policies. In addition to the social justice imperatives for women at the margins and coherence with Scottish Government’s multiple policy commitments on gender equality, decisions must comply with the public service equality duty (PSED). Training on gender equality would help to ensure that local authorities meet their responsibilities under the Equality Act 2010, as described above.

7. **Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

We agree that the SPSO is an appropriate body. Staff conducting reviews should be subject to the same training on gender mainstreaming and ‘welfare reform’ as Scottish Welfare Fund teams across local authorities.
8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

We strongly advocate that a gender perspective is written into the regulations. Gender mainstreaming is urgently need in public policy setting in the Scotland. This is the internationally-agreed approach to tackling gender inequality, adhered to in principle by the UK and Scottish Governments. However, to date, this Scottish Government and previous administrations have failed to integrate gender perspectives or apply gender mainstreaming to most economic and social policymaking.

Such recognition that women are the largest group to be systemically disadvantaged by welfare reform would send a positive and important signal to local authorities, other parts of Scottish Government and wider stakeholders about the importance of gender as a key dimension of social security and anti-poverty policy more broadly.

Subsequently, detail on gender will be essential within the guidelines, particularly in light of limited resources for training of Scottish Welfare Teams within local authorities and the realities of staff turnover.

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

n/a

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

n/a

Jill Wood
Policy Manager
Engender
28 August 2014

About us

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women’s power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions that seek to achieve gender equality and justice.
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM FALKIRK COUNCIL

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

- The Welfare Funds (Scotland) Bill aims to provide assistance as referred to in paragraphs (a) and (b) of Section 2(1) of the Bill: Use of the Welfare Funds. We agree the Bill clearly defines the use of the Welfare Funds and that this is will achieve the Scottish Government's aims of providing short term need and community care assistance.
- We are in favour of the Bill as it provides certainty for future provision of the Scottish Welfare Fund which is a vital source of support for individuals in crisis or at risk of losing their home.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

- All 32 Local Authorities have worked closely with COSLA and Scottish Government to share learning. In particular, the SWF Practitioners Network has contributed to debate which have informed amended guidelines to take account of our learning.

3. Is there anything else that you feel should be included in the Bill?

- Section 5(2) Welfare funds: further provision paragraph (f) refers to circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided.
- Local Authority SWF teams are already aware of a small number of circumstances where successful grant awards are being “sold on” by SWF Applicants and there is currently no clear guidance to respond to applications which are subsequently awarded and not used by applicants for the aims of the act as referred to in Section 2 of the Bill.
- Consideration should be given to introduce Section 5(2) paragraph (f) to deter applicants from submitting applications that are not intended for the aims of the act as referred to in Section 2 of the Bill.

4. Will the Bill and its provisions have a particular impact on equalities groups?

- It is recognised that extensive consultation has already been undertaken and the SWF guidance has been amended to reflect potential impact on equalities groups. E.g. recent amendments to SWF guidance now takes account of
applicants who have been sanctioned by DWP who are now considered for assistance as referred to in paragraph (a) of Section 2(1) of the Bill.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

- Outsourcing or jointly administering the fund would potentially achieve savings. However, this would remove the ethos of the Welfare Fund which is for Local Authorities to deliver the service locally to meet the needs of our local citizens.
- We are currently reviewing how we support individuals with complex/multiple needs to ensure that they receive appropriate support and delivery of the Scottish Welfare Fund is likely to be a key component of this support, enabling us to reach individuals who would otherwise be unlikely to approach us for help.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

- The number of SWF application review requests has been very low within our Local Authority. Our 2nd Tier Review Panel comprises of 3rd and 4th Tier Managers who are not involved with SWF and a rota is in place indicating when panel members are required to be available. Our 2nd Tier Panel also reviews application requests to other services in relation to other financial assistance e.g. DHP applications. It is our opinion the current internal process provides an impartial review on SWF applications. Due to the low number, the cost of our 2nd Tier review requests is absorbed within our own management costs.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

- The Welfare Fund is being established to enable Local Authorities to apply their discretion to deliver assistance as referred to in paragraphs (a) and (b) of Section2(1) of the Bill to meet the needs of our local citizens.
- As the administration of the Welfare Fund is being transferred to Local Authorities and therefore as one of our functions, it may considered the proposed SPSO secondary reviews are unfair given that the current SPSO complaints process has 3 stages i.e. Stage 1 & 2 remain with Local Authorities and stage 3 is handled by SPSO.

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?
As noted in question 6, consideration should be given to introduce Section 5(2) paragraph (f) to deter applicants from submitting applications that are not intended for the aims of the act as referred to in Section 2 of the Bill.

**Financial Memorandum**

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

- Paragraph 39 of the Financial Memorandum suggests that there could be savings for councils arising from the SPSO undertaking second tier reviews but it doesn’t say whether councils could be incurring any costs in providing information for these reviews.
- As described above, to date the number of 2\textsuperscript{nd} Tier reviews requested within our Local Authority has been very low and they have been carried out by managers as part of their managerial duties, therefore there will be no direct savings associated with the removal of the requirement to conduct 2\textsuperscript{nd} Tier reviews within the Local Authority.
- The costs associated with the SPSO administering 2\textsuperscript{nd} Tier reviews (£250-400k per annum) seem to be relatively significant, given that within this Local Authority we have managed to meet the requirement around 2\textsuperscript{nd} Tier reviews within our existing resources.

**Other provisions**

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

- No further comments

Falkirk Council
28 August 2014
Consultation Response

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes, the intention to give a statutory footing to the Scottish Welfare Fund is important. The Bill reflects the experience of Fife Council, and the scope for flexibility on local arrangements for delivery is welcome.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

Yes. Local authorities have shared experience effectively over the two years of running the Fund and the Bill appears to reflect the learning. Administering the Fund at a Council level in Fife has been really worthwhile as we are able to work with different Council services and the third sector in delivering the Fund but also in ensuring that we are able to more broadly support vulnerable people and connect to services.

3. Is there anything else that you feel should be included in the Bill?

No.

4. Will the Bill and its provisions have a particular impact on equalities groups?

The statutory guidance will have a greater impact on equalities groups than the actual Bill itself.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Fife Council supports the Bill’s proposal that local authorities should have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries. The important point
here is to allow flexibility and to enable local authorities to make arrangements that best serve their communities and ways of working.

The most significant benefits would be to promote consistencies and efficiencies. On the latter this may help us to manage limited administrative funding. Fife’s population and geography lends itself to maintaining its own service, and our present holistic approach is predicated on existing relationships with other support providers, and the referral mechanisms that are already embedded.

6. **What are your views on the proposed internal local authority review process?**

The proposed internal local authority review process contained in the Bill replicates the existing arrangements councils complete to review 1\textsuperscript{st} tier SWF decisions under the interim scheme.

If a customer is unhappy with the decision, they can ask for a first tier review to the council who made the original decision. This 1\textsuperscript{st} tier review provides the council the opportunity to ‘remake’ the original decision having looked at the evidence and any new information that has come to light. The case is considered by a decision maker not involved in the original decision and the case reconsidered on the merits of the case.

The current process is low in costs, quick and the decision is examined and changed if appropriate at the earliest opportunity. There is no evidence to suggest the 1\textsuperscript{st} tier internal review arrangements currently in place under the interim scheme are not working.

The number of 1\textsuperscript{st} tier reviews have been low primarily due to the information provided to the customer if they are refused an award. This means they are clear on the outcome and the reasons why before the confirmation letter is sent out. This fits with the holistic approach.

One concern is the ability of councils to meet the timescales for 1\textsuperscript{st} tier review should these increase dramatically. The level of 1\textsuperscript{st} tier review requests needs to be monitored closely to determine whether the level of resource available within councils can sustain the demand for review, without compromising the overall administration of SWF.

7. **Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

Fife Council is positive about using the SPSO. The volume of 2\textsuperscript{nd} tier reviews has been low. This has made it difficult to maintain a level of expertise within the panel.

Using the SPSO will ensure the level of expertise is maintained as they will receive sufficient volumes.
Importantly the SPSO will ensure independence and how the process is perceived by people who are going through a review.

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The accompanying Regulations and statutory guidance provide consistency without eroding the ability of local authorities to make discretionary decisions that reflect local priorities.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

No. The expense of administering the Fund remains a significant issue. Funding of £267,000 has been received for 14/15 but our overall requirement is £553,000. This leaves a gap of over £286,000 that is filled by the Council’s ‘Welfare Reform’ budget. This was agreed by the Council’s Executive Committee.

This provides a level of staffing that can just about deal with the grants in timescale. In 15 months we have found it is not simply a transactional function as some detailed conversations are required with customers, agencies and suppliers to ensure Fife sustain a holistic approach.

As time progresses some more internal efficiencies will be made but maintaining a high level of service would not be possible if we just used the funding received; and there is no certainty that Fife Council’s contribution can be continued beyond the current year.

The savings to the Council with regard to the SPSO taking the role of 2nd tier reviews would be minimal as bringing an application to decision is where the most of the work is done.

The set up costs for the SPSO are based on a notional 2,000 reviews. This details that running costs of £400,000 will enable 2,000 reviews to be undertaken. Given the work Fife Council is to undertake for less that £300,000 this seems generous – or more likely amplifies the argument made above that local authorities are not given sufficient administrative funding.

A concern would be that the volume of reviews increase leading to additional work. This is turn would lead to even higher administration costs.

A further concern arises through the introduction of Universal Credit. Some households will struggle with managing a monthly benefit received in arrears.
and this will likely lead to increasing calls on the Fund, especially through a transitional period.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

Robert McGregor
Sustainable Communities Manager
Fife Council
28 August 2014
Glasgow City Council welcomes the opportunity to respond to the Welfare Reform Committee on the Bill’s proposals. Responses have been provided below against each question:

**General**

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

   *GCC Response: The Bill does allow the provision of assistance for short term need and community care. It is noted that the Bill specifies that the assistance is to an individual however in practice an individual will be considered in the context of their family circumstances.*

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

   *GCC Response: The Bill represents very little change from the interim scheme, other than the changes to second tier review. This is welcomed as this should facilitate an easier transition for local authorities in moving to the statutory scheme. It also reflects that the interim scheme has generally operated well.*

3. Is there anything else that you feel should be included in the Bill?

   *GCC Response: No. It is recognised that the Bill will be underpinned by regulations and guidance.*

4. Will the Bill and its provisions have a particular impact on equalities groups?

   *GCC Response: No particular impacts have been identified by the council.*

**Administration of Welfare Funds**

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

   *GCC Response: Yes, the council does agree that this option should be available. This will allow councils the flexibility to ensure that the programme funding can be managed as efficiently as possible.*
Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

GCC Response: It is reasonable that the local authority has an opportunity to review a decision to ensure that the decision-maker has followed guidance and has had all information available to them in coming to the decision.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

GCC Response: It is recognised that for fairness and transparency that the second tier review is undertaken by a body external to the council and the SPSO is seen as an appropriate body to undertake that activity.

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

GCC Response: No. The council’s view is that the level of detail in the Bill is reasonable noting that there will be an opportunity to comment on the regulations also.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

GCC Response: It is the council’s intention to respond separately to the request from the Finance Committee to comment on the Financial Memorandum. The main risk identified by the council is the uncertainty around the demand for grants in future years as some key welfare reforms have yet to be implemented in Glasgow eg. the move from Disability Living Allowance to Personal Independence Payment.

This would have implications for both the programme funding and administration funding.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

GCC Response: Section 4 paragraph 1 appears by the use of the word ‘may’ to give discretion to Scottish Ministers whether or not to create regulations that would require local authorities to conduct review. Should this not be a requirement and instead of ‘may’ use the word ‘will’ or ‘shall’. This would then align with the detailed and prescriptive paragraphs 3 and 4.
Morag Johnston
Assistant Director of Financial Services
Glasgow City Council
28 August 2014
The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 700 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

Introduction

The ALLIANCE welcomes the opportunity to respond to the call for evidence on the Welfare Funds (Scotland) Bill. In principle, we support legislating for the Social Welfare Fund (SWF) to be continued on a statutory basis. However, we are concerned that enshrining the distribution of the fund among the 32 local authorities will perpetuate the discrepancies that exist under the current Social Welfare Fund system.

At the same time, the ALLIANCE is conscious of the welfare reforms yet to be implemented. With Personal Independence Payment (PIP) to replace Disability Living Allowance (DLA) by 2017, we are concerned that local authorities will be faced with increased demand, without the funds or infrastructure to respond effectively.

The ALLIANCE’s response to this call for evidence considers the main challenges of the Welfare Funds (Scotland) Bill, and poses the key principles that should underpin it.

Social Welfare Fund

From the outset, the ALLIANCE has welcomed the intent of the SWF to mitigate the detrimental effects of welfare reform upon people who use support and services in Scotland. However, appreciating the financial limitations Scotland has to meet the costs of the reforms, the Scottish Parliament’s Welfare Reform Committee’s analysis that “When the present welfare reforms have come into full effect they will take more than £1.6bn a year out of the Scottish economy” raises concern that the investment put into any on-going fund may not be sufficient to meet the demand.

The ALLIANCE is concerned that the Welfare Funds (Scotland) Bill will not address the widespread variation in the grants being awarded by local authorities. It is alarming that while there has been a 12 per cent underspend across the whole of the Fund, in some areas, where the percentage of accepted applications for grants is below the national average, local authorities report an overspend¹.

This suggests there is not only a lack of consistency across local authorities in the awarding of applications to the fund, but within areas themselves, applications are being awarded disproportionately to those being made. Therefore, the criteria being used are failing to meet the demands of the populations attempting to access the fund. The Bill should therefore more strongly specify eligibility criteria that local authorities should employ to make decisions about the Fund’s application.

We support the call within Scottish Campaign on Welfare Reform (SCoWR)’s response relating to the mode in which Community Care Grants are being distributed, with Scottish Government statistics showing 80 per cent of grants being offered as ‘in-kind’ payments\(^2\) rather than cash-payments. This increases concerns that local authorities are restricting people’s right to independent living and self-determination. In line with Scottish Government policy, specifically that on self-directed support, local authorities should implement the SWF in a way which promotes the independence and dignity of disabled people.

Clear direction of the reporting mechanisms being incorporated into local authority processes for allocating awards is also required. It is concerning that people with protected characteristics may be being denied access to the fund without the knowledge that their applications outweigh those applicants who are being recorded. That is, in solely recording the characteristics of those being awarded grants, there may be a misrepresentation of the demographic attempting to access it.

Similarly, we agree with the proposals to introduce a second tier review to the Scottish Public Services Ombudsman (SPSO) to ensure that people have a right to redress where they feel their applications have been unlawfully denied. However, acknowledging the concerns raised in the policy memorandum that the SPSO’s ability to respond to cases brought to them may be limited, the ALLIANCE would seek assurance that individuals would not be unfairly impacted during this time, and that any support required in the intervening period would be offered irrespective of the final decision. At the point where it was decided that financial support should not be offered by the SWF, then funding should cease, but not be reclaimed. Accessible information about the role and nature of the SPSO’s involvement should be widely disseminated.

**Disability Benefit Reforms**

Financial decisions to reduce spending on public services and welfare are likely to have a significant impact on the cost of welfare over the next five years, which is most likely to be felt by disabled people and people who live with long term conditions.

The Scottish Government’s report, *Financial Impact of Welfare Reform on Disabled People in Scotland*, stated that the “DWP expects that 27 per cent of disabled people in Scotland who move onto UC will see an average decrease in entitlement of £37 per week.” This could have a substantial impact on the ability of disabled people to maintain their independence and continue to contribute in the

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community. This will inevitably increase the demand to the Social Welfare Fund in order to make up for the loss of income from the withdrawal or reduction of benefits. The research outlined below indicates that the components of welfare reform will have a substantial disproportionate impact on disabled people:

- UK Government estimates suggest that 80,000 people in Scotland will be affected by restrictions to Housing Benefit for working age residents living in the social rented sector who are occupying a larger property than the DWP considers their household size requires. Around 64% of all households affected across the UK will be households containing a disabled claimant or partner.

- The sequential impacts of under occupancy penalties will lead to an amount of “around £50m per year in 2013-14 of which around £30m will be borne by local authorities or their tenants and around £20m will be borne by housing associations or their tenants.”

- At the same time, the central assumption for the change from Disability Living Allowance to Personal Independence Payments is a 20% reduction in caseload and expenditure once fully rolled out. This would lead to 70,000 disabled people in Scotland losing their eligibility to this support. It is unclear as to how many people will be affected by both cuts to Housing Benefit and Disability Living Allowance.

- Many people who live with long term conditions already live in poverty or close to the poverty line. 60% of households containing at least one person who is disabled or who lives with a long term condition have an annual income of £15,000 or lower. Not only do they experience higher levels of unemployment, those that are in work are also more likely to occupy lower status, less secure jobs. At the same time, many people who live with long term conditions are able to work but require support to manage their condition. Much of this support is under threat as a result of public service cuts.

With the cumulative impact of such reforms having an adverse effect on the lives of disabled people across Scotland, the ALLIANCE believes that the Welfare Funds (Scotland) Bill must address the context of financial inequality amongst disabled people and people who live with long term conditions.

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6 [http://www.hm-treasury.gov.uk/d/junebudget_costings.pdf](http://www.hm-treasury.gov.uk/d/junebudget_costings.pdf)
7 Characteristics of adults in Scotland with long-term health conditions, Wendy Loretto and Matt Taylor, University of Edinburgh, Scottish Executive Social Research (2007)
Disability and Equality

People who are disabled and/or living with long term conditions are already far more likely than others to be living in poverty, experiencing debt and be unemployed or in low paid, less secure employment\textsuperscript{8,9,10}. Someone with a long term condition is\textsuperscript{11}:

- Less likely to be employed
- Likely to have lower occupational status and fewer qualifications
- People claiming Incapacity Benefit, Disability Living Allowance, or both have been found to be five times more likely to report some form of financial difficulty. 83\% reported their illness, health problem or disability as the main reason for this\textsuperscript{12}.
- Likely to experience a higher cost of living\textsuperscript{13}

Key principles

Changes to the welfare system in Scotland must recognise that a significant proportion of people who use the welfare benefits system are disabled people and people who live with long term conditions.

As such, one of the most obvious changes will be for the need for updated and accessible information about welfare benefits. Often the complexity of the benefits system itself can be the biggest barrier to people receiving the level of support to which they are entitled. Greater resources need to be directed to supporting an increased understanding of how to apply for welfare benefits alongside better advice and support.

With this in mind, the main principles which should underpin the benefits system in future should include:

- Adopting an approach that recognises and applies human rights based principles
- Addressing inequality
- Focusing on outcomes for an individual
- Preventative
- Approaching assessment for welfare benefits in a person-centred way
- Raising expectations
- Greater accountability for decision makers

\textsuperscript{8} Wendy Loretto and Matt Taylor, Characteristics of adults in Scotland with long-term health conditions, University of Edinburgh and Scottish Executive Social Research (2007)
\textsuperscript{9} Clare Lardner, Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (July 2006)
\textsuperscript{11} Characteristics of adults in Scotland with long-term health conditions
\textsuperscript{12} Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (2006)
\textsuperscript{13} Counting the Cost, DEMOS (2010)
About the ALLIANCE

The ALLIANCE’s vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self-management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.
1. We are in favour of the Bill. It achieves the Scottish Government’s aim of providing assistance for short term need and community care.

2. Officers from The Highland Council have been involved in the discussions regarding the Interim Scheme and this was very useful. The Bill has built upon this learning from day 1.

3. No

4. The nature of crisis grants is such that they are unlikely to have other than a short term impact on inequalities, although community care expenditure should help disadvantaged persons have a more secure future over a longer timescale.

5. Yes to both questions, because Councils should have the discretion locally to decide what is best in their particular circumstances.

Benefits could be efficiency savings although the rationale behind the Interim Scheme was that responsibility for administration should rest with local authorities as the organisations having the infrastructure on the ground, possibly knowing the client(s) already, and being best placed to refer them without delay to their basket of existing services (social work, housing, money advice, benefit maximisation etc.); the aim being to ensure that clients would be assisted to improve their lot going forward.

Drawbacks might include some remoteness from the local authority with determination of claims by others who in many cases would require to consult Council Services anyway. Also there would be a need for ongoing contractual, control, review and reporting arrangements.

6. No reason why this shouldn’t continue.

7. Yes, but is this a sledgehammer to crack a nut? There is a risk that this may introduce a disproportionate administrative burden for local authorities with no associated increase in administration funding.

8. No concerns about this. No.

9. Our experience is that the costs attributable to the running of the fund are at least 20% higher than forecast. The set-up of the SPSO, however, may overestimate the necessary funding for Second Tier reviews. These funds (£60k-100k 2014/15 and £250k to £400k 2015/16) may be more effectively used to address the funding shortfalls for local authorities’ administration arrangements.

10. No further comments.
General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

3. Is there anything else that you feel should be included in the Bill?

4. Will the Bill and its provisions have a particular impact on equalities groups?

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Highland Council
28 August 2014
Introduction

Homeless Action Scotland is the national membership body in Scotland for organisations and individuals tackling homelessness. Our members include voluntary sector providers, Housing Associations, Local Authorities, academics and other professionals involved in homelessness prevention and alleviation.

Homeless Action Scotland (formerly Scottish Council for Single Homeless) is grateful for the opportunity to respond to the bill. Our response is based on information gathered from our members.

Members have confirmed there are mixed views across the country as to how positive the progress has been to date, though everyone is in agreement that the changes are taking us in the right direction and the previous Department of Work & Pensions system had been in need of review in any case. On the whole the updates have brought about better practice, with a more holistic approach being offered to claimants and a broader range of outcomes being offered to support getting the best result available. The advantage of the fund being located with local authorities allows for the claimant to be offered support in relation to the crisis at the time they need it, and in areas of best practice, for a co-ordinated approach to assistance to be offered.

Our overarching recommendation is for the legislation to be concise focusing (as the current Bill does) on general principles, and for the guidance to be broad in scope, allowing for future changes to the economy, welfare systems, and claimant needs, without the need to amend primary legislation. Any or all of these elements will have implications on how the fund is used in the future and the legislation should remain relevant regardless of changes.

THE BILL

Since the devolution of the Scottish Welfare Fund we have seen systems and the general offer to claimants improve. We would like the following small changes implemented to reinforce this:

Recommended Changes

Current:  
Section 2, paragraph 1) enabling qualifying individuals to establish or maintain a settled home.

Our recommendation:  
Section 2, paragraph 1) enabling qualifying individuals to establish or maintain a settled way of life.
This will allow there to be more flexibility around a claimant’s situation at any given time of need, and take into account that the claimant may not be residing in permanent accommodation at the point of application and may, for example, be moving to interim accommodation rather than a permanent tenancy.

Current:
Section 6, para 3) Before issuing, varying or revoking guidance, the Scottish Ministers must consult
(a) such body representing local authorities as they think fit
(b) such other persons as they consider appropriate

Our recommendation:
Before issuing, varying or revoking guidance, the Scottish Ministers must consult
(a) such body representing local authorities and COSLA, and
(b) such other persons as they consider appropriate, and
(c) any other representative bodies who have a relevant interest in the guidance.

Consultation with additional representative bodies from expert fields such as mental health, addictions, homelessness and housing, will allow any future changes to fully accommodate the broad range of support claimants often assisted by the fund, connect with. Whilst subsection (b) is a ‘catch all’ clause, we believe that representative bodies such as those mentioned above have expert direct knowledge of the fund from the claimants’ viewpoint which should be of equal interest to that of local authorities in considering any change.

THE GUIDANCE

Devolved to Local Authorities

Homeless Action Scotland is pleased the schemes have been devolved to Local Authorities, and that Local Authorities may choose to work jointly. Where procurement for items would be improved upon through larger scale buying, Homeless Action Scotland would suggest Housing Options Hubs be encouraged look at this, and also at any opportunities for improved service provision through joint working.

16 years of age

Homeless Action Scotland is pleased to see clear age eligibility for those of 16 years upwards included in the current guidance, and regards the availability of the Fund to 16 and 17 year olds who are in crisis as extremely important.

3 Claims in a rolling year

Homeless Action Scotland recognises that in most instances the limit of 3 claims in any 12 months would be sufficient, and also prevent the Scottish Welfare Fund being used as a permanent source of funding for individuals. However the nature of crisis is that it is unpredictable and there may well be exceptional circumstances where an individual in crisis may require assistance on more occasions. We would therefore recommend that the maximum of 3 claims in 12 months is not a strict and legal limit,
and for there to be provision for the limit to be breached in exceptional circumstances. Guidance could give illustrations of what might constitute an exceptional circumstance.

**Benefit Listing**

Current guidance includes a list of Welfare Benefits. This is widely misinterpreted as being a definitive list of benefits that a claimant must be in receipt of in order to be eligible for the fund. We would recommend the removal of the list for future guidance, to remove ambiguity.

**Move on from Temporary & Supported Accommodation projects**

Homeless Action Scotland especially welcomed the change within the new scheme that has allowed applications for Community Care Grants to take place without a permanent tenancy address in place at the point of application. This has been a significant benefit of the new devolved system which enables people in transition from temporary or hostel accommodation to permanent accommodation to have essential white goods or furniture in place from day 1 of their new tenancy. However despite this improvement, there is currently a time frame allocated to this.

Homeless Action Scotland would like to see the removal of the timescale. We recommend that where someone is in receipt of support and applying for a tenancy, that where applicable, they may apply at any suitable time prior to the tenancy being granted. This will allow them to plan for their future and make best use of the fund by having time to select from the range of options open to them and make the best decisions. It is important for people in temporary accommodation to know well in advance of any funds which will be available to them when they move to permanent accommodation. Funds would be released on confirmation of the tenancy.

**Awareness & Internet searches**

There was considerable publicity around the abolition of the previous DWP schemes. As a result we have concerns around the level of public knowledge about the current fund. Feedback from our members showed that many clients believed crisis funding and community care grant equivalents no longer existed. Awareness has generally improved over recent months, but could be improved further. In particular where someone is not in contact with any support agencies, we have concerns regarding how easy it is to know what is available in an emergency.

Local Authority websites and general internet searches do not always result in clear information about what is available in an emergency or crisis. Where information is found, claimants can have difficulty gaining access to the scheme.

To make access to the scheme easier, especially for those who are not able to get access to the internet or who have literacy problems we would recommend:

- there should always be a clearly visible telephone number provided;
- the application form should have both a printable version as well as being able to completed online (not everyone will have the option to print forms) equally, not everyone will be able to fill in forms in any format;
Ideally, there should also be a face-to-face option for applications (important for example for those with certain brain injuries or limited literacy)

Homeless Action Scotland would like the Guidance to include the need for ease of access to the fund as well as a review of publicity about the fund to ensure possible claimants are not in the dark. We would recommend service user input in the review processes.

**Are vouchers a necessary offer?**

If a person is in need of help we believe they should not be further embarrassed or stigmatised by vouchers. We see this as being especially degrading where the claimant lives in smaller areas, and the system is more likely to be known. Not only is stigmatisation an issue, but spending options are likely to be limited which may restrict access to bargains and best use of the fund.

We would prefer there to always be the option of money to be handed out in relation to the Crisis Grant element of the fund. In the case of Community Care Grants, we accept that goods rather than cash may be offered. Where money is being used this should be discussed with the claimant in advance, as in some cases, there may already be large arrears and the claimant will have no access to retrieving the funds. Alternatively, they may end up paying a fee to cash a cheque, where another option could avoid this additional cost.

We understand that where someone has an addiction then the option of giving cash may not appear to be a sensible option, as there is an element of temptation. However, if someone has an addiction and is really intent on spending whatever is available to them, the likelihood is that they will sell the voucher for a lesser amount. Vouchers are therefore not the secure option that they appear to be.

**Comments**

Homeless Action Scotland is happy for all of the above to be publicly available, and to make further clarification or comments where necessary.

Robert Aldridge  
Chief Executive  
Homeless Action Scotland  
28 August 2014
Background: Inclusion Scotland (IS) is a Scottish-wide network of disabled people’s organisations which exists to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives. Inclusion Scotland is funded by the Scottish Government to encourage and enable disabled people to engage in the policy process. We have engaged extensively with our members on their experience of the Scottish Welfare Fund and have used their evidence to inform our written evidence.

1. Are you in favour of the Bill and its provisions?

1.1 Inclusion Scotland has consulted widely with our membership and, in broad terms, they are supportive of the Bill’s intent and purposes.

1.2 Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

1.3 No. All the emerging evidence suggests that the need created by welfare reforms (e.g. such as mandatory reconsideration of ESA and JSA decisions; lengthy delays for assessment for Personal Independence Payment; the increasingly punitive use of sanctions, etc.) far outstrips the current capacity of Scottish Government or Local Authorities to respond. Unless the Scottish Government acquired new revenue sources and/or powers over benefit conditions it is difficult to envisage how this increasing call on resources to meet short term need can ever be “fully” addressed.

2 The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

2.1 We are pleased that Scottish Government have listened to the concerns that disabled people expressed and have addressed several of them in the Bill.

3 Is there anything else that you feel should be included in the Bill?

3.1 Inclusion Scotland believes that at 2 (2) “Qualifying individuals” should include a category (c) disabled people who would otherwise be unable to maintain their ability to live independently in their local community and also (d) families or individuals under exceptional pressure.

3.2 Inclusion Scotland also believe that human rights, especially the right to be treated with dignity and respect, are even more important within a discretionary Welfare Fund than they are when benefits are claimed as an entitlement. Disabled
people are discriminated against already within wider society and stigma has increased due to extensive, negative media reporting on people who claim benefits because of disability. As institutional discrimination already exists the Scottish Government should be doing its utmost to ensure that the operation and rules of the new Scottish Welfare Fund do not add to it.

3.3 Treating people equally is not about treating them all the same but about taking into account their individual needs. Although current Guidance states that the applicant’s need should be met that is not disabled people’s experience of what is happening in practice. For example the bulk purchase of goods may save money but it also assumes that everyone’s needs are the same - which they most definitely are not. Inclusion Scotland therefore believe that taking into account the needs of the individual applicant should be a statutory duty placed on local Authorities.

4. Will the Bill and its provisions have a particular impact on equalities groups?

4.1 Potentially the Bill could have far reaching impacts, both positive and negative, on equalities groups. Inclusion Scotland believes that as well as the needs of disabled people being recognised on the face of the Bill the needs of Scotland’s travelling Community also need to be specifically addressed.

4.2 Current regulations specify that a person must normally reside, or about to become a resident within a local authority area, (or is homeless) in order to be entitled to a payment from the SWF. This regulation seems to exclude the possibility of a Scottish Gypsy Traveller who maintains a traditional lifestyle being eligible for a payment. We believe that the Committee should seek an amendment to bring Scottish Gypsy Travellers within the eligibility scope for payments from the Fund.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party?

5.1 No. Inclusion Scotland members, having experienced the provision of state welfare services by third parties at first hand (via Work Capability and Personal Independence Payment (PIP) Assessments provided by Atos and Capita) are both appalled by, and opposed to, this provision being made in the Bill. Whilst the current provision may be imperfect it is at least both democratically accountable and reasonably efficient.

5.2 PIP Assessments have been marked by gross inefficiency and long delays. According to a National Audit Office Report even if original targets were met PIP would cost almost three and a half times more to administer and take double the amount of time to process as Disability Living Allowance (DLA), the benefit it replaces. Each new PIP claim costs an average of £182 to administer compared to £49 under DLA.

There seems to be little objective evidence that the private sector can deliver services more cheaply and efficiently than the public sector.
5.3 The introduction of PIP has also led to enormous delays in disabled people being assessed. The National Audit Office report estimated that claimants were waiting an average of 107 working days to have their cases decided and terminally ill people an average of 28 working days. Although waits for assessments and processing times have now somewhat improved this has only been achieved via a massive injection of additional staff and monetary resources.

5.4 Similarly an internal DWP review of standards of ATOS assessments found that 41% were of such poor quality that the assessment report could not be supported by the evidence within it. By June 2013 this poor quality of assessments had resulted in 567,634 decisions being overturned on appeal or review. Needless to say the monetary and resources costs to the DWP and Tribunal system have been enormous but even worse has been the ongoing misery, stress and poverty inflicted on hundreds of thousands of sick and disabled people deprived of their rightful entitlement by the inept assessment reports provided by ATOS.

5.5 The existing evidence suggests that the private sector are lacking in the necessary expertise to deliver welfare services efficiently and in good time. This may be because they lack an underlying ethos and commitment to the needs of those who use services.

5.6 Do you agree with the proposal that local authorities have the option to jointly administer the fund across local authority boundaries? This seems a reasonable proposal on the grounds of efficiency and the harbouring of scarce staff resources.

6. What are your views on the proposed internal local authority review process?

6.1 Inclusion Scotland are largely satisfied with the arrangements for the internal review process. However we continue to believe that all initial, and review, decisions should be communicated in writing to applicants to the Fund along with information on the applicant's right to seek an internal or external review of the decision (see below under Question 8).

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

7.1 In the absence of a Scottish Review Service the SPSO does seem the most appropriate body to deal with secondary reviews. Inclusion Scotland are pleased to see that the SPSO will be given the power to direct Local Authorities to alter their initial decision. We believe that over time this will lead to fewer "bad" initial decisions and greater consistency of decision making across Scotland.

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?
8.1 Inclusion Scotland believe that a legislative duty should be placed on Local Authorities to accept and record all applications to the Welfare Fund. Some local authorities are employing “gatekeepers” to weed out applicants before they reach the Welfare Fund decision makers. This is undoubtedly resulting in the Fund being under-utilised; unmet need going unrecorded and legitimate applications being rejected before proper consideration and discretion has been applied. It is also preventing the Scottish Government from collecting accurate and comparable data about levels of demand and variations in implementation of national guidelines.

8.2 Inclusion Scotland also believes that all decisions on Welfare Fund applications should be communicated to applicants in a written, accessible format. The UN Convention on the Rights of Disabled People suggests that all information emanating from the state should be provided in formats accessible to disabled people and the Equality Act requires service providers to make “reasonable adjustments” which take into account the needs of disabled people. Therefore communication of decisions should be in formats which are intelligible to applicants.

8.3 Those with sensory impairments or learning difficulties may not be able to take down telephone relayed decisions. Nor does any record then exist of what was communicated to the applicant that they can refer to or show to an advocacy or advice worker. This in turn means that understanding what has been decided or challenging a decision becomes much more difficult.

8.4 As such current practice in some authorities may well be in breach of Local Authorities’ equalities duties both as public bodies and as service providers. Therefore the Welfare Funds (Scotland) Bill should place a duty on Local Authorities to communicate all decisions on applications in writing unless the applicant requests it in an alternative accessible format (e.g. BSL). Such decisions should specify –

- The decision
- Reasons for the decision
- Where the application is successful the nature and amount of support awarded
- The date on which the decision was made and
- How the decision can be challenged

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

Inclusion Scotland believes that, based on current experience and policy intent, the estimated costs are both realistic and proportionate.

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No
Bill Scott
Director of Policy
Inclusion Scotland
7 August 2014

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1 Personal Independence Payment: early progress, National Audit Office, Feb, 2014
2 Ibid
Moray Council achieved a high rate of success in implementing the interim scheme for the Scottish Welfare Fund during 2013/14, resulting in 99% of the funding allocated by the Scottish Government being paid out to those in need. The Council achieved this outcome through its advance preparations, working with local partners and the hard work of the team involved in assessing and processing claims. Having only paid out valid claims that met the criteria in Scottish Government guidance the Council is concerned about the high risk of claims exceeding the amount allocated by the Government in future years. This is our main concern with the Bill.

There are a number of consequences arising from the risk described above. If the amount of claims exceeds the funding in any one year the Council will need to decide whether to take money from other Council services to cover any shortfall. The Council could alternatively simply cease making payments until the start of the next financial year or, if the difficulty is highlighted part way through the year restrictions could be applied to the criteria. This last option will introduce inconsistencies to payments being made in-year and potentially inconsistencies from one year to the next. It follows that there is also a real risk of inconsistent application of the fund from one local authority area to the next. Put simply, this is a demand led service and, unless there is a commitment from the Government to fund all applications that meet the national criteria, it is unlikely that the scheme will be applied consistently across Scotland.

It would be reasonable to expect the amount of funding required to meet demand to increase over the next few years in light of the Government’s announcement to allow the fund to be used to deal with problems arising directly from financial sanctions imposed by the DWP and also as more people become aware of the existence of the scheme.

Moray Council has been provided with additional funding of £50,000 per annum to deal with the administration costs of the fund. This is about half of the ongoing costs that the Council has had to employ to manage the fund effectively. Therefore, the Financial Memorandum does not capture the reasonable costs associated with the Bill.

Much seems to be being made of second tier reviews being undertaken by the Scottish Public Services Ombudsman. In the first year of operation Moray Council had one such referral. The referral was absorbed by existing senior management. Care should be taken in allocating additional funds to the Ombudsman until a reliable assessment of the volume of referrals can be made. Meantime, any additional funding available in this area should go towards the shortfall in the administration funding referred to above.
Mark Palmer  
Corporate Director (Corporate Services)  
The Moray Council  
12 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM NHS DUMFRIES AND GALLOWAY

General

1) Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

We welcome the introduction of the Welfare Funds (Scotland) Bill. The Bill will provide a legislative framework to the Fund. The provisions contained within the Bill will hopefully ensure that a welfare fund is delivered on an equitable and transparent basis.

The Fund should not be established to the detriment of prevention work. There requires to be a greater focus on prevention work in order to stop individuals and their dependents reaching crisis point.

2) The interim SWF scheme has already been running for 2 years. Do you feel that the Bill has suitably taken on the learning from this time?

It is felt that the Bill does reflect learning and outcomes form the interim Scottish Welfare Fund.

3) Is there anything else that you feel should be included in the Bill?

While Section 1 of the Bill allows for the ring fencing of the Scottish Welfare Fund, it does not mandate the Scottish Government or local authorities to do so. It would be useful to strengthen this aspect of the Bill. There is evidence of increasing pressure on the Scottish Welfare Fund and local authority resources and ideally the Welfare Fund should be protected within local authority budgets in order to support those in the most critical circumstances.

Within the Bill recognition of an individual’s wellbeing (Section 2 (1)(a)(ii)) should be extended to include any dependents.

In addition to ‘settled home’ Section 2 (1)(a)(ii) should also include ‘settled way of life’. This section of the Bill implies that that it is only households who can access the fund.

4) Will the Bill and its provisions have a particular impact on equalities groups?
Administration of Welfare Funds

It is hoped that the Bill will meet its objective of supporting those in need at a time of crisis. The Bill should operate on the basis of protecting basic human rights. With this in mind the Bill should not widen inequalities. We feel that the Bill will have a positive impact on the following groups, unemployed, disabled, carers, homelessness, those with substance misuse issues and ex-offenders.

5) Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

We recognise that there is a significant expertise outwith the local authority in terms of providing support for those who are vulnerable and in need. On occasion it might be more appropriate that support is provided in other ways rather than financial payment and this is where a third party provider may be appropriately used. However, an element of caution needs to be applied here. There will be a requirement to put in place robust service level agreements and quality controls with third party providers. An arrangement of this nature should only be used where the local authority is unable to meet the needs of the applicant. There are obvious ‘commissioning’ costs of adopting the ‘third party model’ of provision.

Review of decisions and the SPSO

6) What are your views on the proposed internal local authority review process?

The review process should be transparent, accessible and timely. The new powers to be provided to the Scottish Public Services Ombudsman to allow local authority decisions to be scrutinised is welcomed. This will provide an independent review process for applicants. We would hope that further information on the review process is made available as the Bill develops and that there will be opportunity to comment.

7) Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Yes. It is felt that the Scottish Public Services Ombudsman is the appropriate body to conduct secondary reviews. A local authority panel will not provide a suitable level of independency and the bringing together a number of individuals and bodies to form a tribunal will be more costly. It is imperative the whatever review model is put in place the needs of the applicant are considered in providing speedy responses in order to try and deescalate the problem faced by applicants. Ultimately the success of the SPSO model requires the SPSO to have the powers to overturn local authority decisions.
Further provision – regulations

8) What are you views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The level of detail within the Bill seems appropriate. It would be useful if the introduction clearly sets out the aims for the Welfare Fund and the applicant qualifying criteria.

Financial Memorandum

9) Do you think that the costs attributed to the running of the fund and the set up of the SPSO to administer the secondary reviews are realistic and proportionate?

The costs (£60,000-£100,000) attributed to the established of the SPSO function seem realistic and proportionate to the overall fund amount. It is difficult to ascertain at this stage whether the estimated running costs are realistic – ongoing running costs will be determined by the number of reviews requiring to be undertaken. It is hoped that a thorough evaluation programme will be put in place to monitor ongoing costs.

Other provisions

10) Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

In summary we welcome the Welfare Funds (Scotland) Bill. It is hoped that the legislative framework will bring consistency, transparency and accessibility to the fund and those in need.

The opportunity to work with partners (particularly the 3rd Sector) is welcomed, though as outlined above this approach requires robust commissioning arrangements to be established.

The Fund should require operate within the parameters of basic human rights. Individuals should have a right to dignity and respect when using the Fund – this should apply at all stages (application through to appeal). On this basis the Bill should be subjected to the various Equality and Diversity Impact Assessments

The NHS is starting to see some of the impacts of welfare reform impact on its services. This fund provides an important safety net to mitigate against some of the impacts of welfare reform. Through ensuring it is accessible to those in most need it is hoped that it will prevent individuals and their dependents reaching crisis point and becoming dependent upon already stretched NHS services.

Finally, there should be a requirement to have in place a robust programme of evaluation. This should include sharing of learning and experiences across all parties involved in the delivery of the fund.
General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes. However, however, the view of North Lanarkshire Council that the Bill does not clearly address the discretionary nature of the scheme and therefore, it is important to ensure this aspect is clear in order to avoid any doubt that there is either ‘automatic entitlement to’ or ‘automatic disqualification from’ a grant as part of the decision making process.

It is the view of North Lanarkshire Council that Section 2 of the Bill should read as follows;

“Use of welfare funds: assistance for short term need and community care

1) A local authority may use its welfare fund only in order to provide occasional financial or other assistance to or in respect of individuals for the purposes of -
   (a) meeting, or helping to meet, an immediate short term need -
      (i) arising out of an exceptional event or exceptional circumstances, and
      (ii) that requires to be met to avoid a risk to the wellbeing of an individual, or
   (b) enabling qualifying individuals to establish or maintain a settled home.
   (c) Local authorities may exercise discretion when making decisions on applications to the fund to ensure that the underlying objectives at subsection 1 parts (a) and (b) of the Fund are met.

2. The interim Scottish Welfare Fund scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

No. As previously stated the discretionary nature of the Welfare Fund is not currently made sufficiently clear within the Bill, nor is the ‘holistic’ approach taken by councils to individual applicants and their outcomes. The interim scheme has seen the emphasis on prevention of repeated crisis situations and increased holistic support to provide longer-term sustainable solutions for customers. The Bill in its current form risks a return to a transactional approach to the delivery of the scheme if the
requirement to provide a holistic/preventative approach is not made clear within the Bill.

The explanatory notes to the Bill at paragraph 40 reads:

‘One of the main benefits of local delivery of the welfare funds is the ability of local authorities to offer holistic support to applicants by facilitating access to other services. This approach should help to ensure that applicants can find a way to avoid being in crisis in the future’.

We would strongly assert that the importance of this approach be written within the Bill to allow for those administering the Bill to be fully committed to this preventative approach.

3. **Is there anything else that you feel should be included in the Bill?**

Yes. The Bill should make clear reference to the discretionary nature of the decision making process and the holistic/preventative aspect of the fund. There exists real concern that this holistic/preventative approach may not be implemented as there would arguably be no legislative requirement for local authorities to do so.

Local authorities should be confident that they can adapt decision making to local and individual needs of applicants.

4. **Will the Bill and its provisions have a particular impact on equalities groups?**

Yes. North Lanarkshire Council view the fund as having positive impacts on equalities groups.

**Administration of Welfare Funds**

5. **Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?**

No. Given that this Bill is arguably Scotland’s first piece of Social Security legislation, Section 2 part (3) raises some concern and contradiction about the intention of the Bill.

It may be the case that joint local authority joint working could be considered appropriate to improve efficiency and this may have benefits. However, given the intention of the scheme, it would appear at odds to then allow for the semi-privatisation of this type of statutory service.

Given that the spirit and intention of the Bill is to provide financial support to the most vulnerable in our society it is of great concern that profit motives could be brought
into the scheme by third party providers. Every pound that is spent generating profit or financially supporting third party organisations is a pound less in the pockets of those most in need in our communities.

Review of decisions and the Scottish Public Service Ombudsman (SPSO)

6. What are your views on the proposed internal local authority review process?

North Lanarkshire Council is of the view that the proposed internal local authority review process within the Bill for the first tier of reviews is sufficiently broad to allow such reviews to be carried out quickly and efficiently by councils, but would remind the committee that no specific funding for this aspect of delivery was provided to councils.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

No. The second tier of the review process as proposed within the Bill creates the very real possibility of a conflict of interest for the SPSO. The current position of the SPSO is that they may treat every review request as a potential complaint. This is in contravention of current practice where a customer must exhaust the internal local authority complaints process before taking their complaint to the Ombudsman.

The SPSO in the accompanying papers, have already set out their vision of ‘Complaints and Reviews working together’ and state the following:

“we will have two separate processes with two possible outcomes relating to one user experience dealt with by one organisation.”

“We do not want users to have to engage two processes to get the full outcome. If we only look at these decisions under our review powers, that means no one would be looking at the other issues.”

These statements indicate some confusion on the part of the SPSO over outcomes for customers, given that the SPSO appears to recognise that they will have to have two separate processes.

Merging the two processes does not negate the need for two separate outcomes both of which are ‘full’ and entirely independent of each other. To suggest that a customer has not had a ‘full outcome’ to a review unless a complaint outcome is also investigated is quite wrong. In fact, when looking at review decisions under review powers, no ‘other issues’ exist The customer who seeks a review should receive a full outcome of that review; likewise a customer who seeks to complain should receive a full outcome to that complaint. The fact that someone disagrees with a decision made about them does not constitute a complaint, equally a customer who raises a complaint is not automatically entitled to a review.

Information leaflet 1 on the SPSO’s website draws particular attention to the process for making a complaint to the Ombudsman “You can bring your complaint to us after
you have gone through the organisation’s complaints process.” This is both succinct and to the point.

The onus to raise a complaint must be on the customer who is for whatever reason unhappy with the service they received. To arbitrarily treat reviews as complaints fundamentally deprives local authorities the capacity to investigate and resolve any issues at a local level.

This would create the risk of local authority decision making being undermined by campaigning organisations who may choose to ‘flood’ one or all local authorities with review requests in the hope of shaping the fund through ‘automatic’ complaints.

**Further provision – regulations**

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The regulations contain a sufficient level of detail.

Yes, North Lanarkshire consider that the Bill and the regulations fit together harmoniously to properly and clearly represent the ‘spirit’ of the fund. Thus, making clear both the holistic/preventative approach and the discretionary nature of the fund are key components of both the Bill and subsequent regulations. The Bill should have on the face of it a presence relating to the discretionary aspect of the fund and the holistic approach.

**Financial Memorandum**

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

No, North Lanarkshire Council is underfunded for provision of Scottish Welfare Fund. The allocation of funds was made on the basis of previous historic DWP Discretionary Social Fund spend in each local authority area. This measure for fund allocation takes no account of the additional burden of administering reviews, or undertaking and developing the holistic/preventative approach as the DWP were never compelled to undertake such work. This has led to some rather challenging assumptions being made about the levels of actual demand within communities under current economic conditions.

No. There is no evidence that the set up costs for the SPSO (which are based on the Independent Review Service for Northern Ireland) are either accurate or sufficient in a Scottish context.

If it were the case that the costs were the same as Northern Ireland, it would have been prudent for the Scottish Government to have simply set up its own review service rather than muddy the waters with additional powers for an organisation
which by its own admission cannot be held fully accountable under the regulations for SWF due to its current legal status and parliamentary independence.

**Other Provisions**

10. **Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?**

None.

Stephen Devine  
Scottish Welfare Fund Manager  
North Lanarkshire Council  
28 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM THE OFFICE OF THE SOCIAL FUND COMMISSIONER
("OSFC")

Background

1. The Social Fund was introduced in 1988 and comprises two distinct parts; one regulated and the other discretionary. The Social Fund Commissioner and his Inspectors are concerned solely with the discretionary part of the Social Fund. This is a scheme of payments, by grant or interest free loan.

2. The core purpose of the Office of the Social Fund Commissioner ("OSFC") is to deliver independent reviews of discretionary Social Fund decisions made in the Social Security Agency ("the Agency") in Northern Ireland.

3. The Commissioner is appointed by the Department for Social Development ("the Department") in Northern Ireland and has a statutory duty to:
   - appoint Inspectors and other staff;
   - monitor the quality of Inspectors’ decisions and give advice, as he thinks fit, to improve the standard of their decisions;
   - arrange appropriate training for Inspectors; and
   - report annually, in writing, to the Department on the standard of Inspectors’ reviews.

Independent Review Decision Making

4. Inspectors can only review decisions that have already been reviewed internally within the Agency, providing that an appropriate application has been made. The Inspector’s review goes beyond considering maladministration to include consideration of the merits of the application. An Inspector’s decision has a binding effect on the Agency. Inspectors have the authority to:
   - confirm the decision under review;
   - substitute the decision of the Agency’s Reviewing Officer; or
   - refer the case back to the Agency’s Reviewing Officer to make a fresh decision.

Timeliness

5. Our customers have already experienced what can be a lengthy process of application, initial decision and review decision with the Agency before being eligible to apply for an independent review. For this reason the timeliness in advancing their independent review is important.

6. Applicants dissatisfied with the review decision made in the Agency are entitled to make a written request for an independent review within 28 days of the Agency’s review decision. Independent review requests should be sent directly
to OSFC who subsequently request the case papers from the Agency. These should be received by OSFC within 4 working days of the request (or immediately by fax/email in urgent cases).

7. OSFC targets for clearing routine decisions (starting from the date the case papers are received) are:
   - 24 hours for urgent Crisis Loans (e.g. for living expenses such as food & fuel);
   - 5 working days for Budgeting Loans; and
   - 12 working days for Grant cases.

8. In 2013/14, the average time taken by Inspectors to complete independent reviews was:
   - less than 1 working day for urgent crisis loans;
   - 1.3 working days for a Budgeting Loan; and
   - 6.7 working days for a Community Care Grant.

### 2013/14 Figures

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<td>Initial Refusals by the Agency</td>
<td>21,452</td>
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<td>Applications for Reviewing Officer review</td>
<td>10,499</td>
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<td>Applications unchanged on review</td>
<td>5,889</td>
<td>2,117</td>
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<td>Applications changed on review but not wholly in the applicant’s favour</td>
<td>4,393</td>
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<td>Applications for independent review received in OSFC</td>
<td>1,406</td>
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<td>Number of awards made by Inspectors</td>
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<td>Average amount of award</td>
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### OSFC Cost per case registered 2013/14

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<td>OSFC Business Operating Costs</td>
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<td>Social Fund Commissioner salary and expenses</td>
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<td><strong>Total</strong></td>
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<td>Cases registered</td>
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<td><strong>OSFC Cost per case registered</strong></td>
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### Summary

9. OSFC seeks to deliver timely independent reviews of discretionary Social Fund decisions providing a high quality and accessible service to all its customers. Our independent status is important in giving confidence to customers who have
already received two Agency decisions on their application which they are dissatisfied with.

10. Moreover, although there is provision to seek judicial review through the High Court, in practice the Inspector’s review tends to provide the final resolution for customers. It is vital, therefore, that customers have confidence in our service and Inspectors deliver high standards in their work. We are monitoring our processes closely and have processes in place to check the quality of our decisions to help ensure a high degree of quality is maintained in our work.

Office of the Social Fund Commissioner
19 August 2014
One Parent Families Scotland (OPFS), the organisation for lone parents across Scotland, provides tailored information, advice & support, along with training activities, work preparation programmes & flexible childcare services. OPFS aims to involve lone parents in the work of the organisation and in influencing policy makers.

There are over 165,500 single parents with 281,000 children in Scotland\(^1\). By 2033, the number of households containing one adult with children is projected to rise to 238,000 (24% to 38%)\(^2\) Over four in every 10 (43%) children in single parent families are poor, compared to just over two in 10 (22%) of children in couple families \(^3\)

Working on a day-to-day basis with families, OPFS is well-placed to represent the views of single parents, and to support them to engage with policy makers on important issues and concerns.

Partnership working represents an important means of influencing policy, and OPFS is involved in a significant number of campaigns and partnerships, including the Scottish Campaign on Welfare Reform, the Poverty Alliance, the Ministerial Advisory Group on Child Poverty, and the Scottish Government’s Welfare Reform Scrutiny Group.

The Welfare Funds (Scotland) Bill

The Welfare Funds (Scotland) Bill will place the interim Scottish Welfare Fund\(^4\) scheme on a statutory footing. The Scottish Welfare Fund provides crisis grants which “aim to provide a safety net for people on low income during a disaster or emergency.” It also provides ad hoc community care grants to help vulnerable people “remain independent in the community, preventing the need for institutional care.” The fund has been operating as an interim scheme since the Department for Work and Pensions (DWP) abolished the UK discretionary Social Fund in April 2013 and transferred the funding for community care grants and crisis loans to the Scottish Government.

The essence of the scheme will remain the same. The main change is the proposal to introduce the Scottish Public Service Ombudsman (SPSO) as a second tier reviewer dealing with applicants who wish to appeal their award decision.

OPFS welcomes the Scottish Governments intention to put the Welfare Fund into a stronger legal framework through the Welfare Funds (Scotland) Bill. We are also pleased to have the opportunity to be consulted by the Welfare Reform Committee.

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\(^1\) Household Projections for Scotland, National Records of Scotland, June 2012

\(^2\) Household Projections for Scotland, National Records of Scotland, 2008

\(^3\) Households Below Average Income (HBAI) 1994/95-2011/12, Table 4.5db. DWP, 2013

\(^4\) [http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund](http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund)
which has been designated as lead committee and has asked for views on all of the
Bill’s proposals, in particular around the following questions:

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully
achieves the Scottish Government’s aim of providing assistance for short term
need and community care?

1.1 The Scottish Welfare currently serves many of the poorest families in Scotland, a
quarter of community care applicants were from lone parent households. The
reason why they need to access the fund is because they are living on incomes well
below the poverty line, on which it is extremely difficult to cover unexpected costs.
Most applications are made due to a lack of financial resources, not an inability to
manage these.

1.2 OPFS welcomes the Scottish Governments continued commitment to grants
rather than loans. Grants have a clear role in promoting financial capacity, improving
child wellbeing and tackling hardship precisely because they do not trap families in
debt and below benefit rate incomes. The value of grants is that they are an enabling
and empowering tool. Grants can improve child wellbeing without undermining future
living standards; loans cannot. An adequate grants budget is key to using the fund to
better tackle material hardship in line with Government intentions to eradicate child
poverty. **We would suggest that the commitment to grants and that repayment is not required should be on the face of the Bill.**

1.3 OPFS supports a delivery system with clear national eligibility criteria, and an
adequate recourse to independent review and appeal. The widely varying
discrepancy between existing awards for similar circumstances would be addressed
through high quality decision making. **In principle we would argue rather than life
events or groups, it should be ensured that any individual has the practical
necessities to live in a dignified manner. There should be a check list of items that are deemed essential: cooker, fridge, freezer, floor coverings, curtains, bed, and bedding for example. A specific life event is not always the trigger for
need - anyone who has lived on Income Support or Jobseekers Allowance for a
while will find it difficult to replace a household item. Awards would be made
according to the circumstances of individual applicants and based on the assumption
that every household is entitled to have its needs for basic necessities met, such as
a bed, carpets, cooker etc.**

1.4 Nevertheless it is recognised that certain life events do create a need for a
substantial financial outlay. For example, transitions such as separating from a
partner, leaving the parental home or moving house. OPFS works with pregnant
teenagers & young parents in North Lanarkshire and know the hardships facing this
particular group of young women.

Traditionally many lone parents have qualified for Community Care Grants under the
condition that it will ease pressures on them and their family. We believe that it

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should be a priority to help families facing exceptional pressure and who lack the resources to meet irregular costs to provide a safe and secure environment for their children. We would recommend that the Bill should be amended to include, under 2.(2) “Qualifying individuals” - Families Experiencing Exceptional Pressures

LH is a lone parent with a daughter now aged 4. There were a number of events which occurred in LH’s life when her daughter was born. Splitting up with her partner due to domestic problems, her mother being diagnosed with cancer and having no alternative accommodation. LH moved back into the family home in Glasgow with her daughter to nurse her mother and help her father. LH’s mother passed away at which time her father was diagnosed with cancer. LH was then in a position of bringing up her daughter and now nursing her father. LH’s father then passed away leaving her and her daughter living in a 4 bedroom family home. LH was advised that the Bedroom Tax meant she would be required to put £100 per month towards her rent if she wanted to stay there. She already had a number of debts and was not in a position to find this from her £71.70 per week. LH was offered a 2 bedroom house which she was happy to move to with her daughter. However, she did not the finance to pay for the move, redecoration, flooring etc. She applied to the Council for a welfare fund grant but was excluded from even being able to apply as her circumstances didn’t fit their criteria. LH has had to borrow funds from her sister to hire a van to move home which caused a strain on their relationship. She has to wait for her new house to feel like home as she doesn’t currently have the funds for carpets and basic decoration.

1.5 Payment Methods: LA’s have the discretion to provide support in different ways. OPFS believes a combination of grants and goods may be an effective way of meeting need. However the claimant should always have the opportunity to choose the form of awards and it is our experience that most people favour financial assistance. A voucher system leads to claimants experiencing stigma in shops, being easily identified different from other customers.” Assistance in kind” creates a situation where claimants can feel demeaned and stigmatised.

“They all knew when they visited; you only get two kinds of carpet – blue or brown - so your visitors know. It makes you feel… it makes you feel kinda low.” Lisa a young parent from N. Lanarkshire

OPFS suggests the following amendment

2 (3) A local authority may exercise its power under subsection (1) by making a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual who has chosen this option.

Or if more appropriate a reference to claimant choice in the regs.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?
2.1 OPFS has operational concerns around the policy of giving local authorities complete discretion over delivery. We are concerned that limits on budgets means some claimants are screened out of the process before they even make a formal application. OPFS believes the Welfare Fund should be “needs-led”. In a country as rich as Scotland is we can afford to ensure our poorest families live in dignity.

There is a lack of logical thought and consideration of long term consequences of the awards at times. There is a potential of a postcode lottery developing where a family in need receives more/less/no support depending on where they live.

Marie

Marie is a lone parent, living in Glasgow who has one child aged 2 and was due another child in 6 weeks. OPFS assisted her to apply by phone for a pram and cot. Her son was still in his pram and his cot was put in the bin after constant use had broken it. Client had previously received a grant for these items when her son was born. The request was refused and client came back to go through the appeal process. It was very near the time her baby was due because of the time it took to consider the application and Marie was extremely worried about her situation. The appeal process would have taken so long that the client could have been left without these items for her new born baby. OPFS managed to secure second hand goods.

Susan

Susan is a lone parent, living in Glasgow with two children aged 5yrs and 1yrs. OPFS have been assisting the client on several issues after she split up from her ex-partner. There was a history of domestic abuse. Both her children suffered from ongoing nightmares and frequently had to sleep in her bed. The youngest child suffered from bed wetting due to the stress of the situation. OPFS assisted the client to apply by phone for a grant to supply a double bed and bedding package. Although client should have received a single bed as she is a single person they awarded a double bed and bedding package to her and the items were delivered to her within 10 days of the application.

As can be seen from the above examples there is a wide difference in the decisions to award items and a more consistent approach would improve the system.

The length of time to apply by phone can be considerable, 40 minutes is not unusual which can be very difficult for someone who is trying to answer a number of questions and look after children at the same time. The internet applications can be just as long as the system is slow apart from the fact that many people to not have access to a computer. OPFS would suggest that the council issue forms to organisations such as OPFS as they are doing for Social Work in order that vulnerable clients can be assisted in their home.

2.2 An adequate choice of delivery channels would enable claimants to choose the one that is best for them. These channels should include telephone, on-line, paper-based alongside locally provided and adequately funded face to face support. The use of on-line applications is welcome for those claimants who choose and are able to make and access claims by this route. An online customer account can allow claimants to access up to date information on their claim or review request. The use
of online methods can help make the applications process clearer to claimants and speed up the delay between initial decisions and the receipt of decision notices when relying on paper based applications.

However, we have concerns about on-line applications and telephone applications being the only available option. Many low income families are less likely to be able to afford their own computer and a telephone landline. Considerable work will need to be done to ensure the availability of accessible, high quality information on the new scheme is available to claimants.

In addition it is also evident that staff delivering the scheme still require high quality training to ensure they understand the purpose and process of the Fund so to better inform claimants. Support should be available to those who need it at any stage of a claimants’ interaction with the Scottish Welfare Fund. Assistance and support should be available for potentially vulnerable customers including those with mental health, learning disabilities or for those for whom English is not a first language.

**The development of these new arrangements should include a mechanism to provide clear criteria against which the performance of such services can be measured.**

3. Is there anything else that you feel should be included in the Bill?

3.1 **Ring-fencing** The Welfare Funds (Scotland) Bill will allow the funding for the SWF to be ring fenced formally, should Scottish Ministers and COSLA Leaders agree that this should be the case.

OPFS believes it is important that funds are ring-fenced for obvious reasons –if expenditure is targeted exclusively then it stand more of a chance of being spent in the way it’s intended.

The Scottish Government’s own research shows reforms to the welfare system have had a disproportionately negative impact on women. “The Gender Impact of Welfare Reform’ report by the Scottish government\(^{6}\) found that many of the benefit changes have hit women hardest due largely to their greater caring responsibilities.

Child benefit, child tax credits and the childcare element of working tax credit, all which have come under the government’s axe, are paid to the main carer of children, usually a woman. The income women receive from such benefits has been reduced in real terms as increases in some benefits have not matched inflation.

The UK government’s benefit reform programme unfairly impacts on some of the most vulnerable members of our society. **Ring-fencing is essential to achieve the SG aim that the scheme is a “fair, equitable and more holistic service that contributes to Scottish policy priorities such as tackling child poverty and reducing homelessness.”**

\(^{6}\) http://www.scotland.gov.uk/Topics/People/welfarereform/analysis/welfarereformanalysissgenderimpact
4. Will the Bill and its provisions have a particular impact on equalities groups?

The existing EQIA process concluded that the previous EQIA, carried out in advance of setting up the interim Scottish Welfare Fund, has had a positive impact on equalities groups applying to the Scottish Welfare Fund. Although the monitoring framework put in place for the interim SWF provides a good basis for understanding and developing the Funds in future, some work is needed to improve the quality of the data in order to achieve this. OPFS supports recommendations including:

- A programme of work to improve data quality;
- On-going data monitoring to identify long term trends;
- Working with local authorities to identify barriers and promote good practice in relation to equalities groups; and
- Promoting the fund to groups where data suggests that groups may be under-represented.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

5.1 Administration of welfare funds, Section 3 (1) says “a local authority may make arrangements for another person to administer its welfare fund on its behalf.”

This could enable Local Authorities to contract out to private companies like Serco, ATOS etc. On that basis we suggest that this is removed as evidence shows conflict of interest has led to very poor outcomes in other areas of benefit delivery and there is a lack of democratic accountability.

In the run up to the development of the interim scheme the Scottish Government consulted widely about whom was best placed to deliver the scheme and concluded that Local Authorities should take on that role. We think that any provisions which will enable other agencies to take on responsibility for delivery (albeit, as subcontractors) raise very many issues including, not least in the case of private contractors, whether they would be sufficiently accountable to both the public purse and service users. The evidence in the case of companies such as ATOS is that they are not. Given these concerns we would argue that such arrangements would fundamentally undermine the delivery of the Fund in its current form and therefore this section should be removed.

OPFS suggests the following
Replace section 3(1) with

3(1) A local authority shall make arrangements to ensure the administration of its welfare fund is efficient & effectively meets Scottish Government guidance.

Remove section 3. (2) on the same grounds as above.

Review of decisions and the SPSO

6 &7. What are your views on the proposed internal local authority review process? Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

OPFS supports the SPSO as the body to conduct secondary reviews. OPFS believes that the 2nd tier review must be carried out by an independent tribunal and give the individual the right of audience & the right to be represented. It must have powers to overturn and make awards. The appeals system should be independent of the original decision making body and allow further consideration on errors of law.

An effective appeals procedure should have transparent rules such as how and when claimants can lodge an appeal. The system should also allow for late appeals for those who have been unable to make their appeal on time.

There should not be too great a time lag between lodging an appeal and having your case heard. There should also be adequate opportunities for appellants to be represented by a Welfare Rights Officer, get further evidence to support their case and be given the option of a face to face hearing. The very nature of welfare fund applications means that people require the goods they are applying for at the time of their application. For example, a lone parent moving house or taking up their first tenancy needs household items when they move into the property rather than waiting several months for an award.

Further provision – regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

Section 5 /2 of Welfare funds: further provision

Sub-section 5 (2) (d) Regulations made under this section may, in particular, make provision...about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided,

OPFS understood that the Fund has been very clearly set up to be grant only.

We believe it should be clearly stated on the face of the bill that

“The Scottish Welfare Fund provides grants that do not have to be repaid. It does not provide loans”

Conclusion

OPFS supports the aim of protecting the elements of the fund which are of most importance to poor families in Scotland and in proposing positive improvements
which would support reducing child poverty. The reason that people have recourse to the welfare fund is because for the poorest families incomes are just too low either because of sudden crisis or because of benefit inadequacy elsewhere in the system.

Westminster’s historical shift away from the rights basis for grants provision has been problematic: the value of the rights based approach is that it rebalances the power dynamic between poorer families and the state bureaucracy, it allows easier monitoring of what is going on (against clear entitlement criteria, vital to proof systems against discrimination); and stimulates scheme improvement by ensuring decisions are open to challenge. The current discretionary system opens the door wide for entrenched bad decision making.

Marion Davis
Policy & Research Advisor
One Parent Families Scotland
1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes. Perth and Kinross Council is in favour of the Bill and of its provisions. The provisions are welcome; however it is the view of Perth and Kinross Council that the Bill should make reference to the discretionary nature of the Welfare Fund. It should be made clear that Local Authorities have the power to make decisions to award or refuse a grant on a discretionary basis. This would help provide clarity for customers and third parties that there is ‘no automatic entitlement’ or ‘automatic disqualification’ to a grant. Although the Bill is not prescriptive, per se, the insertion of the word ‘discretionary’ under Section 1 would provide more clarity for customers of the Welfare Fund. Section 1 should read;

“Welfare funds

Each local authority is to maintain a [discretionary] fund (called a “welfare fund”) comprising—

(a) any grants paid into the fund by the Scottish Ministers, and 5
(b) any amounts paid into the fund by the local authority.”

2. The interim Scottish Welfare Fund scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

The discretionary nature of the Welfare Fund is not made clear; however, the Bill could not be described as prescriptive. It does provide Local Authorities with sufficient flexibility to make decisions in accordance with the aims of the Welfare Fund. The holistic approach to the administration of the Fund should also be made clear; one of the vital areas of learning during the interim scheme has been the emphasis on prevention and how Local Authorities can best provide longer-term sustainable solutions for customers. The Bill could see a return to a transactional approach to the delivery of the scheme if the requirement of a holistic approach is not mentioned within the Bill.

3. Is there anything else that you feel should be included in the Bill?

Yes. The discretionary nature of the Welfare Fund, as mentioned under questions 1 and 2. The Bill should permit Local Authorities the power of discretion within either the Bill or the regulations. Local Authorities must be given adequate scope to react to changing circumstances and demands.
The current guidance for the Scottish Welfare Fund interim scheme states,

“1.4 The Scottish Welfare Fund is a discretionary scheme. The guidance cannot cover all eventualities. It is intended to provide a framework for decision makers to promote consistency in decision making, alongside the application form and training materials. Decision makers should use their discretion to ensure that the underlying objectives of the Fund, set out at para 3.1, are met. The absence of guidance on a particular situation does not necessarily mean that a grant should be refused.”

A similar paragraph could be included in the Bill for the permanent arrangements.

The Bill should also mention that the Scottish Welfare Fund is an ‘enabling fund’ and that Local Authorities must take a holistic approach to the administration and delivery of the scheme. A holistic approach is fundamental to the principle of local delivery.

4. Will the Bill and its provisions have a particular impact on equalities groups?

It is the view of Perth and Kinross Council that the Bill and its provisions will have a positive impact on equalities groups.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Yes. Perth and Kinross Council welcomes the option to work collaboratively with other Local Authorities and/or other partners with the appropriate skillsets to deliver the Welfare Fund. Local Authorities may wish to provide shared services in order to provide best value and this provision affords Local Authorities suitable control in terms of financial management and of planning service provision. Local Authorities may also decide to work collaboratively to provide contingency arrangements, for planned or forced office closures, for the purpose of business continuity. Perth and Kinross Council provided a Crisis Grant service on behalf of Highland Council to its customers during the festive office closedown. One of the main drawbacks to this approach is a limited knowledge of local services which is required when delivering a holistic service.

Review of decisions and the Scottish Public Service Ombudsman (SPSO)

6. What are your views on the proposed internal local authority review process?

Perth and Kinross Council believes that neither an internal Local Authority review process nor the Scottish Public Service Ombudsman proposals are
appropriate. Local Authorities have a proven track record in decision-making, therefore an independent Local Authority panel with a Third Sector panel member is our preferred option; we believe this to be the most timely, cost-effective and efficient method of review and it would bring the review process closer to the customer. The Scottish Welfare Fund has already become a specialist area and the knowledge and skills required to undertake reviews at second tier currently exist within Local Authorities and the Third Sector.

Example:

Second Tier Review of a Perth and Kinross decision.

Panel members:

Edinburgh City Council and Capability Scotland.

7. **Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

No. The role of the SPSO is well known and to incorporate an element of review could confuse customers. Furthermore, the current culture and process of the SPSO would not be suitable in terms of the required turn around for Crisis Grant cases.

The briefing note provided by the SPSO highlights the fact that there may be some substantial learning for the Ombudsman on the review function. A “simplified process map” has been provided which demonstrates that where an error has been made by the Local Authority when making a decision, a complaint will automatically be submitted against that Local Authority. This is not the role or function of an independent reviewing body. The decision to make a complaint should be borne by the customer and this right of self-determination should be preserved so as not to cause any unnecessary or undue stress to the customer.

**Further provision – regulations**

8. **What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?**

The level of detail contained within the regulations is sufficient and affords Local Authorities the flexibility to make the best decisions for the people in their communities, despite the fact that this is not explicit.

Section 10, subsections 3 and 4 are welcomed;

“(3) A local authority is to make its decision on an application for a crisis grant no later than the end of the second working day after that on which the authority has received all information allowing a decision to be made.”
A local authority is to make its decision on an application for a community care grant no later than the end of the fifteenth working day after that on which the authority has received all information allowing a decision to be made.”

The wording in these subsections avoids processing “targets” which could penalise customers. The regulations acknowledge the fact that vulnerable customers may not be able to provide evidence timeously.

Section 6, subsection 4(d) is also welcomed;

“(d) enable a qualifying individual to maintain a settled home in a situation where that individual, or another individual in the same household, is facing exceptional pressure;”

This recognises that individuals, not only families, can face exceptional pressure and may require assistance as a consequence. The interim scheme does not allow for the provision of assistance to an individual facing exceptional pressure and were it not for the discretionary nature of the scheme, vulnerable customers may not have received the assistance that they relied upon.

Once again, the discretionary nature of the scheme must be explicit within the regulations; this is fundamental to the intention and objectives of the Fund.

Each Scottish Local Authority is faced with its own individual demographics and pressures and therefore the power of discretion must be set out in the regulations.

The holistic approach to the delivery of the scheme is integral to its intention and therefore must also be explicit within the regulations.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

The costs attributed to Perth and Kinross Council to run the Welfare Fund are not realistic or proportionate. Perth & Kinross Council received a budget of £76,000 for financial years 2013/14 and 2014/15 to administer the Welfare Fund. Current staffing costs total £145,000. As a medium-sized, rural/urban Authority we make all methods of application available so as to allow the greatest possible access to the scheme; online, telephone, face-to-face, paper and home visits (in exceptional circumstances). Whilst the procurement of goods on behalf of our customers is, in our view, the best and most appropriate use of the budget, this too comes with additional costs in terms of administration. Additional funding to administer the scheme at the first point of contact would be welcomed, thus reducing error and the need for both first and second tier reviews.
It is difficult to say whether the costs attributed to the set-up of the SPSO to administer second tier reviews are realistic or proportionate. In order for the SPSO to fulfil its new role appropriately a substantial investment will be required to ensure that adequate training, systems and processes are in place.

Other Provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

None.

Perth and Kinross
20 August 2014
1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

The Poverty Alliance is supportive of the Bill and its provisions. We welcome that the Scottish Welfare Fund is being given legislative footing. The recent figures published by the Scottish Government show that the Scottish Welfare Fund has been successful in helping more than 80,000 households but there have been issues with discrepancies between local authorities and an overall underspend of £4 million.

We hope that the Bill will be successful in achieving the Scottish Government’s aim of providing assistance for short term need and community care but there are areas which we would like to see clarified or extended further to ensure that the Bill is able to achieve its full potential.

We welcome that funds are to be ring-fenced. With demand on the Scottish Welfare Funds likely to increase in coming months as a result of changes to the tax and welfare systems, it is more important than ever that these funds reach those most in need and we believe ring-fencing the funds is the best way of ensuring this.

The Poverty Alliance would like to see the eligibility criteria broadened to recognise that there will be many people in need as a result of unexceptional circumstances who would currently be excluded under the current criteria. As welfare reform widens, more people are likely to find themselves in need as a result of delays or sanctions and these unexceptional circumstances will put them in need. It is important that these people do not find themselves with nowhere to turn to for aid due to restrictive wording of the Bill.

We share the view of CPAG in Scotland that the criteria for Community Care Grants should be widened to include ‘families experiencing exceptional pressure’. The number of families experiencing exceptional pressure is likely to rise as the cost of living continues to increase faster than incomes. Research by CPAG showed that the minimum cost of raising a child in 2013 rose by 4 per cent, while the minimum wage rose by only 1.8 per cent and those on benefits saw only a 1 per cent rise. These families will need somewhere to turn and it is right that they should be able to access the Scottish Welfare Fund.

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The Poverty Alliance would like to see it put on the face of the Bill that repayment of awards cannot be required. Guidance does make it clear that payment should be in the form of grants, not loans but we believe this should be on the face of the Bill. Applicants should not be left facing the additional pressure of worrying that they may be asked to repay funds in the future.

We accept that there will be instances where it is necessary for local authorities to make payments in kind but believe that the applicant should be able to state their preference and the local authority should be able to justify their reasons for making payments in kind rather than cash. The applicant should not be made to feel like there are receiving hand-outs and it is important that their voice is heard in the decision making process. It is important that all decisions are made around what is best for the individual. We have heard of many incidents where lack of choice has resulted in increased stigma for the individual living in poverty e.g. a choice of only red or blue carpet was offered and this was therefore easily recognisable as a carpet provided by the Scottish Welfare Fund. This limited choice has a negative impact on individuals and we would argue that in kind assistance should only be given where local authorities believe it is not in the best interest of the applicant to provide the award in cash.

2. The interim SWF scheme has already been running for two years. Do you feel the Bill has suitably taken on the learning from this time?

The recent statistics published by the Scottish Government showed several areas of concern and the Bill does not adequately address these. By giving local authorities full discretion over delivery, the Scottish Government is allowing a postcode lottery to develop. The figures for 2013/14 show variations in spend between local authorities with some spending in excess of 90 per cent of their budget (Dundee City, East Ayrshire, East Lothian, Glasgow City, Moray, Perth & Kinross Renfrewshire, Scottish Borders, South Lanarkshire, West Dunbartonshire, and West Lothian) but others have not managed to spend even two thirds of their budget (Aberdeenshire, Clackmannanshire, East Renfrewshire, Eilean Siar, and Shetland Islands). The overall figure for Scotland was 88 per cent.

There were also discrepancies across Scotland in the average spend on each grant, with Glasgow’s average Care Grant being approximately £900 compared to the Scottish average of £640. There are many possible reasons for this such as the fact that some local authorities may be able to source household goods for less than others. The reasons for this are unclear but hopefully this can be resolved by improving the way data is recorded.

Another area of concern is the requirement that many local authorities have imposed that applicants be in receipt of means tested benefits. For many people, the reason they are applying to the Scottish Welfare Fund is that there has been a disruption to their means tested benefits either as a result of sanctions or delays. Since the new JSA sanctions regime was introduced on 22 October 2012 and December 2013 over 1 million sanctions have been applied. The sanctions regime has become

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increasingly punitive and those who have lost access to their benefits should not be
left without access to the Scottish Welfare Fund also. To avoid confusion over the
regulations on eligibility and means tested benefits, the Poverty Alliance would like to
see the reference to means tested benefits removed from the regulations.

We would like to see regulations acknowledge a need to look at the applicant’s
outgoings when assessing resources, and not just income.

The Poverty Alliance has serious concerns regarding the number of applications
allowed by regulations. There needs to be discretion in the regulations to allow for
individual circumstances. The Scottish Welfare Fund is there to help those most in
need and therefore regulations should not be so prescriptive in terms of how often a
person may require assistance in a given time frame.

3. Is there anything else that you feel should be included in the Bill?

The Poverty Alliance would like to see section 1 of the Bill amended to make
reference to the overall purpose of the Bill. Doing this helps to ensure that
subsequent provisions, regulations and guidance and interpreted by local authorities
with this purpose in mind. An example of this can be found in the previous UK social
fund directions which stated ‘the Social Fund is a scheme to help people with needs
which are difficult to meet from regular income’. 6

Discrepancies between local authorities may be explained, at least in part, by the
way applications to the fund are processed and recorded. To end this, there should
be a duty on all local authorities to process and record all applications received. Not
only will this make it easier to compare statistics between local authorities but this
will also allow applicants to request a review when they are unhappy with the local
authority’s decision. Moving towards a more open, transparent system has benefits
for everyone.

The Poverty Allowance would also like to see a greater requirement for local
authorities to refer those in need onto other agencies. The number of referrals onto
other agencies needs to be increased to ensure that those in need of support are
able to get access to services. The current figure of 25 per cent is much too low.
For many applying to the Scottish Welfare Fund will be a last resort and so it is likely
that many of those who apply will require additional support after receiving their
grant. It is important that these people are not allowed to slip through the net.

4. Will the Bill and its provisions have a particular impact on equalities
groups?

There is a concern that local authorities are not recording vulnerabilities in
applications. The vulnerabilities which should be recorded are those circumstances
which should be considered by decision makers in prioritising awards. The recording
system used by many local authorities allows only one vulnerability to be considered
by application. To ensure that both applicants and the Scottish Government know

6 DWP (2013) Social Fund Guide:
http://webarchive.nationalarchives.gov.uk/20130703092741/http://www.dwp.gov.uk/docs/social-fund-
guide.pdf%20
when local authorities are failing to take vulnerabilities into account, local authorities should be required to include the list of vulnerabilities considered in decision letters.

5. **Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a local authority or jointly administer the fund across local authority boundaries? What are the benefits and drawbacks to this approach?**

Outsourcing seems to run counter to the ethos of the Scottish Welfare Fund, at least the way it was envisaged i.e. that it remains in the clear control of the public sector and there is a consistent approach across Scotland.

The Poverty Alliance accepts that there may be instances where it is appropriate for a third party to provide assistance but this should only be done when it is in the interest of the applicant. It is important that there is no negative impact on the applicant. There are a number of drawbacks to outsourcing including an additional level of bureaucracy which can result in longer processing times. Outsourcing can also result in reduced levels of accountability and it is essential that there is a way of local authorities tracking complaints to any third party. This can also create complications in the review process.

There are issues surrounding the kind of third party applicants are referred to. In no circumstances is it appropriate to refer applicants to a food bank. Food banks are not part of the social security system and referring people to them instead of providing legitimate aid reduces the choice of the applicant, creates stigma and undermines the dignity of the applicant. Local authorities must consider the appropriateness of outsourcing and what this means for the individuals involved. It is important that the Scottish Welfare Fund is not outsourced for profit.

6. **What are your views on the proposed internal local authority review process?**

The Poverty Alliance is satisfied with the internal local authority review process. It may be helpful if regulations also stipulated instances where applicants could not ask for a review e.g. if there is money left in the welfare fund.

It is also essential to consider why rates of review are currently so low. Is this due to delay or lack of information on appeals being made available to applicants? The applicant’s relationship with the local authority also needs to be taken into consideration and also the applicant’s only confidence to challenge authorities. For many vulnerable people, the idea of challenging a decision made by the Local Authority may appear daunting and therefore the process should be as open and accessible as possible for those who need it most.

We welcome that those who have asked for a review of a Crisis Grant application should receive a decision within two working days but are concerned that fifteen working days for a Community Care Grant application review is too long and would prefer to see a shorter timescale applied.

Figures for 2013/14 show that for Community Care Grants, there were 2,093 tier 1 reviews and the original decision was revised in 59% of cases. For Crisis Grants a
total of 627 tier 1 reviews were received. Decisions were revised in 51% of these. The fact that over half of decisions reviewed were over turned by appeal suggests that there is an issue in the way decisions are being reached. It is important that the right decision is made and in a timely manner. Waiting for a decision and then going through the appeals process is an added stress in what is already a period of difficulty for people.

These figures show that the review system is important and for many it has been their only chance at receiving funds which were wrongly turned down for. The fact that so many decisions have been overturned on appeal shows the need for an effective, efficient system of review and for many waiting 15 days while their review on a community grant will be too long.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Yes.

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

The Poverty Alliance is satisfied with the level of detail contained in the regulations. It would be helpful to have the ‘Decisions on Fund Applications’ on the face of the Bill and also the timings for reviews.

As stated previously, we would also like it to see on the face of the Bill that payment is made via grants, not loans and therefore there is no repayment requirement.

9. Do you think the costs attributed to the running of the fund and the set up of the SPSO to administer secondary reviews are realistic and proportionate?

N/A

10. Do you have any other comments on any other provisions contained in the Bill that you wish to raise with the committee?

It is disappointing that in 21st century Scotland there are people reliant on local authorities to help them feed their families and furnish their house. The Poverty Alliance believes that everyone should be guaranteed a minimum income adequate enough to provide a decent standard of living. However, until we move towards a benefits system that provides enough for all then schemes like the Scottish Welfare Fund are needed.

Overall, the Scottish Welfare Fund is arguably working well and we hope that the Bill will build on its success. It is disappointing that there was a significant underspend last year and that there has been such variation between local authorities but the scheme has successfully helped over 80,000 households in times of need.
By comparison, in England after ten months of the new Local Welfare Assistance Fund Councils had spent on average only 43 per cent of their available budget. In cash terms, it means that, of the £136m available to those councils to spend over the whole year, £67m was unspent. As with Scotland, there were variations in award rates between councils but success rates in England are much lower than those in Scotland or Northern Ireland.

The scheme is not perfect but the Poverty Alliance is supportive of the Bill and its provisions and hopeful that by considering some of the points raised in our response that the Bill can go on to help even more families in need this year.

Carla McCormack
Policy and Parliamentary Officer
The Poverty Alliance
27 August 2014

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http://www.theguardian.com/politics/datablog/2014/apr/20/the-crisis-in-local-welfare-assistance-explained
8 Butler, Patrick et al (2014) *The Crisis in local welfare assistance explained* in The Guardian
http://www.theguardian.com/politics/datablog/2014/apr/20/the-crisis-in-local-welfare-assistance-explained
9 https://docs.google.com/spreadsheets/d/1nAkEz0v5AO_8q_AiBuviEsZ--jz_9ZM09yInc7DpWbw/edit#gid=0
INTRODUCTION

Quarriers is one of Scotland’s largest social care charities supporting thousands of disadvantaged families each year. These families have been struggling to cope in the face of major reforms and stalled economy that has stunted opportunities. We support children, families, young homeless people and adults with learning disabilities from birth through to older age. Quarriers has been campaigning to improve the lives of people we support for over 140 years.

GENERAL

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Governments aim of providing assistance for short term need and community care?

Quarriers welcome the opportunity to respond to the consultation on the Welfare Funds (Scotland) Bill. This has been a crucial support to many people Quarriers support who suffer from a combination of disadvantages such as poor housing, poor health, worklessness and so on as well as low income. Quarriers conducted a study between 2012 and 2014 in relation to families’ experience of multiple disadvantage in Scotland and found that low income to be a common thread running through most of the problems faced by families both as a cause and effect of people’s own mental and physical wellbeing and has a serious strain on people’s relationships with others. (Ties that Bind Demos 2014). Tackling such disadvantage therefore can never be left to one service alone to solve. The best services work with the complexity of family life. Improving outcomes may require working with children or a partner or problems being experienced by siblings. Policy often does too little to take account of this sort of interdependence. We are delighted the Welfare Funds (Scotland) Bill allows for a more holistic linking of services which has the potential to build capacity of all services to respond to someone in need.

2. Has the Bill taken on the learning from the interim SWF scheme?

Quarriers welcome the fact that the Bill will put the SWF on a secure footing. We are delighted to see that sections 2 (1) (2) and (3) of the bill are wide enough to offer opportunity to access the support in a range ways. Quarriers practitioners report that most dealings with social welfare fund have been positive and respectful.

Universal Credit, the Bedroom Tax and changes related to replacement of DLA with PiP are all having an effect on people Quarriers support. Quarriers are concerned that the cumulative impact of welfare reform will lead to more and more people requiring both crisis payments and grants for essential items. This means that in times of Austerity pressures on funding are likely to increase. There is no flexibility
in the bill which accommodates the ups and downs of the market. Nor is there an increase or decrease in the funding which accompanies this variability.

3. Is there anything else that you feel should be included in the Bill?

No.

4. Will the Bill and its provisions have a particular impact on equalities groups?

Quarriers support a large number of people with disabilities and for those individuals, applying for grants can be very confusing. Raising the profile of the SWF through easy read information materials is essential.

Other people Quarriers support have needed help to access the SWF -

Single mum from local area with 3 children, boy age 2, girl age 8 and boy age 11. Her house is in poor condition and has damp. Due to this she disposed of beds and bedding which had been affected by damp. Her application to social welfare fund for new furniture was rejected as it was not deemed urgent. Her appeal was refused as it had not been submitted within time limit. They are now willing to reconsider case following advocacy by worker from the family centre.

Individual situations can be fairly unusual and very unique which can cause delays. For example; Quarriers have had some difficulty accessing the fund on behalf of someone we support who does not have capacity. This lady was being discharged from a long stay hospital and needed palliative care and because of a delay remained in a hospice longer than she needed to.

Quarriers have also found that funding is very limited in relation to people with a disability moving into independence and seldom covers what is required. We have often found advocacy on behalf of people we support is essential but can slow down processes.

ADMINISTRATION OF WELFARE FUNDS

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries?

A Demos report commissioned by Quarriers (Ties that Bind January 2014) illustrated that local services are not joined up.

“We also find that many of the systems that ostensibly help support people are often not experienced as ‘supportive’ in any real sense. People frequently complained about the complexity of the welfare system, were worried about the consequences of recent reforms, exhibited a chronic lack of trust in social services and in rural areas in particular, felt that statutory services were abandoning them altogether.”
Quarriers would hope that local authorities administering the fund offers the opportunity for the connection between funds and services.

Quarriers believe that the timescale for processing Crisis Grants should be reduced to 24 hours and should include out of hours provision. If an application is received by a Local Authority on a Friday payment at the end of the second working day is not an effective response to meeting the needs of people in crisis. Some of the young homeless people Quarriers support have applied for crisis grants because they are in need of food or electricity and delays can cause significant distress. Previously under DWP, decisions and payments were made in the same day.

**REVIEW OF DECISIONS AND THE SPSO**

**6. Local Authority Review Processes**

Quarriers agree with the characteristics of the review process as set out in the Bill. Quarriers believe that applicants, particularly those people with a disability should have access to advocacy and advice in relation to the review process.

**7. What are your views on the proposed internal local authority review process?**

Quarriers welcome the decision that second tier reviews are undertaken by the Scottish Public Services Ombudsman rather than local authority panels. This allows an administrative solution to be made by through a scrutiny of the process. Quarriers welcomes section 4 (4) of the Bill which gives the SPSO the power to make alternative decisions.

**FURTHER PROVISION – REGULATIONS**

**8. Views on the level of detail?**

Quarriers believe that there is the right balance between discretion and regulation.

**9. Financial Memorandum**

Quarriers acknowledge the difficulty in planning in relation to SPSO undertaking reviews. The interim SWF gives a good guide in relation to the number of reviews therefore costs should be estimated accordingly.

Quarriers
28 August 2014
## WELFARE REFORM COMMITTEE

### WELFARE FUNDS (SCOTLAND) BILL

### SUBMISSION FROM RENFREWSHIRE COUNCIL

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
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<tbody>
<tr>
<td><strong>General</strong></td>
<td></td>
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<tr>
<td>1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?</td>
<td>We are in favour of the Bill, which gives local authorities (LAs) certainty in terms of the ongoing operation of the SWF and allows LAs to plan on this basis. We believe the policy aim is achieved through the Bill, however (as we have commented previously in the consultation on the draft Bill) the achievement of this aim should not require the provision of resource from LAs, as is provided for in s1(b).</td>
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<tr>
<td>2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?</td>
<td>In terms of the operation of the Fund, the Bill appropriately reflects in broad terms the discretionary nature of the SWF. However, from experience of administering the SWF, it would be helpful to have in supporting regulation or guidance clear definition of some key terms used eg &quot;exceptional&quot; (as in s2(1)(a)(i) of the draft Bill – &quot;...an exceptional event or exceptional circumstances...”).</td>
</tr>
<tr>
<td>3 Is there anything else that you feel should be included in the Bill?</td>
<td>There is provision in the Bill (s5(2)(f)) for Scottish Ministers to regulate for LAs to recover amounts paid out; however the draft Regulations are silent on the matter. It is desirable for LAs to be clear on the circumstances when recovery is possible eg where a fraudulent claim has been proved.</td>
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<tr>
<td>4 Will the Bill and its provisions have a particular impact on equalities groups?</td>
<td>From our experience of administering the SWF; and our understanding that the Bill will largely put the interim arrangements on a statutory footing with no significant change, we do not consider any particular equalities groups will be impacted.</td>
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<tr>
<td><strong>Administration of Welfare Funds</strong></td>
<td></td>
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<tr>
<td>5 Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across the local authority boundaries?</td>
<td>Having the flexibility of these options available within the Bill is helpful, however we feel there are potential practical issues which would require to be considered and addressed to make the joint administration of the SWF across LA boundaries achievable. For example, it is possible that individual LAs may have differing levels of demand, deprivation and funding which make consistent decision making challenging. Also, the ethos of the SWF is based on a local approach where links with other types and sources of support are well understood by those administering the SWF – this local knowledge may be diluted if either a joint approach is in operation or the fund...</td>
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drawback to this approach? | is administered by a third party.
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**Review of decisions and the SPSO**

<table>
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<tr>
<th>6 What are your views on the proposed internal local authority review process?</th>
<th>We are content with the first tier review process proposed.</th>
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</table>

| 7 Do you agree that the SPSO is the appropriate body to conduct secondary reviews? | No. As we previously commented in the consultation on the draft Bill, we feel the SPSO option is costly, potentially adds delays to the review process and does not sit particularly well with the current role of the SPSO. Further, given the potential for only a small number of second tier reviews to be requested, it is questionable whether the SPSO mechanism as an option is the most appropriate approach that is both effective whilst also supporting the delivery of value for money. |

**Further provision – regulations**

<table>
<thead>
<tr>
<th>8 What are your views on the level of detail that will be contained within the regulations?</th>
<th>We feel the balance of items either in the Bill or the Regulations is appropriate given the discretionary nature of the SWF.</th>
</tr>
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<tbody>
<tr>
<td>Is there any aspect which you feel would benefit from being on the face of the bill?</td>
<td>As mentioned above however, we feel that clearer definitions of some key terms would be helpful to LAs in administering the SWF eg “exceptional”, “homeless”.</td>
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<td></td>
<td>Regarding 10(3) and 10(4) which state the LA is to make its decision on an application “no later than the end of the [second or fifteenth] working day after that on which the authority has received all information allowing a decision to be made”. The current practice is for decisions to be made within these timescales ie there is an operating assumption that applicants will have a decision within either 2 or 15 working days – further guidance would be welcomed regarding the maximum amount of time an application can be “pended” before a decision must be reached.</td>
</tr>
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**Financial Memorandum**

| 9 Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate? | The costs may be realistic, however for the potential volumes of second tier reviews, we do not feel they are proportionate. |
### Other provisions

<table>
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<tr>
<th>10 Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?</th>
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<tr>
<td>The Bill makes no mention of administration funding and does not place any obligation on the Scottish Government to provide an appropriate and sufficient level of funding to LAs as administering authorities. The Council’s experience in the first two years of the interim scheme is that the level of administration funding provided by the Scottish Government is significantly inadequate. The Bill should place a statutory requirement on the Scottish Government to ensure that local authorities are fully and appropriately funded to allow them fulfil the associated administrative and service requirements of the scheme.</td>
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Renfrewshire Council  
28 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM SCOTTISH BORDERS COUNCIL

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term needs and community care?

Yes, Officers are in favour of the Bill and the provisions it contains. However, Local Authorities should receive the level of funding required to deliver what the Bill sets out.

2. The interim scheme has already been running for 2 years. Do you feel that the Bill has suitably taken on the learning from this time?

Yes. The interim guidance has been evolving and reflects lessons learned. It is clear that these have been reflected in the Bill and regulations. The level of detail within the Bill and regulations does not outline the discretions that have been extended to Councils throughout the development of the scheme but we assume these will be included within the statutory guidance.

3. Is there anything else that you feel should be included in the Bill?

No

4. Will the Bill and its provisions have a particular impact on equalities groups?

We do not anticipate the Bill having any particular impact on equalities groups as it reflects, in the main, what is already in place.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries?

Yes we welcome this flexibility.

What are the benefits or drawbacks to this approach?

Benefits – economies of scale, cost reductions; greater negotiation power; unified reporting; consistent procedures

Drawbacks – reduces the link to local services/organisations and local knowledge

Officers can see why centralising Community Care Grant’s could be beneficial but not Crisis Grant’s – local connections on Crisis Grant’s are stronger than on
Community Care Grant’s

6. **What are your views on the proposed internal local authority review process?**

   The proposals for the internal local authority review mirrors the existing arrangements under the interim scheme. Officers feel this currently works well and support it’s continuation as laid out in the Bill.

7. **Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

   Officers have a number of concerns on the proposals for secondary reviews and the role of SPSO and these are listed below. These are centred on the opinion that the current method of dealing with second tier reviews, within local authorities, works well. The view of Officers is that removing this from local authorities reduces the options available for claimants. Requests for second tier reviews are low and Officers support the SPSO dealing with complaints generated from these as it does give that independent view.

   - Officers are concerned about what happens if the funds are exhausted by the time the SPSO makes a decision and the decision of the SPSO is to make the award.
   - There are 32 Scottish Local Authorities, each with their own policies which means the SPSO will need to make reference to the policy specific to the Local Authority the review is in respect of.
   - The priority level for the Local Authority at the time of the decision will have influenced the decisions therefore this will need to be borne in mind for second tier review.
   - The route to SPSO seems disproportionate for Crisis Grants given the small sums involved.
   - Officers are concerned about the timescales the SPSO will work to and the level of resources Local Authorities will have to provide to deal with requests from the SPSO.

8. **What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?**

   There are discretions in certain circumstances which should be included in the regulations. Specifically, qualifying criteria in terms of qualifying benefits and what constitutes a family with the appropriately discretions should, be in the regulations.
9. **Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?**

No, Officers do not believe these are realistic as there is a significant shortfall between the funding provided to Local Authorities compared to the actual cost of administering the fund. Local Authorities are already subsidising the scheme by allocating administrative resources above the level of funding which has, in part, contributed to the success of the interim scheme.

Funding for SPSO compared to that of Local Authorities appears to be disproportionate to the level of work anticipated. Officers do not anticipate that Local Authorities will see any significant level of savings as a result of the SPSO dealing with second tier reviews.

10. **Do you have any other comments on any other provisions contained in the Bill that you wish to raise with Committee?**

No

Scottish Borders Council
28 August 2014
The Scottish Campaign on Welfare Reform (SCoWR) is a coalition of leading civil society organisations. Members work with people experiencing exclusion and poverty across Scotland. This response draws on the consensus of opinion which exists among SCoWR members over the devolution of community care grants and crisis loans. Many of our members are also providing their own, detailed responses. This response is intended to complement those provided by individual members.

The SCoWR manifesto sets out the five reforms that our members believe are necessary for an adequate social security system:
- Increase benefit rates to a level where no one is left in poverty and all have sufficient income to lead a dignified life
- Make respect for human rights and dignity the cornerstone of a new approach to welfare
- Radically simplify the welfare system
- Invest in the support needed to enable everyone to participate fully in society
- Make welfare benefits work for Scotland

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

1. SCoWR are in favour of this Bill and the fact that it will give the Scottish welfare fund legislative underpinning. By legislating for a national framework the Scottish Government has the opportunity to establish a welfare fund which is transparent, accountable and accessible.

2. By increasing investment and ensuring that the fund is accessible and sufficient, the Scottish Parliament and Scottish Government have the opportunity to prevent many vulnerable households from reaching crisis point. This will not only preserve the stability and wellbeing of households, it could also prevent them from being forced to rely on costly public services such as residential care, homelessness services and the NHS.

3. We are, however, concerned that certain groups who are likely to be at increased risk of experiencing crisis or instability (largely as a result of ongoing tax and welfare reforms) may have difficulty accessing the fund as a result of certain provisions of this Bill. These includes:

- **Families experiencing exceptional pressure.** Under the UK discretionary social fund families experiencing exceptional pressure were listed amongst
the categories of applicant eligible for community care grants. The term ‘exceptional pressure’ was not defined and included pressure resulting from a range of factors including disability, low income and relationship breakdown\(^1\). The Bill does not currently make provision for families under exceptional pressure. This is a particularly concerning given that families with children are one of the groups most likely to be affected by tax and welfare changes and the increased cost of living\(^3\).

We therefore believe that a third category should be added under article 2(2) to include amongst qualifying persons (currently limited to those facing or leaving prison, hospital, residential care or homelessness) families under exceptional pressure.

- **Disabled People**
  Disabled people in Scotland are also being disproportionately affected by ongoing welfare reforms\(^4\), with increase financial hardship and lack of support often undermining their ability to live independently. SCoWR therefore believe that the Bill should also make reference to disabled people who would otherwise be unable to maintain their ability to live independently in their local community, amongst the categories of individual eligible for a community care grant.

- **Vulnerable young people**
  The Bill and/or regulations should also ensure that the fund is accessible to young people who may be particularly vulnerable, including care leavers, young carers and those in kinship care. When considering applications from families and young people local authorities should consider the Scottish Government’s indicators of child wellbeing (Safe, Health, Active, Nurtured, Achieving, Respected, Responsible, Included).

4. Excluding or deprioritising groups likely to have an increased need for the fund could result in increased poverty, exclusion, hardship and/or ill-health. In many cases, the only alternatives to the SWF are high interest lenders, ‘loan sharks’ or making the difficult decision to sell items from the home – all of which are likely to exacerbate rather than resolve financial problems and increase the likelihood of eventual reliance on public services.

5. The Bill should also make it clear that where an award is made under the scheme that it is a grant rather than a loan and that no repayment of awards can be required. We believe this is an essential characteristic of the permanent scheme which should be protected through primary legislation.

6. Finally, in order to ensure that the Scottish welfare fund is sufficient to meet demand it is essential that funds are ring-fenced. While section 1 of the Welfare Funds (Scotland) Bill will *allow* the funding for the SWF to be ring-fenced, it does not oblige the Scottish Government to do so. Given the increasing pressure on the SWF and wider local authority resources over in the coming years (largely as a result of tax and social security reforms at UK level) SCoWR does not believe this provision is strong enough.
2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

7. There are several aspects of the scheme which have proved problematic in the first year of the interim scheme which could be better addressed through the current Bill. These include:

- **7.1 Concerns relating to the provision of awards in kind**
  
  We are concerned by the broad scope which the Bill gives local authorities to make awards in kind rather than by way of a cash payment.

  The Scottish Government’s statistics show that in the first year of the interim scheme, more than 80% of CCG spend was in kind (rather than by way of cash, cheque or bank transfer). SCoWR believe there is a risk that by systematically allocating goods rather than cash payments local authorities will remove choice and undermine the dignity of the individual. Handing out vouchers, for instance, can not only limit the choice available to applicants but can also create stigma, undermine dignity and lead people to feel they are receiving hand-outs rather than exercising a legitimate right to assistance during a crisis.

  It is also essential that, where assistance is given in kind, the goods allocated meet the applicant’s needs. A disabled individual, for instance, may need a specific type of mattress than cannot be provided by the local authority (or a third party delivering aspects of the scheme on their behalf). In such circumstances it is essential that an appropriate supplier is identified or that a cash payment is made.

  Furthermore, making an award in kind should never result in additional cost to the applicant. The costs involved in travelling to another location to pick up white goods, for instance, should always be considered and covered as part of the award.

  It is also essential that awards in kind never result in additional delay in obtaining essential goods, particularly for homeless people applying for a Community Care Grant to move into a home of their own. Any undue delay can lead to increased risk of hardship for claimants and rent arrears where claimants cannot move into a property due to lack of basic furnishings.

- **7.2 Concerns relating to gate-keeping**

  SCoWR members are aware of cases in which vulnerable people have been told that they should not make an application to the fund as they are not eligible to do so. Indeed, in some cases local authorities appear to have developed internal practices or policies which exclude applications from certain groups.

  This leads to a concern that some local authorities may be fettering their own discretion by refusing to accept, process or record certain applications. The refusal to accept an application also undermines the transparency of the
scheme by depriving the applicant of their ability to request a review (because there is no official decision to challenge).

SCoWR believe that the Bill should place a duty on local authorities to accept all applications made to the fund. This would not only prevent local authorities from fettering their discretion (contrary to the legal principles governing public decision making) it would also allow the Scottish Government to collect accurate and comparable data about levels of demand for assistance across Scotland.

4. Will the Bill and its provisions have a particular impact on equalities groups?

8. There is a concern that some local authorities are not properly recording (and therefore unlikely to be adequately considering) the vulnerabilities of certain applicants (as they are requested to do under current Scottish Government guidance).

9. According to the current guidance, the vulnerabilities which local authorities should be recording are those characteristics or circumstances which should be considered by decision makers in prioritising awards. Many of these vulnerabilities are more likely to be experienced by individuals or households with protected characteristics. They include, for example, frailty or old age, learning difficulties, mental health impairments, physical impairment or disability, including sensory impairments, chronic illnesses and terminal illnesses.

10. Failure to consider these vulnerabilities therefore creates a risk that applications from individuals with protected characteristics will not be given sufficient priority in relation to the welfare fund. Local authorities should therefore have a duty to consider and record relevant vulnerabilities.

11. There is also a concern that the software currently used by many local authorities to process applications is preventing them from recording multiple vulnerabilities. The Scottish Government’s own Equality Impact Assessment in relation to the current Bill states, “It would appear that some systems are recording default responses rather than real responses or that they offer limited options for recording, due to the design or configuration of the software.”

12. In particular there is a concern that software only allows local authorities to consider one vulnerability per application. As well as potentially discriminating against applicants with protected characteristics this fails to recognise the many intersecting issues which affect a large number of claimants (for example disabled refugees).

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?
13. SCoWR are concerned about section 3(1) which states that “A local authority may make arrangements for another person to administer its welfare fund on its behalf.” We believe there is a need for clarification within the Bill that such arrangements should only be made where that other ‘person’ is suitable. Regulations should set out criteria the third party must satisfy in order to be considered suitable. Relevant third parties should, for instance, have an awareness of the purpose of the scheme and an ability to deliver the scheme fairly and effectively as well as an awareness of the specific needs and requirements of vulnerable groups.

14. There is also a need for regulations to ensure scheme users have a way of holding third party providers to account and that local authorities are made aware of complaints relating to the service provided by a third party.

15. Where a third party is administering any part of the fund it is essential that all applicants are provided with clear information about how to challenge relevant decisions and/or make complaints.

6. What are your views on the proposed internal local authority review process?

16. We are happy for first tier review to be conducted internally by local authorities. This allows for reviews to be conducted quickly. There is, however, a need for the Committee to consider why rates of review are currently so low. Review rates have increased very slightly over the first year of the interim scheme but we are deeply concerned that low rates of review will become a feature of a devolved system.

17. This might be addressed by the increased independence of the review system that will be supplied by the SPSO’s potential role. Consideration should also be given to whether low rates of review are symptomatic of:

- Delays notifying applicants of the outcome of decisions. A failure to provide time limits for notification may mean that by the time the applicant hears about the decision and receives a written explanation of it, the relevant crisis has passed.
- A lack of clarity about the fact that the nature of the award (amount, type of good etc.) can be challenged, as well as refusals.
- Difficulties resulting from the complexity of the relationship between the individual and the local authority. Where, for instance, the applicant relies on the local authority to provide essential care or support at home, s/he may be unwilling to challenge that local authority due to a misplaced perception that there will be negative consequences. Similarly, where a family has had previous interventions from social work or child protection, they may be fearful of drawing attention to themselves by challenging the local authority. Applicants with council tax arrears may feel that they are in a similar position.

18. Hopefully, some of these concerns will be resolved through oversight from an independent body, but local authorities should take reasonable steps to ensure that applicants are encouraged to challenge decisions and that they can access any support, information or assistance they need in order to do so.
7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

19. SCoWR are pleased that an external, independent body will take on the role of hearing second tier reviews. We are, however, keen to ensure that the procedure for both requesting a review and making a complaint to the SPSO are clear and straightforward to applicants. It is essential that the SPSO and local authorities work together to produce clear, accessible guidance to ensure this is the case. This is particularly vital given the Scottish Parliament’s inability to pass regulations in relation to the role of the SPSO.

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

20. SCoWR are concerned that some of the details contained within the regulations risk wrongly excluding certain applicants from the fund, including individuals not in receipt of qualifying benefits. Although we note that applicants are not disqualified by virtue of their non-receipt of certain benefits, we are concerned that the current wording of the draft regulations may suggest such an exclusion. The wording of the current regulation (in particular the use of the phrase (“not ineligible”) risks misinterpretation and may serve to exclude, for instance, people who are often wrongly refused benefit (EU citizens, students, those recently granted refugee status) or those who are not on a means-tested benefit but are receiving the same amount as people on means-tested benefits do (e.g. single people on contributory ESA).

21. Addressing the issue of qualifying benefits through guidance rather than regulations would allow local authorities more flexibility to respond to changing benefit rules and particular hard cases.

22. Providing specific guidance on the ability of refugees and other migrants to access the Scottish welfare fund would also be welcome as it would lead to more consistent decision-making in a traditionally complex area.

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

23. In developing the scheme and designing its delivery the Scottish Government must continue to be aware of the changing context in which it will be operating. In particular, the Scottish Government must be aware of the impact the introduction of universal credit will have on households in Scotland. Universal credit will replace a range of benefits such as housing benefit, income support and child tax credit. This means that a mistake or delay on the part of the DWP could result in people being deprived of all their benefit - not just one part of it. The Scottish Government must clarify with the DWP how the fund’s decision making apparatus will be able to assist claimants in this situation. The introduction of universal credit should be seen as an opportunity to work with the DWP in a better way to protect potential applicants to the fund.
The views expressed in this submission are based on the general principles of the SCOWR manifesto, as agreed by our members. Individual organisations may have their own positions in relation to specific aspects of the Bill.

Satwat Rehman
One Parent Families Scotland
Peter Kelly
The Poverty Alliance
John Dickie
CPAG in Scotland
28 August 2014

SCoWR Members include:

Bipolar Scotland
Blackwood Housing Association
Capability Scotland
Child Poverty Action Group in Scotland
Children 1st
Children in Scotland
Church Action on Poverty
Energy Action Scotland
Engender
Glasgow Council for the Voluntary Sector
Glasgow Disability Alliance
Glasgow Homelessness Network
Hillcrest Housing Association
HIV Scotland
Homeless Action Scotland
Inclusion Scotland
National Autistic Society Scotland
One Parent Families Scotland
Oxfam
National Society for the Prevention of Cruelty to Children
Public and Commercial Services Union Scotland
Quarriers
Scotland’s Commissioner for Children and Young People
Scottish Association for Mental Health
Scottish Drugs Forum
Scottish Federation of Housing Associations
Scottish Homelessness and Employability Network
Scottish Poverty Information Unit
Scottish Trade Union Congress
Scottish Women’s Aid
Scottish Women’s Convention
Scottish Council for Voluntary Organisations
Sense Scotland
Shelter Scotland
Terence Higgins Trust Scotland  
The Action Group  
The Stroke Association  
The Iona Community  
The Poverty Alliance  
Turning Point Scotland  
and other committed individuals.

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\(^1\) SF Dir 4  
\(^2\) http://www.scotland.gov.uk/Topics/People/welfarereform/analysis;  
http://www.cpag.org.uk/content/cost-of-a-child-2014  
\(^3\) http://www.scotland.gov.uk/Topics/People/welfarereform/disabledpeople  
\(^4\) http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/swf  
\(^5\) http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/swf
Introduction

SCVO welcomes the opportunity to respond to this consultation. Our response makes the following key points:

- We need to take full stock of how the Scottish Welfare Fund (SWF) is operating. We call for a delay in proceeding with the Bill;
- We need to embed principles of dignity and compassion within the legislation and as the Fund moves forward;
- We need to be clearer about the rationale for legislating;
- There should be a review clause built into the bill;
- Getting the Fund right is necessary because it is a key safety net for so many in our society.

It is vital that in deciding on the next steps for the Scottish Welfare Fund, and that during parliamentary consideration, we never lose sight of the human cost of austerity and welfare cuts and that the severest costs have fallen on specific groups including women\(^1\) and disabled people\(^2\). This means significant numbers of people are seeking crisis support or help with basic goods and equipment which many of us might take for granted.

We must do more to prevent people reaching crisis point, and ensure the third sector and statutory services are working together locally and nationally with this goal in mind. It is important that those who need to access the Fund are treated with dignity and respect.

POST REFERENDUM NOTE:

With Lord Smith’s review underway, the possibility of additional welfare powers being devolved may provide a different context within which the Fund operates. Where will additional powers sit and within that picture, will the purpose/nature of the Fund need to be reviewed? We must also consider the impact of the Chancellor’s announcements at the Conservative party conference, with further cuts likely to cause further destitution. The question of what else can be done by the Scottish Government in the face of such changes must also be considered. Our arguments for a review clause in the Bill (pages 4/5) should also be considered in this context.

Delaying the bill to review options and delivery

We are concerned about the relative speed at which the Bill is being taken forward. Given some of the concerns highlighted by our members, by the Evaluation of the Interim Fund and the significant carry-over of funds from 2013/14 into 2014/15\(^3\), we would suggest that further investigation is needed:
A not insignificant number of local authorities are not fully completing monitoring data. Third sector organisations have noted the gaps in recording of vulnerabilities where only 23 out of 32 local authorities have provided any data.\textsuperscript{iv, v} There also gaps in relation to reasons for applications for both Crisis Grants (CGs) and Community Care Grants (CCGs) (p 18), and further support offered to applicant (Referrals/Signposting, p11). This latter gap is important as a key feature of the Fund was the opportunity to create more holistic and effective support for people in need.\textsuperscript{vi}

These gaps raise questions about accountability and transparency in the operation of the Fund. They limit our understanding of who is using the Fund and why as well as our ability to consider what happens next with the Fund.

There may be issues to address in relation to how applications are processed and awards are made. The Heriot Watt evaluation of the Fund indicated that “screening” or “gatekeeping” practices may be ruling out people who are indeed eligible to apply.\textsuperscript{vii} Feedback from the sector concurs with this\textsuperscript{viii} and suggests that this might be as a result of lack of knowledge about the criteria and wider guidance amongst SWF staff. The Interim Fund evaluation points potentially to ‘judgement’ of applicants especially in relation to CCG’s.\textsuperscript{ix}

Transparency of decisions: There are concerns that with Crisis Grants, applicants need to be deemed to be “high priority” before they receive a grant; however, there isn’t always transparency or clarity in how that decision is made. The end of year statistics indicate that 19% of Crisis Grant applications were turned down because they weren’t a high enough priority – worryingly, 27% of cases had no clear reason for refusal. For Community Care Grants, 54% of applications were refused because they did not meet the conditions for an award; 20% had no clear reason for refusal (Table 17).

Whilst the number of reviews requested are relatively low\textsuperscript{x}, a high number of decisions are successfully challenged. For CCGs, 59% of tier one reviews overturned original decisions, 54% at Tier 2. For CGs, 51% are revised at Tier 1\textsuperscript{x1}. (Consider how this compares to the overturn rate in relation to benefit sanctions; reconsideration success rates for 2013 stood at 40.4% and just over 51% of next stage appeals were successful.\textsuperscript{xii} )

A small number of applications are still taking significant amounts of time to see through to completion – 4% of CCGs take more than 51 days; 3% of CGs take 6 working days or more. There may be very good reasons for this, but given we have people in real need, the partial data on applicants’ vulnerabilities, we may have some very needy individuals without the necessary support. The Heriot Watt evaluation raises similar issues, and suggests that the maximum target for processing applications for CG’s should be one day\textsuperscript{xiii}. How applications are processed prior to the weekend needs to be considered.

The evaluation of the scheme highlights some concerns about how it is operating and how it is linked with other policies and supports.\textsuperscript{xiv} As with its predecessor, the Scottish Welfare Fund has low levels of applications from older people. The sector has consistently raised concerns about the use of vouchers as opposed to
cash. We have heard anecdotally that one council may be considering awarding most Crisis Grants in this way.

- The sector has other operational concerns - e.g. SAMH remain worried about limited number of applications which can be made, and the discretion given to close applications based on that limit. SAMH argue that the Fund should be purely “needs led”. We are supportive of issues raised by Engender in relation to the lower level of female applicants to the Fund, and the need to investigate this further. xv

- Operation of IT systems procured to help run the Fund – we need to raise questions about the need for and effectiveness of different recording system/approaches for the same scheme. Will these be reviewed and rationalised at some point?

In reviewing the evidence and performance of the fund, our main point is this: the scheme is not quite two years old. We haven’t yet had time to assess the impact of recent changes to the fund guidelines in relation to qualifying benefits and sanctioned clients. Local authority colleagues have also faced challenges in setting up the scheme.

We welcome the Scottish Government’s involvement of the third sector in shaping the fund to date and in responding to concerns about its operation from the earliest stages. However, SCVO is arguing for a delay in taking forward the bill to:

- Ensure we have a fuller data set which helps us to better understand how the Fund is operating, following the initial “bedding in” period;

- Provide an opportunity to identify and share both good and bad practice;

- Investigate concerns raised within the evaluation and by the sector e.g. referral and signposting xvii;

- To identify and take forward further training of decision makers and frontline staff. The evaluation carried out by Heriot Watt indicated that staff administering the scheme needed to better understand the situation in which applicants found themselves, and to apply more discretion in making decisions;

- To ensure links between the third sector and the fund at local level are strengthened and that joint work creates clear referral pathways and the holistic support envisaged for the Fund.

A delay would also allow a more in-depth consultation/involvement of applicants and those who have received awards to build up a clearer picture of how the Fund is operating.

Our call to delay this Bill is made in good faith, linking back to the public service reform agenda, where we can encourage joint working within local authorities, across public bodies and ensure the third sector continues to play its part in the ongoing development of the Fund.
Rationale for the Legislation

Before the Bill is subjected to parliamentary scrutiny, we need to be clear about the rationale and necessity of the legislation. Is there a threat to the continuity of the Fund? Will the legislation help applicants to be better protected? Is legislation absolutely necessary? If there is a sense that the legislation is needed to protect applicants then of course that is important.

The Bill reference group, which includes third sector organisations, will have an important role in helping to make sure the legislation works and has no unintended consequences.

Comments on the Draft Legislation

The lack of any clear principles in guiding the tone and nature of the bill is a missed opportunity. We have made this argument in relation to previous legislation xviii.

As the Bill drives the direction of travel in regulations and guidance, there needs to be a clear rights based focus, indicating how those in crisis or those needing support from the Fund should be treated. As SCVO outlined in a previous consultation:

“We believe that the planned Bill must include principles or a commitment to protect key human rights and/or reflect a commitment to maintain the dignity and respect of individuals who have to use the Fund. In the case of this Bill, this is especially important as many approaching the fund for help are struggling to achieve the most basic of rights e.g. access to food, heat etc. Further stigma and bureaucracy only serves to further strip people of those rights”.

We remain convinced that an upfront set of principles is needed.

The ability to contract out all/parts of the Scottish Welfare Fund is likely to cause concern within the sector xix xx. We need to consider how already contracted out parts are operating – both in terms of involvement of ALEOs and charities. Some concerns about people being offered second hand/recycled goods have been raised. Concerns exist that block purchase of goods such as carpets, settees, beds etc. mean applicants have no real choice. Activists have suggested that had applicants been given cash, they may have been able to buy cheaper and better quality goods. As pointed out in the SCOWR response to the Draft Bill, the legislation must not act to reduce the choice in how awards are fulfilled:

“Handing out vouchers, for instance, can not only limit the choice available to applicants, in some cases it can also create stigma, undermine dignity and lead people to feel they are receiving hand outs rather than exercising a legitimate right to assistance.”xxi

Clause to Review Legislation
If the Bill is to progress as planned, we would suggest that a review clause be built in.

A review clause would allow parliamentary scrutiny of the Fund – given its nature and reach, ensuring effective operation of this support is vital. Such a clause could come into play perhaps two years after the Bill was passed to ensure we consider:

- How the Fund is operating and any changes in the policy/operational context;
- If other delivery options have emerged;
- Scottish Government responses to the continuing Welfare Reform agenda – with more cuts in the pipeline.

**Draft Regulations**

We welcome early sight of a first draft of regulations which will build on the Bill. Clearly, the final version will be dependent on the content of the Bill, if enacted. We take this opportunity to make some early points about the regulations, as they stand:

- We must ensure that recent positive changes to guidelines (e.g. emphasis on people not having to be on qualifying benefits; support for sanctioned claimants) are not unintentionally lost if the regulations are too specific.

- The regulations must not lead to unintentional exclusion of some families e.g. those with disabled relatives/children and also couples/individuals especially in the case of CCGs. The risk of moving into care may be minimal but the wider benefits of assisting someone through the Fund may reduce the risk of family breakdown, or greatly enhance quality of life and the ability to remain independent at home.

**Reviews**

Colleagues from across the third sector will comment in more detail on the plans to involve the SPSO. From SCVO's perspective, clarity, ease of access and learning from reviews of Fund decisions must guide the final model. Those who are involved in using the Fund must be able to shape the review process.

**Financial Memorandum**

We use this response to the Welfare Reform committee to respond to the Finance Committee’s call for evidence.

Our concern as with other financial memorandums is the impact of legislation on the third sector. The sector can face additional resource constraints when a new policy/scheme is introduced.
Applications to the Fund’s predecessor scheme, run by the DWP, were being wound down. As the Scottish Fund becomes better known, demand on the sector to help people apply for grants is likely to increase. Time and financial/human resources are needed to ensure frontline workers are up to speed with the Fund, and to support applicants through the process.

Some examples from the sector suggest that significant time and effort has been put in by the sector up to this point, but this is not recognised within the context of the Financial Memorandum. It should not be assumed that the sector can pick up additional costs which might arise as the Fund continues and demand for support increases.

Training has been focussed largely on local authorities and we need to ensure that there are opportunities and resources for all local partners to build up networks to ensure the Fund offers the holistic support approach that was intended. Where possible, opportunities for joint training with local and national third sector organisations should be explored.

**Conclusion**

The third sector acknowledges the significant progress made in getting the Scottish Welfare Fund established in a relatively short period of time as well as the direct involvement of the sector in shaping the Fund and the revision of Fund guidance to widen its coverage.

Our review of the data, experience from the sector and the fact that this is a relatively new Fund would indicate that we need to take more time to consider how it is operating before we move to legislate. A review clause within the legislation would be helpful in getting the Fund right and reviewing future delivery options. It becomes more important in the light of the Smith review in a post referendum context.

In concluding, the Scottish Government has indicated a strong will to drive through a more dignified and holistic approach to welfare. SCVO and the third sector would not disagree with this. It is vital that we get the Fund right – it is a key part of a social security safety net which needs to start from a position of trust, and prevent stigma being attached to individuals and families already in dire need.

Lynn Williams,
Policy Officer
Scottish Council for Voluntary Organisations
1 October 2014

**About us**

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 137,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.4 billion.
SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1300 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1300 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.¹

References

Scottish Voluntary Sector Statistics 2010, SCVO

¹ http://www.engender.org.uk/content/publications/engenderwelfarereport.pdf
⁵ Welfare Reform Committee call for evidence on the Welfare Funds (Scotland) Bill, Engender response, August 2014
⁶ http://www.scotland.gov.uk/About/Performance/programme-for-government/2013-14/Scottish-Welfare-Fund-Bill
⁷ Review of the Scottish Welfare Fund Interim Scheme, Scottish Government, 2014
⁸ Scottish Campaign on Welfare Reform response to the Welfare Reform Committee call for evidence on Scottish Welfare Fund (Scotland) Bill
¹⁰ Scottish Campaign on Welfare Reform response to the Welfare Reform Committee call for evidence on Scottish Welfare Fund (Scotland) Bill
¹⁵ Welfare Reform Committee call for evidence on the Welfare Funds (Scotland) Bill, Engender response, August
¹⁶ http://www.scotland.gov.uk/Resource/0045/00450561.pdf - especially the sections on referral and signposting:
¹⁷ “Less than a third of Community Care Grant applicants were signposted to support organisations when the decision was communicated to them. Only one in seven Crisis Grant applicants was

¹ SCVO’s Policy Committee has 24 members elected by SCVO’s member organisations who then co-opt up to eight more members primarily to reflect fields of interest which are not otherwise represented. It also includes two ex officio members, the SCVO Convener and Vice Convener.
signposted at this stage. While in most cases the signposting was genuinely tailored to the applicant’s needs, in some cases it was limited to a standard mention of Citizens Advice. Similarly, even in areas where charitable organisations are well present, usually only one alternative source of support was mentioned

\[ xvi \] \( \text{http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-55_.pdf} \)


\[ xviii \] Inclusion Scotland response, Welfare Fund (Scotland) Bill, August 2014

\[ xix \] One Parent Families Scotland response, Welfare Funds (Scotland) Bill, August 2014

\[ xx \] Scottish Campaign on Welfare Reform response to the Welfare Reform Committee call for evidence on Scottish Welfare Fund (Scotland) Bill – refers to Section 2(1) in draft bill.

\[ xxi \] This refers to paragraph 5 of the draft regulations

\[ xxii \] This refers to paragraph 6(4) for the draft regulations

\[ xxiii \] \( \text{http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Public%20Bodies%20Joint%20Working%20Scotland%20Bill/PBJW0045_-_Scottish_Council_for_Voluntary_Organisations.pdf} \)
The Scottish Government Welfare Funds (Scotland) Bill is clearly very welcome for the necessary support for mitigating the consequences of welfare reform among vulnerable individuals and families. On behalf of the Scottish Directors of Public Health (SDsPH) I am writing to endorse the written evidence already submitted by NHS Dumfries and Galloway which is attached. In particular we would emphasise the points raised regarding the need for enhanced work on preventative approaches that remove the need for reliance on welfare by addressing social, economic & health inequalities.

Phil Mackie
Lead Consultant in Public Health, Scottish Public Health Network
Head of Knowledge and Research Services, NHS Health Scotland
28 August 2014
Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers to equality and the promotion of independent living for people affected by disability.

We are a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. Our aim is to ensure that the voices of people affected by disability are heard and heeded within their own communities and at a national and political level.

About this call for written evidence

The purpose of the Scottish Welfare Fund is to make arrangements on the maintenance of welfare funds and to provide them to be used to help certain individuals.

The interim Scottish Welfare Fund aims to:

- provide a safety net in an emergency when there is an immediate threat to health and safety, through the provision of a non-repayable grant which is known as a Crisis Grant; and

- enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant. This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.

General points

- SDEF, alongside the majority of its members, are in favour of the Bill.
- Our members feel that this Bill will provide Disabled People with a more independent quality of life.
- Many of our members feel disabled people may not get to know about the fund and therefore not be able to access it.
- Our members feel the costs are very high for the running of the fund.

Answers to specific questions

Before completing this response, SDEF polled its members, made up of individuals, organisations and Access Panels, with a shorter version of this consultation. We have used these to help develop our response.
Question 1
Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government's aim of providing assistance for short term need and community care?

SDEF welcomes the Bill and its provisions.

SDEF feels that it is important to use the opportunities presented by involving disabled people in the design of these changes.

However, disabled people in Scotland are also being disproportionately affected by ongoing welfare reforms. Many are facing an increase in financial hardship and a lack of support, affecting their ability to live independently. The Bill should also make reference to disabled people who are unable to maintain their ability to live independently in their local community, amongst the categories of individual eligible for a community care grant.

Question 2
The interim Scottish Welfare Fund scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

SDEF recognises that there is a learning process with all new legislation, but feels strongly that it is necessary to ensure that those potentially affected by change should be better informed. This is typical of the uncertainty around the pending changes and highlights the need to remove unnecessary fear by providing clear and consistent information in accessible formats across all media platforms.

Question 3
Is there anything else that you feel should be included in the Bill?

Clear direction of the reporting mechanisms being incorporated into local authority processes for allocating awards is required. We are concerned that the eligibility criteria are not consistent across all local authorities and therefore disabled people are being awarded according to a 'postcode lottery'. We believe this Bill should place a duty on local authorities to accept all applications made to the fund. This will then provide true data and information of those applying for the fund across the country.

Question 4
Will the Bill and its provisions have a particular impact on disabled people?

SDEF feels that it is important to use the opportunities presented by involving disabled people in the design of the Bill and its provisions.

SDEF recognises the Scottish Government’s ongoing commitment to working towards a society where disabled people can exercise the right to live a life of dignity, respect and independence.
We would like to suggest that the recording and monitoring processes used reflect the characteristics and needs of disabled people so this information is used fairly in the decision making process.

**Question 5**

*Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?*

The majority of our members do not agree with this proposal.

It is felt this may cause confusion and the possibility of one area receiving more help than another.

“A loss of accountability if jointly controlled – outsourcing should not be allowed”

Where a third party is administering any part of the fund it is essential that applicants have access to, and are advised of, a fair and transparent appeals process which allows them to challenge relevant decisions or make complaints. Jointly administered funds further increases the need for an impartial body such as the SPSO to oversee decisions made.

**Question 6**

*What are your views on the proposed internal local authority review process?*

SDEF is concerned over the inconsistency across local authorities when approving applications to the fund. We would like to suggest that eligibility criteria across all local authorities be reviewed and implemented.

**Question 7**

*Do you agree that the SPSO is the appropriate body to conduct secondary reviews?*

SDEF agree with the proposals to introduce a second tier review to the Scottish Public Services Ombudsman (SPSO) to ensure that people have a right to review their applications if they have been denied. As discussed throughout, we feel the role and purpose of SPSO needs to be communicated widely in accessible formats.

**Question 8**

*What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?*

The majority of our members feel it is important to detail as much as possible about the bill so people will understand it.

Our members feel the process should be clearly explained and for all to understand.
Question 9
Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

As discussed already in our response, we feel strongly that monitoring and evaluation of the fund is implemented, however we also note the financial memorandum does not include this function. We would like to suggest this is added. Our members commented that they feel the costs are very high.

Question 10
Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

Members comments:

“There should be as much flexibility and discretion built into the system as possible”

“I think the running cost of £400,000 to be very extravagant, how can this be justified?”

“Since the introduction of all welfare reform, it has taken longer and cost more to deliver, this may fall into the same trap if not resources properly”

“there should be a contingency plan built-in”

Contact

Thank you for considering the comments in this response paper to the Welfare Committee’s call for evidence on the Welfare Funds (Scotland) Bill.

Morven Brooks
Information and Communications Officer
Scottish Disability Equality Forum
1 September 2014
Shaping and Leading Disability Equality in Scotland

Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers to equality and the promotion of independent living for people affected by disability.

We are a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. Our aim is to ensure that the voices of people affected by disability are heard and heeded within their own communities and at a national and political level.
About this Consultation

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The interim Scottish Welfare Fund aims to:

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- enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant. This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.
General points

- SDEF, alongside the majority of its members, are in favour of the Bill.

- Our members feel that this Bill will provide Disabled People with a more independent quality of life.

- Many of our members feel disabled people may not get to know about the fund and therefore not be able to access it.

- Our members feel the costs are very high for the running of the fund.
Answers to specific questions

Before completing this response, SDEF polled its members, made up of Individuals, Organisations and Access Panels, with a shorter version of this consultation. We have used these to help develop our response.

Question 1
Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

- Yes.
- Our members feel this support is needed
- Our members feel the existence of the fund will need to be widely promoted to ensure everyone is aware of it.
- “it’s existence need better publicity”
Question 2
The interim Scottish Welfare Fund scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

- The majority of our members agree.

- Our members feel there is not enough accessible information about this.
Question 3
Is there anything else that you feel should be included in the Bill?

- Our members suggest Carer’s under 16 be included in the Bill.

Question 4
Will the Bill and its provisions have a particular impact on disabled people?

- Our members feel the Bill should provide a safety net in the future years to come.
- Our members feel the Bill should allow more disabled people independence.
- Our members also felt that disabled people may not be aware of the fund or feel too proud to apply.
Question 5
Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

- The majority of our members do not agree with this proposal.
- It is felt this may cause confusion and the possibility of one area receiving more help than another.
- “A loss of accountability if jointly controlled – outsourcing should not be allowed”

Question 6
What are your views on the proposed internal local authority review process?

- The majority of our members agree with the review process
- Our members feel if this process is in place the right people in need are receiving the correct amount of funding required
- “A fair provision”
Question 7
Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

- The majority of our members agree that the SPSO is the appropriate body to conduct secondary reviews
- Our members feel it is important to review where the funding is going, making sure it is being spent on the right items and for the correct purpose.

Question 8
What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

- The majority of our members feel it is important to detail as much as possible about the bill so people will understand it.
- Our members feel the process should be clearly explained and for all to understand.
Question 9
Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

- Our members feel the costs are very high.
- Our members suggest that a voluntary organisation could potentially manage this at a lower cost?

Question 10
Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

- “There should be as much flexibility and discretion built into the system as possible”
- “I think the running cost of £400,000 to be very extravagant, how can this be justified?”
- “Since the introduction of all welfare reform, it has taken longer and cost more to deliver, this may fall into the same trap if not resources properly”
- “there should be a contingency plan built-in”

Morven Brooks
Information and Communications Officer
Scottish Disability Equality Forum
1 September 2014
1. Introduction

1.1. As the national representative body for housing associations and co-operatives in Scotland, the SFHA welcomes the opportunity to respond to the Welfare Reform Committee’s invitation to offer views on the Welfare Funds (Scotland) Bill.

1.2. To provide context, housing associations and housing co-operatives in Scotland own and manage 46% of the country’s affordable rented housing stock. This represents 274,996 homes across Scotland, concentrated in some of the poorest communities in our country.

1.3. There are some important and distinctive features of associations which differentiate us from other public bodies. Our members are:

- Independent businesses with goals aligned to the Scottish Government in providing and managing high quality affordable accommodation and housing services;
- Responsible for accessing and managing some public resources for house building, but mostly reliant on our tenants’ rents for income and expenditure;
- Managing businesses imaginatively and inventively to benefit housing and communities through our not-for-profit ethos;
- Accountable to our members and tenants, who live or have other interests in the communities and places which they create;
- Regulated by an independent Scottish Housing Regulator;
- Able to demonstrate added value in terms of care and support, wider role and financial inclusion.

1.4. It would be misleading to think of housing associations as a homogeneous group. They were formed from a variety of different circumstances and come in all shapes and sizes, ranging from large ex-local authority stock transfer organisations with tens of thousands of properties, to small community-controlled organisations owning a couple of hundred homes.
2. General

2.1. The SFHA welcomes the Bill and its provisions. Our members have a keen, valid interest in the creation of a successfully administered Welfare Fund that will alleviate crisis situations and facilitate settled tenancies for our tenant and customer groups. As the Bill has evolved from the interim scheme, there has been the opportunity to review its operation through a well consulted process, amend the eligibility for assistance in the light of experience and thus shape what the Bill should cover.

2.2. We welcome the specific effort the Scottish Government has made to standardise decision making over the course of the interim scheme, and also the broadening of eligibility to include households without children who were under exceptional pressure. We recognise that giving the interim scheme a legislative foundation is a natural progression, though we would urge that operational review and amendment of regulations, if necessary, should be maintained, based on monitoring and evaluation data supplied by the administrators of the fund.

3. Administration of Welfare Funds

3.1. The SFHA’s principal concern is that the process is transparent and accountable. There have been concerns raised in the past about bodies that fall outwith the public audit model. It is therefore important that there is systematic monitoring and evaluation of the operation of the fund, which should be laid out in the regulations.

4. Review of Decisions

4.1. Given the necessity of a rapid response, particularly in respect of Crisis Loans (which by their very nature are urgent), prompt service provision would need to be given, whichever body was responsible for second tier reviews.

4.2. The SFHA has reservations about the delegation of second tier review of decisions to the Scottish Public Services Ombudsman (SPSO). There is a risk of confusion of two roles: that of providing adjudication in the light of fresh evidence or on interpretation of legislation and the inquisitorial role into maladministration. It would sit awkwardly, should a claimant still wish to pursue a complaint of maladministration beyond the second tier review, if the SPSO had to investigate a process in which it had previously had a direct involvement.

4.3. The SFHA’s preference therefore would be for a tribunal under the aegis of the HM Courts and Tribunals Service. It would be independent of local authorities; legislative and regulatory interpretation would be entirely within its remit and expertise. It could sit locally and make timeous decisions with due service development.

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1. For example, Audit Scotland, (June 2013), Discussion Paper on Arms Length External organisations (ALEOs) (accessed 26th August 2014)
5. Further Provision – Regulations

5.1. The SFHA acknowledges that the strength of the proposed regulations stems from the experience gained in the operation of the interim scheme. There are three levels of control of the operation of the Welfare Fund: the Act itself, the regulations and the guidance. At present, the requirement to provide monitoring and evaluation data is contained lies within the Guidance – the least proscriptive level of control.

5.2. There is a concern that the standard of service varies between local authorities, but this cannot be fully assessed if some authorities do not provide complete monitoring and evaluation data, as has happened in the past. It is therefore recommended that the provision of monitoring and evaluation data should become a regulatory requirement. The regulations need to provide a measurable framework to ensure a consistent approach across all local authorities. Whilst it is recognised that there needs to be local discretion over the arrangements of delivery, the standard of delivery should be consistent nationally.

5.3. Whilst the SFHA recognises that there may be practical advantages to sharing a service across local authority services, we would have concerns about the maintaining and monitoring of standards in such circumstances, especially if the service was provided by a third party such as an Arms Length External Organisation. It is our view that it is essential that the regulations include requirements in respect of maintaining standards, data sharing, accountability and consistency.

6. Financial Memorandum

6.1. The SFHA supports the ring-fencing of funding. It is important that the level of funding is maintained beyond the current spending review.

7. Other Provisions

7.1. Given that a high proportion of applicants to the Scottish Welfare Fund may be those who have been subject to benefit sanctions, it is essential that the application process also encompasses a check that applicants have accessed or at least are aware of their rights to a reconsideration/appeal of the decision and access to a hardship payment.

7.2. It is unfortunate that no duties have yet been conferred on local authorities to have triage systems set up to connect claimants with the range of services in their area. If not an actual requirement, there should be an expectation put upon local authorities to provide onward referrals for specialist provision of assistance across the range of claimant needs, as a matter of good practice.

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2 Scottish Government, (July 2014), Scottish Welfare Fund Statistics 2013/14 (Section 34 Data Quality)
8. Conclusion

8.1. The SFHA welcomes in principle the Bill and concurs with its necessity in order to mitigate the negative aspects of welfare reform.

8.2. Administration of the Welfare Funds should be transparent and accountable; to that end regulations need to make provision for systematic monitoring and evaluation of the operation of Welfare Funds and encompass requirements in respect of maintaining standards, data sharing, accountability and consistency.

8.3. Reviews of decisions need to be timeous, especially in the case of Crisis Grants. Delegation of second tier reviews would sit better with HM Courts and Tribunals Service rather than the SPSO, the better to distinguish between administrative interpretation and maladministration.

8.4. This concludes SFHAs submission to the Welfare Reform Committee’s call for views on Scottish Welfare Funds (Scotland) Bill.

Jeremy Hewer
Policy Advisor
Scottish Federation of Housing Associations
27 August 2014
The Scottish Independent Advocacy Alliance believes that Local Authorities and the Scottish Public Services Ombudsman should have a duty to refer or signpost individuals to organisations providing support, information and advocacy.

Impacts of Welfare reform

Independent advocacy organisations across Scotland have been reporting on the impacts of the various aspects of welfare reform on people they support and on the numbers of referrals they are receiving. These can be due to direct and indirect aspects of welfare reform and include the introduction of Personal Independence Payment (PIP) to replace Disability Living Allowance (DLA), and issues around housing benefits, assessments and loss of income.

Role of Advocacy

Advocacy organisations are clear that their role is to support people to access expert information and advice on welfare issues; they do not provide such information and advice themselves. Advocacy organisations would however support service users at medical assessments and other interviews and many organisations have seen substantial increases in requests from service users for such support. There has also been an increase in requests for advocacy support when accessing specialist information and advice.

Steady Increase in Demand

From a survey of advocacy organisations, 87% of respondents reported receiving referrals in relation to benefits or aspects of welfare reform in the 2013/14 year, an increase of 7% over the 2012/13 year.

In response to an earlier survey all advocacy organisations had previously reported increasing numbers of referrals for issues in direct or indirect relation to benefits, assessments, housing benefits, debt or loss of income issues, homelessness etc.

The results of these surveys show steadily rising demand for advocacy support in relation to benefits and welfare reform issues. Organisations report that demand for advocacy in direct or indirect relation to welfare reform has seen a 100% increase in the 2013-2014 year over that experienced in the 2012-2013 year. Advocacy organisations now estimate that around 20% of all referrals have some connection to welfare reform.
Reports are consistent from across Scotland. The impact of welfare reform on individuals is not merely financial but can have serious impact on mental and physical health and wellbeing.

**Future Challenges**

There is already a significant amount of advocacy support being provided in direct or indirect relation to welfare reform in general. All areas of Scotland report increasing numbers of such referrals.

Organisations report that, while they will refer people in to specialist information and advice services, some of those they support feel that they also need advocacy support when facing welfare reform related issues. It is important that independent advocacy is available as, while some will require only the support offered by information and advice agencies, others will require independent advocacy support to access and understand the necessary information and advice.

Recognition of this has led in some areas to commissioners and funders providing small amounts of funding to support increased capacity within advocacy organisations. The majority of advocacy organisations are already working on issues relating to welfare reform and there is significant knowledge and experience of the direct and indirect impact. However it may be difficult for some organisations to deal with any greater increase in volume without some additional resources.

While, in many areas advocacy organisations have developed links with their local information and advice agencies, advocacy organisations in some areas have reported that their local information and advice agencies also have increasingly limited capacity. This has created additional difficulties for service users.

**Access to Independent advocacy**

Independent advocacy provision varies across Scotland. Under the terms of the Mental Health (Care & Treatment) (Scotland) Act 2003 everyone with a mental disorder has a statutory right of access to independent advocacy; as a result, in all Scottish Local Authority areas, there is independent advocacy provision for people with mental health problems, learning disabilities or dementia. Many Local Authority areas have broader access criteria including access for older people, people with a community care issue, and people with alcohol and drug problems amongst others. However in some areas access may be limited to those with a statutory right.

Findings from the most recent study of Scottish advocacy provision shows increased demand alongside standstill and reducing budgets. Advocacy organisations report the need for waiting lists and many are now required to prioritise individuals who may be subject to compulsory measures under the terms of the Mental Health Act. As a result many people seeking advocacy support for a welfare reform related issue may have to wait for some time before they can access independent advocacy.

To ensure that people who are experiencing the impact of welfare reform in whatever guise (ESA, PIP, Housing Benefits, loss of income, medical assessments, care charges, etc) there needs to be sufficient provision of information and advice and...
also of independent advocacy to meet the needs of the most vulnerable members of our society.

Muriel Mowat
Scottish Independent Advocacy Alliance
28 August 2014

The Scottish Independent Advocacy Alliance (SIAA) is Scotland’s national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.
I am writing in response to your call for written evidence on the Welfare Funds (Scotland) Bill.

In July I published, for the first time, a briefing note to help individuals and organisations wishing to respond to a consultation. I did so because the Bill currently being considered by the Committee is proposing to give the SPSO not simply a new area of jurisdiction but a new function, that of reviewing decisions. This is an important step and I wanted to explain how this could look in practice in order to help those wishing to comment on whether or not that step was appropriate. I would like to thank the Committee for adding this note to their website and I hope it has assisted those responding to you.

I do not intend to repeat the points made in that note. In this, my own response to the Bill, I would like to highlight some specific changes that we consider need to be made to the Bill to help us undertake this role, and also to comment on the funding implications for us. I also make some general comments based on our experience of complaints handling. I would like to stress, as I did in the briefing note, that the Ombudsman is a Parliamentary and not a government-sponsored role. The decision on whether this is an appropriate role is for Parliament and I would be happy to provide any further information or clarification that assists with that.

Before I look at the impact on us, I would briefly like to comment on question 4 which deals with the proposal that local authorities be given the power to outsource or jointly administer the provision. I have nothing to say on the policy itself but I would like to stress the importance of ensuring that, if this is allowed, there is clarity about the review or complaints process and who is responsible for that. This is important not only for applicants but also for staff. This should be built in whenever such an arrangement is put in place.

**SPSO and reviewing decisions**

The SPSO was created in 2002 as a one-stop-shop. Since then a number of additional roles and responsibilities have been added to our remit. In this case, the Welfare Fund as a function of local authorities is already within our jurisdiction. The policy being considered would give us additional powers over that function, to allow for an independent appeal process. At present the only appeal is internal to the council. The process being suggested in the draft regulations parallels the new complaints processes for councils, in that it only has two stages before an individual can access an external, independent organisation. Our experience of the previous system (where council processes had multiple complaint stages) was that that additional stages do not improve outcomes for individuals, rather they often cause delay and discourage people from pursuing the matter further.
We also know that few people raised concerns about the Independent Review Service (IRS). In 2012/13, the IRS considered 48,368 requests for review of Social Fund (the UK-wide system which was the predecessor to the welfare fund) decisions. Only 22 complaints about the IRS were lodged with the Parliamentary Ombudsman and none of those were investigated.

The process as set out in the draft Regulations and legislation is, therefore, one where there are successful parallels. However, for us this will be the first time we will be able to specifically review a decision and to make a direct and binding change to that decision. While this is unusual for us, the Ombudsman role has proved a very flexible one and powers vary around the world. Such powers do exist elsewhere. Although we appreciate there are other models, there may be benefits in one organisation being able to look holistically at both the decision and at any issues about how someone has been treated.

For us, the challenge will be how effectively we can undertake this new role as well as effectively managing the fact that our old role will remain. We concentrated on the practicalities of that in the briefing note. I would like to now highlight some legal issues.

**Legislative changes**

We would highlight that we will be asking the Scottish Government to consider the following amendments at stage 2 and the reasons for those requests.

*Article 6 of the European Convention of Human Rights*

We said in our briefing note that we would comment on this further. We have taken legal advice and are also in discussion with the Scottish Government about article 6 compliance. There is no current case law requiring compliance. However, the advice we have had is that a court may well decide in the future that article 6 applies. We consider it prudent to approach this by ensuring that we have systems and legislation in place that allow us to be article 6 compliant. We do not think this will require significant additional cost and you will see that, where appropriate, we have taken the requirements of article 6 into account when considering the legal changes we need. However, it should be noted that this is not the sole reason for any of the requests below.

*Consequential amendments to ensure equality of protection between complaint and appeal*

We will be asking for some consequential amendments to our legislation, the Scottish Public Services Ombudsman Act 2002. At present our customers and our staff benefit from some key protections and powers, and we would like to ensure that those also apply to the review process.

To give some examples, key sections include the ability to obtain information and to take evidence under oath if required; the provisions that protect those coming to us, allowing them to speak to us freely and ensure their information is kept confidential; and provisions that ensure staff operate under the delegated power of the Ombudsman. We think it is logical that these protections and powers should also apply to this new function.
There would also be real practical difficulties for us if we had different powers for this function to those we have when handling complaints. If the new role is approved, it will be possible for us to receive both a complaint and an appeal, raising different issues about the same application. It would be difficult to, for example, manage our information if a local authority could refuse to send us information when we are reviewing the appeal about the application but we could ask for it when looking at the complaint. We are aware of no reasons why these powers should not also apply to this process and do not anticipate any of the amendments being controversial.

A requirement that we issue rules after consultation with interested parties. We intend to ask the Scottish Government to include a provision in the legislation allowing us to produce rules, after appropriate consultation, showing how we will consider reviews. These rules will mean that both the public and local authorities will know the standards and criteria by which we will be approaching their decisions, and will set out some key aspects of the process.

This will ensure that if we are required to do so we can demonstrate article 6 compliance. However, even if that were not the case, we think it would be good practice to have these and it will ensure we comply with common law principles of natural justice and fairness.

The Scottish Government will be issuing regulations around the council stages and has already issued a draft version. However, we agreed that it was not appropriate for ministers to issue rules for the review stage because of our status as a Parliamentary body and statutory provision that explicitly excludes ministers from giving us directions. Allowing us to issue rules and to consult on them will ensure transparency. Like all of our current work, any decisions we make around the rules will be subject to the ultimate supervision of the courts on any individual case.

While we do not intend to pre-empt any consultation, at present we intend to include within any rules an indication of when we would, either on request or on our own initiative, hold hearings. This would be relevant in circumstances where there are critical facts in dispute, and where these can only be established by holding a hearing. This will help us to ensure we are compliant with article 6 if that does become a requirement. However, it also means we can use the full range of investigative tools and help to ensure we also fulfil the common law principles of natural justice. It should be stressed that we do not anticipate hearings being a regular occurrence. Indeed, it is the experience of other Ombudsman who are subject to article 6 that they are used extremely rarely, and more usually a dispute on facts can be resolved by other methods. However, it is an option we would like to be able to access quickly when needed.

**Funding**

I am responding on this in more detail to the Finance Committee but I understand why the Committee is asking questions about the realistic and proportionate funding of our role. It is intended that the Welfare Funds will make a real difference to vulnerable people and to those in crisis. It is the experience of the current system and those working with the previous Social Fund that individual payouts, while significant to those receiving them, often involve small sums of money. I appreciate
the need to ensure that any review process balances the need to ensure that justice can be obtained with the need to ensure that the cost is reasonable.

I am aware from work done by the Scottish Government that the cost was considered, though it was not the deciding factor, in their policy decision. Any review process may seem disproportionate in relation to a single claim of, for example, perhaps £50-£60 for a crisis payment but it should be remembered that any independent review organisation will only look at a proportion of cases. It is appropriate that the route used should be accessible, flexible and user-focused, and also one that ensures that if something has gone wrong in one case then improvements are made to ensure this does not happen again to others in the future.

Having said that cost was only one factor, I understand that the estimates for us taking on this role were lower than the other options considered by the Scottish Government.

The estimates are not based on the way we currently operate, as we do not intend to manage this area in the same way. That is why we suggested the Scottish Government look to a model actually in use for a cost-base, which we considered was likely to be more realistic. There will be differences with the model used - for example, hearings are not part of that system. However, as we anticipate that the number of cases that may require hearings will be extremely low we do not anticipate that in itself adding significantly to the estimate. The transition costs are based on our own previous experience and, while we consider that is appropriate, there will always be some uncertainty given that this is a completely 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.

In summary, apart from one particular issue around accommodation we do not currently anticipate ongoing costs being considerably higher than those set out in the estimates. It is, however, the case that there is still uncertainty on a number of points and, given this, the current cost projections are properly described as estimates.

Although this area is new for us, we have significant experience of taking on new areas of jurisdiction and to date have done so in a way that has usually generated savings for the public purse. We will also be working closely on the costs with the SPCB who approve all our budget decisions.

Jim Martin
Ombudsman
28 August 2014
About Scottish Refugee Council

1. Scottish Refugee Council is Scotland’s leading refugee charity with a vision to ensure that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect and are able to achieve their full potential. We provide advice and information to people seeking asylum and refugees in Scotland. We campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues, including in areas such as housing, welfare, health, education, employment, justice, gender and equalities. We also support organisations in the community working with or led by refugees; coordinate a variety of arts and cultural events; and work to raise the profile of refugees and asylum seekers in the media.

Introduction

2. Scottish Refugee Council welcomes the opportunity to respond to this call for evidence. We have not endeavoured to answer all of the questions set out in the consultation document. Instead we focus on the key areas of the Bill that affect refugees in Scotland and, in particular draw the Committee’s attention to the points raised in Question 4 regarding impact on Equality Groups as, although refugee status is not in itself a protected characteristic under the Equality Act, refugees encompass a number of protected groups and engage several intersectional issues.

Background

3. An asylum seeker is a person who has made an application to the UK Government for protection and who is waiting for a decision on their application. While they await a decision on their claim and if they are destitute, asylum seekers may receive accommodation and financial support from the Home Office, which may extend to limited cashless support, in limited circumstances, if that claim for asylum is refused.¹

4. Applications for asylum are assessed by the Home Office and if they meet the criteria in the 1951 UN Convention relating to the status of refugees, they may be granted Refugee status. In some circumstances, people may be granted another form of international protection, such as Humanitarian Protection or Discretionary Leave.

5. Refugees and people granted Discretionary Leave², Humanitarian Protection or Indefinite Leave to Remain are all entitled to public funds and mainstream

¹ Sections 95(1), 96(1) and 4(1)-(2) Immigration and Asylum Act 1999.
² Discretionary Leave to Remain may, in limited cases, be granted with no access to public funds.
benefits, including the Scottish Welfare Fund. In addition, refugees may be joined at some point after being granted leave to remain, by dependent members of their family. These family members will usually hold a Family Reunion visa allowing them access to public funds on the same basis as UK nationals.

6. In the *New Scots: Integrating Refugees in Scotland's Communities 2014-17* refugee integration strategy, the Scottish Government has recognised the need for action to intervene early to address the welfare needs of newly granted refugees.  

**Aims of this call for evidence**

7. The Welfare Funds (Scotland) Act was introduced to the Scottish Parliament on 10 June 2014 and is being scrutinised at Stage 1 of the Bill by the Welfare Reform Committee. The aim of this call for evidence is to gather views on the proposals set out in the Bill and related regulations set out in The Welfare Funds (Scotland) Regulations 2015.

**Scottish Refugee Council response**

**Endorsement of SCoWR and Engender responses**

8. Scottish Refugee Council is a member of the Scottish Campaign on Welfare Reform (SCoWR) and has worked closely with a collective of organisations representing diverse women in Scotland (Engender, Close the Gap, Scottish Women’s Aid and Zero Tolerance) to raise concerns about the impact of welfare reform on refugees and refugee women in particular.  

9. Scottish Refugee Council welcomes the availability of a fund to assist with short-term and community care funding needs. The nature of the pathway that newly granted refugees and their families take on their journey to rebuilding their lives in Scotland means that they often face destitution and a consequent need for the emergency and community care grant provisions envisaged by the Bill.

**Refugees’ experiences of destitution**

10. On being granted leave to remain in the UK refugees are given 28 days’ notice by the Home Office after which any accommodation and financial support provided to them as asylum seekers is stopped. Within this 28-day period, referred to as the ‘move-on period’, people are expected to obtain a national insurance number and apply for and secure payment of welfare benefits. At the same time, most are going through the homeless system, and

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4 http://www.engender.org.uk/content/publications/engenderwelfarereport.pdf
may be accommodated in hotel or hostel accommodation with the resultant upheaval to their lives. The vast majority of refugees enter this situation with very little knowledge of the UK welfare and housing systems. Refugees by their very definition have been uprooted from their homes, families and support networks in circumstances of violence and persecution, and have often spent many months negotiating a very complex asylum process.

11. A significant cause of destitution amongst refugees is administrative error during this ‘move on’ period. Refugees are entitled to claim benefits on being granted leave to remain. As such, the Home Office should inform the Department for Work and Pensions (DWP) as soon as a grant of status is made, allowing the DWP to generate a National Insurance Number (NINO) within this 28 day period. A seamless transition should then be made from Home Office provided support to mainstream welfare benefits.

12. In practice, this frequently does not occur. Delays in processing NINOs push significant numbers of potentially vulnerable refugee women, men and children into destitution, forcing many to claim living expenses from the Scottish Welfare Fund. Awards are often only given in the most extreme of circumstances and where there is an extra element of vulnerability, such as where children are involved. This forces many people to rely on charitable support when they are in fact fully entitled to state welfare provision. Delays on the part of Job Centre Plus in processing benefits claims can also cause destitution among refugees. Our statistics suggest that of refugees who reported a problem with delays in their benefit claim, on average, people waited 39 days for this to be resolved.

13. Several other organisations, including the Refugee Council, British Red Cross, and the Refugee Women’s Strategy Group, a representative group of refugee and asylum seeking women in Scotland, have raised concerns about the destitution faced by refugees during the ‘move on’ period.

14. Scottish Refugee Council also assists people who have refugee status and who arrange for dependent members of their family to join them in the UK. Family members of refugees, usually women and children, are entitled to apply for all UK benefits and housing upon arrival. However, this group faces similar barriers to timely access to NINOs, a period in homeless or overcrowded accommodation, and little or no orientation to the system. There are also particular challenges faced by this group in that they do not have access to Home Office funding so do not have a 28-day ‘move-on’ period in

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5 Appendix 1, Fig. 6
which to resolve issues on arrival. A further issue is the often complex family dynamic that can prevail following a period of separation that has been marked by conflict, loss and trauma. The dependent family members’ right to remain in the UK and their entitlement to welfare provision are wholly dependent on the person granted refugee status, which is usually the male head of household. In situations of domestic abuse, this causes additional complexity, insecurity and risk to the victim(s).

Our experience of supporting refugees to access the SWF

15. Scottish Refugee Council has supported refugees and their family members to apply for the Scottish Welfare Fund with mixed outcomes. Some, particularly families or those with additional vulnerabilities have had positive outcomes with awards for subsistence both during the immediate period of destitution and where families are being asked to live on a single-person’s income.

16. However, from our experience, refugees have had less success in securing awards where the application is made by a single person, particularly where Glasgow City Council has set its priority level to “high”. We have also had problems persuading Glasgow City Council to accept an application from refugees who do not yet have a NINO, despite having recourse to public funds and being entitled to claim. We understand that this may be due to the Capita IT system that administers the claims on behalf of most Scottish Local Authorities. As part of our development work with Glasgow City Council, we are addressing many of these issues. However, there is a need to address them at a national level to ensure consistency.

17. Where an application for a Crisis Grant due to delay in obtaining benefits is made, current guidance states that a maximum award of 14-days’ subsistence should be made. However, a separate rule prevents a further application within 28 days on the same grounds. Therefore, where an applicant is granted an award but the benefit issue remains unresolved after 14 days (as is commonly the case) there is no mechanism to make a further application. Instead, applicants must seek a review of the original decision which the fund can then consider. This is an unsatisfactory situation as the need for review implies that the original decision was wrong, which is not the case. It is also inefficient as it requires the original decision to be reviewed. Standard rules enabling repeat claims in certain circumstances should be set out in regulations with clear guidance on when this might be appropriate.

18. Scottish Refugee Council has assisted refugees and their families to apply for crisis grants in 47 cases. 28% of claims were made by single male clients, despite the fact that the demographic of refugees in the UK is predominantly young, single males. The largest group applying for crisis grants was single females (32%) and 70% of applications came from households with a female family member. This suggests that refugee women make a disproportionately high number of applications for crisis grants. Refugee women and those who join male refugee heads of household in the UK

10 Appendix 1, Fig. 5
face a number of additional barriers, which should be recognised and further investigated by the Scottish Welfare Fund.\textsuperscript{11}

19. Although Scottish Welfare Fund provisions allow for Crisis Grants in a number of circumstances including where people are waiting for welfare benefits to be processed, we suggest that circumstances where particular groups, such as refugees, may require assistance should be set out in regulations and guidance, clarifying specific needs, experiences and vulnerabilities.

20. \textbf{We recommend that the following are provided for in specific regulations:}

   a. Where an individual can demonstrate recourse to public funds a National Insurance Number should not be a requirement for making a claim to the Scottish Welfare Fund.
   
   b. Clear guidance on when and how a Local Authority can set its priority levels and a provision for minimum award qualifications even when the priority level is set to “high”.
   
   c. Clear guidance and provisions for repeat applications in certain circumstances.
   
   d. Specific training and guidance on processing claims from refugees and their families to ensure their particular needs and experiences are recognised.

\textbf{Other circumstances in which refugees may face destitution}

21. Once access to benefits has been secured, the vast majority of refugees are awarded Jobseeker’s Allowance\textsuperscript{12} requiring them to meet increasingly strict conditionality agreements and leaving them vulnerable to sanctions for non-compliance. Our statistics show that 62% of refugees have a very basic English language ability of Access 2 or below, and 59% feel that they need support to improve their core skills before they can seek work.\textsuperscript{13} This suggests that the conditionality system refugees are asked to comply with is inappropriate to the language barriers they face and their ability to take up employment. \textbf{Whilst recognising that the Scottish Welfare Fund is not intended to undermine the existing sanctions system, we would argue that, in some circumstances, the Scottish Welfare Fund may have a role in bridging such gaps in the mainstream benefits system.}

\textbf{Community Care Grants}

22. After being granted leave to remain, most refugees reside in temporary accommodation until they can be housed in permanent socially rented accommodation. The majority of refugees have very few possessions and no furniture. They are often forced to apply for funds for these items through the Scottish Welfare Fund. Unfortunately, we are unable to provide a detailed

\textsuperscript{11} See for example the work of the Refugee Women’s Strategy Group at http://www.scottishrefugeecouncil.org.uk/rwsg

\textsuperscript{12} Appendix 1, Fig. 7

\textsuperscript{13} Appendix 1, Figs. 8 & 9
breakdown of applications we have supported for Community Care Grants due to the limitations of our case management database and because many refugees receive this assistance from other organisations such as housing support providers.

23. However, feedback from refugees we support suggests that there is an inconsistency between the time it takes to receive a Community Care Grant and the time allowed by most housing associations between the signing of a tenancy and the move-in date. Individuals are often given only one or two days from signing to move in. This is clearly insufficient time to allow for a claim for a Community Care Grant for essential items to enable them to move into their new property. Additionally, Housing Benefit rules do not allow people to claim simultaneously for temporary and permanent tenancies so they must have moved into their permanent tenancy in order to claim Housing Benefit. The resultant reality for many people is a choice between moving into their new property with no furniture or remaining in their temporary accommodation running up rent arrears in the new property.

24. Refugees report having to move into their new homes with no bed, sofa or cooking equipment and no means to procure these items beyond the Community Care Grant. This has resulted in people sleeping on the floor for up to 4 weeks while their Community Care Grant is being processed and the goods procured.

25. We have been informed by Glasgow City Council Welfare Fund Department that this delay is partly due to their supplier’s lead-in period for delivery of goods being 14 days. It would thus appear that part of the delay in getting essential goods to people in need is due to Local Authorities being encouraged to provide material rather than cash awards. We would argue that this is unsatisfactory and leaves potentially vulnerable people with their essential living needs unmet. It should be possible to assess an application for a Community Care Grant within a few days and deliver goods within one or two days. **We would recommend a reassessment of the current policy of providing goods rather than cash in certain circumstances and that provisions are put in place for cash awards for absolute household essentials.**

**Recommendations**

26. In summary, we make the following recommendations to the Committee:

   a. Standard rules enabling repeat claims to the Scottish Welfare Fund for Crisis Grants in certain circumstances should be set out in regulations with clear guidance.
   b. The Scottish Welfare Fund should recognise and provide training and guidance to decision makers on the needs and experiences of refugees with a particular focus on refugee women, single applicants (both men and women), and family members.
c. Where an individual can demonstrate recourse to public funds a National Insurance Number should not be a requirement for a claim to the Scottish Welfare Fund.

d. Clear guidance should be provided to Local Authorities on setting priority levels and a provision made for minimum award qualifications even when the priority level is set to “high”.

e. Clear guidance and provisions for repeat applications for Crisis Grants in certain circumstances should be set out.

f. There should be a reassessment of the current policy of providing goods rather than cash for Community Care Grants in certain circumstances and provisions should be put in place for cash awards for household essentials.

27. Scottish Refugee Council would like to thank the Committee for the opportunity to respond to this Call for Evidence. Should you have any questions about this response, please contact:

Jamie Stewart
Housing Development Officer
Scottish Refugee Council
28 August 2014
Appendix 1
Statistics from Scottish Refugee Council Refugee Integration Service

Demographic distribution of refugees accessing our services

Figure 1: Gender distribution of refugees accessing SRC integration services (2013-14)

- Men: 67%
- Women: 33%

Figure 2: Age distribution of refugees accessing SRC integration services (2013-14)

- 18 to 19: 2%
- 20 to 24: 17%
- 25 to 34: 58%
- 35 to 59: 22%
- 60+: 1%
Figure 3: Family composition of refugees accessing SRC integration services (2013-14)

Figure 4: Nationality distribution of refugees accessing SRC integration services (2013-14)
Refugees and the Scottish Welfare Fund

Figure 5: Demographic distribution of service users applying for crisis grants (November 2013-August 2014)

- Single female parent: 32%
- Single male: 28%
- Couple with children: 21%
- Single male - 1 other dependant: 2%
- Couple with adult/other dependant: 4%
- Couple, no children: 4%

Figure 6: Causes of homelessness for refugees accessing SRC integration services 2013-2014

- End of Asylum Support: 92%
- Asked to leave by friends: 2.7%
- Unknown/ not recorded: 2.7%
- Voluntary relocation: 1.6%
- Other: 0.6%
Figure 7: Welfare benefit distribution of refugees accessing SRC integration services (2013-14)

Figure 8 Language ability distribution of Scottish Refugee Council clients 2013-14

Figure 9 Self assessed ability to seek work amongst Scottish Refugee
Introduction

The Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) was established by Scottish Ministers in November 2013 (following the abolition of the Scottish Committee of the Administrative Justice and Tribunals Council) to provide external, expert scrutiny of the devolved administrative justice and tribunals system in Scotland. Its remit includes promoting the interests of system users and championing an administrative justice and tribunals system that is accessible, responsive and has users’ needs at the centre.

We have focussed in our evidence on questions 6 and 7 (review of decisions) but also give some limited comment on other matters.

Q 6. What are your views on the proposed internal local authority review process?

We note that regulations are subject to negative procedure. We believe that it is particularly important that the Government consult fully on the draft regulations and guidance, as is their stated intent.

Internal review

We offer comment on the proposed internal local authority review process on the basis of the (limited) detail available at this time in the draft Bill and draft Regulations:

1) We would comment generally that the primary purpose of both tiers of the review mechanism, as for any mechanism for review or appeal of individual decisions, should be to identify and correct decisions which are wrong. A secondary but very important purpose should be to encourage learning from mistakes so that fewer bad decisions are made in future.

2) Section 4(2) of the draft Bill provides that regulations can either make all decisions subject to (internal, first tier) review, or provide for the types of decisions that are subject to review. We believe that in principle and in the interests of natural justice, and ensuring that system users have confidence in the process, all first instance decisions should be subject to internal review.

3) Section 5(2) of the draft Bill provides that regulations can include provision on how an application for review by a local Authority is to be made, etc. We
believe it should be possible to access the review mechanism by a number of differing routes that would maximise accessibility of review for users, and that this should be added in the regulations. Access mechanism should include, for example:

- completing an online form;
- completing a paper form and posting it to the LA;
- attending an LA or community partner access point in person;
- applying for a review by telephone.
- signposting of applicants to appropriate independent sources of advice and assistance

4) Because of the time critical nature of a crisis grant decision, we believe that the regulations or the guidance should reflect the requirement to communicate review decisions to the applicant as quickly as possible, followed up formally in writing.

5) It is not entirely clear how the internal review process would work if an LA makes arrangements under section 3 for someone else to administer the fund on its behalf - do the internal review arrangements then also apply to that other person or body? It is surely logical and in the interests of fairness and natural justice (and we assume intended) that if the principle of review is accepted, and if administration of the fund is delegated, the decision of the person or body to whom it is delegated should also be subject to review. It would therefore be helpful to clarify whether all of the arrangements relating to internal review (in the Bill and the regulations) equally apply to the person to whom the local authority delegates the administration of the fund.

6) We are pleased that the regulations specify timescales both for initial decision on entitlement and for decisions on internal reviews, in order that decisions get made quickly.

**Permitted Extent of Local Discretion/Variation – impact on second tier review**

It is uncertain from the face of the Bill (Section 5(2)(c) and draft regulations as they exist at this time, just what will be the extent of local variation that will be permitted in the administration of the fund. We think it would be beneficial to clarify further the intended extent of permitted local variation under the Scottish Welfare Fund (SWF). We noted in our response to the Draft Bill consultation¹ that the extent of permitted local variation has important implications for the second tier review system as this could result in different outcomes for broadly similar applications across LA boundaries. Examples could include assessment of priority, use of discretion and determination of delivery arrangements (goods vs. grants), for example. We, therefore, recommend that clear policy decisions are made and communicated to

local authorities and to the general public on the purposes and intended extent of local variation in policy including the weight to be given to local prioritisation whether in Regulations or Guidance.

These matters need not necessarily be expressed in the Bill itself, but they should be clarified via regulations made under section 5. The Committee should ask Ministers to explain their views on the intended extent of permitted local variation and how they will use the regulation making power to determine the scope of local authority discretion.

**Q 7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

As indicated in our response to the draft Bill Consultation (footnote 1), we think that the SPSO can be an appropriate option for the second tier review, depending on the detail of implementation. Comments on particular issues are given below.

*Scope of review*

We agree, as the Bill provides, that the SPSO should be able to examine the merits of the case in determining SWF Reviews in the same way that statutory tribunals typically can when considering appeals. That means that there should be no restrictions on the ground of review. The SPSO would be able to substitute its view for that of the local authority on questions of fact, questions of law and questions of discretion. To put it another way, the SPSO would be empowered to substitute its view of the right decision. This will better ensure protection of applicants’ interests, make applying for a review more straightforward and ensure more thorough scrutiny of decision-making.

*Binding decisions*

We are pleased that the Bill provides for the SPSO being able to make binding decisions rather than merely making a recommendation to the local authority. We are also pleased that the Bill gives the SPSO the option, where a defective decision has been made, of either directing the local authority to reconsider the application or substituting its own decision.

*Application to SPSO*

We are pleased that the Bill provides for applications for second tier review to be made direct to the SPSO. We believe that, when the SPSO draws up its review processes (see comments below), it should ensure that it is made as easy as possible for applicants to ask for a review. Therefore, it should be possible to ask for a review by any of the following methods:

- completing an online form;
- completing a paper form and posting it to the SPSO;
- applying for a review by telephone.
Detail of SPSO review process

Whilst we recognise that the independence of the SPSO must not be compromised, and that no detailed provision should be made in regulations about how the SPSO carries out 2nd tier review (Bill section 5 (4), nevertheless we do believe that the Bill, or regulations should require that the SPSO publish guidance on how it will undertake 2nd tier review and that SPSO consult with relevant parties before publishing or updating such guidance. This guidance will allow the opportunity for the SPSO to set out how it will ensure easy access to review, what the detailed process for application will be, what timescales it intends to operate to, and will provide applicants with clarity on the process.

Annual Report

We previously recommended (in our consultation response) that there should be specific provision in either the Bill or in the regulations for the SPSO to report on how it carries out its second tier review function, and the performance of that function (including for example numbers of and outcomes of decisions, adherence to timescales etc.) The purpose is to ensure (a) that the second tier review is providing an effective remedy for applicants aggrieved by local authority decisions, and (b) that the review procedure is encouraging improvement in initial decision-making. Such a report to the Scottish Parliament on the operation of the second tier reviews could be a distinct section of the annual report the SPSO makes under section 17 of Scottish Public Services Ombudsman Act (2002) rather than a separate report.

Other matters

Quality Improvement

Both the internal and second tier review procedures should inform quality improvement in initial decision making. In relation to the internal review, this can be addressed in any guidance Scottish ministers may issue under section 6(1) of the draft regulations. The SPSO should be given direction also to promote and support such improvement.

STAJAC
August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM SHELTER SCOTLAND

Key Points

- Shelter Scotland is in favour of the Bill. It will achieve the provision of assistance for short term need and community care as long as it continues to be resourced financially at the current levels and inasmuch as it is underpinned by robust guidance. Families under exceptional pressure should be added as a category for eligibility.

- Local authority staff should be required to record all inquiries which do not progress to the point of application in order to protect against judgements on eligibility being made prematurely.

- Regular review of the fund should be built into the Bill to ensure that it remains effective and evolves in response to social changes and demands.

- The Bill needs to explicitly clarify that no repayment of rewards under the Welfare Funds will be required.

- The joint commissioning and outsourcing of the Funds by local authorities could be positive but should always taking into account existing local provision and contracts should only be given to suitable providers who can be held to account.

- We are content with the level of detail currently included in the Bill. However, there are some elements of the draft regulations that we would want to ensure were considered before they are finalised.

Welfare Reform Committee Consultation Questions

Shelter Scotland welcomes the opportunity to respond to the Welfare Reform Committee’s consultation questions on the Welfare Funds (Scotland) Bill.

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Shelter Scotland is in favour of the Bill and believes that it will achieve the provision of assistance for short term need and community care. This will be successful as long as it continues to be resourced financially at the current levels and inasmuch as it is underpinned by robust guidance. The fund provides an important means of helping vulnerable households when they are in crisis and enabling households to live independently. As such, the fund also serves as an important preventative
investment, diverting costs from emergency and long term services such as residential care.

Shelter Scotland supports the Child Poverty Action Group (CPAG) in calling for the inclusion of ‘families under exceptional pressure’ as a category for eligibility for community care grants, as was the case under the UK discretionary social fund. Many families are at risk because they are struggling to pay for basic household essentials to maintain their home.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

Shelter Scotland supports CPAG’s comments regarding learning from the past two years that should be reflected in the bill and accompanying regulations and guidance. In summary:

- Concerns that certain individuals have been discouraged from making an application through local authority staff making premature judgements on eligibility. This could be overcome by requiring authorities to record all inquiries which do not progress to the point of application.
- Concern about the requirement that applicant be in receipt of means tested benefit (see answer to question 8)
- Concern about the setting of concrete timeframes that do not allow for the required level of discretion to respond appropriately to the varied circumstances applicants face.

3. Is there anything else that you feel should be included in the Bill?

Shelter Scotland welcome the dedication of funds in 2015/16 as laid out in the Financial Memorandum. However, Shelter Scotland would like to see the funding for the Scottish Welfare Fund ring-fenced in the Bill to secure this vital lifeline in future years for households at the point of crisis and who need help to establish or maintain a home.

In response to the changing welfare landscape and evolving social needs, we would also like to see a commitment to monitoring and regular review of the implementation included in the Bill. This would ensure that inconsistencies and arising issues would be recorded through official Scottish Government Statistics and addressed through review.

Current guidance, the Explanatory Notes and accompanying Policy Memorandum for the Bill all make clear that the policy intention is for the fund to be given in the way of grants rather than as loans. In particular the Policy Memorandum (s.30) lays out the strong rationale for this. The Bill therefore needs to clarify that no repayment of rewards will be required. We are concerned by the inclusion of the potential for Scottish Ministers to pass regulations that may change this status (s. 5.2.f) and call for its removal.
4. Will the Bill and its provisions have a particular impact on equalities groups?

We share the concern of other organisations that local authorities are not sufficiently recording the multiple vulnerabilities that many applicants present with. Individuals with complex needs are some of the most excluded in society and it is important that their circumstances are recorded and accounted for in the assessment and provision of the Welfare Fund. In many authorities this is a technical software issue that needs to be overcome.

Another IT issue in some authorities that is having an impact on a vulnerable group is the requirement to provide a National Insurance number before an application can proceed. This impacts particularly on migrant groups who may not yet have been allocated a NI number.

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Outsourcing and joint commissioning can both be positive ways to increase the scope and expertise of provision in an area and to deliver services in a more efficient way. In principle we support this option being available for local authorities, but with some caveats.

Firstly, the design of any outsourced or joint services should some take into account existing local provision and work to maximise on existing local networks and knowledge. For example, organisations represented by Community Resources Network Scotland and small scale ‘starter pack’ charities that can respond quickly and flexibly to demand.

Secondly, regulations should set out criteria that the third party must satisfy in order to be used for the provision of the fund, to ensure that only suitable providers are used to provide this lifeline to often very vulnerable people.

Thirdly, there must be a way for the third party to be held accountable for the standards of their provision and an effective mechanism must be in place for recipients to be able to raise concerns about third parties as well as local authorities.

6. What are your views on the proposed internal local authority review process?

The proposed local authority review process is a necessary first point of call for any individuals that are not satisfied with the decision or how it has been made. This should enable quick responses to requests for reviews. This reflects the practice in many authorities for review of homeless decisions. The Bill should set out a duty for applicants to be informed, in a format that is accessible, of their right to request a review.
7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Although Shelter Scotland’s initial preferred option for the secondary review process was to set up a local government based system, we are reassured by the Scottish Public Services Ombudsman briefing note. This addresses the need for the service to respond rapidly, sensitively and flexibly to requests for secondary review. The performance and capacity of the Ombudsman to meet the demands of this new function should be monitored and reviewed.

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

We are content with the level of detail currently included in the Bill. However, there are some elements of the draft regulations that we would want to ensure were considered before they are finalised.

Firstly, there appears to be a lack of clarity in the draft Regulations over the definition of ‘qualifying individual’. The Bill at 2.2.b explicitly references ‘homeless or otherwise living an unsettled way of life’ whereas in the Regulations at 6.4 and 6.5 the homeless group is not mentioned explicitly. This could be read as the Regulations omitting homeless people as ‘qualifying individuals’. For the avoidance of doubt we would advocate for this group to be explicitly referenced in the Regulations. In addition, we would want the regulations to include a clearer definition of ‘homeless or otherwise living an unsettled way of life’ as this phrasing could currently be variously and broadly interpreted.

Secondly, in light of some authorities currently requiring all applicants be in receipt of a means tested benefit, we share CPAG’s concerns about the clarity of the wording in the Regulations at 5.2. We recommend, with CPAG, that the reference to means tested benefits should be removed from the regulations. Instead, the issue of income, essential costs and capital should be robustly addressed in accompanying guidance.

Thirdly, it should be clarified whether a “person stranded in the authority’s area and the assistance is a crisis grant which will assist the person to return home” is intended to include migrants who wish to return to their home countries.

Debbie King
Public Affairs and Campaigns Officer
Shelter Scotland
28 August 2014
General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

South Lanarkshire Council is in favour of the Bill. However we understand that further points which are under consideration in the policy instructions have yet to be added to this version. Also, feedback from the National Practitioners Group is that further paragraphs may be added in relation to the addition of a regulation on recovery of items in cases where inaccurate information has been provided to the Council.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

The Council is of the view that the Bill has taken on lessons learned from the operation of the interim scheme which has been running for 15 months at the point of writing this response. However we would welcome the additional paragraphs mentioned above in relation to recovery of items.

3. Is there anything else that you feel should be included in the Bill?

No see answers to 1 and 2 above.

4. Will the Bill and its provisions have a particular impact on equalities groups?

The Council does not envisage any circumstances where the Bill will impact directly on any specific equalities group, as the content of the Bill and the regulations should ensure that fairness and consistency is applied in the operation of the permanent scheme.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

The Council agrees with the proposal to allow local authorities the option to outsource or to jointly administer the fund across local authority boundaries. This provides local authorities with a degree of flexibility and allows the opportunity to combine resources with neighbouring authorities if deemed
appropriate at a later date. However a great deal of success from the service provision to date has been the ability to coordinate information on a local basis from officers and information held in other departments of the Council. This has permitted the targeting of grants towards to those in most need and a more centralised approach may increase the risk of this being diluted.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

The Council agrees with the proposed internal review process, which is no different to the process currently in place at present with the interim scheme.

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

In our previous response South Lanarkshire Council selected the SPSO as the third option for the second tier review process, mainly due to the fact that in its current form the SPSO does not have the power to enforce a different decision on local authorities. It is noted from the content of the Bill and draft regulations that the SPSO will be given the power to direct and overturn decisions made by local authorities. However a note of caution should be highlighted with this proposal in that the SPSO must recognise that the SWF is a discretionary fund which is cash limited. There is also concern with regards the practical operation of this proposal and the necessity for any such service to be capable of responding very quickly to a request for a secondary review especially given the nature of the service provided. There is also concern with regards to where the funding for this new service will come from and we note that administration funding for councils has only been extended at its current level to 2015/16.

Further provision – regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

We feel that the following should be included within the regulations and reference made within the Bill:

- Form, manner and procedure for making an application
- Provision of information in support of applications
- Maximum savings thresholds
- Capital to be disregarded
- Descriptions of priority ratings
- Vulnerabilities which attract priority in decision making
- Reporting requirements
- Recovery of items claimed through dishonest means
Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

The Council welcomes the decision to extend administrative funding to 2015/2016 at the existing level of £5m. Based on service demand at South Lanarkshire Council, any reduction to administrative funding would have a detrimental impact on our ability to assess and award grants within the target timescales. Further information on the requirements for funding of up to £0.4m for SPSO would be welcomed given the relatively low volumes of second tier reviews that are currently being dealt with. It should also be noted that South Lanarkshire does not anticipate any savings to administrative costs as a result of Second Tier reviews being administered by the SPSO and, as stated previously, any reduction to administrative costs will have an adverse impact on the service to claimants.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

No

Patrick Murphy
Head of Support Services
South Lanarkshire Council
21 August 2014
WELFARE REFORM COMMITTEE
WELFARE FUNDS (SCOTLAND) BILL
SUBMISSION FROM WEST DUNBARTONSHIRE COUNCIL

General

1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

Yes

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

Yes

3. Is there anything else that you feel should be included in the Bill?

No

4. Will the Bill and its provisions have a particular impact on equalities groups?

None

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Yes, though we believe more in the option to jointly administer the fund across local authority boundaries. We feel that the scheme being jointly administered by another LA would work best and be more efficient if the administrative and policy approaches of Councils involved in the joint administration are consistent regarding eligibility, controls over payments, reviews, etc. Some of the likely benefits and drawbacks are listed below:

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Drawbacks</th>
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<tr>
<td>☐ Could provide efficiencies in running costs</td>
<td>Each LA has access to information from the DWP CIS system. That combined with their own information reduces the information a customer requires to provide and improves the speed of the decision making. If this was carried out by third party/another LA, appropriate data sharing mechanisms would need to be put in place and agreed with the DWP. Should that not be possible it could create delays in the process.</td>
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Benefits

- Could provide consistency of administration – avoiding “post code lottery” issues if Councils could align policy in a single administrative approach

Drawbacks

- Re processing by a third party, there would need to be proper links in place around data sharing to avoid customers having to provide evidence of income/residence where they do not need to do this at present, thereby delaying decision making.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

No issues with this

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Yes

Further provision - regulations

8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?

Happy with level of detail and do not believe it should be changed, the discretionary element of the scheme around decisions is key.

Financial Memorandum

9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?

For WDC we do not believe this model will deliver any savings as this has not been factored into our costs when working out our admin costs. Furthermore, WDC only had 3 reviews in 2013/14, so transferring responsibility elsewhere will not reduce our costs.

Other provisions

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

None

Arun Menon
Business Support Manager
West Dunbartonshire Council
28 July 2014
Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government’s aim of providing assistance for short term need and community care?

At Who Cares? Scotland we support care experienced young people until the age of 26 by providing relationship based independent advocacy across most local authority areas. We have reviewed the Bill’s provisions and support its endeavour in providing assistance for short term need and community care. We welcome that the Bill aims to put a more localised and holistic approach into statute, ensuring that the Welfare Fund adheres to minimum intervention principles and doesn’t create a reliance on a fund that is aimed at mitigating against deficits in short term need.

The Welfare Funds (Scotland) Bill Explanatory Notes explains that applicants will be “sign posted” to other services provided by the local authority. The explanatory notes state that the services referred to are commonly “advocacy, welfare rights, housing and money or debt management”. We believe that providing access to these services is right and will better enable applicants to develop better coping mechanisms to better manage future crises. For young care leavers we strongly believe this support should come from an independent advocate who, in our experience, can best support them through their care journey and continue to do so upon leaving care. The Children and Young People (Scotland) Act 2014, aims to ensure that care experienced young people are best supported in making the transition into independent living and most importantly have stable, long term relationships alongside them at this challenging time. As an organisation supporting care experienced young people, we would hope that accessing these holistic services would be encouraged prior to the young person embarking on their transition to independent living. We would also recommend that there should be a coordinated approach between corporate parents and Welfare Fund administrators to alleviate the stress caused during these unsettling transition times.

The Bill affirms that each local authority can supplement the funding provided by Scottish Ministers, although they are not obliged to do so. This raises the possibility that awards will not be issued solely on the basis of need but on what resources dictate or can afford. This means awards may vary depending on whether a local authority has chosen to supplement the funding from Scottish ministers or not. We are keen to understand how this inconsistency can be remedied or safe-guarded against, to prevent the commonly referred to ‘post-code’ lottery effect for Scotland’s care leavers.

The Staying Put Approach (2013) recognises that young people who grew up in care may develop complex needs both during and after that journey. This means that when they leave care they may struggle to engage with services. This can be for many reasons such as lack of information; ease of accessibility; a distrust of services
due to a high level of intervention throughout their childhood or a lack of motivation to engage when out with the formal care ‘system’. Those with complex needs are also more likely to leave the care system early\(^1\). Therefore it would be reasonable to suggest that this group of care experienced young people may be more likely to require access to the funds. As it is already recognised that care experienced young people with complex needs have difficulty in engaging with services, the holistic approach to linking them with other services, particularly independent advocacy, is embraced by our organisation. We are aware however, that not all local authorities at present provide independent advocacy specific to care experienced young people and so the support provided could depend on a young person’s geographical location. It would be beneficial if the Bill, or the explanatory notes, or guidance, advises local authorities on how they can mitigate against this deficit in support. This would better enable local authorities to meet their corporate parenting responsibility of ensuring that their services are accessible to all of their looked after population, as stated in the Children and Young People (Scotland) Act 2014 – especially in relation to a joined up Continuing Care and Aftercare service as is laid out in Parts 10 and 11 of the Act.

**The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?**

It is positive that those sanctioned by the DWP will be able to access the welfare fund, without the reason for the sanction being taken into account when coming to a decision. However Who Cares? Scotland’s advocacy workers have experience of young people being denied access to the interim welfare fund after the young person’s social media activities were scrutinised as a way of attempting to validate their claim. As an organisation we believe that this should not be permitted, and could hinder care experienced young people’s ability to build trusting relationships with those from the local authority.

Who Cares? Scotland was initially encouraged to see that Heriot-Watt University conducted an independent review into the progress of the SWF however we are left disappointed in the lack of representation of care leavers within this report. As a result, while we believe there has been some positive learning generally on the interim SWF, little attention has been given to how this process affects care experienced young people who often experience poverty stricken, transient and unsettled lifestyles once they leave care. Given that the state intervened in their childhood and was in charge of their care for all or portions of their childhoods – it seems necessary that upon leaving formal care the financial assistance available to support their transition into the daunting prospect of young adulthood and independent living is available and accessible.

**Is there anything else that you feel should be included in the Bill?**

Subsection 2, of section two, of the Bill states that welfare funds can be accessed by those who have been in a residential care establishment. The explanatory notes explain that those who have lived in an “other institution such as foster care” can also access welfare funds. As an organisation we work in partnership with young

people who live within a variety of care placements. We believe that it would be beneficial for the bill or the explanatory notes to name the different types of placements; for example being looked after at home or kinship care placements. This would reduce the risk of young people’s care experience not being recognised during the application process; and it would also align the Bill provision with the support rights granted by the Children and Young People Act (2014) for care experienced young people.

We would also recommend that all care experienced young people in receipt of continuing care or aftercare services should meet the criteria to access the fund. As an organisation, we appreciate that the Welfare Fund is discretionary and not based on entitlement. We would like to highlight that our advocates have supported young people to apply for community care grants, and the applicants have been denied items such as washing machines, as the decision makers deemed these items as not being essential. There have also been occasions when care experienced young people have had to resort to using sheets as blinds, for their ground floor flat, as again decision makers believed such items were not essential. These young people have to request access to this fund as they have, at best, a fragmented support network. As a result of these experiences we believe that it would be helpful if the Bill, or its guidance, gave clear direction on which items would be essential for those leaving the care system with no other source of funding. We accept that the review process has been further developed since the implementation of the interim fund and we are pleased that more applicants will now be aware of how to seek a review of a decision. If guidance provided direction to decision makers as to what items were essential there would be a more consistent approach to decision making, local authorities would also be better placed in meeting their corporate parenting obligation without having to utilise other funding streams. We would recommend that the actual experiences of former care leavers help to determine what items are essential.

Will the Bill and its provisions have a particular impact on equalities groups?

The Bill affirms that the Welfare Fund is partly targeted towards supporting those transitioning out of a formal care arrangement. On average looked after young people in Scotland move on from the care system between the age of 16 and 18, whilst the average age for young people moving out of the family home in Scotland is around 25 years old. Those considering care leavers applications should remember that care leavers are at greater risk of experiencing homelessness, than any other group. This is also due to the high numbers of care leavers who find themselves unable or ill-equipped to access and sustain a positive destination – especially in comparison to non-looked after peers.

It is our understanding that normally an individual will not be awarded a crisis grant if they have already been awarded three in a twelve month period; unless they can evidence that they are not to blame for requiring additional grants. We would encourage those reviewing applications to consider the evidence base that demonstrates the difficulties faced by those leaving care at a young age. These

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young people struggle to maintain the minimum level of income needed to support them in everyday living. As an organisation we would promote an individual and holistic response to the reviewing of applications and would hope that a standardised approach would not be adopted. If a care experienced young person requires a grant more than three times in a year, we would encourage local authorities to assist the young person in overcoming the crisis being experienced but also take an inter-professional approach to empowering care experienced young people to develop better coping strategies that will equip them to live independently. The provisions in the Children and Young People Act (2014) provide the framework for this. Therefore this financial assistance must seek to complement and enhance the application of that framework.

As previously stated, it is positive that those sanctioned by the DWP will still be able to access the welfare fund, without the reason for the sanction being taken into account when their application is being considered. Our advocates have experience of young people being denied access to the welfare fund after the young person’s social media activities were scrutinised as a way of attempting to validate their claim. As an organisation we believe that this should not be permitted, and could hinder care experienced young people’s ability to build trusting relationships with those from the local authority. In many cases care experienced young people are judged, demonised and classed as undeserving by a lot of society. Our welfare processes should not compound this.

Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Section three of the bill - Administration of welfare funds - informs that local authorities can appoint a third party to administer the fund. The Bill informs that the third party appointed in administering the fund can be from either the private or voluntary sector. As the local authority will still be accountable for the fund it would be essential that any third party appointed is aware of the local authority’s corporate parenting obligations to Scotland’s looked after population. It would be essential that all those involved had a deep understanding of the challenges faced by the care experienced population and that they aspire to emulate best practice examples of corporate parenting. The Children and Young People (Scotland) Act 2014 embeds corporate parenting responsibilities into statute. The appointment of third parties in the administering of the Welfare Fund could bring about benefits to both applicants and to local authorities. We would hope that the appointment of third parties was done so on their ability and experience in working with vulnerable individuals, and in particular the care experienced population, as opposed to their ability to effectively ration resources. We would also expect that the inclusion of those from the private sector did not in any way negatively impact on the resources available to applicants, particularly if the organisation is aspiring to achieve a year on year profit.

Section three of the Bill also states that local authorities can work in partnership with one another in administering their funds. It would be beneficial to the care experienced population that these partnerships publish joint plans that tell of how they intend to ensure service provision is tailored to meeting the needs of the care
experienced population, as directed in the Children and Young People (Scotland) Act 2014. We believe that this could encourage a more universal approach to service delivery, although it should be considered that there could be a risk that these partnerships could make it difficult for the benefits of localised provision to be realised. This also reflects the cross-local authority placements and realities that many care experienced young people face during and after care.

What are your views on the proposed internal local authority review process?

The internal local authority review process is not sufficiently independent of the decision makers in charge of allocating the SWF. Who Cares? Scotland is concerned that those looking to review their unsuccessful application would be put off by the knowledge that those reviewing the decision are colleagues of those making the decision. In this circumstance it is imperative that those applying for a decision review are made fully aware of the SPSO led second tier review option and are supported to follow this option if necessary. Again, we believe that independent advocates are best placed to support care experienced young people in this process.

A further concern in regards to the review process is the complexity of seeking the second tier review. The effort and strength needed to pursue a review would be challenging at the first local authority review stage, never mind taking this one stage further. Who Cares? Scotland would be concerned that many would be unlikely to pursue the second stage review with SPSO following rejection at application stage and then again at the first tier review process. This set back is particularly pertinent for those care leavers who have little in the way of support.

Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

As the Scottish Public Services Ombudsman (SPSO) has experience of working in partnership with the 32 individual local authorities that are utilising their own individual policies we agree that they are the appropriate body to conduct secondary reviews.

The SPSO has indicated - in its briefing note - that it intends to amend its structures and processes in order to ensure that it will be capable of fulfilling its new role. Our understanding of their brief is that they intend to construct a unit within their organisation if demand requires it. However if referral numbers reflect lower estimates, then the SPSO intends to create a small team of staff to deal with secondary reviews. The briefing noted that all staff will be trained in welfare rights and be in receipt of training that will ensure they will be effective in their new role. We would like the SPSO to consider delivering training to their staff specific to the needs of Scotland’s looked after population. If the referral rates permit the creation of a staffing unit within the organisation we would suggest they consider referring care experienced young people to specific staff. We believe this would enhance service delivery and ensure that those engaging with the ombudsman receive a competent service which meets their needs.

The SPSO has indicated that it will employ various methods in ensuring that they are accessible to all, we commend this and feel that local authorities should be
encouraged to provide the same level of accessibility in the initial application process.

**Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?**

The Bill’s accompanying documents highlight that individuals and families on lower incomes are expected to be placed under greater financial pressure as austerity measures continue to be introduced and as inflation rises. We feel that at present the funds allocated are realistic and proportionate although, we would respectfully request that the funds allocated reflect demand.

**Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?**

We are disappointed that the report by Heriot-Watt University reflecting on the interim fund was unsuccessful in engaging with any care experienced young people. As a result of this we are unable to feel confident that the learning from the last two years is able to incorporate the needs of one of the most marginalised groups of Scotland’s population; care leavers. Their poor social, economic and well-being indicators are well documented and known at national and local government level; and many of these correlate directly to the lack of financial resources to support them in their lives. They also correlate directly to the lack of sustainable positive destination outcomes for these young people upon leaving care. We would respectfully request that this committee takes action to remediate this by speaking directly to care experienced young people in order to collate their views and ensure that the provisions outlined are inclusive of their needs.

Who Cares? Scotland
28 August 2014
Dear Mr McMahon

Additional Information for the Welfare Reform Committee

Thank you for giving Sacro the opportunity to attend the committee meeting on Tuesday 7 October 2014. I was glad we were able to help inform the discussions around the proposed legislation, the Welfare Funds (Scotland) Bill.

You mentioned at the end of the meeting that if any of the attendees wished to make additional comments, as they had not had time during the debate, then these could be submitted for the committee’s consideration. With that in mind, I trust the following three brief points (below) may be of use.

As I mentioned in the meeting, Sacro is a community justice organisation that works to create safer and more cohesive communities across Scotland. We provide a wide range of services from conflict resolution, restorative justice, housing support, self-directed intensive support through to intensive support packages for high risk prisoners on release from custody. Our focus is on helping resolve conflict and reduce offending. We are not a specialist welfare organisation, though our staff provide general advice and guidance to many service users who are affected by the changes to the welfare system. They also help service users navigate through the systems and processes in operation.

1. Take up of the Fund amongst prisoners

If we consider the data on those making applications, it appears that the number of individuals who are in prison or in detention who are making SWF claims is relatively small. The early data from April - September 2013 indicated that only 1,413 applications were made out of a total of nearly 68,400. That was approximately 2% of all applications in that period.

In the last few years, we know that there are approximately 15,000 receptions of sentenced prisoners over the course of every year. When those on remand are included the total number of receptions into custody is nearer 37,000. Many of these individuals will be short term prisoners who are doing long term prison sentences in instalments in effect. Whilst we recognise that not all of these individuals will require or be eligible for assistance from the Fund, it is reasonable to ask if all of those who do fit the criteria are aware of it and making claims.

Sacro is supporting the Scottish Government’s work on improving throughcare services for short term prisoners: this is through the Reducing Reoffending Programme 2 workstream. This is essentially geared towards making the process of release and the prisoner’s resettlement much more effective and successful. There is scope to ensure that the development of the Fund is linked closely with that workstream. It may help to note that Scottish Government colleagues from Housing, Regeneration and Welfare are involved in this agenda.
2. Supporting prisoners during home leave

The Fund could create good opportunities to help families cope better with a prisoner who is being released on home leave. In our experience, families often struggle to cope with the prisoner’s return, both financially and practically.

Many families have to make significant adjustments when a family member is incarcerated. They may have come to terms with a more restricted income and limit their spending accordingly. At the point when the prisoner is being considered for release, they often put aside their concerns about the practical arrangements of supporting the individual and struggle on. However this can often cause relationship difficulties, tension and a breakdown of the leave arrangements. More publicity material about the Fund, alongside wider promotional activity in prisons, social work offices etc., could assist families in better supporting prisoners during periods of leave.

3. Information transfer and the processing of claims

Our staff tell us that there are some potential challenges in the system, especially around prisoner movements and the handover of information to local authorities. A recent example that illustrates the point is this. One of our staff was working with a young prolific offender who was admitted to one establishment then transferred to two other establishments before release. The young man had made a Community Care Grant application for clothing on being admitted. On release he checked on his application with the local authority and no record could be found. He checked with the prison in which he had made the application and no record could be found there either. Our staff supported the young man in making a new application and in gaining access to second hand clothing (via a charity store) in the interim. The new application was approved but it took three weeks to do so.

Sacro recognises that the system is still in its infancy and that prisoner movements around the estate are not unusual. However, if the system of applying to the Fund is to work efficiently and effectively, it will rely on good information transfer processes between establishments and local authorities. Sacro has been advised that COSLA and SPS are working on a clearer process presently.

I trust that this is information is useful. Sacro would be happy to assist further, if required.

Yours sincerely

Paolo Mazzoncini
Director of Operations (East)
COSLA Response to the Welfare Reform Committee’s request for additional evidence 
Welfare Funds (Scotland) Bill

General
COSLA welcomes the opportunity to provide additional written evidence to the Welfare Reform Committee around the costs associated with operating the Scottish Welfare Fund (SWF).

As the Committee will be aware COSLA is the representative body for all 32 Councils in Scotland. COSLA has worked closely with the Scottish Government Bill Team and local authorities during the period of the interim scheme, on the content of the Bill and accompanying draft Welfare Funds (Scotland) Regulations.

COSLA submitted responses to both the Welfare Reform Committee and the Finance Committee’s call for evidence on the Welfare Funds Scotland Bill. Both these responses reflected Directors of Finance significant concerns around the level of administrative funding provided.

Actual Costs
COSLA has gathered information from all local authorities and have identified that the actual costs associated with administering the scheme to be £8.3 million a year. The Scottish Government has provided £4.8 million in 2013/14 and 2014/15 for administration and provision has been made for this to be maintained for 2015/16. The funding provided to councils therefore falls someway short of the actual costs associated with the service being delivered.

The level of funding provided to local authorities is the same amount of administrative funding DWP allocated to achieve the previous transactional discretionary elements of the Social Fund scheme. The DWP provided a ‘typical’ loan system under the Social Fund, the amount of administrative funding allocated was £4.8 million, around 20% of the total £24 million available for distribution. Using this costing model and noting that the Scottish Government added an additional £9 million to the fund, COSLA has already made the case to the Scottish Government that the administrative funding should at least be £6.8 million, 20% of the £33 million fund available to allow local authorities to provide at least the same level of service DWP gave previously.

Additional Costs
The Scottish Government is of the belief that 15% of the programme budget is adequate to administer SWF in the context of typical administration grants procured being in the region of around 10%. However the Welfare Funds (Scotland) Bill, the accompanying Welfare Funds (Scotland) Regulations and the jointly agreed interim guidance all make it clear that councils should provide additional support and assistance over and above the administration of any award. COSLAs survey of Councils sought to quantify the costs associated with the different delivery mechanisms encouraged by the interim guidance and also the costs associated with providing holistic signposting and referrals.
With regard to the costs associated with the provision of goods via SWF, returns from those authorities who provide goods as a means of fulfilling awards, report around 20% more staffing resources deployed in dealing with fulfilment via goods, as opposed to those authorities who provide cash. The Committee will be aware that by using furniture contractors local authorities have been able to utilise their bulk buying power, ensure value for money and are therefore ultimately able to reach more people. However this does mean resources need to be deployed to manage suppliers relationships, assist customers through the ordering/delivery process and ensure adequate accounting and reconciliation take place. Some local authorities have intimated that should administrative funding remain at current levels that the provision of goods via the SWF could potentially lessen as cash awards have much less administrative burden associated with them.

The survey returns also highlighted costs associated with providing cash payments to customers. Whilst operating the previous scheme the DWP were able to make payments in cash via customer’s bank accounts. The Committee may be aware that many customers applying to SWF for assistance only have Post Office Accounts which are unable to accept Crisis or Community Care Grant payments. Local Authorities have to organise cash pay-out via alternative means, which again takes up additional staff time and has a separate transactional costs associated depending on the methods available locally.

Around the area of holistic signposting and referrals, returns from local authorities who provide comprehensive onward referrals and outcome management reported around 10% more staffing resources taken up providing advice and information. The additional costs associated with this part of the service reflect the fact SWF teams are dealing with the most vulnerable groups and taking the time to get to the underlying issue. This holistic support is delivering better customer outcomes which should benefit the public purse in the long term. The provision of wrap around support and onward referral is one of the areas where SWF stands out from the previous scheme as delivering better customer outcomes however this area does not factor in the funding transferred from DWP as it was not provided previously.

**Conclusion**

COSLA Leaders have continued to voice concerns that local government has not been funded to provide even the most basic of transactional services and have certainly not been adequately funded to provide the holistic service as described in the jointly agreed interim guidance. The lack of adequate funding for SWF exacerbates the funding issues local authorities are already facing due to reductions in the administration funding for Housing Benefit, the establishment of the Single Fraud Investigation Service and the financial implications of welfare reform in general.

COSLA continue to work with member Councils to share best practice, looking at ways we can jointly procure systems to drive down costs and generally improve efficiency. COSLA is of the view that the Scottish Government should reconsider the funding available and provide adequate resourcing as appropriate. Failure to address the concerns highlighted around administrative funding could potentially jeopardise the wider outcomes the Welfare Funds (Scotland) Bill is trying to achieve.
The Scottish Parliament
Pàrlamaid na h-Alba

Finance Committee

Report on Welfare Funds (Scotland) Bill

The Committee reports to the lead committee as follows—

INTRODUCTION

1. The Welfare Funds (Scotland) Bill ("the Bill") was introduced into the Scottish Parliament by the Scottish Government ("the Government") on 10 June 2014. The Bill was accompanied by a Financial Memorandum (FM) (at page 9 of the Explanatory Notes) which set out the estimated financial implications of the Bill.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, to consider and report on the Bill’s FM. In doing so, it is required to consider any views submitted to it by the Finance Committee ("the Committee").

3. The Committee issued a call for written evidence in June 2014 and received 22 responses, the majority of these being from local authorities. The Committee also received responses from the Scottish Public Services Ombudsman (SPSO) and the Scottish Parliamentary Corporate Body (SPCB) in relation to the costs associated with the SPSO taking on the function of a second tier review body for applications made for support from the fund.

THE INTERIM SCOTTISH WELFARE FUND

4. An interim Scottish Welfare Fund (SWF) has been in operation since April 2013. The interim SWF was established following the changes to the discretionary elements of the Social Fund under the Welfare Reform Act 2012 and the extension of the Parliament’s legislative competence “so that it can legislate in relation to the provision of welfare assistance in case of a crisis or to help maintain and establish a settled home”.1 The purpose of the Bill is to create a specific statutory basis for the SWF.

5. The SWF provides for two forms of assistance, a crisis grant and a community care grant. The FM describes these forms of assistance as being “to provide a safety net in an emergency when there is an immediate threat to health and safety through the provision of a non-repayable grant” (crisis grant) and to “enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant”.2

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1 Policy Memorandum, paragraph 4
grant... This includes providing assistance to families facing exceptional pressures. For example, where there has been a breakdown in family relationships, perhaps involving domestic abuse, which is resulting in a move.”

ADMINISTRATION FUNDING

6. One of the main areas addressed in the responses received by the Committee was the level of administration funding that has been made available to local authorities in connection with the SWF. All but one of the local authorities that submitted a response highlighted concerns about this matter. In both 2013/14 and 2014/15, the Scottish Government provided overall administration funding of £5 million. The FM indicated that the level of funding for 2015/16 was to be confirmed but that it was anticipated to continue at a similar level.

7. The evidence provided by local authorities was that they are already in a position where they were supplementing administration funding from their own budgets. For example, Fife Council stated that it had received funding of £267,000 but that its overall requirement was £553,000 while Highland Council identified staffing costs directly attributable to SWF at £149,000 against available administration funding of £117,000.

8. Glasgow City Council did not express concern about its current level of administration funding. It did, however, state that “currently only applications with a priority level of high are being approved to remain within programme funding” and that further welfare reform changes that are due to take effect “would have pressures for both the programme funding and also the administration funding if local authorities were faced with increased applications.”

9. COSLA commented that the “administrative funding provided to councils fall someway short of the actual costs associated with the service being delivered.” COSLA went on to say that “Failure to address the concerns highlighted around administrative funding could potentially jeopardise the wider outcomes the Welfare Funds (Scotland) Bill is trying to achieve.”

10. The Committee asked the Scottish Government Bill team about the kinds of activities involved in administration of the SWF, including the level of administration funding as a proportion of programme funding, and about how the distribution of administration funding to local authorities was decided.

11. In response to questioning about spending £5 million to distribute £33 million and the question of the value for money this represents, the Bill team outlined the activities involved in administering the Fund as follows—

“Initially, there is the first level of call handling and taking applications. That is the simplest, up-front element of the administration. Beyond that, local

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2 Financial Memorandum, paragraph 7
3 The budget line for the Scottish Welfare Fund in the Draft Budget 2015/16 is set at £38 million. As programme funding has been confirmed at £33 million it may be assumed that the level of administration funding will continue at £5 million for 2015-16.
4 Glasgow City Council, written submission
5 COSLA, written submission
authorities find that they are incurring quite significant costs in taking forward the awards. In cases where local authorities are providing goods, for instance, there are issues around receipting, arranging deliveries and ensuring that things are being followed up, and then reconciling everything at the end of the process. That adds on costs for local authorities.

The other element on which local authorities have suggested that they are using time and resource is that of trying to fulfil the holistic nature of the welfare fund by passing applicants on to other areas of the local authority that might be able to help them, or signposting them to third sector services that might exist in the area.  

12. In relation to distribution of the funding, the Bill team explained that the basis of distribution was agreed in the joint COSLA and Scottish Government settlement and distribution group and that the agreement reached was that “the administration funding should be based on the historical pattern of applications at local authority level under the old DWP scheme, according to the data we had available”.

13. The Bill team further explained that agreement has been reached to carry forward the original basis of distribution for a further year, “predicated on the basis that, the next time we discuss the matter, we will consider what is actually happening on the ground in local authorities and try to identify appropriate indicators to assess need and demand by local authority area”.  

14. The Bill team also highlighted work that is being undertaken across local authorities to look at the options for administration funding—

“COSLA is undertaking a benchmarking exercise to look at the true costs, at what some local authorities might learn from others that are delivering within their admin funding and at the areas where the costs are not being captured quite as they should be. The DFM said that she will be willing to consider the evidence that comes from that benchmarking in looking at future admin funding.”

15. The SWF has been designed to be holistic in nature and to offer local authorities an opportunity to signpost applicants to other sources of support and assistance beyond immediate crisis. The function of the SWF as being to help people “manage their lives more effectively and avoid crisis in the future” was noted by the Bill team. As such the SWF can be considered as a preventative tool that can play a role in preventing future, potentially more costly, demands falling on public services. Given this, the Committee considers that it is vital that administration of the fund is supported by the appropriate resource levels and that growth in demand for assistance be recognised.

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6 Scottish Parliament Finance Committee, Official Report, 1 October 2014, Col 7
7 Scottish Parliament Finance Committee, Official Report, 1 October 2014, Col 39
8 Scottish Parliament Finance Committee, Official Report, 1 October 2014, Col 45
16. The evidence received from local authorities reflects their significant concerns that the level of administration funding has not been sufficient to meet the actual costs of providing the service. If the number of applications for support from the fund is anticipated to increase it would seem reasonable to assume that the costs of administering those applications will also rise.

17. The Committee welcomes that benchmarking exercise that is being undertaken in relation to this element of the overall funding of the SWF and invites the lead committee to seek further information from the Minister as to when the outcomes of the exercise are expected to be known.

18. Notwithstanding the findings of the benchmarking exercise, the lead committee may wish to ask the Minister to provide further detail about the process for setting the level of administration funding and whether any increase in that funding will be considered in response to the concerns raised by local authorities.

SECOND-TIER REVIEW FUNCTION FOR THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

19. The other main issue raised in written evidence was the costs that will be associated with establishing the second-tier review function within the Scottish Public Services Ombudsman.

20. Under the interim SWF, local authorities have been undertaking second-tier reviews of decisions on applications. The Bill proposes that this role be taken on by the SPSO. The FM notes that the “new powers diverge from SPSO’s traditional role in dealing with maladministration and require a different approach”.9

21. The FM estimated costs to set up and run a separate unit within SPSO to carry out this function. The FM estimated set-up costs of £60,000-£100,000 which would fall in 2014/15. Two estimates were provided in the FM for the annual running costs of SPSO delivering this function—

- £400,000 per year for an annual caseload of 2,000 reviews
- £250,000 per year for an annual caseload of 400 reviews.

22. The estimated running costs have been based on the costs of delivery of a similar function by the Office of the Social Fund Commissioner for Northern Ireland and will be subject to review as the new process is established.

23. The FM states that the Government will transfer the funding to the Scottish Parliamentary Corporate Body for set up costs in 2014/15 and running costs in 2015/16. The FM notes that beyond 2015/16 “permanent arrangements will be put in place for funding”.10

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9 Financial Memorandum, paragraph 18
10 Financial Memorandum, paragraph 18
24. As a result of uncertainty about the number of reviews, the FM states that there are “significant uncertainties” relating to the estimated costs. The FM states that there may be a reduction in costs if the number of reviews does not rise as expected but that “the reduction in costs would not be in direct proportion to the reduction of cases”. This is explained as being because “fixed costs would remain” and “to ensure quick turnaround of cases a minimum staffing level would be required”.

25. Another issue in relation to the uncertainties is identified in the FM as being “the possibility that the SPSO may have to physically expand their estate to accommodate the expected number of staff required to undertake reviews”. The FM states that expansion of the SPSO estate “would be subject to interactions with its current functions and staffing levels and the costs relating to second tier review functions would be subject to negotiation”.

Second-tier review caseload

26. The FM states that the “Government does not have full data for second-tier reviews under the interim arrangements but estimate that there will have been fewer than 500 reviews in the first year of running”. Argyll and Bute Council provided a figure of 144 second-tier reviews having been carried out across Scotland in 2013/14. This seemed to be confirmed by the Bill team which stated that “I think that we had 120 second-tier reviews for community care grants and only 24 for crisis grants.” The Bill team went on to comment that “The informal feedback that we have had from local authorities this year leads us to expect that the numbers will probably double by the end of the second year of the scheme.”

27. The nature of the scheme was suggested by the Bill team as one reason why the number of second-tier reviews may have been lower to date than under the previous DWP scheme—

“The way the scheme works is potentially why we are seeing fewer reviews than we might have seen under the previous DWP scheme. If an applicant is refused, the hope is that they will be referred or signposted to another service, either within the local authority or within the local area, that is able to help them. Applicants are not just getting a flat refusal, so we hope that they are having a better experience and getting a better outcome from the scheme.”

28. The FM notes that it is anticipated that “there will be more reviews conducted by the SPSO than the number of second-tier reviews the Scottish Government has seen so far in the interim scheme”. The Scottish Government’s view that the...
number of reviews will increase is supported by COSLA. The Government has used a planning assumption of 2,000 reviews per year.

29. The Committee asked the Bill team for a further explanation of how it arrived at the planning assumption of 2,000 reviews per year. The Bill team explained that—

“The short answer is that we had a lot of discussion with COSLA, local authorities and the Independent Review Service, which used to provide the same type of service under the old DWP scheme. It was not quite a finger-in-the-air process to arrive at the figure of 2,000, because it seemed a reasonable number. The numbers for this year, for example, have been very low; I think that we had 120 second-tier reviews for community care grants and only 24 for crisis grants, which was very low and probably lower than we expected. The informal feedback that we have had from local authorities this year leads us to expect that the numbers will probably double by the end of the second year of the scheme.

We took a view that 6,000 seemed far too high given the experience of what is happening now in Scotland, and we arrived at the figure of 2,000, which is somewhere in the middle, in consultation with stakeholders.”

30. In relation to the difference between the higher and lower estimates, and the reduction in costs that may be realised if a lower number of reviews are carried out, the FM states that “the reduction in costs would not be in direct proportion to the reduction of cases, as fixed costs would remain”.

31. Both the FM and the submission from the SPSO note the intention to undertake a review of the funding required for SPSO to fulfil second-tier function.

32. In its written submission, Falkirk Council commented that “The costs associated with the SPSO administering 2\textsuperscript{nd} Tier reviews (£250-400k per annum) seem to be relatively significant, given that within this Local Authority we have managed to meet the requirement around 2\textsuperscript{nd} Tier reviews within our existing budget.” Comparing SPSO costs with their own administration funding, Fife Council stated “Given the work that Fife Council is to undertake for less than £300,000 this seems generous – or more likely amplifies the argument made above that local authorities are not given sufficient administration funding.” Moray Council commented that “Care should be taken in allocating additional funds to the Ombudsman until a reliable assessment of the volume of referrals can be made.”

33. If an equal cost per review was to be assumed, the estimates in the FM would give ‘unit costs’ of undertaking reviews at £200 per review for 2,000 reviews per year and £625 per review for 400 reviews per year. Some local authorities commented on the consideration of value for money in these unit costs compared

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19 Scottish Parliament Finance Committee, Official Report, 1 October 2014, Col 43
20 Financial Memorandum, paragraph 51
21 Falkirk Council, written submission
22 Fife Council, written submission
23 Moray Council, written submission
with the value of payments that are issued from the Scottish Welfare Fund. The FM itself does not provide details of the average value of payments that have been issued.

34. North Ayrshire Council commented that the unit cost at 400 reviews per year “which is more than the average cost of a community care grant in Scotland in 2013-14 (£613)...does not demonstrate value for money when compared to the cost of this service being provided by Scottish Councils.”

35. East Ayrshire Council provided average values for payments it has made under the interim scheme of £505 for community care grants and £76 for crisis grants and states that “proportionality must remain a consideration for the scheme.” Argyll and Bute Council’s submission stated average values of £644 for a community care grant and £71 for a crisis grant. On the basis of the figure of 144 reviews carried out in 2013/14, it went on to note that the lower cost estimate of £250,000 would represent a cost per review of £1736.

36. The Committee pursued these issues with the Bill team. In relation to the unit cost, the Bill team referred to the Business and Regulatory Impact Assessment that had been prepared in relation to the Bill stating the SPSO option was the least costly of the options considered—

“Based on 2,000 cases a year, the estimated cost per case was £202 for the SPSO; £413 for the tribunal; and between £420 and £520 for the local government panel.”

37. The Committee notes that comparable estimates for the tribunal and local government panel at 400 cases per year were not provided in the impact assessment.

38. The Committee considers that, as with all elements of the SWF, second-tier reviews should be delivered in a way which delivers the best value for money. The Committee recognises that both the Government and COSLA expect that the number of second-tier review cases will increase from the levels experienced in the operation of the SWF to date.

39. However, the Committee considers that greater detail and analysis could, and should, have been provided as to why a caseload of 2,000 reviews per year has been used as a planning assumption given that only 144 reviews were carried out in 2013/14. On the basis of the information that has been made available so far, the Committee is not in a position to assess whether this planning assumption is reasonable or not.

40. The Committee suggests that the lead committee may wish to seek clarification as to why funding has been made available for 2,000 cases per year.

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24 North Ayrshire Council, written submission
25 East Ayrshire Council, written submission
26 Scottish Parliament Finance Committee, Official Report, 1 October 2014, Col 44
41. The Committee notes that the Government will transfer funding for the SPSO to the Scottish Parliamentary Corporate Body (SPCB) for the years 2014/15 and 2016/15. The Committee’s role includes scrutinising the SPCB’s budget, and, in that regard, the Committee expects the SPSO to provide details of the number of second-tier reviews that it has considered when making its bid to the SPCB in relation to its budget for 2016-17 and beyond.

Ongoing local authority costs in relation to second-tier reviews by the SPSO

42. The FM states that following the set-up of the review function within the SPSO, local authorities will no longer have to meet the costs associated with undertaking the second-tier reviews themselves, noting that these costs have included “the associated costs of arranging and supporting panel meetings” and that authorities have “absorbed these costs into administration costs”. However, in relation to whether local authorities will realise savings as a result of this change, Aberdeenshire Council stated that “It does not seem appropriate to expect savings in administration costs from the removal of the second tier review function as this has been such a small part of the Scottish Welfare Fund workload to date.”

43. COSLA noted that the FM suggests that following the review role being taken on by the SPSO “local authorities will no longer have to meet and costs associated with these reviews” but that local authorities will “still be required to perform the first stage review and to prepare and respond to those cases which progress to 2nd stage via the SPSO”.

44. This view was echoed in the submission from Dundee City Council.

CONCLUSION

45. The lead committee is invited to consider this report as part of its scrutiny of the Welfare Funds (Scotland) Bill’s FM.

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27 Financial Memorandum, paragraph 39
28 Aberdeenshire Council, written submission
29 COSLA, written submission
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so did you comment on the financial assumptions made?
1. Aberdeenshire Council took part in the consultation on the draft Welfare Funds (Scotland) Bill in November 2013. However the consultation paper did not include any financial assumptions.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not applicable

Did you have sufficient time to contribute to the consultation exercise?
3. Yes, based on the consultation document which was issued.

Costs
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.
4. The FM reflects that the administration funding for local authorities for 2015/16 has not been determined although provision has been made for it.

Since the FM assumes that the Bill will result in no additional costs for local authorities, it would perhaps have been useful to include local authority data on the costs of administering the existing scheme.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. The savings referred to in the FM may not be capable of being realised if the number of applications to the Fund increase as this would result in additional administration costs for local authorities.

Based on the number of crisis grant and community care grant applications received in the first quarter of 2014/15, Aberdeenshire’s crisis grant applications are forecast to increase by 10% on the previous year and the community care grant applications by 22%.

It also does not seem appropriate to expect savings in administration costs from the removal of the second tier review function as this has been such a small part of the Scottish Welfare Fund workload to date.
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?

6. If the assumption within the FM that the Bill will not impose any additional costs is correct, there will be no additional costs arising from the Bill.

In Aberdeenshire the cost of administering the Scottish Welfare Fund already exceeds the administration funding provided and that cost is not always met by increasing the budget. Sometimes it comes from the re-targeting of resources from other work areas, which has a corresponding impact on performance in those areas.

**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?**

7. The FM reflects the uncertainty associated with the Bill’s estimated costs and in particular the administration funding for 2015/16.

The FM does not reflect the uncertainty thereafter nor does it indicate how any additional costs associated with an increase in applications to the Fund would be dealt with.

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. Yes, the FM captures the estimated costs associated with moving the second tier review function from local authorities to the Scottish Public Service Ombudsman.

**Do you believe that there might be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. None that are foreseeable at this time.
Argyll and Bute Council welcomes the opportunity to respond to this consultation. The Council considers that the interim scheme has provided an effective source of support to some of the most vulnerable in our communities. However it notes that many applicants are not eligible for support from the Scottish Welfare Fund (SWF) as their hardship often reflects a delay in processing their benefit application and they have to be referred back to DWP for a short term benefit advance. Others were initially not eligible as their hardship stemmed from a benefit sanction and they were excluded from the scheme until April 2014. With the introduction of the new claimant commitment, the incidence of claimant sanctions is expected to rise. The council is aware that this is in line with UK government policy but is concerned about the impact on the welfare of some of the most vulnerable members of our community.

The Council considers that the introduction of SWF has worked well. Although volumes of applications have reduced from those experienced by DWP, this is in part due to the reduced reliance on cash for support and the increased use of goods and vouchers. Whilst undoubtedly less popular with claimants, this means that assistance is much more targeted. The new national contract from Scotland Excel has also meant that better value can be obtained through increased purchasing power. The council considers these aspects to be a major improvement. The council has also welcomed the fact that grants do not have to be repaid and would be keen to see this element enshrined in legislation.

One of the key differences between Scotland and England is that a national scheme has been introduced in Scotland and it has not been left to individual local authorities to introduce different schemes for each local authority area as in England. This means that there is consistency of decision making. It should be noted that in Wales the decision was taken to have a single scheme operated by an outsourced company – Northgate – rather than by individual local authorities. It is disappointing that the consultation provides no information about how well each of the different approaches taken in England, Wales and Scotland is working. Such a review would be welcomed before the new guidance and detailed regulations are drafted.

Because of the short time for introduction, the opportunity was lost to commission a single national computer system to support the scheme and each local authority had to make its own arrangements. There are 4 main systems in use. There is now an opportunity to commission a single hosted national system to support the new permanent scheme, with a single set of parameters and interface facilities. This would be consistent with the national public sector ICT strategy.

This Council cannot sustain the current high cost of administering Scottish Welfare Fund payments. This council has serious concerns about the administration costs of the current scheme which is currently very expensive to administer for small authorities with relatively low volumes despite making use of the Scotland Excel contract. There is an opportunity to consider the efficiencies of a single consolidated team to support telephone and on-line applications with the benefits of economies of scale. It would be much easier now to build in local variations in referrals, as this has all been worked out and is now known. This would be one way to improve its cost efficiency. The opportunity should be taken to ensure that the new permanent scheme is designed with key improvements in efficiency in mind.
Consultation

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

1. Yes, Argyll and Bute Council responded to the consultation issued in November 2013 entitled "Consultation on draft Welfare Funds (Scotland) Bill and options for challenging decisions made by local authorities on applications to the Scottish Welfare Fund".

Our response stated:

“There is now an opportunity to commission a single hosted national system to support the new permanent scheme, with a single set of parameters and interface facilities. This would be consistent with the national public sector ICT strategy. There is also an opportunity to consider the efficiencies of a single consolidated team to support telephone and on-line applications with the benefits of economies of scale. It would be much easier now to build in local variations in referrals, as this has all been worked out and is now known. This council has serious concerns about the administration costs of the current scheme which is currently very expensive to administer for small authorities with relatively low volumes despite making use of the Scotland Excel contract. This would be one way to improve its cost efficiency. The opportunity should be taken to ensure that the new permanent scheme is designed with key improvements in efficiency in mind.”

In relation to the proposals for second tier review we said:

“A local authority panel is the current method for second tier decisions. These reviews can be carried out quickly and at a relatively low cost. The latter is important as this needs to be proportionate. At present it is costing an excessive amount to administer the scheme particularly for smaller authorities despite having very low costs for second tier reviews. Increasing the bureaucracy of second tier reviews will further add to these costs without providing demonstrable value. The average award of a crisis grant cross Scotland is £60. Any review by SPSO or a tribunal is likely to cost many times the average award level, and it is inconceivable that they would be able to do this within a week. Whilst the average award value for a community care grant across Scotland is much larger at c £578 and the timescales are not so constrained, it is still likely that the costs of second tier reviews by these other bodies will be greater than any award.”

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

2. The financial memorandum makes no comment on the matters raised in our earlier response.

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

3. We asked for a week’s extension to allow the response to be approved at our council meeting and this was agreed. We sent a draft of the response in advance of the original deadline so as not to delay review of comments.

Costs

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.

4. The financial memorandum is significantly understating the real costs of administering the scheme. The Council receives £55,000 to administer the scheme annually. This is enough administration funding to employ 2 FTE staff to work on SWF. To date, the Council has needed to employ 4 FTE to handle the volume of claims and
provide cover for sickness and holidays. This based on a telephone service only with no face-to-face service and no out of hours service. There has also been significant supervisory and management time expended in dealing with reviews, supplier arrangements, monthly reporting requirements, and practitioner meetings which is not costed directly to this activity. Excluding these costs, it cost a total of £115k to pay out £304k last year which is not administratively efficient. This cost is made up of £101k staffing costs and £14k on software and other costs of making payments. The council is significantly subsidising the costs and this is unsustainable. This is likely to be the case in many smaller councils.

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

5. The estimated costs on local authorities in the FM are understated for the reasons set out in the response to question 4 above.

The figures quoted for set up and running costs for the SPSO appear reasonable. However, these are based on 2000 second tier review cases whereas the statistics show that there were only 144 such cases in 2013/14 across all of Scotland. If the lower cost based on 400 reviews were applicable, that would produce a cost per review of £1,736 compared to an average award of a crisis grant of £71 and community care grant average award of £644.

The figures for programme funding are set out at the budgeted levels of £33m. This compares to actual spend of £29m for 2013-14 with £4.26m to be carried forward to 2014-15. At present, it is not clear why the projections support this increasing back up to the full budget of £33m. This amount exceeds the monies spent by DWP. Also the arrangements for disbursing community care grant monies are tighter in that in most cases goods are provided rather than cash as previously and local authorities benefit from their consolidated buying power.

**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?**

6. No – this council is not content that it will be able to meet the ongoing administration costs of the SWF scheme within the monies being made available. The council will have to look at alternative arrangements for carrying out its responsibilities jointly with other bodies in order to realise some economies of scale, although this may be to the detriment of local arrangements.

**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?**

7. It would be appropriate to collate actual costs for operating the interim scheme for 2013-14 to inform the FM. We are not aware that these have been requested from local authorities. This would help to reduce uncertainties.

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. See response to questions 5, 6 and 7 above re costs for local authorities. The only other potential costs would be for the voluntary sector who may act as advocates for potential welfare fund claimants and their costs are not captured.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. Subordinate legislation will determine the shape of the scheme and will have an impact on the quantum of the costs. However these are not expected to be additional to the type of costs outlined within the financial memorandum.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. The Council did respond to the consultation exercise but did not comment on financial assumptions made

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not applicable.

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

Costs
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.
4. The Council is of the opinion that the current level of administration funding provided by the Scottish Government is not sufficient to provide the service level processing times required for community care (15 days) and crisis grants (2 days). Since the commencement of the Welfare Fund on 1 April 2013 the following have occurred all of which have increased the number of applications to the fund: awareness of the fund has increased, a number of changes have been made to the guidance all of which have led to increased demand, the numbers of customers who have had their benefit sanctioned has increased leading to more applications to the fund. The Council believes that the administration funding requires to be increased by 20% to ensure the provision of good customer service.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. The Council is of the opinion that the level of grant funding is reasonable and accurate but that the level of administration funding is not due to the reasons detailed at 4 above.

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?
6. The Council is of the opinion, as stated at 4 above, that the level of administration funding is not sufficient to provide the level of service required. Given that the fund is a new burden to Local Authorities the Council is of the opinion that these additional administration costs should be met by the Scottish Government. Alternatively, the Scottish Government should allow Local Authorities to move funding from the grant fund to the administration fund to ensure good customer service is delivered.
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?

7. The Council is of the opinion that the margin of uncertainty is reflected within the FM.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. The Council is of the opinion that the FM does not capture all costs associated with the Bill. The following costs are not included: publicity for changes to guidance (both as a result of the Bill and any future changes), IT/software costs. In addition the Bill does not include any provisions for dealing with Fraud. Dealing with Fraud could involve a visiting programme on a percentage of claims to establish that there was a requirement for the goods. Currently it is assumed the Local Authority will meet these costs. The Council is of the opinion that these costs should be met by Scottish Government.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. The Council is unable to determine or quantify any possible future costs at this time.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. No

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

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

Costs
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.
4. Yes, we have considered the implications and the FM and are content that these cover those affecting Comhairle nan Eilean Siar.

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

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?
6. Yes given the current allocation of funding from Scottish Government.

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?
7. Yes

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Yes

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
9. None that we can anticipate at this time.
Introduction
COSLA welcomes the opportunity to provide written evidence to the Finance Committee on the Financial Memorandum of the Welfare Funds (Scotland) Bill. This written evidence complements the submissions of member Councils, and reflects Scottish Local Government Leaders’ views. COSLA will also be sending comments on the policy aspect of the Bill to the Welfare Reform Committee.

Background
COSLA is the representative body for all 32 Councils in Scotland. Councils are already administering Crisis and Community Care Grants on an interim basis, as agreed by COSLA Leaders and the Scottish Government, using jointly developed guidance.

COSLA has worked closely with the Scottish Government Bill Team and councils around the content of the Bill and the accompanying Welfare Funds (Scotland) Regulations.

COSLA welcomes the undertaking to place the Scottish Welfare Fund (SWF) on a statutory footing and is satisfied the contents of the Bill provide the suitable framework to deliver the policy intention whilst retaining enough flexibility to allow local authorities to meet local needs.

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment of the financial assumptions made?
1. COSLA submitted a response to the Consultation on the draft Welfare Funds (Scotland) Bill and options for challenging decisions made by councils on applications to the SWF in February 2014.

Limited comments around the financial assumptions were made and these related to the SWF review process, the costs of which councils are absorbing internally during the first two years of the interim scheme.

COSLA’s response highlighted that, regardless of the final option chosen for 2nd tier review of the SWF, councils would still have a role to play and need to be adequately resourced to carry-out that role.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. COSLA is concerned that the comments made on the financial assumptions around the area of SWF review are not accurately reflected in the FM.

The FM recognises the fact that local authorities have absorbed the costs of providing the SWF review process, however suggests that following the set-up of independent review by the Scottish Public Services Ombudsman (SPSO), local authorities will no longer have to meet any costs associated with these reviews. It is true that councils may no longer have the costs associated with actually hearing the second tier review, they will however,
as indicated in the original response, still be required to perform the first stage review and to prepare and respond to those cases which progress to 2nd stage via the SPSO.

The SPSO prepared a briefing note which provided a high level overview of how they intend to administer the SWF review process however this did not provide details of how this will be delivered on a day to day basis, nor include what will be required of councils. COSLA is committed to working with the Scottish Government (SG) and the SPSO to ensure any process established is fit for purpose; whether this will achieve the savings suggested in the FM remains to be seen.

**Did you have sufficient time to contribute to the consultation exercise?**

3. Yes, COSLA’s response to both this and the original consultation were both approved by COSLA Leaders.

COSLA thanks the Finance Committee for the short extension agreed to allow this latest response to be approved by COSLA Leaders on 29th August 2014.

**Costs**

*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.*

4. The Bill advises local authorities have a duty to maintain and administer the fund and that local authorities can, but are not obligated to, top up the fund locally. This replicates the agreement already in place between COSLA Leaders and the Scottish Government for the interim scheme.

The FM does not reflect the intention for SPSO decisions on 2nd Tier review to be binding on local authorities. The interim SWF operates on a discretionary, budget-limited basis with applications being prioritised according to need. COSLA has concerns that if number of reviews rise, and the number of cases being overturned by SPSO increases, local authorities may encounter potential difficulties managing their SWF budget in year. How this works in practice needs careful consideration, to ensure budget management is not compromised by the amended 2nd tier review process.

The Bill also allows Scottish Ministers to make further provisions about the procedure local authorities should follow by way of Regulations. The accompanying draft Welfare Funds (Scotland) Regulations include details of decisions on fund applications, specifically, what a decision in writing should include. Local authorities have advised COSLA that they will in all likelihood incur costs to ensure decision notices comply with this requirement through changes to the IT systems.

COSLA Leaders would like the Scottish Parliament to note their concern that the current level of funding needed in future years may not be enough to sustain the demand as the welfare reform changes continue to take effect.

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

5. The administrative funding provided to councils falls someway short of the actual costs associated with the service being delivered. This inadequate funding is causing significant concern within local authorities.

COSLA accepts the Scottish Government topped up the administrative funding transferred from Department for Works and Pensions (DWP) for 2014/15 to 5 million, following
discussions with COSLA, and that provision has been made for this within budget plans for this to be maintained for 2015/16. Even with this top up, the funding still falls some way short of the 6.8 million originally requested, following work completed with COSLA members.

The level of funding provided to local authorities to administer the scheme is the level of administrative funding DWP allocated to achieve the previous transactional discretionary elements of the Social Fund scheme. The DWP provided a ‘typical’ loan system under the Social Fund, the amount of administrative funding allocated was around 20% of the total fund available for distribution.

The Scottish Government is of the belief that 15% of the programme budget is adequate to administer SWF in the context of typical administration grants procured being in the region of around 10%. However the Welfare Funds (Scotland) Bill, the accompanying Welfare Funds (Scotland) Regulations and the jointly agreed interim guidance all make it clear that councils should provide additional support and assistance over and above the administration of any award.

The FM highlights discussions on administrative funding will continue to take place to establish the costs and benefits associated with administering the funds under the permanent scheme. COSLA continues to actively engage with local authorities around the costs of administration to provide evidence to form the basis of these continued discussions.

With regard to savings set out in the FM this response has already highlighted the concerns around the costs for local authorities associated with the 2nd tier review process moving to the SPSO. The 2nd tier review function has to date been a small part of the workload of the SWF teams, the suggestion that savings can be released from the transfer of this limited function seems unlikely.

The FM also suggests the that councils will experience downward pressure on other local authority budgets such as section 12 emergency social work payments and homelessness in the longer term. COSLA does not dispute the benefits of local delivery or the ability of local authorities to offer holistic support to applicants, but would suggest the impact on the pressure of these already oversubscribed budgets has been minimal to date. Savings in the area of emergency social work payments and homelessness are difficult to achieve in a steady state even more so alongside the current programme of welfare reform.

_{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?}_

6. Local authorities are experiencing significant pressure over the inadequacy of the administration costs for the interim scheme.

The lack of adequate funding exacerbates the funding issues local authorities are already facing due to reductions in the funding for Housing Benefit, establishment of the Single Fraud Investigation Service and the financial implications of welfare reform in general.

COSLA is working with all local authorities to accurately identify the actual costs associated with dealing with SWF applications. COSLA is of the view that the Scottish Government should consider these findings carefully and provide adequate resourcing as appropriate. Failure to address the concerns highlighted around administrative funding
could potentially jeopardise the wider outcomes the Welfare Funds (Scotland) Bill is trying to achieve.

**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?**

7. COSLA worked closely with the SPSO and Scottish Government around the subject of reviews. COSLA supports the Scottish Government view that the review numbers will rise as the process becomes more widely known but that numbers will not rise to those seen by the Independent Review Service when they were responsible for reviewing Social Fund decisions, not least because local authorities provide a holistic service with other outcomes where a payment from SWF is not available.

With regard to the timescales for reviews actually transferring to the SPSO, the FM does not provide any indicative timescales and further work is required on the end to end process to determine how accurate the suggested funding transfer is.

COSLA agrees with the costing of SPSO model and the estimated costs, based on the upper and lower number of reviews, and welcomes the fact there is provision in the Welfare Reform Mitigation Budget to meet the initial set-up costs for the SPSO review function and the running costs in years 2014/15 and 2015/16

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill?**

**If not, which other costs might be incurred and by whom?**

8. Notwithstanding the points made earlier in this response, COSLA does not anticipate any additional costs being incurred in relation to the Bill.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. COSLA does not anticipate significant future costs associated with this Bill. The Bill provides the framework, which along with the regulations and statutory guidance will put the scheme on a statutory footing.

The objectives of the fund are clear and the package of regulations and statutory guidance will provide national consistency.

The statutory guidance provides guidance on the day to day running of the fund and COSLA would anticipate any futures changes could be achieved by amending the statutory guidance, not the Bill or Regulations.
Consultation

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

1. Dundee City Council submitted a response to the draft Welfare Funds (Scotland) Bill however no comment was requested or provided in relation to any financial assumptions relating to the Bill.

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

2. Not applicable

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

3. Yes

Costs

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.

4. While the level of administration grant to administer the scheme for 2015/16 and beyond has still to be confirmed we note that provision has been made within the Scottish Government’s budget plans for this to remain at the same level. Should this remain at the historical level, Scottish Welfare Fund running costs within Dundee City Council will continue to far exceed the grant funding provided despite significant efficiencies in service delivery being achieved over the last 12 months. We believe that in Dundee we are providing a good, holistic service in line with the Scottish Government’s aspirations and through the use of local suppliers and social enterprise we are delivering local community benefits. However there must be recognition that to deliver this type of service, there needs to be appropriate and sustainable investment in the administrative infrastructure to support the SWF.

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

5. As noted in question 4 the administration costs continue to be significantly underfunded therefore we do not consider the costs to be reasonable and accurate. We would disagree with the suggestion that local authorities may make savings through no longer having to undertake second tier reviews. The current “cost” of undertaking second tier reviews relates to staff being released from other duties to participate in the review therefore this is a displacement of staff costs already being incurred by Dundee City Council and would not result in any direct financial saving. What hasn’t been acknowledged in the Financial Memorandum is the cost in staff time which will be incurred by local authorities in preparing papers to be lodged with the SPSO and any subsequent representation at second tier review if required.
We are not in a position to comment on the reasonableness of the potential cost range of setting up and running the SPSO second tier review function given there is no detail behind the constitution of the salary costs.

**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?**

6. As per above, Dundee City Council cannot continue to meet the administrative running costs of the Scottish Welfare Fund within the current level of funding provided.

**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?**

7. No. It is difficult to predict at this stage what the future demand and spend for Crisis and Community Care Grants will be given the relatively low, (but rising) initial expenditure baseline position in 2013/14. This is dependent on a number of factors including inflation on the price of goods and services offered as fulfilment options but more significantly will be driven by individuals’ needs, particularly as other Welfare Reform changes such as Universal Credit and the move to PIP start to make an impact. It would be helpful that some estimate was made of the potential increased demand for Crisis and Community Care Grants over the medium term.

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. As noted in the response to Q5 it is reasonable to expect that local authorities will continue to incur a cost in staff time in providing the SPSO with information to assist with second tier reviews.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. It is unclear what potential further subordinate legislation would be required to be introduced in relation to the provision of Welfare Funds at this stage.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes

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

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

Costs
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.
4. At a local level, we are experiencing significant pressure on our SWF budgets. This is unsurprising given the socio-economic, poverty and wider deprivation indicators in our area. Core programme spending is managed through setting priority levels, and for the year to date these are set as “HIGH” for both Crisis Grants and Community Care Grants. This is resulting in increasing numbers of applications being refused (or accepted but at a lower value than that applied for), where the assessment of priority does not match our priority levels for payment. We anticipate programme funding being fully utilised in the current financial year.

Administrative funding also presents a challenge in terms of the resources necessary to deliver a fully effective service. Whilst not arguing for more administrative funding at the expense of programme funding, there does require to be a realistic provision of funding to deliver the service. The pressure on the team can occasionally require additional support to be provided from the core Benefits Processing Teams, which can lead to issues in that service area.

It is unlikely that significant “savings” will accrue from the decision to transfer 2nd Tier appeals to SPSO. Cases will need to be produced and presented to SPSO, with the potential opportunity for decisions to be overturned. This would increase pressure on the programme funding budget that cannot be fully controlled by the Council.

Robust evidence to support the claim that the cost of core services, S12 payments and homelessness costs are reducing through LA’s administering the SWF has yet to be seen. It is not appropriate to suggest potential savings can accrue in this area.
without a strong evidence base. It is however, acknowledged that a holistic approach can be of benefit to our most vulnerable residents in terms of managing their situation, but this of course can result in the Council requiring to deliver additional services to a previously unknown client group.

The option to top funds up locally is a discretion that usefully remains in the Bill although use of this would clearly have financial implications locally. It is important to emphasise the discretionary nature of this power.

There will be the potential (almost inevitable) for further IT software changes and associated costs (eg around decision letters) arising from the legislation and associated regulations. It will be important to ensure these are adequately funded.

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

5. Not entirely for the reasons outlined in section 4. Furthermore, in relation to SPSO activity around 2nd Tier appeals, this in itself could represent a significant cost burden to the process. As pressure builds on programme funds, it could be anticipated that more applications will be refused and more appeals therefore lodged. This is clearly an unknown and will require ongoing review.

Care must be taken to consider the cost of the process (from the initial application through to 2nd Tier appeal) against the amount of grant funding being applied for. In EAC for 2013/14, the average value of CCG and CG awards were £505 and £76 respectively. Proportionality must remain a consideration for the scheme.

The holistic approach does bring additional costs, particularly where a client was previously unknown to the Council.

**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?**

6. Additional pressures on the administration of SWF will impact on the core budgets of the “host” service. In the case of EAC, this is the Revenues and Benefits service, which is already experiencing increased demand, and reduced administrative funding from DWP. Delivering this important service remains a key focus, however funding it at the expense of other (equally important) service areas is not sustainable.

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

7. The greatest level of uncertainty with the Bill is around 2nd Tier appeals. The Bill does capture some sensitivity analysis around this, but it is difficult to anticipate if the lower / upper levels are appropriate.

**Wider Issues**
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. I am not aware of any additional costs that may be incurred, although anecdotally CAB are reporting significant volumes of SWF appeal work. What impact 2nd Tier appeals moving to SPSO is likely to have is difficult to gauge without knowing how SPSO intend dealing with these.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. No
FINANCE COMMITTEE CALL FOR EVIDENCE
WELFARE FUNDS (SCOTLAND) BILL: FINANCIAL MEMORANDUM
SUBMISSION FROM FALKIRK COUNCIL

Consultation

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

1. Falkirk Council submitted a response to the Scottish Government consultation on the Draft Bill which closed on the 7th February 2014. The consultation did not specifically ask about the financial assumptions and we did not include any comments on the financial assumptions.

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

2. Not applicable.

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

3. Yes – the timescales associated with the consultation exercises have been reasonable.

Costs

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.

4. Paragraph 39 of the Financial Memorandum suggests that there could be savings for councils arising from the SPSO undertaking second tier reviews but it doesn’t say whether councils are likely to incur costs associated with providing information for these reviews.

The administration funding for 2015/16 is not clear. The cover notes say that the SWF budget line in the Draft Scottish Budget for 2014/15 indicates total funding of £37.6m which would indicate that the plan at that time was to provide £4.6m – a reduction of £0.4m. However, Para 17 of the financial memorandum says that the allocation for 2015/16 has yet to be decided but provision has been made within budget plans to maintain it at the same level.

Any reduction in the administrative funding provided will have significant implications for us, given we already use our own funding to make up a significant gap between the costs of running the fund and the amount of administration funding provided.

In para 30 states that decisions re. funding for 2016/17 will be allocated from their block grant in the same way as other funding pressures are met i.e. it will be considered alongside all of the other spending pressures.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. To date the number of 2\textsuperscript{nd} Tier reviews requested within our Local Authority has been very low and reviews have been carried out by managers not involved in delivery of the Scottish Welfare Fund, as part of their managerial duties. Therefore there will be no direct savings associated with the removal of the requirement to conduct 2\textsuperscript{nd} Tier reviews within the Local Authority.

The costs associated with the SPSO administering 2\textsuperscript{nd} Tier reviews (£250-400k per annum) seem to be relatively significant, given that within this Local Authority we have managed to meet the requirement around 2\textsuperscript{nd} Tier reviews within our existing resources.

*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?*

6. As stated above (Question 4) we are concerned by the possibility that there could be future cuts in the administrative funding, which will result in additional financial burdens on the Council that we may be unable to meet.

Ideally the administrative funding should be maintained at least at the level it has been to date to ensure the service can be delivered effectively to support our more vulnerable customers.

*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?*

**Wider Issues**

*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. As mentioned above it is unclear whether the Local Authorities will incur significant costs in terms of providing information to the SPSO in relation to the 2\textsuperscript{nd} Tier Reviews. Without having an understanding of what the scale of these costs could be it is not possible to look at how these could be met.

Additionally the Bill allows for the Funds to be ring-fenced. This could bring some additional administrative requirements to Local Authorities around reporting to the Government, which could result in additional cost to the Local Authorities. However Paragraph 34 of the Financial Memorandum says that the Bill doesn’t make any significant alterations to the administrative requirements for Local Authorities and the Government does not anticipate any additional net costs for councils.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes. Fife was represented at an initial meeting when the Bill was discussed. At the time the main focus was on the second tier review process and the guidance. Concern was also expressed about the administrative costs. However it was still relatively early in the process and the ‘true’ costs of running the Fund were being ascertained particularly with regard to maintaining a holistic approach.

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

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

Costs
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.
4. No. Administering the Fund at a Council level has been really worthwhile as we are able to work with different Council services and the third sector to deliver for vulnerable people. However the expense of administering the Fund remains an issue. Funding of £267,000 has been received for 14/15 but our overall requirement is £553,000. This leaves a gap of over £286,000 that is filled by the Council’s ‘Welfare Reform’ budget. This was agreed by the Council’s Executive committee.

This provides a level of staffing that can just about deal with the grants in timescale. In 15 months we have found it is not simply a transactional function as some detailed conversations are required with customers, agencies and suppliers to ensure Fife sustain a holistic approach.

As time progresses some more internal efficiencies will be made but maintaining a high level of service would not be possible if we just used the funding received; and there is no certainty that Fife Council’s contribution can be continued beyond the current year.

A further concern arises through the introduction of Universal Credit. Some households will struggle with managing a monthly benefit received in arrears and this will likely lead to increasing calls on the Fund, especially through a transitional period, with an impact on running costs.

The savings to the Council with regard to the SPSO would be minimal. The current ‘tier 2 review’ process is awkward to administer as it is a challenge to keep members
of the panel up to date on developments. The number of reviews is low with the main reason being that customers are well informed of the process and the reasons for the decisions reached.

The set up costs for the SPSO are based on a notional 2,000 reviews. Provision is made for running costs of £400,000 which will enable 2,000 reviews to be undertaken. Given the work Fife Council is to undertake for less that £300,000 this seems generous – or more likely amplifies the argument made above that local authorities are not given sufficient administrative funding.

Using the SPSO will ensure independence and hopefully a greater level of expertise and learning due to the combined volumes they will be dealing with. However the cost saving to a Council will be low as the detail of the case will still have to be compiled and sent for review as is currently the case.

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

5. As stated in question 4 the administrative costs are not sufficient to do what is required to undertake the function properly particularly if adhering to a holistic approach. While LAs will get more efficient as time progresses the current funding is never likely to cover the full costs of the operation. At this time it is also unknown if the demand for the Fund will continue to steadily rise or if they will level off.

As regards savings it is too early to tell how Councils will save on the ‘cost of care’. It is safe to say that this assertion has not been tested as this would have to be measured over a longer time period.

In Fife we estimate it costs £40 to bring an application to decision (based on the estimated 14,000 applications in 14/15). The argument can be made that £40 to award a Community Care Grant of £750 is money well spent as the individual is more likely, for example, to sustain a tenancy thus reducing future homelessness. This assertion is probably more tenuous with regard to a £60 Crisis Grant. It will help the individual but is unlikely to save the Council money in the longer term.

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?

6. No. Currently the service has to apply for the additional funding which so far has been forthcoming. However the funding received means less for other areas of the Council.

If these additional funds are not available in future staffing levels would have to be reduced and a more basic service provided, with an impact on wellbeing of vulnerable people.

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?
7. The estimated costs are still unknown given the erratic pace of the Welfare Reform programme. The further implications of Welfare Reform and their cumulative impacts (e.g. Universal Credit and increasing benefit conditionality) are not accounted for. It is likely that more strain will be put on the Fund.

**Wider Issues**
*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. Given the information we have currently it doesn’t accurately reflect on actual costs being absorbed by Councils.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. At this time it is difficult to foresee what additional costs there might be.
FINANCE COMMITTEE CALL FOR EVIDENCE
WELFARE FUNDS (SCOTLAND) BILL: FINANCIAL MEMORANDUM
SUBMISSION FROM GLASGOW CITY COUNCIL

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. GCC Response: Yes, the council did respond to a previous consultation.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. GCC Response: In the consultation referred to above the council commented on Section 1 of the bill. The Bill sets an obligation for local authorities to have a fund however the risk is that if funding is not provided by Scottish Ministers then it will fall to local authorities to provide funding from within their overall settlement.

It is noted that the wording in this section still raises a risk for local authorities finances.

Did you have sufficient time to contribute to the consultation exercise?
3. GCC Response: Yes.

Costs
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.
4. GCC Response: The FM reflects that local authorities will incur administration costs.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. GCC Response: Glasgow City Council administers the Scottish Welfare Fund within its Customer and Business Services division and as such has found that the current level of administration costs are sufficient. However currently only applications with a priority level of high are being approved in order to remain within programme funding.

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?
6. GCC Response: Please see response above.

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?
7. GCC Response: The FM does not reference the risk of an increase in applications to the Fund resulting from welfare reform changes that are still to take effect eg. Personal Independence Payment and also the conditionality for working
households that is expected to come with Universal Credit. This would have pressures for both the programme funding and also administration funding if local authorities were faced with increased applications.

**Wider Issues**

*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. GCC Response: None identified.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. GCC Response: None identified.
FINANCE COMMITTEE CALL FOR EVIDENCE
WELFARE FUNDS (SCOTLAND) BILL: FINANCIAL MEMORANDUM
SUBMISSION FROM THE HIGHLAND COUNCIL

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. No

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

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

Costs
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.
4. No. Main concern is Administration Funding, where Council’s staffing costs directly attributable to SWF (at £149k) exceed available funding (of £117k) by approximately 27%. Staffing is 5fte + 0.5fte team leader, but we also incur system and processing and fulfilment costs.

Programme Funding at current level of £33m. will mean that it will be necessary to adjust the priority levels in order to constrain some demand.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. In general, yes. It is difficult to understand however (based only on local experience so far) why sum for Second Tier Reviews is so high.

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?
6. No. If material in value they should be centrally funded.

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?
7. Yes.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Yes
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
9. Unaware at present of any future costs.
I refer to your call for written evidence in relation to the Welfare Funds (Scotland) Bill and attach the submission from Moray Council as agreed by the council’s Policy and Resources Committee on 12 August 2014. If you require any further information in this regard, the lead officer from the council on this matter is Mark Palmer, Corporate Director (Corporate Services).

**Welfare Funds (Scotland) Bill – Submission by Moray Council**

Moray Council achieved a high rate of success in implementing the interim scheme for the Scottish Welfare Fund during 2013/14, resulting in 99% of the funding allocated by the Scottish Government being paid out to those in need. The Council achieved this outcome through its advance preparations, working with local partners and the hard work of the team involved in assessing and processing claims. Having only paid out valid claims that met the criteria in Scottish Government guidance the Council is concerned about the high risk of claims exceeding the amount allocated by the Government in future years. This is our main concern with the Bill.

There are a number of consequences arising from the risk described above. If the amount of claims exceeds the funding in any one year the Council will need to decide whether to take money from other Council services to cover any shortfall. The Council could alternatively simply cease making payments until the start of the next financial year or, if the difficulty is highlighted part way through the year restrictions could be applied to the criteria. This last option will introduce inconsistencies to payments being made in-year and potentially inconsistencies from one year to the next. It follows that there is also a real risk of inconsistent application of the fund from one local authority area to the next. Put simply, this is a demand led service and, unless there is a commitment from the Government to fund all applications that meet the national criteria, it is unlikely that the scheme will be applied consistently across Scotland.

It would be reasonable to expect the amount of funding required to meet demand to increase over the next few years in light of the Government’s announcement to allow the fund to be used to deal with problems arising directly from financial sanctions imposed by the DWP and also as more people become aware of the existence of the scheme.

Moray Council has been provided with additional funding of £50,000 per annum to deal with the administration costs of the fund. This is about half of the ongoing costs that the Council has had to employ to manage the fund effectively. Therefore, the Financial Memorandum does not capture the reasonable costs associated with the Bill.

Much seems to be being made of second tier reviews being undertaken by the Scottish Public Services Ombudsman. In the first year of operation Moray Council
had one such referral. The referral was absorbed by existing senior management. Care should be taken in allocating additional funds to the Ombudsman until a reliable assessment of the volume of referrals can be made. Meantime, any additional funding available in this area should go towards the shortfall in the administration funding referred to above.

Caroline Strong
Corporate Secretary to Mark Palmer
Consultation

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, North Ayrshire Council responded to the consultation exercise preceding the Bill but did not make any comments about the financial assumptions made as the full implications for the Council were not known at that time.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not applicable.

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

Costs

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.
4. The Bill has financial implications for North Ayrshire Council in terms of the administration of the Scottish Welfare Fund; these costs are not accurately reflected in the Financial Memorandum (FM).

The Council received £174,880 administrative funding for 2014-15; this has been expended fully employing 6 FTE staff and other associated costs.

The Council received 4,316 crisis and 2,129 community care grant applications during 2013-14. The number of applications and expenditure has increased significantly since the Scottish Government made the interim scheme accessible to people on low income with 1,629 crisis and 748 community care grant applications received in the first quarter of 2014-15; up 101% on the same period last year.

The Council projects that for 2014/15 the total number of applications received will be around 12,954 compared to 6,445 in 2013/14. Based on current projections, the council anticipates spending almost £1m more in 2014/15 when compared with 2013/14. A review of the current criteria is required to manage spend within available resources.

To meet increased demand the Council invested £41,000 from its General Fund to supplement the Scottish Welfare Fund processing team by 2 FTE. In addition, Department for Work and Pension welfare reform extra burdens funding has funded 3 FTE customer services posts to complete application forms over the telephone with customers at a cost of around £81,000. This funding will run out on the 31 March 2015.
The amount of administrative funding is inadequate to meet customer demand and to deliver the Scottish Government’s processing target of 2 working days for a crisis grant and 15 working days for a community care grant.

The amount of administration funding of £5m for Scottish Councils has not kept pace with the increase in customer demand. North Ayrshire Council is concerned about the reduced level of service given to vulnerable customers if sufficient administrative funding is not provided.

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

5. The estimated £60k to £100k set up cost and £250k to £400k running cost for a separate unit within the Scottish Public Services Ombudsman (SPSO) to hear second tier reviews is excessive for an estimated caseload of 400 to 2,000 reviews; an estimated review caseload of 400 for a running cost of £250k, as set out in the FM, is a unit cost of £625, which is more than the average cost of a community care grant in Scotland in 2013-14 (£613) and does not demonstrate value for money when compared to the cost of this service being provided by Scottish Councils.

North Ayrshire Council had 3 second tier reviews in 2013-14 with 2 decisions upheld.

Scottish Councils can provide a more cost effective second tier review process by continuing with the current practice of review panels. This would release funding to increase the administrative grant and help Councils meet the demand of their vulnerable customers.

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?

6. No, North Ayrshire Council would require additional funding to meet the cost of administering demand within the required timescales.

As outlined under Section 4 the amount of administrative grant is inadequate to cover the cost of the Scottish Welfare Fund.

Section 6 of the Bill states that Scottish Government guidance may be varied or revoked; previous changes to the scheme have had a cost implication for North Ayrshire Council in terms of software changes, new promotional and other documents including the application form, changes to public Internet site and staff training.

As mentioned under Section 9 below the introduction of Regulations may incur future costs and these will need quantified.

The Scottish Government should meet these costs.

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?
7. No, North Ayrshire Council is investing more than the administration grant received from the Scottish Government and the FM does not reflect this.

There is no indication that £150,000 funding retained by the Scottish Government in 2014/15 for a COSLA development Officer, training and awareness sessions and publicity materials will continue in 2015/16; including powers to introduce Regulations and vary or revoke the scheme. North Ayrshire Council recommends the retention of this funding during this transitional period.

**Wider Issues**

*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. Yes, the FM reasonably captures the costs associated with the Bill, as it stands.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. Yes, North Ayrshire Council believes that there may be future costs associated with the Bill.

Section 5 “Welfare Funds: Further provision”, provides Scottish Ministers with the power to make further provisions by Regulations including, how an application is made, the procedures local authorities are to follow when dealing with applications, the time period to deal with applications and the circumstances in which grants may be recovered or repaid; all of these could have cost implications for Scottish Councils; for example the recovery of grants may require investigation staff and possibly a billing system if existing systems cannot be used, which will result in staff costs and software charges.

It is difficult to quantify these costs as details of the regulations are not known; but for example the annual salary of a benefits fraud investigator is £29,376 (including employers costs).
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, the Council submitted a response to Consultation on draft Welfare Funds (Scotland) Bill and options for challenging decisions made by local authorities on applications to the Scottish Welfare Fund in February 2014 with comments of an operational nature.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. No, North Lanarkshire Council is concerned that the assumptions around the costs of the review process are not accurately reflected in the Financial Memorandum. The cost of reviews for councils begins at the 1st tier stage and continue throughout the 2nd tier stage whether the review is ‘heard’ by the SPSO or any other independent body. The costs of administering the 1st stage and supporting the 2nd stage do not vanish with the transfer of the 2nd tier review hearing, rather they continue to be incurred by councils and could possibly increase if numbers of reviews were to grow under a single review body. See also response to Question 6.

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

Costs
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.
4. No. North Lanarkshire Council is of the view that there are significant financial implications to the organisation as a result of the Bill. The costs of administering the fund are considerable. North Lanarkshire Council is not adequately funded to provide the additional aspects of service delivery which are part of the Scottish Welfare Fund but did not feature as part of the previous DWP (Discretionary) Social Fund.

SWF delivers a holistic/preventative approach to making grant awards which seek to reduce harm by dealing as far as possible with the underlying and ongoing causes of crisis situations faced by customers. This involves making appointments and referrals to partner organisations that can assist customers with any causal links to their current predicament. This takes time and resource, whilst providing higher quality and more sustainable outcomes for customers over the longer term.

With regard to Community Care Grants, local authorities are engaged in the procurement of furniture items for families looking to remain in the community. This involves not only the procurement of items but also all of the financial reconciliation
work required, such as receipting, invoicing, recording and administering all items for all claims. This particular aspect of the service is administratively burdensome and while current administration allocations to councils have largely paid for decision making staff, ICT systems and assets, there is no specific additional funding for this extra element of service delivery, these costs have been absorbed by councils.

Budget allocation for Crisis, Community Care and administration of the fund was based on previous DWP usage of Social Fund for each council area, however North Lanarkshire has seen 9.73% of the national share of applications in the first 4 months of 2014 and received only 8.96% of the budget allocation. Glasgow City saw 15.57% of all applications across Scotland in the first 4 months of 2014 yet receive 23.40% of the national budget. Similarly South Lanarkshire Council saw 5.13% of all applications during the same period but received 6.5% of the national budget. If the current demand and usage remain the same throughout the course of 2014, North Lanarkshire Council will not be adequately funded to meet this level of demand.

The DWP previously received 20% of their total budget for administration costs associated with delivering the Social Fund which was a wholly transactional service. The current funding allocation model for SWF has provided local authorities with only 15% (14.32% actual in North Lanarkshire’s case) of their total budgets for the administration of a service which goes beyond the transaction to a holistic/preventative model of delivery. This difference represents a clear disparity between the previous DWP funding, the expectations of the Scottish Government and what is achievable with the currently available administration funding.

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

5. No. For the reasons stated above, the estimated costs have fallen short of actual experience for local authorities. The under-spend in year 1 should not be confused as an indication that funding is adequate for the provision of SWF. The limitations of systems, communications about the fund and the wholly different approach to service delivery from the DWP have challenged all councils during year 1. Demand for the first 4 months of year 2 has risen dramatically in North Lanarkshire and budgets are now under some pressure. We are expecting to receive in excess of 20,000 applications in year 2 compared with 13,000 in year 1.

The cost savings outlined in the FM are minimal and mostly relate to the transfer of 2nd Tier Reviews to the SPSO. In truth, numbers of these reviews have been so low that local authorities will struggle to see any real savings here. North Lanarkshire Council had to find additional resources to those allocated for SWF to cover the costs of 2nd Tier Reviews and will experience no savings as a result of this change. As indicated in our response to Question 2, The costs of administering the 1st stage and supporting the 2nd stage do not vanish with the transfer of the 2nd tier review hearing, rather they continue to be incurred by councils. The cost of the entire review process was absorbed by councils since the beginning of the service.

**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?**
6. No. North Lanarkshire Council is not appropriately funded. Administration costs of the service are a concern. Additional administration costs will have to be met by the Scottish Government on the basis that the scheme as it currently stands is a Scottish Government Scheme administered on their behalf by local authorities.

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?

7. No. The FM takes little account of external pressures on SWF and its resulting costs such as the impacts of continuing welfare reforms, changing local economies or the holistic/preventative approach of the service provided by local authorities as opposed to the transactional service provided previously by the DWP.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. No. No measure has been applied to the cost of providing the holistic/preventative agenda as part of SWF. This is a real cost to both staff time and resources and there has been no measure of it since the beginning of the interim scheme.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. Yes. There are already additional costs associated with providing administrative support to the 1st and 2nd tier review process, the procurement process and financial aspects of providing furniture items. There are also costs associated with providing the additional holistic approach which was absent previously from the DWP’s Social Fund, however it is too early to say what further costs may arise from any future changes to subordinate legislation.
Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. We have taken part in previous consultations but have not specifically made comments on the financial assumptions made.

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

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

Costs
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.
4. Existing Administration Funding provided to the authority is approximately one quarter of the actual cost incurred. Although funding for 2014/15 is yet to be confirmed it looks as if it will remain at or below 2013/14 levels. This will result in an additional financial cost to the authority.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. No comments raised.

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?
6. The authority has met the shortfall costs of Administration Funding for 2013/14 and 2014/15 through the submission of growth bids. If funding remains at the same, or lower, levels these costs will remain an additional cost burden on the local authority.

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?
7. No comments raised.

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. No comments raised.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. No comments raised.
FINANCE COMMITTEE CALL FOR EVIDENCE

WELFARE FUNDS (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM PERTH & KINROSS COUNCIL

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, the Council submitted a response to Consultation on draft Welfare Funds (Scotland) Bill and options for challenging decisions made by local authorities on applications to the Scottish Welfare Fund in February 2014 with comments of an operational nature.

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

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

Costs
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.
4. The costs of administering the fund exceed the administration grant awarded to Perth and Kinross Council. We understand that the DWP previously received 20% of their total budget to administer the Discretionary Social Fund, namely Crisis Loans and Community Care Grants. Scottish Local Authorities receive 15% of their total budgets for administration costs, despite a £9.2 million increase in Welfare Fund budget. Perth and Kinross received less than 15% of the budget to cover administration costs. We received £76,940 to administer a budget of £592,924; based on the principle of 15% Perth and Kinross Council should have received almost £89,000 in administration costs. Furthermore, there is a distinct difference between the DWP Discretionary Social Fund and the Scottish Welfare Fund and that is the approach to service delivery. The DWP scheme was a wholly transactional service; conversely the Scottish Government scheme takes a holistic approach to service delivery. Local Authorities, on behalf of the Scottish Government, look beyond the presenting issues and seek to assist customers to address underlying causes of crisis or to find longer-term sustainable solutions for customers to reduce repeat applications by acting as a gateway to other services. This is one of the successes of the fund and it should be acknowledged financially.

A holistic approach is taken to the delivery of the Scottish Welfare Fund. This takes time and resource, whilst providing higher quality outcomes for customers over the longer term.

The fulfilment options of the majority of Local Authorities to provide goods as opposed to or as well as cash or equivalent, increases the costs associated with the administration of the fund. These fulfilment options are supported by the Scottish
Government and give both Local Authorities and the Scottish Government a degree of certainty that grants are being used for their intended purpose.

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

5. No. For the reasons stated above, the estimated costs have fallen short of the actual experience for Perth and Kinross Council. The Perth and Kinross Scottish Welfare Fund budget was augmented by the Local Authority by a further 11%. Perth & Kinross Council received a budget of £76,000 for financial years 2013/14 and 2014/15 to administer the Welfare Fund. Current staffing costs total £145,000. As a medium-sized, rural/urban Authority we make all methods of application available so as to allow the greatest possible access to the scheme; online, telephone, face-to-face, paper and home visits (in exceptional circumstances). Whilst the procurement of goods on behalf of our customers is, in our view, the best and most appropriate use of the budget, this too comes with additional costs in terms of administration. Additional funding to administer the scheme at the first point of contact would be welcomed, thus reducing error and the need for both first and second tier reviews.

The limitations of systems, communications about the fund and the wholly different approach to service delivery from the DWP. Demand for the first three months of 2014/15 has risen dramatically in Perth and Kinross and both Crisis and Community Care Grant budgets are under strain. We are expecting to receive a 50% increase in the total applications to the fund, somewhere in the region of 4,500 applications during 2014/15 compared with 3,000 in 2013/14.

The cost savings outlined in the FM are minimal and mostly relate to the transfer of Second Tier Reviews to the SPSO. Perth and Kinross saw no Second Tier Reviews in 2013/14 and to-date there have been none in 2014/15. Across Scotland there were fewer than 500 Second Tier Reviews, compared with 6258 under the Discretionary Social Fund during 2011/12.

**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?**

6. No. All additional costs will need to be covered by the administration grant from the Scottish Government. The Scottish Welfare Fund is a Scottish Government Fund administered by Scottish Local Authorities on behalf of the Scottish Government.

**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?**

7. No. The FM takes little account of other pressures on the Welfare Fund, the roll out of the UK Government’s Welfare Reform agenda, current economic climate and other environmental factors have not been given full consideration.

**Wider Issues**

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. No. The FM does not reasonably capture the costs associated with the provision of goods as opposed to cash or equivalent. The Bill affords Local Authorities the right to choose their own fulfilment options, the provision of goods allows Local Authorities to assist more people in their communities, effectively making the grant budget go further. The procurement of goods involves financial reconciliation, receipting, invoicing and recording for the majority of all Community Care Grant applications. This particular aspect of the service is labour intensive and comes at a cost to Local Authorities.

_Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?_

9. It is too early to comment beyond the indications given above.
Consultation

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

1. Yes, we provided comments to the consultation on the draft Bill; and yes, we commented on the financial implications of the Bill.

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

2. We commented that an appropriate level of administration funding would be required by local authorities (LAs) administering the SWF.

The funding of £5m for 13/14 and 14/15 is clear, however there is no confirmation regarding the level of administration funding required in future years. The share of the administration funding required by this authority is far below the level of spend actually being incurred, and we believe this is the case in many LAs.

We also commented that the entire funding requirement for the SWF should be borne by the Scottish Government – the Bill continues to provide further support, in our view suggesting that the funding provided by the Scottish Government may not be sufficient to meet demand. The bill should be amended to remove this provision and should instead include provisions which state explicitly that the Scottish government should be required to provide appropriately the full level of funding to ensure local authorities have the level of required funding available to both administer the scheme and meet anticipated demand.

Finally, we commented that the available funding should be appropriately apportioned across LAs – actual spend figures from 2013/14 demonstrate that the original basis for the distribution is not appropriate and should be reviewed as a matter of urgency. Within Renfrewshire, the Council has during 2013/14 and is fully expecting during 2014/15 for the level of the Scottish Government resources to be fully exhausted prior to the financial year end. This despite making financial awards under the scheme only in the very highest of priority cases and also reducing the level of support provided. It is clear therefore that Renfrewshire Council has been provided with insufficient resources to meet local demand for support.

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

3. Yes

Costs

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.

4. The FM mentions in paragraph 38 that LAs had requested £6.8m in administration funding, however only £5m has been provided. We continue to believe that the £5m available is unrepresentative of the administration costs being
incurred nationally. Locally, the cost to administer the scheme is far in excess of the level of administration grant provided and there is a requirement for this issue to be addresses by the Scottish Government and for this to be explicit statutory obligation moving forward on the part of the Government.

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

5. Experience and evidence from the operation of the interim scheme in 2013/14 demonstrates that the £33m available for the SWF was sufficient in that the first year of operation on a national basis, albeit we are of the view the distribution of these resources does not reflect demand, particularly when Renfrewshire and as detailed in response to point 2 above. However as the availability of the SWF becomes established we fell there will be increasing demands on the total funding available; which in turn will put LAs under the increasing pressure to contribute to the SWF from their own scarce resource.

Para 39 mentions that LAs currently undertaken second tier reviews and are absorbing this costs – we believe there have been so few second tier reviews requested that there are no savings to be made by LAs from the transfer of this obligation to the SPSO.

We have no evidence of the costs to LAs of providing care services being reduced following the introduction of the SWF as is mentioned in pare 40 of the FM.

**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?**

6. We are not content that we continue to meet the administration costs being incurred over and above that funded by the Scottish Government. The Scottish Government should provide adequate funding to administer the SWF and as referred to above, this should be a statutory on the part of the Scottish Government.

**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?**

7. There are degrees of uncertainty – that highlight in relation to SPSO costs is accurately reflected but given the relatively small costs involved this is a marginal concern. What is more concerning is the potential for significantly increased demand in the years following the current spending review.

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. In terms of the organisations affected, we consider the cost headings (if not the magnitude) are appropriately captured.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**
9. We are not aware of any other costs which may be incurred, other than those we have already highlighted.
I am responding to the Finance Committee’s general call for evidence on the Welfare Funds (Scotland) Bill’s Financial Memorandum.

As you will be aware, the Scottish Public Services Ombudsman is a SPCB supported body. The Act establishing the Ombudsman, the Scottish Public Services Act 2002, confers a number of governance duties on the SPCB including scrutinising and approving the Ombudsman’s annual budget. The SPCB therefore has a direct interest in any proposals which will have financial implications for the Ombudsman as the SPCB will have to fund the associated additional costs. The issue of whether the proposed changes should be implemented is a matter for the Parliament.

Turning to the questionnaire, the SPCB has restricted its comments to matters concerning the proposed new role for the Scottish Public Services Ombudsman and therefore provides comments on questions 1, 4-7 and 9 as follows:

**Consultation**
*Did you take part in any consultation exercise proceeding the Bill and, if so, did you comment on the financial assumptions made?*

1. Answer - No

**Costs**
*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.*

4. Answer – As mentioned above, the SPCB funds the Ombudsman. We have not been involved in the preparation of the financial estimates set out in the Financial Memorandum (FM). The FM states that the Scottish Government will transfer funding to the SPCB for set-up costs in 2014-15 (£60k-£100k) and for running costs in 2015-16 (£400k). From there on in, we assume that the Ombudsman will bid for resources through the SPCB’s annual budget process and that the additional costs will be met from SPCB funds. We would wish the Finance Committee to be aware that these proposed changes could increase the SPCB’s overall budget bid for 2016/17.

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

5. Answer – We were not consulted on the financial implications but understand that the Government worked with the Ombudsman, who has relevant experience of estimating costs having taken on additional complaints type functions e.g. Waterwatch and prison complaints. We do note, however, that the proposed new role is not a complaints handling function for which the Ombudsman already has appropriate processes and procedures in place but an entirely new role which the Ombudsman intends will sit apart from his other functions.
Given the uncertainty over the number of reviews likely to reach the Ombudsman we note that a planning assumption of 2,000 reviews per year has been used to provide figures for the cost of setting up and hosting reviews within the Ombudsman’s office which is based on the costs of delivery a similar scale review function by the Office of the Social Fund Commissioner for Northern Ireland.

Figures have been provided for a low and high number of reviews based on 400 and 2,000 respectively, but no estimate has been provided should the number of review cases exceed 2,000. In 2011 the number of second tier reviews undertaken by the Independent Review Service in Scotland was 6,258. We note the reasons given for using 400 and 2,000 for estimating costs, and that the Ombudsman has suggested that an initial review of numbers should be undertaken after six months. If the number of reviews is substantially higher than anticipated, it would have budgetary implications for the SPCB and we would expect an in-year budget revision from the Scottish Government.

**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?**

6. Answer – Funding for start-up costs and the first year’s running costs will be transferred from the Scottish Government to the SPCB. Running costs from 2016-17 will then be met out of the SPCB’s overall budget which is scrutinised on an annual basis by the Finance Committee and forms part of the annual Budget Bill.

**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?**

7. Answer – As mentioned above in answer to question 5, we consider it would have been helpful, for illustrative purposes, if costs had been provided for a low, medium and high number (e.g. 400, 2,000 and say 4,000) of second tier reviews given the IRS dealt with 6,258 cases, which is more than three times the Government’s highest estimate of 2,000 review cases.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. Answer – Whilst the policy implications are a matter for the Parliament as a whole, we do note that under the Bill the Ombudsman will have discretion to set his own processes and procedures and that these will be administrative rather than statutory. Should these processes and procedures be subject to review in a Court of law, the costs of defending the action would have to be met from an additional call from SPCB funding.
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

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

1. 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).

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

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

**Did you have sufficient time to contribute to the consultation exercise?**

3. Yes.

Costs

**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.**

4. 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.

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

5. 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.

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?

6. 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.

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?

7. 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.
Introduction

SCVO welcomes the opportunity to respond to this consultation. Our response makes the following key points:

- We need to take full stock of how the Scottish Welfare Fund (SWF) is operating. We call for a delay in proceeding with the Bill;
- We need to embed principles of dignity and compassion within the legislation and as the Fund moves forward;
- We need to be clearer about the rationale for legislating;
- There should be a review clause built into the bill;
- Getting the Fund right is necessary because it is a key safety net for so many in our society.

It is vital that in deciding on the next steps for the Scottish Welfare Fund, and that during parliamentary consideration, we never lose sight of the human cost of austerity and welfare cuts and that the severest costs have fallen on specific groups including women and disabled people. This means significant numbers of people are seeking crisis support or help with basic goods and equipment which many of us might take for granted.

We must do more to prevent people reaching crisis point, and ensure the third sector and statutory services are working together locally and nationally with this goal in mind. It is important that those who need to access the Fund are treated with dignity and respect.

Delaying the bill to review options and delivery

We are concerned about the relative speed at which the Bill is being taken forward. Given some of the concerns highlighted by our members, by the Evaluation of the Interim Fund and the significant carry-over of funds from 2013/14 into 2014/15, we would suggest that further investigation is needed:

- A not insignificant number of local authorities are not fully completing monitoring data. Third sector organisations have noted the gaps in recording of vulnerabilities where only 23 out of 32 local authorities have provided any data. There also gaps in relation to reasons for applications for both Crisis Grants (CGs) and Community Care Grants (CCGs) (p 18), and further support offered to applicant (Referrals/Signposting, p11). This latter gap is important as a key feature of the Fund was the opportunity to create more holistic and effective support for people in need.

These gaps raise questions about accountability and transparency in the operation of the Fund. They limit our understanding of who is using the Fund and why as well as our ability to consider what happens next with the Fund.

- There may be issues to address in relation to how applications are processed and awards are made. The Heriot Watt evaluation of the Fund indicated that “screening”
or “gatekeeping” practices may be ruling out people who are indeed eligible to apply. Feedback from the sector concurs with this and suggests that this might be as a result of lack of knowledge about the criteria and wider guidance amongst SWF staff. The Interim Fund evaluation points potentially to ‘judgement’ of applicants especially in relation to CCG’s.

- Transparency of decisions: There are concerns that with Crisis Grants, applicants need to be deemed to be “high priority” before they receive a grant; however, there isn’t always transparency or clarity in how that decision is made. The end of year statistics indicate that 19% of Crisis Grant applications were turned down because they weren’t a high enough priority – worryingly, 27% of cases had no clear reason for refusal. For Community Care Grants, 54% of applications were refused because they did not meet the conditions for an award; 20% had no clear reason for refusal (Table 17).

-Whilst the number of reviews requested are relatively low, a high number of decisions are successfully challenged. For CCGs, 59% of tier one reviews overturned original decisions, 54% at Tier 2. For CGs, 51% are revised at Tier 1. (Consider how this compares to the overturn rate in relation to benefit sanctions; reconsideration success rates for 2013 stood at 40.4% and just over 51% of next stage appeals were successful.)

- A small number of applications are still taking significant amounts of time to see through to completion – 4% of CCGs take more than 51 days; 3% of CGs take 6 working days or more. There may be very good reasons for this, but given we have people in real need, and partial data on the vulnerabilities facing applicants, we could see some applicants being left without no support. The Heriot Watt evaluation raises similar issues, and suggests that the maximum target for processing applications for CG’s should be one day. How applications are processed prior to the weekend needs to be considered.

- The evaluation of the scheme highlights some concerns about how it is operating and how it is linked with other policies and supports. As with its predecessor, the Scottish Welfare Fund has low levels of applications from older people. The sector has consistently raised concerns about the use of vouchers as opposed to cash. We understand that one large council may be considering awarding most Crisis Grants in this way.

- The sector has other operational concerns - e.g. SAMH remain worried about the limit in number of applications which can be made, and the discretion given to close applications based on that limit. SAMH argue that the Fund should be purely “needs led”. We are supportive of issues raised by Engender in relation to the lower level of female applicants to the Fund, and that this merits further examination.

- Operation of IT systems procured to help run the Fund must be considered – we need to raise questions about the need for and effectiveness of different recording system/approaches for the same scheme. Is there work under way to rationalise this?

In reviewing the evidence and performance of the fund, our main point is this: the scheme is not yet two years old. We haven’t yet had time to assess the impact of recent changes to the guidelines in relation to qualifying benefits and sanctioned clients. Local authority colleagues have clearly faced significant challenges in setting up the scheme.
We welcome the Scottish Government’s involvement of the third sector in shaping the fund to date and in responding to concerns about its operation from the earliest stages. However, SCVO is arguing that a delay in taking forward the legislation would help to ensure:

- A fuller data set which enables us to better understand how well the Fund is operating, following a “bedding in” period.

- Identification of both good and bad practice.

- Investigation of concerns raised within the evaluation and by the sector e.g. referral and signposting\(^{xvi}\).

- That there is further training of decision makers and frontline staff. The evaluation carried out by Heriot Watt indicated that staff administering the scheme needed to better understand the situation in which applicants found themselves, and to apply more discretion in making decisions.\(^{xvii}\)

- The need to ensure links between the third sector and the fund at local level are strengthened and that joint work creates clear referral pathways and the holistic support envisaged for the Fund.

A delay would also allow a more in-depth consultation/involvement of applicants and those who have received awards to build up a clearer picture of how the Fund is operating.

Our call to delay this Bill is made in good faith, linking back to the public service reform agenda, where we can encourage joint working within local authorities, across public bodies and ensure the third sector continues to play its part in the ongoing development of the Fund.

**Rationale for the Legislation**

Before the Bill begins to undergo parliamentary scrutiny, we need to be clear about the rationale and necessity of the legislation. Is there a threat to the continuity of the Fund? Will the legislation help applicants to be better protected? Is legislation absolutely necessary?

If there is a sense that the legislation is needed to protect applicants then of course that is important. The Bill reference group, which includes third sector organisations, will have an important role in helping to make sure the legislation works and has no unintended consequences.

**Comments on the Draft Legislation**

The lack of any clear principles in guiding the tone and nature of the bill is a missed opportunity. We have made this argument in relation to previous legislation\(^{xviii}\).

As the Bill drives the direction of travel in regulations and guidance, there needs to be a clear rights based focus, indicating how those in crisis or those needing support from the Fund should be treated. As SCVO outlined in a previous consultation:
“We believe that the planned Bill must include principles or a commitment to protect key human rights and/or reflect a commitment to maintain the dignity and respect of individuals who have to use the Fund. In the case of this Bill, this is especially important as many approaching the fund for help are struggling to achieve the most basic of rights e.g. access to food, heat etc. Further stigma and bureaucracy only serves to further strip people of those rights”.

The ability to contract out all/parts of the Scottish Welfare Fund is likely to cause concern within the sector. We need to consider how already contracted out parts are operating – both in terms of involvement of ALEOs and charities. Some concerns about people being offered second hand/recycled goods have been raised. Concerns exist that block purchase of goods such as carpets, settees, beds etc. have left applicants with lack of choice. Activists have suggested that had applicants been given cash, they may have been able to buy cheaper and better quality goods.

As pointed out in the SCOWR response to the Draft Bill, the legislation must not act to reduce the choice in how awards are fulfilled:

“Handing out vouchers, for instance, can not only limit the choice available to applicants, in some cases it can also create stigma, undermine dignity and lead people to feel they are receiving hand outs rather than exercising a legitimate right to assistance.”

Clause to Review Legislation

If the Bill is to progress as planned, we would suggest that a review clause be built in. A review clause would allow parliamentary scrutiny of the Fund – given its nature and reach, ensuring effective operation of this support is vital.

Such a clause could come into play perhaps two years after the Bill was passed to ensure we consider:

- How the Fund is operating and any changes in the policy/operational context;
- If other delivery options have emerged;
- Scottish Government responses to the continuing Welfare Reform agenda – with more cuts potentially in the pipeline.

Draft Regulations

We welcome early sight of a first draft of regulations which will build on the Bill. Clearly, the final version will be dependent on the content of the Bill, if enacted. We take this opportunity to make some early points about the regulations, as they stand:

- We must ensure that recent positive changes to guidelines (e.g. emphasis on people not having to be on qualifying benefits; support for sanctioned claimants) are not unintentionally lost if the regulations are too specific.”
• The regulations must not lead to unintentional exclusion of some families e.g. those with disabled relatives/children and also couples/individuals especially in the case of CCGs. The risk of moving into care may be minimal but the wider benefits of assisting someone through the Fund may reduce the risk of family breakdown, or greatly enhance quality of life etc. 

Reviews

Colleagues from across the third sector will comment in more detail on the plans to involve the SPSO. From SCVO’s perspective, clarity, ease of access and learning from reviews of Fund decisions must guide the final model. Those who are involved in using the Fund must be able to shape the review process.

Financial Memorandum

We use this response to the Welfare Reform committee to respond to the Finance Committee’s call for evidence.

Our concern as with other financial memorandums is the impact of legislation on the third sector. The sector can face additional resource constraints when a new policy/scheme is introduced.

Applications to the Fund’s predecessor scheme, run by the DWP, were being wound down. As the Scottish Fund becomes better known, demand on the sector to help people apply for grants will increase. This requires time and financial/people resources to ensure people are up to speed with the Fund, to support applicants through the process whilst councils themselves are bedding the scheme in. Some examples suggest significant time and effort has been put in by the sector – but this is not recognised within the context of the Financial Memorandum. It should not be assumed that the sector can pick up additional costs which might arise as the Fund continues and demand potentially increases.

Training has been focussed largely on local authorities and we need to ensure that there are opportunities and resources for all local partners to build up networks to ensure the Fund offers the holistic support approach that was intended. Where possible, opportunities for joint training with local and national third sector organisations should be explored.

Conclusion

The third sector acknowledges the significant progress made in getting the Scottish Welfare Fund established in a relatively short period of time as well as the direct involvement of the sector in shaping the Fund and the revision of Fund guidance to widen its coverage.

Our review of the data, experience from the sector and the fact that this is a relatively new Fund would indicate that we need to take more time to consider how it is operating
before we move to legislate. A review clause within the legislation would be helpful in getting the Fund right and reviewing future delivery options.

In concluding, the Scottish Government has indicated a strong will to drive through a more dignified and holistic approach to welfare. SCVO and the third sector would not disagree with this. It is vital that we get the Fund right – it is a key part of a social security safety net which needs to start from a position of trust, and prevent stigma being attached to individuals and families already in dire need.

Contact:
Lynn Williams,
Policy Officer
Scottish Council for Voluntary Organisations,
Mansfield Traquair Centre,
15 Mansfield Place, Edinburgh EH3 6BB

Email: lynn.williams@scvo.org.uk
Tel: 0131 559 5036
Web: www.scvo.org.uk

About us
The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 137,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.4 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1300 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1300 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
brings together organisations and networks connecting across the whole of Scotland.

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.¹

Further details about SCVO can be found at www.scvo.org.uk.

The Scottish Council for Voluntary Organisations (SCVO) is a Scottish Charitable Incorporated Organisation. Registration number SC003558.

References

Scottish Voluntary Sector Statistics 2010, SCVO


¹ http://www.engender.org.uk/content/publications/engenderwelfarereport.pdf
⁵ Welfare Reform Committee call for evidence on the Welfare Funds (Scotland) Bill, Engender response, August 2014
⁶ http://www.scotland.gov.uk/About/Performance/programme-for-government/2013-14/Scottish-Welfare-Fund-Bill
⁷ Review of the Scottish Welfare Fund Interim Scheme, Scottish Government, 2014
⁸ Scottish Campaign on Welfare Reform response to the Welfare Reform Committee call for evidence on Scottish Welfare Fund (Scotland) Bill
¹⁰ Scottish Campaign on Welfare Reform response to the Welfare Reform Committee call for evidence on Scottish Welfare Fund (Scotland) Bill
¹⁵ Welfare Reform Committee call for evidence on the Welfare Funds (Scotland) Bill, Engender response, August
¹⁶ http://www.scotland.gov.uk/Resource/0045/00450561.pdf - especially the sections on referral and signposting e.g. "Less than a third of Community Care Grant applicants were signposted to support organisations when the decision was communicated to them. Only one in seven Crisis Grant applicants was signposted at this stage. While in most cases the signposting was genuinely tailored to the applicant's needs, in some cases it was limited to a standard mention of Citizens Advice. Similarly, even in areas where charitable organisations are well present, usually only one alternative source of support was mentioned"

¹ SCVO's Policy Committee has 24 members elected by SCVO's member organisations who then co-opt up to eight more members primarily to reflect fields of interest which are not otherwise represented. It also includes two ex officio members, the SCVO Convener and Vice Convener.
Scottish Campaign on Welfare Reform response to the Welfare Reform Committee call for evidence on Scottish Welfare Fund (Scotland) Bill – refers to Section 2(1) in draft bill.

This refers to paragraph 5 of the draft regulations

This refers to paragraph 6(4) for the draft regulations

Shelter Scotland has made a full written submission to the Welfare Reform Committee’s call for written evidence on the Welfare Funds (Scotland) Bill. Although Shelter Scotland are not in a position to answer the Finance Committee questionnaire, we would like to take this opportunity to add some comments to assist the Committee’s scrutiny of the Financial Memorandum.

Shelter Scotland welcomes the continuation of extra funding for the Welfare Funds to 2015/16, as set out in the Financial Memorandum. The Welfare Funds are a vital lifeline for households facing crisis and for those who would otherwise not be able to gain or maintain independent living. Through providing help to divert crisis and preventing people from requiring institutional care or living lifestyles that place high demand on public services, financial investment in the Welfare Funds prevents higher public spend in other areas.

There is no doubt that beyond 2015/16 there will remain a critical need for grants in situations of crisis and to enable vulnerable households to gain or maintain a home. Therefore, funding for the Welfare Funds must be ring-fenced to ensure that these grants which support some of the most vulnerable people in society are not lost or diminished in the comprehensive spending review.

As the programme of Welfare Reforms continues to be rolled-out in Scotland the benefits landscape will significantly change over the coming years. Concerns regarding the impact of these changes on the most vulnerable in society have been widely voiced, including the increased potential for households to face crisis situations. Therefore the level of funding made available, along with other aspects of the Funds, should be periodically reviewed to meet emerging needs.

For further information please contact:
Debbie King 0344 515 2447 debbie_king@shelter.org.uk

From the Shelter Scotland policy library www.shelterscotland.org
August 2014
**Consultation**

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

1. WDC Response: Yes, WDC did take part in a consultation re the bill in February 2014 around the option for challenging decisions on SWF application. However we have not made any comments on the financial assumptions to date.

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

2. WDC Response: Not Applicable

*Did you have sufficient time to contribute to the consultation exercise?*

3. WDC Response: Yes

**Costs**

*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.*

4. WDC Response: N/A. We believe the bill has not changed from the interim model, on which WDC’s costs are based

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

5. WDC Response: It’s hard to say as WDC is not aware of the specific needs and circumstances of other Local Authorities. The grant funding from 2013/14 demand seems to be appropriate however we do feel there is pressure on the SWF team which is reflected in the admin funding. WDC has had to increase the SWF team by 1.5 FTE to cope with that demand. Furthermore, if the reduction of admin funding from £5m to £4.6 in year 2015/16 is as a result of reviews moving to SPSO, WDC would not support the same. This is because we have not factored this into our costs when working out admin costs and furthermore only had 3 Tier-2 reviews in 2013/14.

The savings are not estimated, but even if they were they are not deliverable in West Dunbartonshire. WDC had 3 second tier appeals in 13/14 and transferring this will not allow any staffing reduction.

*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?*

6. WDC Response: If the demand for service increases or WDC is required to consider offering goods as an option for CCG’s, it would mean a need to revisit funding levels as it would entail greater staff time to administer as well as increase
the average award. Furthermore, our existing funding is based on DWP estimates from 2011/12 which were 4,740 application for Crisis Loans and 2,200 applications for CCG. However in reality WDC received 6,983 Crisis Grants and 2,514 CCG applications in 2013/14. Therefore we believe there is a need to increase both the grant funding and the admin funding.

**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?**

7. WDC Response: The only area where uncertainty is mentioned is in relation to the second tier review organisation’s costs. No concerns regarding this, other than, as stated above, there will be no saving in many LAs as there have been very few second tier reviews. So this assumption is not valid.

The other uncertain area is regarding demand levels and associated direct cost of financial support and of the administration of the scheme. Demand is uncertain and perhaps for this reason the total grant pot should be subject to annual review as to sufficiency (in total and per LA). Linked to this is the level of administrative support – which is currently under-funded for WDC and for which an additional resource should be provided.

**Wider Issues**

**Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. WDC Response: Subject to comments at item 7 (above), yes for Scotland overall however there needs to be further analysis of individual LA demand to reflect specific needs and funding adjusted accordingly

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. WDC Response: Not aware of any at this point.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

24th Meeting, 2014 (Session 4)

Wednesday 1 October 2014

Present:

Gavin Brown    Malcolm Chisholm
Kenneth Gibson (Convener)    Jamie Hepburn
John Mason (Deputy Convener)    Michael McMahon
Jean Urquhart

Welfare Funds (Scotland) Bill: The Committee took evidence on the Financial Memorandum from—

Calum Webster, Bill Team Manager, Helen Carter, Finance Business Partner, and Ann McVie, Team Leader, Scottish Welfare Fund, Scottish Government.
On resuming—

Welfare Funds (Scotland) Bill: Financial Memorandum

The Convener: We are still waiting for Gavin Brown to return, but I think that we have had a reasonable break, given that time has been against us this morning. I apologise to the bill team for keeping them waiting so long and for the previous evidence session overrunning. The technical glitch did not help.

Item 2 is an evidence-taking session with the Scottish Government bill team on the financial memorandum to the Welfare Funds (Scotland) Bill. I welcome to the meeting Calum Webster, Helen Carter and Ann McVie. Members have copies of the written evidence that we have received.

We will move straight to questions. As always in this committee, I will start with some opening questions, and then I will open out the session to colleagues. Paragraph 24 of the financial memorandum states:

“Spend by local authorities between April and December of 2014 was £18 million and the full year spend is estimated to be in the region of £29 million.”

Clearly, that is not the full allocation. Are there many discrepancies across Scotland in relation to how the money has been spent? Are some local authorities significantly underspending while others are hitting the full allocation? What will happen to the estimated £4 million surplus?

Calum Webster (Scottish Government): There has been variation in local authorities’ level of spend. Last year, three or four authorities actually provided extra funding to the welfare fund, because they had used up their allocation, but other areas were below the allocation. A lot of that was to do with the fund’s relatively slow start in its first three months of operation last year. After the first three months, the spend picked up to the level that we had anticipated.

For this year, our informal figures show that the spend is more or less in line with a sort of flat profile at Scotland level. There is still some variation beneath that but, by and large, local authorities across Scotland are spending what we would expect them to spend, and that includes last year’s underspend, which was carried over into this year for local authorities to spend.
only about half the money that it requires has been allocated to it. How is the administration funding calculated? Two committee members represent the North Lanarkshire Council area, and that council has said that, in the first four months of 2014, it got a 9.73 per cent share of national applications but received only 8.96 per cent of the budget allocation, whereas Glasgow got about 15.5 per cent of applications, yet received 23.4 per cent of the national budget. How are the administration funding and the money that is made available to provide funds for claimants distributed?

Ann McVie (Scottish Government): In line with normal practice, the basis of the distribution of the funds across local authorities was agreed in the joint COSLA and Scottish Government settlement and distribution group. When the Scottish Government became responsible for local welfare provision and ministers decided that the funding that was being transferred from the Department for Work and Pensions to the Scottish Government should be spent for broadly the same purpose, we started discussing through that group the basis of the distribution across local authorities. We agreed that the administration funding should be based on the historical pattern of applications at local authority level under the old DWP scheme, according to the most recent data that we had available, and that the programme funding would be based on the spend at local authority level under the previous DWP scheme, because that was the best proxy that we had for assessing the need and demand for the new arrangements.

The Convener: Those were 2012 figures but, given that you have more up-to-date figures on how the funds are being spent and given the difference in demand, are there any plans to reallocate some of the budget, which I know you intend to continue to fix at £33 million a year?

Ann McVie: We went back to the settlement and distribution group in June to consider whether we should change the basis of the allocations for 2015-16. The original agreement was to stick with the first basis of distribution for two years so that we could take time to assess what was happening on the ground. Two or three months ago, the agreement was that we should carry forward that basis of distribution for a further year, because at the moment we have formal statistics only for the first year of the scheme’s operation in Scotland and it was felt that it was too soon to take a view on how we might reallocate funding across local authorities. That agreement was predicated on the basis that, the next time we discuss the matter, we will consider what is actually happening on the ground in local authorities and try to identify appropriate indicators to assess need and demand by local authority area.

The Convener: The submission from North Ayrshire Council, which is my area, states:

“The Council projects that for 2014/15 the total number of applications received will be around 12,954 compared to 6,445 in 2013/14”,

which is a doubling. It continues:

“Based on current projections, the council anticipates spending almost £1m more in 2014/15 when compared with 2013/14. A review of the current criteria is required to manage spend within available resources.”

How can the funds that are currently being allocated possibly meet the demand without a significant change in the type of applications that are accepted? Surely if the prioritisation changes so that grants are awarded in only higher-priority cases we will end up with more people going to review, because they will know people who got a grant the previous year. How do we square that circle?

Ann McVie: That is a very good question. It is hard to square that circle. The fund is a discretionary scheme, not an entitlement-based one. The guidance is written to give local authorities the scope to change the priority levels. It is a harsh fact that, at some points of the year, some local authorities might be able to meet medium to low-priority applications, whereas other authorities might be able to meet only high-priority cases. Obviously, ministers will want to keep that under review as the pattern of demand for the new funds becomes clearer.

The Convener: As a number of colleagues will want to explore the issue of review, I will not go into it in any detail. However, I note that, in its submission, North Ayrshire Council has, like a number of other authorities, expressed concern about the Scottish Public Services Ombudsman hearing second-tier reviews, pointing out that “an estimated review case load of 400” with “a running cost” of £250,000 represents “a unit cost of £625, which is more than the average cost of a community care grant in Scotland”, which is £613. The council says that that “does not demonstrate value for money ... compared to the ... service being provided by Scottish Councils.”

What are your comments on that?

Calum Webster: We expect—and COSLA shares this view—the number of reviews to rise significantly from their levels in the first year of the fund’s operation. We looked at the characteristics of the second-tier review when we issued our consultation response on review last year, and it was felt that the SPSO met the desirable characteristics and would be able to deliver the reviews better than some of the alternative options. In particular, the requirement to be
independent of the decision was quite a big factor in considering who would be best placed to deliver the reviews.

There is also the issue of estimated cost. The business regulatory impact assessment that we published to support the bill looked at the estimated costs of second-tier reviews by the ombudsman, by a tribunal and by a local government panel. Even though the costing that you have quoted seems quite high per case, our estimates in the BRIA suggested that the ombudsman would incur the lowest cost per case on the basis of there being 2,000 cases a year. I guess that there are a variety of issues around that.

The Convener: There is an issue about second-tier reviews being carried out by the local authority involved, but I suppose that a local authority could handle its neighbour’s reviews and vice versa. That might be more cost effective. However, if the overall fund does not increase but, as has been mentioned, the level of awareness rises and prioritisation changes, more cases will go to review and we will end up with a larger amount of money being spent on reviews than will be spent on what is being delivered. Obviously, I am not talking about the bulk of the funds, but more money will go into administration than will go into delivery at the sharp end.

Calum Webster: Judging by the figures that we published in the BRIA, I think that that would be an issue regardless of the second-tier review route that was taken under the bill. As I have said, the figures for a tribunal and a local government panel are higher than the figure for the ombudsman. I accept that the cost looks high in relation to the grants that are being paid out, but the cost must be met to give people the opportunity to have a proper, independent second look at a case.

The Convener: In some local authorities, more than half of all the reviews find in favour of the applicants. Is the issue that some local authorities are not delivering the awards that they should be delivering?

Calum Webster: The high overturn rate is probably partly attributable to the fact that this is a new type of service that local authorities are delivering. As Ann McVie has mentioned, it is a discretionary rather than an entitlement-based scheme, and there has been a period of local authorities feeling their way into how to make such decisions and take into account clients’ vulnerabilities and special requirements. We are working to ensure that there is consistency in decision making across local authorities and that the guidance is being applied consistently, notwithstanding the discretion in decision making that local authorities have within the guidance. The high overturn rate is possibly related to the fact that it is a new scheme that requires a new way of working from local authorities, which we are trying to help them get to grips with.

The Convener: Why was it decided to have fixed budgets, given that it is bound to be the case that fewer people will be aware of the funding in the first year and demand will increase with time? What was the thinking behind having £33 million a year for three years rather than having a steady increase in the fund as demand increases, so that local authorities do not have to continue to tighten the criteria as the funding diminishes?

Ann McVie: Ministers took the view that the funding is part of the budget process and that it will be reassessed or reappraised every year when the budget document is presented to Parliament. It was a bit of an unknown. In the financial memorandum, we set out how much was spent under the old DWP arrangements, and ministers decided to increase the amount of money that was transferred from the DWP to the Scottish Government and then onward to local authorities. They came to the view that £33 million would broadly restore what had been spent historically in Scotland under the old DWP scheme and that, to give a degree of stability, that would be maintained for the first three years of the scheme. That will be discussed and challenged through the budget process as we go forward.

The Convener: Yes. I know that ministers put in an extra £9.2 million a year to try to provide that cushion, but it now seems that we are up against it.

I want to allow colleagues in, but I have a final question about the computer system and information technology costs. Paper 2 says:

"Argyll and Bute Council notes that following the introduction of the interim Scottish Welfare Fund each local authority had to make its own arrangements for computer systems and that there are now four main systems in use. It goes on to state that—

‘There is now an opportunity to commission a single hosted national system to support the new permanent scheme, with a single set of parameters ... This would be consistent with the national public sector ICT strategy.’"

Are there any plans to take that forward?

Calum Webster: The Improvement Service has been examining that issue on behalf of the local government information and communication technology board, and it has just recently completed the first phase of that work. It concluded that a single IT system was probably unworkable due to the set-up costs and integration issues across local authorities.

We have moved on to the second phase, which involves considering how procurement could be taken forward, local authorities’ requirements for integration, and the way that people can work
across and within local authorities. That work potentially includes taking forward procurement arrangements for each of the four main providers.

That is an on-going piece of work that we could keep the committee updated on as it moves forward.

The Convener: I would appreciate that.

Ann McVie: The four IT suppliers are the four that already provide a range of services to local authorities. Going with the same IT supplier gives a local authority the ability to embed the new system in its other services. They are not four new IT suppliers that are completely unknown to local authorities. There are certain advantages in local authorities buying in a new module from IT suppliers that they are already working with.

The Convener: Okay. Thank you very much for that. I now open out the session.

Jamie Hepburn: As a member of the Welfare Reform Committee, I can follow up some of the discussion.

On the financial memorandum and the second-tier review issue that the convener touched on, local authorities have obviously expressed concern about the SPSO taking on the second-tier review role. We heard a little bit about that at the Welfare Reform Committee meeting yesterday. Is there an issue with individual local authorities—particularly Scotland’s smaller local authorities—handling such a small number of second-tier reviews? If the reviews remained with those authorities, would there be an issue with their having such a small case load that they would not be able to maintain the expertise to deal with them?

Calum Webster: That is part of the issue. The ability to bring in independent members for second-tier review panels is also potentially a difficulty for local authorities. It is a fair point. If the number of cases stays so low, maintaining that expertise and getting into the mindset of the decision making that is required under the scheme could be difficult.

Jamie Hepburn: I turn to the assumption that there will be 2,000 reviews per year. I would have thought that that could still be an issue for some of the smaller authorities. Why did you arrive at the assumption that there will be 2,000 reviews per year?

Ann McVie: That is a very good question.

Jamie Hepburn: That is why I asked it.

12:15

Ann McVie: The short answer is that we had a lot of discussion with COSLA, local authorities and the Independent Review Service, which used to provide the same type of service under the old DWP scheme. It was not quite a finger-in-the-air process to arrive at the figure of 2,000, because it seemed a reasonable number. The numbers for this year, for example, have been very low; I think that we had 120 second-tier reviews for community care grants and only 24 for crisis grants, which was very low and probably lower than we expected. The informal feedback that we have had from local authorities this year leads us to expect that the numbers will probably double by the end of the second year of the scheme.

We took a view that 6,000 seemed far too high given the experience of what is happening now in Scotland, and we arrived at the figure of 2,000, which is somewhere in the middle, in consultation with stakeholders.

Jamie Hepburn: I recognise that this is difficult territory, given that it is uncharted and pretty new for the Government and local authorities. Nonetheless, you have a lower-end estimate of 400 reviews per year. The convener made the point that, at that level, the funding per case would mean that more would be spent to administer the case than would be awarded, which seems rather cost ineffective. I am not advocating this approach for obvious reasons—at least, I hope that they are obvious—but it would almost be better just to pay the person, as that would be more cost effective.

Mr Webster set out that involving the SPSO would be the most cost-effective option. I ask for a bit more information on the other options and their costs.

Calum Webster: The consultation that we sent out last November on the draft bill included a specific section on reviews. One of the advantages of having a bill was that we could have an independent second-tier review panel, and the consultation suggested the options of the SPSO, a tribunal and a local government panel with independent representation. With COSLA, we worked up cost estimates for local government panels, and we discussed with the tribunal service and the SPSO set-up costs and estimated annual costs for the other two options. We included the estimates in the BRIA that supported the bill. Based on 2,000 cases a year, the estimated cost per case was £202 for the SPSO; £413 for the tribunal; and between £420 and £520 for the local government panel.

Jamie Hepburn: So the costs for the other options were significantly in excess of those for the SPSO.

Calum Webster: Yes.

Jamie Hepburn: Thank you.
Michael McMahon: Local authorities have pointed out that the administration of the new fund is in addition to what they did before. This is not the upgrading or stepping up of something that was already in place; this is something that is entirely new, so the costs are new costs. If funding of the administration costs falls short, local authorities will have to find the additional costs from within existing budgets.

The evidence that we have taken so far at the Welfare Reform Committee shows that staff who were doing jobs in local authority welfare and benefit departments have been transferred across to take care of the Scottish welfare fund. That means that the jobs that they were doing are not being done any longer. Somewhere along the line, local authorities are being burdened: they are either finding the staff to administer the Scottish welfare fund from existing staff, or trying to run the Scottish welfare fund without the number of staff required to do that work. Have you any indication at all of the additional costs, and have they been factored into the considerations?

Calum Webster: We are aware of the concerns that local authorities have raised with the committee on admin funding. There is a recognition that these are new costs. We provided set-up costs to local authorities of around £2 million to help them get themselves ready for the start of the new fund.

The admin funding that we provide to them is roughly 15 per cent of the programme funding for the scheme, which we think is a fairly generous amount for administering a scheme of this type. Ten per cent is the typical amount that we would use in procuring administration systems throughout the Scottish Government. The figures range from, at the lower end, 7 to 8 per cent for loan schemes, up to 15 per cent for complex projects that require quite a lot of reporting. On that basis, we think that the admin funding is fairly generous.

We realise that local authorities are making a case that the funding is not sufficient for them to deliver the scheme, and there has been correspondence between Councillor O’Neill and the Deputy First Minister on the admin funding.

I think that this point came up yesterday at the Welfare Reform Committee, but COSLA is undertaking a benchmarking exercise to look at the true costs, at what some local authorities might learn from others that are delivering within their admin funding and at the areas where the costs are not being captured quite as they should be. The DFM said that she will be willing to consider the evidence that comes from that benchmarking in looking at future admin funding.

Michael McMahon: That is really helpful.

We heard the convener and Jamie Hepburn comment on the cost of the SPSO doing the second-tier assessments compared with the cost of local authorities doing them, in relation to the amount of awards. That issue has been interrogated. However, we have also heard evidence to the effect that the burden that will be placed on the SPSO, regardless of whether we believe the figures are right, appears to have been underestimated in exactly the same way as local authorities argued the burden on them had been underestimated.

We have heard that the burden that will be placed on the SPSO will mean that it will require either more staff to be recruited to take care of the responsibilities or staff to be transferred from their current responsibilities to these additional responsibilities.

The evidence that we have heard so far is that there has been an underestimate of that cost. Will you comment on that?

Calum Webster: We have been in discussions with the SPSO for quite some time and, as I mentioned, we discussed the issue with the tribunal service as well, during the consultation. The SPSO has been in discussions with its counterparts in Northern Ireland who administer a similar process over there. That is really where the cost estimates for delivery stemmed from. The SPSO has been looking at an existing service, and although there will be differences in implementation here, I think that that is a reasonable basis for assumptions or estimates to be made on running costs.

Michael McMahon: You do not believe that there has been an underestimate, overall, of the burden that will be placed on the SPSO.

Calum Webster: I do not think so. We have been engaging with the SPSO for quite some time and we have a range of potential numbers of cases that they have considered and factored into the running costs.

It is too early to tell what level of reviews we will end up with, but on the current figures, I think that 2,000 is probably quite a good estimate, and that is what the SPSO has based a lot of its thinking on.

Michael McMahon: Okay. We will obviously have to interrogate that elsewhere. Thanks.

John Mason: On reading the papers, my initial reaction was to ask how on earth we can be spending £5 million in order to hand out £33 million. That is 15 per cent, as I think you said. The public sector generally gets criticised for being bureaucratic and inefficient, and such figures absolutely underline that. Surely somebody can hand out £33 million without that costing £5
million. Can you clarify what is involved in the administration, and especially in the second-tier reviews?

Calum Webster: Initially, there is the first level of call handling and taking applications. That is the simplest, up-front element of the administration. Beyond that, local authorities find that they are incurring quite significant costs in taking forward the awards. In cases where local authorities are providing goods, for instance, there are issues around receipting, arranging deliveries and ensuring that things are being followed up, and then reconciling everything at the end of the process. That adds on costs for local authorities.

The other element on which local authorities have suggested that they are using time and resource is that of trying to fulfil the holistic nature of the welfare fund by passing applicants on to other areas of the local authority that might be able to help them, or signposting them to third sector services that might exist in the area.

I hope that that is a reasonable summary of where the admin costs arise.

John Mason: Part of me wonders whether we are just going about things in the wrong way. We seem to be saying, “Well, that’s a good cost, and so is that, and we’re offering a bit of advice and a bit of this and a bit of that”—it all builds up. Instead, we could look at it in another way and say that, if around £600 is to be given out, £50 is a reasonable amount for admin and we should do what we can for £50. Would that not be another way of looking at it?

Calum Webster: I guess that that is another way of approaching it.

The idea behind the fund is to try to focus as much as we can on the applicants and on trying to help them to move on from whatever crisis they are in. A crisis grant by itself will not necessarily help them to move on from whatever crisis they might have when presenting to the fund, rather than offering advice at that point on the issues that the applicants might have. That is how I would see it.

Gavin Brown: I have a couple of questions about paragraph 19 of the financial memorandum and the table that follows it. The first column from the left is headed “Programme Funding” and it shows for each of three financial years a sum of £33 million. If I heard your answers to the convener correctly, the actual outturn for 2013-14 was approximately £29 million. Is that correct?

12:30

Calum Webster: Yes.

Gavin Brown: Again, if I heard you correctly, does that mean that the programme funding for 2014-15 becomes £37 million?

Calum Webster: Yes. That money is carried forward within the local authorities to be spent on the welfare fund.

Gavin Brown: So the entirety of the underspend for 2013-14 goes into 2014-15. Is that right?

Calum Webster: Yes, that is right.

Gavin Brown: The next column in the table is headed “Administration Funding”. For the first two financial years, the amount for that is given as £5 million. For 2015-16, the amount is down as “TBC”. For some reason, I thought that I read somewhere that the amount for that financial year was probably going to be £5 million but I cannot now find that reference. Is the “TBC” figure going to be £5 million or in that ball park, or are you unable to say at this stage?

Calum Webster: I cannot say that the figure will be exactly £5 million—

Gavin Brown: Sure.
Calum Webster: We still have to go through the budget processes. I understand that funding is available to meet that level of spend, but the actual amount remains to be seen. It will possibly be influenced by the benchmarking work that COSLA is currently undertaking.

Gavin Brown: So you cannot give an exact figure—that is fair enough. Would it be fair to say that the figure will not be significantly higher or lower than £5 million? I do not want to put words in your mouth, so just say no if you cannot confirm that. I am just trying to get a feel for what the financial memorandum is most likely to be.

Calum Webster: I cannot say what the figure will end up being. I do not imagine that it will vary significantly either way, but obviously it is subject to discussions between the Scottish ministers and COSLA on admin funding for next year and the outcome of the benchmarking work.

Gavin Brown: That is a fair enough answer.

The next column in the table is headed “Second Tier Review Funding”. You have been asked a number of questions in relation to that; I have just one question on it. Obviously, you are working on the basis of figures from not many years and you are trying to work out what the most accurate figures are likely to be. You put down the two figures for the two financial years. My question is: given that the financial memorandum was published on 10 June and you would have done your homework, presumably, in the weeks and months leading up to that point, has anything happened in the almost four months since then that would change any of those “Second Tier Review Funding” figures, or do they remain your best estimates for 2014-15 and 2015-16?

Calum Webster: The figures remain our best estimates. We have some understanding of an increase in second tier reviews in the early part of this financial year, which suggests that there would be enough reviews to make it viable for the SPSO to run a unit, but beyond that there is nothing to change the figures that we have in the memorandum.

Gavin Brown: Thank you.

Malcolm Chisholm: There is quite a lot of talk about linking with other services. Is that partly to ensure that no case that meets the relevant criteria slips through the system, or is it just to make sure that additional help is given to the people who apply?

Calum Webster: I think that it is to ensure that the people who apply get the help that is available and which they can get. The way the scheme works is potentially why we are seeing fewer reviews than we might have seen under the previous DWP scheme. If an applicant is refused, the hope is that they will be referred or signposted to another service, either within the local authority or within the local area, that is able to help them. Applicants are not just getting a flat refusal, so we hope that they are having a better experience and getting a better outcome from the scheme.

Malcolm Chisholm: I am interested to hear that the number of reviews is down. There is a lot of interest in the ombudsman, but the fact is that there is not much of a variation in the administrative costs either for a high or for a low number of appeals.

Has any thought been given to how the nature of the ombudsman’s decisions will differ from the nature of the decisions made by local authorities? I presume that the ombudsman will be administering national criteria across Scotland while reviews by local authorities will be carried out very much in the context of the money available to a particular local authority and the demand that it is facing. As one of you said earlier, money might simply not be available because of high demand or the time of the year, but I presume that, if the appeals system is being administered on a national basis by the ombudsman, it will not take such factors into consideration.

Calum Webster: The intention is for the ombudsman, in considering a review application, to take into account local conditions and the priority level that the local authority was operating under. In other words, the ombudsman will not be looking at a case simply from a central point.

Malcolm Chisholm: So you do not envisage the nature of the ombudsman’s decisions being fundamentally different from what they would be under a local authority system.

Calum Webster: No, I do not think so.

Ann McVie: No.

Malcolm Chisholm: I think that you have said that the money can be carried over from year to year, but what happens if a lot of appeals are granted and no money is available in a particular year’s budget? Is the assumption that the local authority would just have to dip into the following year’s budget? How would that work?

Ann McVie: I think that the assumption would be that the local authority would have to dip into the following year’s budget. However, we hope that that will apply in only a very small number of cases and, as Calum Webster has said, the ombudsman will be expected to take into account the state of the budget in the local authority when it remakes a case.

Malcolm Chisholm: Thank you.

The Convener: That concludes questions from colleagues, but I want to touch on an issue that
has not yet been raised. In its fairly interesting submission—indeed, it is different from the others that we have received—the Scottish Council for Voluntary Organisations says:

“We are concerned about the relative speed at which the Bill is being taken forward”,

and it has suggested that it be delayed for options to be reviewed. In a section of the submission entitled “Rationale for the Legislation”, it says:

“Before the Bill begins to undergo parliamentary scrutiny, we need to be clear about the rationale and necessity of the legislation. Is there a threat to the continuity of the Fund? Will the legislation help applicants to be better protected? Is legislation absolutely necessary?”

Calum Webster: We feel that bringing in the bill now will result in three definable benefits for applicants. First, applicants will potentially have the certainty that welfare funds will continue; at the moment, they are delivered only under a voluntary agreement between COSLA and the Scottish ministers. Secondly, the bill will allow for independent review by SPSO, which is not possible under the current arrangements. Finally, there is an option for the funding for welfare funds to be ring fenced.

A lot of submissions that have been sent particularly to the Welfare Reform Committee have looked at operational issues and matters that affect the scheme’s day-to-day running. They do not necessarily impact on the bill, but they will have an impact on the regulations and the guidance that will sit underneath all of this. We will continue to take on board and learn from such views as we go through the process of introducing the legislation and I hope that we can reflect that learning in the regulations and guidance that will come into effect after the legislation is passed.

The Convener: Michael McMahon wants to come in on that point.

Michael McMahon: This is more of a statement, but I will ask it as a question to see whether you agree. Another point that was made at yesterday’s meeting of the Welfare Reform Committee as a justification for enshrining the Scottish welfare fund in legislation was that the certainty of the existence of the fund will allow local authorities to retain staff and build up expertise in its delivery. Do you see that as a valid reason and justification for this legislative process?

Calum Webster: I guess so—if local authorities themselves see that as a big advantage. I am not well enough versed in their human resources procedures and processes and how they recruit and retain to comment on the matter.

Michael McMahon: It certainly convinced me.

The Convener: Ah well, that is something.

The SCVO submission also raises the issue of training, and I note that some of the submissions have commented on the amount available for staff training. How much funding is going to be available as we move forward? Obviously all organisations have staff turnover, but do you expect training to be self-funded by local authorities?

Calum Webster: Local authorities will have to deal with their own turnover issues, but some of the £2 million set-up funding that, as I have pointed out, was provided before the fund was even established was used for training materials and courses for would-be decision makers.

Over the 18 months in which the fund has been running, we have run a number of seminars on specific decision-making and prioritisation issues, and we will continue to fund our quality improvement officer, who tries to take a view across cases, spread good practice and help people to develop their understanding and their abilities to take decisions.

We are doing things across the piece to support and help people develop their skills within the fund, but it will be down to the local authorities to manage individuals and issues such as the turnover of staff.

The Convener: Thank you very much. We have concluded our questions, but do you wish to raise any issue that we might not have covered?

Calum Webster: No, thank you.

The Convener: Thank you very much for answering all our questions, and I thank my colleagues for asking them.

As that is the last item on our agenda, I conclude today’s Finance Committee meeting.

Meeting closed at 12:42.
Delegated Powers and Law Reform Committee

57th Report, 2014 (Session 4)

Welfare Funds (Scotland) Bill

Published by the Scottish Parliament on 8 October 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

**Clerk to the Committee**
Euan Donald

**Assistant Clerk**
Elizabeth Anderson

**Support Manager**
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meetings on 24 June, 5 August and 7 October, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Welfare Funds (Scotland) Bill at stage 1 (“the Bill”). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

OVERVIEW OF BILL

3. This Government Bill was introduced on 10 June 2014, by Nicola Sturgeon MSP. The lead Committee is the Welfare Reform Committee.

4. In outline, the Bill is designed to make provision for the establishment of welfare funds which will be maintained by local authorities. Welfare funds will operate on a discretionary basis, and are intended to (1) provide a safety net in an emergency when there is an immediate threat to health and safety and (2) enable people to live, or to continue to live, independently preventing the need for institutional care.

5. The Policy Memorandum notes that this Bill, together with associated regulations and guidance which will be produced in due course, are designed to set out arrangements which have been in place on an interim basis since April 2013 (“the interim scheme”). Following abolition by the Department for Work and Pensions of elements of its Discretionary Social Fund covering this type of relief, funding for Scotland was transferred to the Scottish Government to establish systems. This led to the establishment of the interim scheme, currently

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1 Welfare Funds (Scotland) Bill [as introduced] available here: [http://www.scottish.parliament.uk/S4_Bills/Welfare%20Funds%20(Scotland)%20Bill/b51s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Welfare%20Funds%20(Scotland)%20Bill/b51s4-introd.pdf)

administered by local authorities under section 20 of the Local Government in Scotland Act 2003.

6. The Scottish Government now wishes to legislate to put the interim scheme on a permanent footing. The Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013 ("the Order") widened the legislative competence of the Scottish Parliament to enable it to legislate on the provision of local welfare assistance.

DELEGATED POWERS PROVISIONS

7. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

- Section 5 – Welfare funds: further provision
- Section 6 – Guidance

8. At its meeting of 24 June, the Committee agreed to write to the Scottish Government to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the Annex.

9. The Committee’s comments, and where appropriate, recommendations on the remaining delegated powers in the Bill are detailed below.

Section 4(1), (2) and (5) – Review of decisions

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

10. Section 4(1) and (2) provide that regulations may be made to require local authorities to review the decisions made by them under section 2, as to the use of welfare funds. The regulations may make all decisions subject to review, or they can set out particular types of decision which would be subject to review.

11. The regulations can set out that decisions of a reviewable type only require to be reviewed in particular circumstances. Section 4(3) provides that if dissatisfied with the outcome of such review, the individual concerned may apply to the Scottish Public Services Ombudsman ("the Ombudsman") for a further review.

12. The DPM explains that section 4 is considered necessary by the Scottish Government, to allow requirements to be placed on local authorities to carry out reviews of decisions in relation to applications for assistance through welfare funds. Regulations are considered more suitable, to set out the details of which decisions need to be reviewed. This will allow the flexibility to restrict or widen the category of reviewable decisions, in the light of experience with the operation of the welfare funds over time.

13. The right to obtain a review of a decision on funds used for immediate short term or community care needs may be significant to the individuals who may be
affected by the exercise of this power. Section 4(3) provides that the right to a further independent review to the Scottish Public Services Ombudsman applies where an individual is dissatisfied with the outcome of a first review. That “second tier” right of review pre-supposes that a first review has been required by regulations.

14. Accordingly the Committee sought further explanation why it has been considered appropriate that section 4(1) is framed as permissive - allowing the Scottish Ministers to regulate to require local authority reviews - rather than requiring regulations which will put the review process in place. Further, section 4(2)(a) provides for a choice which may be implemented by the Ministers in the regulations - that all decisions under section 2 may be subject to review, or only certain types of decision would be subject to review. The Committee therefore also sought explanation why (similarly) this power is framed as permissive, to allow the Scottish Ministers to regulate to implement one of these 2 options, rather than requiring the regulations to provide for one option.

15. The Committee also asked for more information as to how it is envisaged that this power could be used.

16. The Scottish Government’s response in the Annex generally explains the policy intent - that there should be a power to require Councils to review decisions made under section 2, but the possibility should be left open that not every decision should be subject to review. The response acknowledges that the section may have been framed in different ways, but the Government has considered that section 4(1) and (2) provide an appropriate way of delivering the policy.

17. The Scottish Government has also provided a couple of examples of how the powers could be used. Regulations under section 4(2)(a) could specify it is not appropriate for there to be a right to require review of a decision to refuse assistance out of a welfare fund, where there are no monies left in the fund at the time of the application. The power under section 4(2)(b) to provide for circumstances in which decisions are to be reviewed might be used to put a time limit on a request for assistance, before a review is required.

18. The Committee considers that an issue of principle remains: why, given the significance of the rights to have decisions on crisis grants and community care grants reviewed, is there a discretionary power to make regulations, rather than there simply being a requirement placed on the Scottish Ministers to make regulations which either say that all decisions are reviewable, or some of them, and which provide for the circumstances in which decisions are to be reviewed?

19. While the Government’s present intention may be to put suitable regulations in place forthwith once section 4 has been brought into force by a commencement order, the Bill terms do not secure this. The provisions allow for an indefinite period, before any regulations may be either made, or brought into force.

20. The Committee has also considered that in terms of section 4(3), the ability to have a second independent review by the Ombudsman of a local authority decision on an application depends on the ability to have an initial review under the regulations. This is more than a matter of administrative detail – a wide scope
is proposed in the section, to specify any types of decision which would be subject to review (or otherwise), and also the circumstances in which reviewable decisions are to be reviewed (or otherwise).

21. The policy intention is that there should be a power to require local authorities to review decisions made by them under section 2, “but that the possibility should be left open that not every decision should be subject to review”. While the Scottish Government has provided a couple of examples of how this power might be used, the Committee is unclear why the wide power in section 4(2) requires to be taken, to provide for any types of decision which would be subject to review, or to provide for any circumstances in which reviewable decisions are to be reviewed (at the discretion of the Scottish Ministers).

22. It appears therefore that there could be scope to draw the power more narrowly. The Scottish Government has acknowledged that the powers in section 4(1) and (2) could be formulated differently. For example, a more defined approach would be to list, in various heads, the types of decision that may be subject to review, or which may be excluded from review, or the circumstances in which decisions could be reviewed. If such an approach could be taken, then in being asked to approve the terms of section 4 the Parliament would be approving a range of permissible types of decision and circumstances, in respect of which the right of review by the local authority and the Ombudsman could apply, or could be excluded (if not all decisions are to be reviewable). Within that range, the regulations would later specify the types of decision that would be subject to review, or the circumstances in which decisions could be reviewed.

23. The Committee notes that a comparable approach, listing various heads of possible provision that could be in the regulations, is taken in section 5(2), concerning the powers to make further provision in connection with the Act.

Affirmative or negative procedure

24. Section 4(5) provides that the regulations are subject to the negative procedure. The DPM states that this has been considered appropriate because matters of administrative detail would be covered in the regulations. This is considered to provide a suitable balance between “expedition and convenience” and the need for scrutiny of which decisions under section 2 should be reviewed.

25. The powers do not only cover matters of administrative detail – the regulations will provide substantive rights to have the decisions of local authorities reviewed. As above this power is of wide scope, as the regulations can determine which decisions of local authorities under section 2 would be subject to review, and determine the circumstances in which decisions would be reviewed. For any affected individual, the right to have a local authority decision on an application for welfare funds reviewed may be a significant matter.

26. The Committee therefore considers that, as the powers are presently framed in section 4(1) and (2), the regulations should be subject to the affirmative procedure, unless there is good reason why that procedure would not be suitable.
27. The Committee therefore reports as follows, in relation to the powers in section 4(1), (2) and (5):

28. The Committee notes that the Scottish Government considers these powers are framed appropriately to implement the policy intentions, but it acknowledges that the formulation in section 4(1) and (2) could have been framed in various different ways.

29. Given that it is proposed to delegate powers to the Scottish Ministers to implement the requirement for local authorities to review decisions made under section 2, the Committee considers that in principle there should be a requirement for the regulations under section 4(1) and (2) to be brought into force within an appropriate period following the passing of the Bill, rather than there being a discretion to make regulations. In relation to section 4(2), the Committee sees no good reason why there should not be a requirement to provide for the matters set out in the subparagraphs (a) and (b), rather than this being discretionary.

30. The Committee also draws to the lead committee’s attention that, where regulations propose to make only some types of decision subject to review, or provide for the circumstances in which reviewable decisions are reviewed, the section confers wide power to specify any such types of decision and circumstances. The right of an affected individual to obtain a review of a local authority decision under section 2 is a significant matter, and in terms of section 4(3) a right of further review by the Ombudsman is dependent on there being a right of first review under the regulations.

31. The Committee considers that the delegated powers to specify in regulations the types of decision and the circumstances of review should be drawn as narrowly as may be appropriate, and consistent with conferring on persons suitable rights to review the decisions made by local authorities under section 2.

32. The Scottish Government should consider for Stage 2 of the Bill whether section 4(2) could identify the proposed range of the types of decision which may be subject to review, of the types which may be excluded from review, and of the circumstances in which decisions are to be reviewed. That approach would have the benefit that Parliament would be asked to approve within the Bill the range of the types of reviewable decision and circumstances of review, which would be the permitted parameters for the review system. The regulations could then propose the types of decision to be subject to review and the circumstances for review, within those parameters.

33. The decision in accordance with section 4(2) as to the types of decision which would be subject to review, and the circumstances in which decisions are to be reviewed, is a significant matter for those persons who may be affected by the proposals. The Committee therefore considers that, as the powers are presently framed in section 4(1) and (2), the regulations should be subject to the affirmative procedure, unless there is good reason why that procedure would not be suitable. If the powers in section 4 are amended
at Stage 2, the Committee will re-consider the scrutiny procedure proposed, after that Stage.

Section 7 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Laid, no further procedure

34. Section 7 enables sections 1 to 6 to be commenced by order. Section 7(3) provides that any commencement order may include incidental, supplementary, consequential, transitional, transitory or saving provision.

35. The Delegated Powers Memorandum states in relation to section 7 that as the Bill provides for setting on a statutory footing the ongoing arrangements for the provision of welfare funds by local authorities, this possibly may give rise to the need to include transitional or other supplementary provisions in a commencement order.

36. The Committee considers that it is not usual for the commencement powers in a Bill of this scope to include powers to make incidental, supplemental or consequential provision, where the power is not subject to the negative procedure. On the other hand, it is more usual for the commencement powers to include powers to make transitional, transitory and savings provisions, subject to the “laid only” procedure. The Committee therefore sought an explanation.

37. The Scottish Government’s response in the Annex has explained that it is unlikely that any provision of particular consequence may be required under section 7(3) (which permits incidental, supplementary, consequential, transitional, transitory or saving provisions). The response also explains that as the Bill is introducing a new statutory regime, it does not include a section enabling ancillary provisions by means of a “free-standing” order (not a commencement order). Some ancillary powers are therefore needed, given that Councils are operating at present a non-statutory system for welfare funds which is broadly equivalent to the system in the Bill.

38. The Committee considers that the likelihood whether ancillary provision could be required under section 7(3) is not of any particular relevance to the Parliamentary scrutiny procedure which should be applied to the provisions. The Scottish Government’s explanation to the Committee has offered no analysis why any incidental, supplementary or consequential provision that might be made in a commencement order should not be subject to the right of the Parliament to annul the provision, should the Parliament determine that it is unacceptable. The Committee is firmly of the view that any such ancillary provisions made in a commencement order under this Bill should be subject to the negative procedure.

39. The Committee reports as follows, in relation to the commencement powers in section 7.

40. Section 7(3) is not a usual provision within commencement powers, so far as it proposes that a commencement order made under section 7(2)
could make incidental, supplementary, or consequential provision, as well as making transitional, transitory or saving provision.

41. The Committee acknowledges in light of the Scottish Government’s response to it that these ancillary powers might possibly require to be exercised, when provisions in the Bill are commenced. However the Committee considers that the powers to include incidental, supplementary, or consequential provision should be subject to the negative procedure, so that the Parliament would be entitled to annul such provision, should it so determine. It is apparent from the Scottish Government’s response that it is not certain what such provision might cover, or indeed whether such provision will actually be required, when the Bill provisions are commenced.

42. If the Scottish Government considers that the position should be consistent between all the types of ancillary provision referred to in section 7(3), then the powers should all be subject to the negative procedure.
ANNEX

Correspondence with the Scottish Government—

On 24 June 2014, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 24 June and seeks an explanation of the following matters:

Section 4 – Review of decisions

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<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
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2. Section 4(1) and 4(2) provide that regulations may be made, to require local authorities to review the decisions made by them under section 2, as to the use of welfare funds.

3. The Delegated Powers Memorandum explains that section 4 is considered necessary by the Scottish Government, to allow requirements to be placed on local authorities to carry out reviews of decisions in relation to applications for assistance through welfare funds.

4. Further, section 4(3) provides that the right of a further independent review to the Scottish Public Services Ombudsman applies where an individual is dissatisfied with the outcome of a first review. That “second tier” right of review pre-supposes that a first review has been required by regulations.

5. The Committee asks the Scottish Government:
   - To explain why it has been considered appropriate that section 4(1) is framed as permissive - allowing the Scottish Ministers to regulate to require local authority reviews, rather than requiring regulations which will put the review process in place?

6. Section 4(2)(a) provides for a choice which may be implemented by the Ministers in the regulations - that all decisions under section 2 may be subject to review, or only certain types of decision would be subject to review.

7. The Committee asks the Scottish Government:
   - Why this power is framed as permissive, to allow the Scottish Ministers to regulate to implement one of these 2 options, rather than requiring the regulations to provide for one option?
   - How it is envisaged that this power could be used?
   - What examples could be given of the types of decision that could be made subject to review (or otherwise), and the types of
circumstances that might be specified in which reviewable types of decision are to be reviewed? and;

- Why could these not be stated initially in the Bill, though subject to adjustment in future by regulation?

Section 7 – Commencement

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<th>Power conferred on:</th>
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<tr>
<td>Parliamentary procedure:</td>
<td>Laid, no further procedure</td>
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8. Section 7 enables sections 1 to 6 to be commenced by order. Any order under section 7 may include incidental, supplementary, consequential, transitional, transitory or saving provision.

9. In regard to section 7(3), the Committee considers that it is unusual in a Bill of this scope for the commencement powers to include power to make incidental, supplemental and consequential provision, where the power is exercisable by an order which is laid before Parliament but is not subject to the negative procedure.

10. The Committee therefore asks the Scottish Government:

- To explain why Parliamentary scrutiny by the negative procedure is not considered appropriate for the exercise of those ancillary powers, or whether the Scottish Government could agree to lodge an amendment at Stage 2 of the Bill, so that the negative procedure would be applied in those circumstances?

On 15 July 2014, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

Section 4

The policy intent behind section 4 is that there should be a power to require local authorities to review decisions made by them in pursuance of section 2 of the Bill, but that the possibility should be left open that not every such decision should be subject to review.

Whilst the section could have been framed in various different ways, the Scottish Government considers that the formulation in section 4(1) and (2) provides an appropriate way of delivering the policy.

You asked for examples of how the powers in section 4 could be used. Regulations made under 4(2)(a) could specify that it is not appropriate for there to be a right to require review of a decision by a local authority to refuse assistance out of a welfare fund because there are no monies left in that fund at the time of an application being made.
The power within section 4(2)(b) is available to, for example, require review only if a request is made within a certain period of time by or on behalf of an applicant for financial assistance.

The Scottish Government considers that the detail of the review process is better suited to subordinate legislation, following consideration as outlined in section 4 of the Delegated Powers Memorandum.

Section 7

The Scottish Government thinks it unlikely that any provision of particular consequence is likely to require made in terms of section 7(3) of the Bill.

The Bill is introducing a new statutory regime and hence there is no requirement to cover the transition from one statutory regime to another. This is reflected in the fact that the Bill does not include the standard section for ancillary provision to be made by way of a free-standing order. However, the possibility of ancillary provision being required cannot be totally ruled out, particularly given that local authorities are operating at present a non-statutory system for providing financial assistance which is broadly equivalent to the system which the Bill (if enacted) will set up.

In the circumstances, the Scottish Government does not consider there to be any good reason to apply negative procedure to a commencement order which includes provision made by virtue of section 7(3).
Welfare Funds (Scotland) Bill: The Minister for Housing and Welfare (Margaret Burgess) moved S4M-11877—That the Parliament agrees to the general principles of the Welfare Funds (Scotland) Bill.

After debate, the motion was agreed to (DT).

Welfare Funds (Scotland) Bill: Financial Resolution: The Minister for Housing and Welfare (Margaret Burgess) moved S4M-11311—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Welfare Funds (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
Welfare Funds (Scotland) Bill:
Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-11877, in the name of Margaret Burgess, on the Welfare Funds (Scotland) Bill.

I call on Margaret Burgess to open the debate. Minister, you have 14 minutes.

14:20

The Minister for Housing and Welfare (Margaret Burgess): I am delighted to open this stage 1 debate on the general principles of the Welfare Funds (Scotland) Bill. I extend my gratitude to Michael McMahon and the members of the Welfare Reform Committee for both their scrutiny of the bill and their stage 1 report on it. Thanks are also due to the Finance Committee and the Delegated Powers and Law Reform Committee for their consideration of the bill and their contributions to the lead committee’s scrutiny.

The Welfare Reform Committee should be commended for taking evidence from such a wide range of organisations and individuals. The evidence from users of the fund was especially compelling. I am grateful to those stakeholders for the considered views that they offered to the committee and also for their responses to the numerous Scottish Government consultations, which helped to shape both the policy objectives of the interim Scottish welfare fund and the proposals in the bill.

The committee’s conclusion that the bill provides a suitable framework for establishing the interim Scottish welfare fund on a secure statutory footing is to be welcomed. It captures well what the Government wants to achieve through the bill—that is, to put in place for people on low incomes a permanent and reliable safety net in which they can have confidence.

The committee made a number of suggestions, detailed recommendations and comments, and it called on the Government to consider and respond to them during the later stages of the bill’s parliamentary scrutiny. The Government is still reflecting on some of them, and I will set out our position on all of them in our response to the report prior to stage 2 proceedings. In this afternoon’s debate, the focus should be on the principles of the bill and what we want to achieve through it, although I will try to address some of the more significant points that the committee raised.

It has to be said that the Welfare Funds (Scotland) Bill is a slightly unusual bill in that it seeks to put an existing scheme on to a statutory
footing. Members will be aware that the Scottish welfare fund has been operating on a voluntary, interim basis since April 2013, following agreement between the Scottish ministers and Convention of Scottish Local Authorities leaders. It is clear to me from the evidence that the committee heard, and from its report, that delivery of the current scheme is generally viewed in a positive fashion, albeit that there is scope to improve practice.

Most people have told us and the committee that local authorities are the right people to be delivering the fund and that the experience of applicants is generally more positive than under the previous Department for Work and Pensions scheme. Indeed, Scott Robertson from Quarriers observed at the evidence session on 7 October:

“The comparison between the new system and the previous system is like night and day.”—[Official Report, Welfare Reform Committee, 7 October 2014; c 5.]

It is also worth noting that there is no longer an equivalent local welfare scheme in operation across England, so this is a clear example of this Government taking a distinctive approach to protecting vulnerable people in Scotland. Feedback on the patchwork of provision in England gives me confidence that the Scottish Government is doing the right thing in the bill. However, that does not mean that we are complacent. Since the fund was launched, we have done a lot of work to ensure that lessons are learned and good practice is shared, and that work will continue as we move towards the permanent arrangements.

We have been working extensively with local authority practitioners and third sector stakeholders to ensure that learning from the interim scheme is captured and good practice is shared. Only last month, a series of decision-making workshops were held with local authority practitioners across the country to help them to hone their decision-making skills. The workshops included case studies from third sector partners such as Who Cares? Scotland, and Engender, which helped to enhance the quality-improvement measures that we are undertaking with COSLA to make the Scottish welfare fund as effective as possible.

Given its high-level nature, the bill has not been particularly affected by that, but the work will be of great value when we develop the associated regulations and detailed guidance that will really set out how welfare funds will operate under the permanent arrangements.

It would be appropriate at this point to reflect on the rationale for the bill. There were three reasons behind its introduction. First, the bill demonstrates a long-term commitment to the Scottish welfare fund; as I said earlier, the current scheme is administered voluntarily under an agreement between the Scottish ministers and COSLA leaders. Secondly, the bill provides the option of the independent review of cases by the Scottish Public Services Ombudsman, which would not be possible without the bill. Finally, the bill allows for the funding for the welfare funds to be ring fenced if required.

The bill is designed to set a high-level framework that reflects the wording of the section 30 order that gave the powers to the Scottish Parliament to deliver the type of assistance that is provided by the current Scottish welfare fund. The regulations and the associated statutory guidance will set out the detail of how the funds should operate. We will consult on draft regulations and guidance, informed by the evidence that the Welfare Reform Committee has heard on the bill, before the permanent arrangements come into force.

We consulted on a draft bill between November last year and February this year. The most significant change to the draft bill that we consulted on was the proposal that the SPSO should have powers to carry out independent reviews of local authority decisions. Responses to the consultation on the best option for reviewing were divided, but I am convinced that the SPSO best meets the criteria for second-tier reviews that we set out in our consultation.

Most importantly, the SPSO’s independence will ensure that the right decisions are made for applicants. That will give them and the people who work with them greater confidence in the Scottish welfare funds. The SPSO’s national overview will also play an important role in continuing to improve the quality of decision making and helping to maintain the national character of the scheme.

I know that there is significant interest in how the SPSO will discharge its responsibilities with the independent review function that is proposed in the bill; indeed, the ombudsman raised that matter in his written evidence to the committee. We have been in discussion with the ombudsman on how best to enable him to have the powers that he regards as necessary to discharge the proposed review function as effectively as possible. We intend to lodge amendments at stage 2 that will give the SPSO powers in relation to reviews that match its existing powers in relation to complaints in areas such as evidence gathering, confidentiality and reporting.

I know that stakeholders have very different views on the powers to outsource the administration of welfare funds under section 3 of the bill. That was included in the bill because the service is new and we wanted to provide flexibility for the varying approaches to delivery among local authorities. However, others have expressed
concerns that the provision would introduce the possibility of outsourcing to private sector firms, and they have highlighted issues with the delivery of welfare-related services by the private sector.

I have given a lot of consideration to the Scottish welfare fund’s unique position in providing a safety net to a local authority’s most vulnerable people and the value added by the local knowledge, signposting and referral to other services as part of a Scottish welfare fund application. I have also considered the different positions that stakeholders hold in the debate, including the position that is taken in the committee’s stage 1 report.

Although I can see a case for local authorities collaborating to provide services across boundaries, I have concluded that effective provision of the Scottish welfare fund is not consistent with outsourcing the service. I therefore intend to lodge an amendment at stage 2 to remove from the bill the ability of local authorities to outsource the provision of welfare funds. [Applause.]

It is clear from the response in the chamber that that is welcome. I welcome that welcome. It was never the intention that the service could be outsourced to the private sector. Although that was never the intention and that was never suggested, it is clear that there was a perception in the evidence that was put to the committee that that could happen and was going to happen. It is right to be very clear at this stage that that ability will be removed from the bill and that we will lodge an amendment to that effect at stage 2.

As the committee recognised, the bill is about putting the interim Scottish welfare fund on a more secure statutory footing. It will enable us to demonstrate a long-term commitment to the Scottish welfare fund, provide for independent review of welfare fund applications and give us the flexibility to ring fence the funding provided.

The bill is about helping the most vulnerable people in our communities the length and breadth of Scotland, and I want to work with all members and all parties across the chamber to secure those objectives. The fact that we have had the interim Scottish welfare fund on a voluntary basis has allowed us to learn a lot of lessons. We hope to progress matters through the bill, and the regulations will set out in detail how we proceed.

I move,

That the Parliament agrees to the general principles of the Welfare Funds (Scotland) Bill.

The Presiding Officer: Before I invite Michael McMahon to speak on behalf of the Welfare Reform Committee, I point out to members that there is a bit of time in hand, so we will be extremely generous with the times for your speeches.

14:31

Michael McMahon (Uddingston and Bellshill) (Lab): I welcome the opportunity to speak on behalf of the Welfare Reform Committee following our stage 1 report on the Welfare Funds (Scotland) Bill. I thank the committee clerks and colleagues who served on the committee throughout the bill’s consideration for the hard work that they put in. I also thank those who gave evidence to the committee for informing us of the issues and the concerns of civic Scotland and others about the delivery of the new Scottish welfare fund.

We are here to debate a bill that will place the interim Scottish welfare fund on a statutory basis. We know from the evidence that we took that the interim fund has been a benefit to many vulnerable people across Scotland. I repeat the minister’s reference to the comparison of the scheme with the DWP fund by Scott Robertson from Quarriers, who observed:

"The comparison between the new system and the previous system is like night and day."—[Official Report, Welfare Reform Committee, 7 October 2014; c 5.]

Local authorities have also reported the benefits. Creating a statutory duty will provide greater assurance and the ability to retain staff members, expertise and knowledge. It will also help to secure local authority funding and resources and encourage better engagement with local partners.

Section 2 of the bill sets out the circumstances in which a local authority can provide assistance. In particular, we heard evidence about the need of families facing extreme financial pressure—not as a result of sudden crisis, but as an on-going part of their everyday life. When the scheme operated as the DWP social fund it had a category for families in which a local authority can provide assistance.

The bill intends to reform the criterion in light of the evidence received to ensure that all those in legitimate need of the fund are able to access it.

Section 3 allows for outsourcing or joint administration of the fund between local authorities. We took evidence that there are benefits that may be drawn from joint working, particularly for smaller authorities, such as economies of scale, increased purchasing power, sharing best practice and increased consistency. However, third sector organisations are firmly against the use of private third-party providers
being involved in the delivery of state benefits for profit. As a committee, we have heard the horror stories of Atos Healthcare’s administration of the work capability assessments. We are clear that we do not want a repeat of that situation.

The committee took some comfort that the Scottish Government does not envisage the fund being outsourced to a private company. However, we noted that contracting out the services would likely be subject to European Union regulations on public procurement, which requires public bodies to comply with rules on equal treatment and non-discrimination.

In light of that, some members thought that the potential for outsourcing should be removed from the bill and that the provision should be restricted to joint working with other local authorities. However, a majority of the committee was content to recommend

“that the Scottish Government consider the issue of outsourcing in light of EU procurement laws and thresholds to ensure that private companies are not allowed to undertake the work.”

That was probably the most contentious area of the bill. I am personally delighted by what the minister, having heard the evidence, said today. I am not sure whether Alex Johnstone will maintain his position on the matter, but I am delighted that the minister’s position has moved.

Section 4 concerns the review of decisions and provides for the Scottish Public Services Ombudsman to take on a new role as a second-tier review body. Witnesses’ views on the new role were split. Local authorities thought that it would be more consistent with the principles of local self-governance if second-tier reviews remained under local authority control, whereas the third sector was in favour of the use of the SPSO, which is regarded as independent, consistent and impartial. The committee agrees that independence, consistency and impartiality are essential principles for any review body. We therefore support the Scottish Government’s proposal that the SPSO conduct second-tier reviews, and we welcome the SPSO’s commitment to carry out a full consultation and publish guidance. We support the call for an appropriate provision to that effect to be included in the bill.

Section 5 sets out the circumstances in which payments or assistance may be repaid or recovered. We understand and support the Scottish Government’s clear intention for the fund to be a grant-making scheme, but in the interests of future proofing the fund we recommend clarification to ensure that recovery of awards is considered only in the context of dealing with fraud.

The increasing demand on the fund and the increasing impact of welfare reforms, much of which is still to be seen, were concerns for witnesses. Third sector organisations expressed concern about variation in spend across Scotland. The minister responded with an assurance that the Scottish Government will consider a needs-based approach to future budget allocations. The committee welcomes that. We also recommend that an additional category, on monitoring unmet need and the reasons why it has arisen, be included in COSLA’s benchmarking indicators.

Another strong message from the evidence was that administrative funding is falling short and that local authorities are supplementing funding from their own budgets. We heard that Dundee City Council is short by 30 or 40 per cent, just on the cost of processing applications. COSLA said that failure to address such concerns will potentially jeopardise the wider outcomes that the bill is trying to achieve.

It is vital that administration of the fund is supported and that growth in demand is recognised. We welcome the assurance that the Scottish Government will reconsider the distribution of administrative funding if strong evidence emerges from the benchmarking exercise that is due to be completed by COSLA. We encourage COSLA to make its findings publicly available as soon as possible.

The funding that will be allocated to the setting up of the SPSO in the role of second-tier reviewer provoked a mixed response. Our discussions focused on the uncertainty around the number of cases that the SPSO will need to deal with. Jim Martin, the Scottish Public Services Ombudsman, said:

“For planning purposes, we have had to arrive at numbers in order to think through what the implications would be if we reach a certain level of appeals. What the actual numbers will turn out to be is anyone’s guess at the moment.”—[Official Report, Welfare Reform Committee, 4 November 2014; c 23-4.]

The uncertainty will have a significant yet currently unquantifiable impact on the SPSO’s funding, resource and space requirements. We welcome the SPSO’s intention to be flexible so that it can adapt to changing demands. When the legislation is in place, reviews should be conducted to establish the true nature of demand for second-tier reviews.

The bill provides only a framework; much of the detail about the running of the fund will appear in regulations and guidance. We recommend that regulations be subject to the affirmative procedure.

Witnesses put forward a wide range of evidence on the operation of the fund to date. I will highlight one or two of the points that they made.
Strong arguments were made about whether it is better for an applicant to receive an award in the form of cash or in the form of vouchers or goods. The provision of goods allows councils to know that the award is being used as intended, and it can provide for local businesses opportunities in procurement and distribution. However, being allowed a choice is essential in order to maintain a level of dignity and self-determination and to reduce stigma. Treating applicants with respect, despite their circumstances, is vital. We welcome the Scottish Government’s assurance that it will look again at the issues of stigmatisation and choice. Providing options and meeting individual needs should be central to the fund’s process.

We spoke directly to some individuals affected. Connor, a welfare fund user, said:

“I felt quite a lot of the time as though the person did not recognise me as a person. They just saw me as a voice on the phone looking for money. If they were to meet face to face with people, they could see the reality that you are a human being who has nowhere else to turn”. —[Official Report, Welfare Reform Committee, 28 October 2014; c 10.]

Fund users also had a view on processing times. In the interim Scottish welfare fund scheme, local authorities have 48 hours in which to process a crisis grant. However, in the previous DWP fund scheme, that deadline was 24 hours. We view crisis grants as an essential part of the safety net provided to vulnerable people, so it is essential that local authorities work as quickly as possible to deliver grants to applicants and keep them informed of the process. The committee notes the minister’s assurance that local authorities are working to a same-day deadline and that the 48 hours is the maximum time allowed.

Overall, we welcome the Welfare Funds (Scotland) Bill and support its general principles. The committee recommends that the bill passes stage 1.

The Deputy Presiding Officer (John Scott): Thank you very much. I call Jackie Baillie, whom I can give an extraordinarily generous 10 minutes to, as we have a bit of time in hand this afternoon.

14:41

Jackie Baillie (Dumbarton) (Lab): Oh my goodness, Presiding Officer! I am not often made such an offer by you, so I shall take you at your word.

I start by saying what pleasure it gives me to speak on behalf of the Scottish Labour Party in the debate on the Welfare Funds (Scotland) Bill. As members might know, it will fall to Ken Macintosh to close the debate for Labour and to carry forward this portfolio in the future. I thank the Minister for Housing and Welfare, and I hope that she has enjoyed our tussles in the chamber over the piece. Perhaps she has not—I am sure that she will be glad to see the back of me.

I thank Michael McMahon, the convener of the Welfare Reform Committee, for his consideration of the bill, together with his colleague MSPs, the clerks to the committee and everybody who gave evidence. I also thank the staff in local authorities across Scotland who process and make decisions on the claims, because they play a vital role. It has been a learning process for them. Not everything that we have all done has been right, but I think that we are now starting to get there.

In a spirit of good will and new-found consensus—it is Christmas, after all—I indicate that Labour will support the general principles of the bill.

I well remember when the Scottish welfare fund was first created following the devolution of crisis loans and community care grants from the United Kingdom Parliament to the Scottish Parliament. I look forward to more of that in the future when the Smith agreement is implemented—that, of course, is a debate for Thursday afternoon. Suffice it to say that the Smith agreement represents the biggest-ever transfer of powers to the Scottish Parliament. It is a promise delivered, and I am excited at the potential that it presents: the potential to shape some benefits differently; the potential to top up existing benefits; and—perhaps the most imaginative of all—the potential to create new benefits in devolved areas. This will not be the last piece of legislation that we see on welfare; on the contrary, there is much more to come.

Bob Doris (Glasgow) (SNP): I am delighted that Jackie Baillie is excited by some of the new powers over benefits that will be coming to Scotland. Does she agree that, for any benefits paid by Scotland, there should be no cash clawback from, say, means-tested UK benefits such as income support? Does she agree that any benefits paid in Scotland or topped up in Scotland should not be taken back by the UK Treasury at any point?

Jackie Baillie: I do not think that there has even been a debate on that. The power to top up is exactly that. I would not anticipate clawback. I genuinely think that to top up means to increase. I think that the member is probably getting excited before something happens.

The Scottish welfare fund was established without statutory underpinning. I agree that it was the right approach to test the operation of the fund before legislating, because there has been much to learn. There are a number of concerns and, as we know, guidance has been changed a number of times to reflect those concerns, including on the
ability to provide funds to people who have been sanctioned.

The operation of the fund was devolved to local authorities, and it is fair to say that the results have been mixed. Naturally, the 32 local authorities did things in different ways. In some instances, that was not always to the benefit of those in need, although I am sure that that was completely unintentional. Decision making was inconsistent. Some authorities were tougher than others on awarding grants, and others had trouble spending their budget. Some local authorities that cover our most disadvantaged areas could have done with more money, because the need in their areas was greater than they could meet.

While I am on the budget, I record how disappointed I was that the fund was underspent at the end of the year. Time after time, we came to the chamber asking about the underspends, from the very first quarter to the very last quarter, and we were assured that the money would be spent. It is not as if there is not a need out there, as we are experiencing our worst cost-of-living crisis in generations and the level of sanctions is rising at a staggering rate. Therefore, for me, to underspend the fund borders on the criminal. The total underspend at year end was £4 million, which was 12 per cent of the overall budget. That money could have helped to stave off hardship for families in the past year.

Kevin Stewart (Aberdeen Central) (SNP): Will Jackie Baillie give way?

Jackie Baillie: No. I have already given way and I need to make progress. I will be happy to take an intervention later.

Another question is whether it is appropriate to provide goods rather than treat people with the respect and give them the dignity that I think we all believe they deserve by allowing them some choice. I will come on to that later.

The issue of eligibility was raised in the Welfare Reform Committee report and in briefings from third sector organisations. I welcome the committee’s recommendation that eligibility should be widened. We need to ensure that no vulnerable person is excluded from seeking support and we need to make information about the fund widely available. The language in the bill implies that the majority of the fund’s clients are already in the system, but that excludes some groups of vulnerable people who might not be on benefits. Many of the most vulnerable people might be seen not to fit the criteria that are currently laid out. I hope that the minister agrees that more work is needed on that.

My fear is that the language in the bill might be restrictive. Third sector organisations have noted that the definition of “qualifying individuals” excludes care leavers, families that are under exceptional pressure or people with disabilities. The language of “exceptional circumstances” may also discourage applicants. For example, it might discourage people whose benefits run out before they pay the bills that need to be paid, people who face intermittent costs such as that of replacing a broken cooker or people who face benefit delays or sanctions.

I believe that the language should be widened to include “families experiencing exceptional pressure”, as recommended by the Child Poverty Action Group in Scotland and the Poverty Alliance. People are facing a cost-of-living crisis the likes of which we have not seen for generations. We already know that families that are under exceptional pressure are underrepresented in Scottish welfare fund awards. In 2013-14, 20 per cent of community care grants were awarded to such people versus a figure of 53.6 per cent for the UK social fund in 2012-13. Clearly, there is more to be done on that.

I strongly disagree that the Scottish welfare fund should be outsourced to the private sector. We have all been very strong in our condemnation of what Atos has done just with assessments—so much so that it has withdrawn from part of the delivery of UK assessments. I genuinely believe that decisions on benefits must be made by Government, so I am absolutely delighted that the minister has had a change of mind. I take great comfort from her view that she does not want provision on outsourcing to be in the bill, and I look forward to amendments on that at stage 2. I congratulate her on listening to the members of the committee—although the point certainly was not made by the members of her party, who differed on the issue. Other members of the committee argued that point particularly strongly.

The bill should allow local authorities to undertake joint work with other local authorities, but outsourcing to the third sector would have produced a conflict of interests. Many third sector groups help people to apply for grants, so it would be difficult for them to advocate for clients and make benefits decisions. The possibility will be removed, and I am grateful for that.

I turn to the appeals process. It is essential for the Scottish welfare fund’s users that the review process be transparent, impartial and independent. In particular, given that the first-tier reviews are carried out by local authorities, it is crucial that an independent agency carry out second-tier reviews.

Almost a year ago—it was probably more than that—I raised the question of social security commissioners with Nicola Sturgeon when she held the relevant Cabinet post. She denied that such an appeals mechanism was necessary, so I
am again delighted that the Government is listening and changing its mind on that.

We need to understand why the number of appeals that there have been so far is so low. Are people content with the decisions, are they not being informed that they have the right to appeal, or is their crisis so bad that they cannot hang around and wait for an outcome?

I ask those questions because there is a significant overturn rate for appeals. There were 2,700 reviews for community care grants and crisis grants in 2013-14, and, in both cases, more than 50 per cent of the decisions were changed. I welcome that because we can learn from it but we need to understand exactly what is going on so that we truly learn the lessons from the process.

We need to ensure that there is a statement in every decision letter that informs people of their right to appeal. Local authorities must make applicants aware of their rights, regardless of whether they are given an award. Whatever agency carries out the second-tier reviews, its decisions must be binding. I am happy that—if I understand this correctly—the SPSO will be able to overturn decisions rather than simply consider the decision-making process. That is a change to how it operates but it is a welcome change indeed.

We need to consider timescales so that we have timely decisions. At the moment, the bill is vague on the review process. Perhaps that is for understandable reasons and the matter is one for guidance, but we must set out somewhere in statute our expectations on timelines and reporting requirements, because we need an approach that is consistent nationwide. Consistency matters, and it matters in relation to reviews and appeals as well.

It is interesting that those who gave evidence to the committee also perceived the SPSO to be the most fair and impartial body to carry out reviews, and that local authorities just did not cut the mustard. Bill Scott from Inclusion Scotland said:

“nobody—not one single disabled person whom we asked—said that the local authority should do it. People said that that would not be perceived as fair. Even if the decision was correct, the local authority would still be reviewing its own decision, and that was just felt to be unfair.”—[Official Report, Welfare Reform Committee, 7 October 2014; c 29.]

A key issue that people on low incomes experience is the stigma that comes with living in poverty. The most vulnerable of us should not be made to feel small simply because we are poor. You and I, Presiding Officer, expect to be treated with dignity and respect; the most vulnerable among us should be treated in the same way. Therefore, I welcome the committee’s recommendation that trust of, and respect for, applicants be among the fund’s underlying principles.

However, with those principles of trust and respect comes choice. Vulnerable people should be given a choice in decisions that concern their lives. They should have a choice between receiving goods and receiving a cash payment instead, if the situation calls for that. Simply giving out goods reverses decades of agreed policy and practice in relation to benefits, and I am sure that the minister would not want to do that. Having that choice helps to reduce the stigma of poverty and enables people to live a dignified life.

I welcome again the general principles of the bill and look forward to the minister continuing to listen so that improvements are made at stage 2.

The Deputy Presiding Officer: I call Alex Johnstone, who has a very generous six minutes.

14:54

Alex Johnstone (North East Scotland) (Con): I would like to take an early opportunity in this debate to thank my former colleagues on the Welfare Reform Committee, which I left two weeks ago to go on to other activities. My three years on the committee were enjoyable, I must say. I thank my colleagues and members of the clerking team for how they took my, at times, extremely different attitudes—contradictory might be a fair description—in good spirit, realising that I was doing a particular job and that I might not agree with my colleagues on everything. As a result, I think that, on a number of occasions, I was treated as the pantomime villain of the piece—

Kevin Stewart: Oh, no you weren’t!

Alex Johnstone: I was waiting for someone to shout, “Look out behind you!” I would have asked them what exactly Willie Rennie is doing.

However, the process of the bill has been informative. Not only did we consider the bill in the normal process, but we also had the responsibility of considering the interim scheme as it was introduced. Therefore we have, along with the Government, had the opportunity to consider the difficulties that were experienced and to work through them, as the Government had to. I think that the interim arrangements were a steep learning curve for the Government and the local authorities that had to administer them.

This was, of course, our first step into the welfare arena, and one that will—as has been mentioned by other members—be repeated as time goes on and more powers are devolved. However, it is ironic that this attempt to implement one aspect of Scotland’s welfare responsibility left us in the unusual position of having a Scottish Government that perhaps underestimated the
responsibility that it had taken on. The result was that, on more than one occasion in the early days of the scheme, back in 2013, we heard of people who felt that they should have been entitled to receive support but were not given any when they applied. There was a mistaken belief that the social fund had simply been abolished rather than devolved; as a result, many people did not realise that the new scheme existed. During its inquiry, the committee spoke to a number of people who were surprised when they found out by some route or other that the money was still available.

There is firm evidence that, as a result of those early difficulties, applicants in key local authority areas might have been turned away from the scheme when they should have received help, and that some applicants who were refused in the earlier part of the year might have been accepted if they applied in the latter part of the year. I have spoken to people who were refused help in the early days and were referred to food banks. Ironically, the Scottish Government might blame welfare reform for some of the shortcomings in social policy, even although it, or at least a scheme that it administers, might have been one of the key drivers for that transfer. Consequently, we have learned a lot.

I am broadly supportive of the nature of the legislation that is being brought in, and the Conservatives will vote in favour of the bill at stage 1 tonight. However, as has been mentioned, there is in the report one area in which I felt it necessary to register my objection—the discussion around outsourcing. I understand that there are many people in this Parliament—a majority, I am sure—for whom the private sector is simply not an appropriate agent for providing a public service. I dispute that on a fundamental level, but that is not where I wish to go at this particular moment.

What concerns me about the failure to allow the private sector to become involved is the fact that we are taking that decision away from local authorities. If politicians in this chamber have faith in local authorities, they should have had faith that they would not choose that action. One of the things that we are doing today, as a result of the changes that the Government has promised to introduce, is that we are undermining the decision-making process of local authorities. Local authorities might not have used the power, but to deny them the option to use it is to undermine them and is an example of the centralisation of power.

On the same issue but from another angle, I have concerns that, by taking away the opportunity for the private sector to wield that power, we may be preventing third sector organisations from entering into partnerships using a private sector model as a vehicle. We could have allowed people with a great deal of expertise to get involved. I believe that, in the future, the Government’s decision to close off that avenue will be shown to have been a mistake.

The experience of the previous scheme, and particularly the involvement of local authorities, has taught us that local authorities have the potential to be the vehicle for the introduction of great many of the new welfare powers that are coming down the road, thanks to the Smith commission. Although there has been a steep learning curve, we have seen local authorities start with a difficult set of circumstances but reasonably successfully find their way through to the end of the process.

When the committee took evidence on the bill, we spoke to a number of people in local authorities who have demonstrated that they now have a high level of expertise and experience and a great deal to offer in this area. I commend those who gave evidence. They were open and honest with the committee and sometimes told the committee things that it did not want to hear.

I support some key aspects of the bill but I have concerns about others. It is an excellent and appropriate idea that the second-tier reviews should be conducted by the SPSO. As other members have said, however, we cannot at this stage predict what that will cost or how many people will go through that process. As a consequence, I have some concerns about how that will turn out.

An issue that was raised on some occasions was the administration costs of the scheme. Local authority representatives in particular objected to the fact that not enough money had been allocated for admin costs. That is a concern. We know that admin costs will be high, but I am worried that they may get out of hand. For that reason, we must be sure that the scheme is efficient and that, rather than its being worn away in administration, as much money as possible is being passed to the people who qualify for it and need it to carry on their lives.

I understand the idea of widening the qualification criteria. However, we must look at that from the point of view of the additional cost and how it will be financed. As we move forward, Parliament must be accountable for its actions and for how it raises money, as well as for how it spends it. The scheme must be taken forward with both those concerns at the front of our minds.

On the question of payment in cash or in kind, we took a great deal of evidence during the inquiry that indicated that people are very happy to receive assistance and support in kind. We spoke to witnesses who were very pleased to have had white goods or carpets delivered and fitted. Simply
to have been given the money was the second preference, especially for people who live in areas where it is difficult to acquire such things at reasonable cost.

The Deputy Presiding Officer: Will you draw to a close now, please?

Alex Johnstone: Indeed, I will.

The committee heard people say that they like face-to-face meetings, but the speed of the phone process is important to many other people. We should not ignore that.

Finally, there is some discussion and, perhaps, some confusion about what is meant by the 24-hour and 48-hour timescales. People gave evidence to the committee that suggested that their applications had been in the in-tray for an extra 24 hours, simply to reach the 48-hour limit. We need to emphasise that irrespective of whether 48 hours is the limit, if an application can be processed in 24 hours it should be done in 24, and that applications should not be backed up or stockpiled.

That said, I give my commitment that we will support the bill at decision time tonight.

The Deputy Presiding Officer: We move to the open debate and we have some time in hand. Clare Adamson has a generous six minutes.

15:05

Clare Adamson (Central Scotland) (SNP): I welcome the debate on the committee’s stage 1 report and I welcome the minister’s comments about the report and the bill. The report says that this is a suitable framework with which to move forward. The bill will give the welfare fund a secure statutory footing. It will demonstrate the fund’s permanency and the commitment to providing such a safety net and security in Scotland.

I joined the Welfare Reform Committee very recently and I am relatively new to the report and to the bill. I thank the committee; its convener, Michael McMahon; and its previous members for their diligence during stage 1 deliberations and for producing a comprehensive and welcome stage 1 report. I am enthused about taking the bill through the committee stage in the coming months.

I was a bit surprised to hear that one of the committee’s members enjoyed his time on the committee. Having read the evidence and seen some of the reports, I have to say that it would be difficult to describe the experience as enjoyable. I am sure that it has been harrowing and difficult for committee members on occasion and I pay tribute to those who have given evidence and come forward to discuss the very difficult situations that they find themselves in.

I have mixed feelings about the bill. It is regrettable that Scottish resources and efforts are to be spent on mitigating bad—indeed, in my opinion, appalling and inhumane—decisions that have been taken in another place. I regret that Scotland did not take on welfare powers in this place as an independent Scotland and that the welfare settlement proposed by the Smith commission does not bring significant powers to shape welfare. I sit with the Scottish Trades Union Congress and the third sector organisations that have said that that is a missed opportunity.

However, the Welfare Reform Committee has done an excellent job. As the minister said, the welfare fund has already helped more than 100,000 households and the bill will put the fund on a statutory footing to ensure that that vital help continues.

I thank the third sector organisations that provided briefings for the debate. I was struck by the description in a Citizens Advice Scotland briefing of what destitution in Scotland means. Since the welfare fund is for people in crisis, I wish to put that definition on record. The briefing states:

“Destitution, while an emotive word, is a useful term to use to describe a situation in which a client cannot afford to obtain essentials for life through their own means. This goes beyond poverty, where a person is unable to cut back anymore and needs some sort of external assistance. Bureau statistics do not record these situations specifically, although a number of indicators—such as issues recorded covering food parcels ... show”

that destitution is increasing.

CAS extrapolates from the figures that it has to show that, although one in 50 clients last year who were seeking advice had a recommendation of a food parcel, it expects that by the end of the year, that will go up to as many as one in 42 clients seeking advice. That level of poverty and—as CAS says—destitution in Scotland is simply unacceptable.

I am really glad that the welfare fund has been established and has helped 32,000 families in Scotland. I am more than happy that the stage 1 report, which seems to have been accepted across the chamber, will take forward the bill to ensure that there is a permanent commitment to welfare in Scotland.

It is important to commend the Scottish Government for what it has done so far. The fact that it has topped up the money that was provided by the UK Government by £9 million indicates how seriously it takes the situation. That has not happened across the UK, where the full amount of funding has not been given to welfare funds in some areas.

In the stage 1 report, the Welfare Reform Committee recognises
the greater stability that a statutory duty for local authorities to maintain a welfare fund brings in securing staff and resources as well as an improved, more holistic service.”

That is important. The Quairiers quote that has been used twice this afternoon—that the difference between the new system and the previous system is like the difference between night and day—is welcome news in Scotland.

I am glad that the Scottish Government is providing more than £100 million in 2015-16 to protect families from the impact of Westminster welfare cuts, although it is regrettable that such mitigation is necessary. It is unacceptable that anyone should be living in poverty in a country that is as wealthy as Scotland. We are taking action by setting aside £104 million in next year’s budget to tackle poverty and inequality and to help those who are affected by the welfare changes. That is welcome indeed.

I mentioned Citizens Advice Scotland. I note that it is addressing welfare reform and has announced that it has established a new Scottish leaders welfare and benefits group. Lord McFall, who chairs that group, said:

“The overall aim of this group is to work collaboratively to highlight and respond to the impact of recent changes to the welfare and benefits system on the people, services, and communities of Scotland, especially vulnerable people or groups.”

If it was Scotland’s system, I do not think that it would be broken. Indeed, if it was Scotland’s system, it would be day to austerity’s night.

I could not agree with that more and I am glad that a group is looking at the issue.

The response to the stage 1 report shows that consensus can be achieved across the chamber on an important issue for Scotland. However, I take issue with the title of CAS’s press release:

“New Group aims to investigate Scotland’s broken welfare system”.

I note that most of the briefings that we have had on the stage 1 report broadly welcome the bill. I congratulate Michael McMahon and the Welfare Reform Committee on the work that they carried out, because it has been a good contribution to the bill process.

I welcome the minister’s announcement that outsourcing will not continue under the bill. I know that Alex Johnstone stands by his previous argument, but I hope that some of his colleagues have changed their minds and now support that position that the committee convener put forward.

The briefing from the Poverty Alliance sets out some important points that I hope we can pick up as the bill progresses through Parliament. It makes a number of points on accessibility, highlights the need to publicise the fund and questions whether people are aware that the fund exists. There was a 12 per cent underspend in the fund in 2013-14, yet levels of deprivation and poverty are higher, which makes the underspend difficult to explain.

Increasing numbers of people are experiencing pressures, and families are facing a cost-of-living crisis. As the briefing notes, some have argued that the eligibility criteria for grants should be widened to include ‘families experiencing exceptional pressure’.

At present, a lot of families are experiencing such pressure.

On the subject of eligibility criteria, I remember from my former job sitting on a social work committee that, every time the budget was put under more pressure, the eligibility criteria changed to allow the budget to be managed. We need to look at the eligibility criteria for the fund and take on board the views that we are hearing.

The minister mentioned that the fund has been in place since 2013, although the legislation is being introduced now. The advantage of that is that the committee has been able to hear and learn about some of the issues from people and from organisations that have supported people to access the fund.
On stigma, the Poverty Alliance quotes someone who says:

“I felt small, simply because I was poor did not mean I should have no choice”.

That is an important point, as Jackie Baillie noted. The Poverty Alliance recommends that awards should

“be issued as cash unless it is not in the interest of the individual.”

I hope that the minister will pick up that point. My ambition is to drive people out of poverty so that they do not need to access such funds, but in the meantime no stigma should be attached to accessing funds. We need to ensure that people are treated with proper respect when they apply for grants.

Likewise, members have highlighted issues with the appeals process, such as the number of appeals that did not take place, whether people are aware of the mechanism and whether support is in place. I hope that some of the points on that from the briefings to members will be picked up.

I welcome the minister’s announcement that the Scottish Government will not outsource the scheme’s administration. As a final point, I highlight the need to look at the variation between local authorities. The average care grant in Glasgow, for example, is approximately £900, whereas the Scottish average is approximately £640. We need clear advice and criteria in place so that the system does not end up as a postcode lottery. I certainly support having local authorities administer the fund, but we need clear guidelines. I hope that the minister will pick up some of the issues that have been raised on that as the bill progresses through Parliament.

15:19

**Kevin Stewart (Aberdeen Central) (SNP):** I welcome the fact that we have reached the first stage of putting the Scottish welfare fund on a statutory footing, and I agree with Councillor Norman MacDonald of Comhairle nan Eilean Siar, who said:

“legislation will give certainty not just to local authorities but to the clients about what is in place.”—[Official Report, Welfare Reform Committee, 30 September 2014; c 18.]

However, it saddens me that we have to do such a thing and that we are seeing £6 billion-worth of cuts to families in Scotland as a result of the Tory-Liberal welfare reforms.

Mr Johnstone described himself as the pantomime villain of the Welfare Reform Committee, but there is nothing pantomimic about the policies that are emanating from the Government at Westminster, which are creating difficulties in our society. I welcome the fact that, over 2015-16, the Scottish Government will put £100 million into mitigating the effect of welfare reform, but the reality is that that is a drop in the ocean in comparison with the £6 billion cut.

What are the realities? What is happening out there? What are people facing? The other week, I was in the Trussell Trust food bank in the Seaton area of my constituency. We know from the trust that, over the past year, use of its food banks in Scotland has risen by 400 per cent. Last year, more than 22,000 children had to rely on three-day emergency food parcels from the trust.

I know from the folks I spoke to that day not only that they have been relying on food banks but that they have needed to access the Scottish welfare fund. I spoke to one woman whose benefits have been sanctioned for more than two years. She relies entirely on friends and family, measures such as the Scottish welfare fund and support from the Trussell Trust. I spoke to two young families in both of which the husband is in work but who rely on food banks and things such as the Scottish welfare fund because they are not paid enough. It is a shame that this Parliament does not have control over the minimum wage, as I would like. That would help to eradicate poverty, which is what both Mr Rowley and I want to see.

The £6 billion of cuts are having a real effect on our society. I welcome the £100 million commitment from the Scottish Government, but we need to ensure that the Government at Westminster goes and that whatever replaces it changes tack. The only way that we will see that is with strong Scottish National Party representation at Westminster next year.

I will look at some of the issues in the bill. There has been debate about outsourcing, and all members of the committee were against privatisation of the Scottish welfare fund, apart from the pantomime villain, Mr Johnstone. I am glad that the minister has ruled that out completely today, unlike the Welsh Labour Administration, which has given all its welfare funds over to a private company—its social fund is now being dealt with by that company. There is a degree of hypocrisy among Labour members today.

We heard from Jackie Baillie about the underspend that there was at the beginning of the Scottish welfare fund. As Mr Johnstone rightly pointed out, when folks heard that the social fund was going, they were often not told about its replacement.

**Jackie Baillie:** Will the member take an intervention?

**Kevin Stewart:** No, I will not. Ms Baillie did not take an intervention from me. I am sorry to be so petty, but that is how she operates all the time in not taking interventions.
The reality is that 120 per cent of the funding that was provided to the Scottish Government was paid out in that year, which compares very favourably with the fact that the Labour-controlled Welsh Government managed to pay out only 70 per cent of the funding that it received.

To ensure that people trust the Scottish welfare fund, it is extremely important to have an appropriate appeals process. I am glad that the Scottish Public Services Ombudsman will take over the second tier of appeals. I share the view of Derek Young of Age Scotland, who said:

“Our firm view is that, if second-tier reviews cannot be done at a Scotland-wide level, no structural dynamic will ensure consistency.”

I believe that the SPSO’s involvement will lead to improvements being made to the fund, and I share the view of Mark Ballard of Barnardo’s, who said:

“The great virtue of the overall review structure is that it enhances learning and the dissemination of best-practice models, which can be taken up across the board.”—[Official Report, Welfare Reform Committee, 7 October 2014; c 13.]

I welcome the fact that we are moving to put the Scottish welfare fund on to a statutory footing, and I welcome the fact that the Scottish Government is doing what it can to mitigate the effect of welfare reform. I will continue to oppose the £6 billion-plus cuts that the poorest in our society are having to face because of the harsh Tory-Liberal Government at Westminster.

15:26

Willie Rennie (Mid Scotland and Fife) (LD): I enjoyed listening to Alex Rowley, because he reminded us that when we think about why many people find themselves in such circumstances and what we can do in a holistic sense to tackle the five evils that Beveridge highlighted, we need to do so in the wider context. I am not sure whether Alex Rowley wanted to echo Tony Blair’s famous quote, but his reference was apposite for today’s debate, because we need to consider poverty itself as well as the causes of it.

We welcome the bill, which entrenches the fund that already exists and gives it a statutory underpinning so that clients and local authorities have the confidence of knowing that it will be a permanent feature. We support the bill’s general principles.

I thank the Welfare Reform Committee for the work that it has done, in the course of which it received harrowing evidence from people who have been affected by welfare reform. The committee also took evidence from local authorities and front-line organisations in the third sector.

This is a precursor of what is to come. Jackie Baillie—if she wants to make an intervention, I will be happy to let her in, unlike some other members, because I am a bit of a sook on such occasions—is right that we are creating a new Scottish welfare system, with disability living allowance, personal independence payments, attendance allowance, discretionary housing payments, the universal credit flexibilities and the ability to create new benefits. I can give Bob Doris the assurance that there will be no clawback—it is clear that it was the Smith commission’s intention that there should be no clawback. If a benefit, a top-up or a supplement is implemented here, there should be no effect down south.

Bob Doris: I thank Willie Rennie for giving way, as I know that he really wanted to hear from Jackie Baillie. I welcome the fact that Willie Rennie has given that guarantee. Does it extend to any new benefits that we might want to give to vulnerable groups who might be in receipt of, say, income support, which is a means-tested benefit? Can he give a cast-iron guarantee that there will definitely be no clawback of any such benefits?

Willie Rennie: It is clear that the Smith commission’s intention was that there should be no clawback. I am sure that issues on the edge that we do not expect will come up over time, but the principle is clear. The UK Government and the UK parties have given a commitment that that is their intention, so every effort—

Bob Doris rose—

Willie Rennie: I will not take another intervention, as I have another few points to get through. I am sure that we can discuss the issue on a future occasion.

This is a precursor of what is to come. It is a steep learning curve, as Alex Johnstone rightly said. We are grappling with issues that Westminster and the DWP have been grappling with for some time, including stigma—Inclusion Scotland quite rightly raised that issue—and the balance of trust and respect. I think that everyone would want a system that has trust and respect, but in reality and practice that is extremely difficult to ensure. The fine words that are uttered in the chamber need to be reflected in local authorities. It is important that we send out that message, but we also need to work out what trigger mechanisms and training are required to ensure that it is enacted.

Another aspect is gatekeeping, which has some connection to what Bob Doris referred to. Do people fear that they should not apply or do local authorities deter people from applying for particular funds? Is the DWP perhaps seen as being at fault and the reason why a person is
without funds? Obviously we should discourage gatekeeping, but members can understand that a local authority would not want its funds to be affected by another authority’s mistake. We need to ensure that the principles are well entrenched, so that local authorities understand that they should help if someone is in need, no matter who is to blame for the problem.

Inclusion Scotland raised the use of the phrase “normal residence” and how Gypsy Travellers would be affected. I would like some assurance from the minister that Gypsy Travellers’ human rights would not be affected by the use of that phrase. A review of that phrase might be appropriate over time.

We should strive to have a standard and a practice that are as good as, if not better than, those of the DWP. That is why I urge the Government to look again at the issue of having a 24-hour waiting time target for crisis grants, rather than a 48-hour waiting time target. If someone applies for a crisis grant on a Friday and there is a 48-hour target, and the clock does not start ticking until the weekend is over, they could wait for quite a considerable period before they could access the fund. I am sure that local authorities will try to process applications as quickly as possible, but we should set a standard in law that means that they must act as quickly as possible.

CPAG quite rightly raised the issue of families under exceptional pressure. I urge the minister to look at whether the term “families under exceptional pressure” ought to be included in the bill, so that people can be given confidence. The figures here in comparison with those at Westminster are quite striking: 20 per cent of applications in Scotland are for families under exceptional pressure, compared with more than 50 per cent of Westminster applications. That is quite a stark comparison. I would like to understand why that is the case. Perhaps putting the term in the bill will encourage more families under exceptional pressure to apply for the funds.

On the SPSO appeal process, it makes eminent sense to have a body that is removed from the local authority make the judgment and deal not just with the process but, as Jackie Baillie said, with the substance of the application as well. Sometimes the process may be perfect but the judgment might be wrong, so it is appropriate to have that wider power, although that is not the normal way that the SPSO considers matters.

The Liberal Democrats support the bill. An awful lot more difficult issues are to come, and today’s debate is an indication of the fact that the Parliament will have to come to terms with them and make judgments that are difficult but necessary, if we are to create a Scottish welfare system that we can all be proud of.

15:33

Richard Lyle (Central Scotland) (SNP): I welcome the opportunity to take part in this debate, which is on an issue that touches all communities in Scotland, not just my Central Scotland region.

When the DWP decided to abolish elements of the discretionary social fund, namely crisis loans for living expenses and community care grants, this Government rightly had to look at how to replace the DWP’s one-size-fits-all approach with a service that was fairer for those who used it and which contributed to Scottish policy priorities such as tackling child poverty and reducing homelessness. As members know, the new service has been in place on an interim basis since April. The Scottish welfare fund aims to steer people towards a range of social services, as well as help people in a financial crisis or enable them to lead a more settled life by providing them with essential household goods.

The Scottish welfare fund is a discretionary budget-limited scheme that prioritises applications according to need and the grants provided do not need to be repaid at any time. Local authorities have the discretion to provide support in different ways, not always through grants and cash payments. Support may take the form of vouchers, a household fuel card or furniture, if local authorities think that that is the way to meet the applicant’s need. I would support cash payments and not vouchers, which, as has been said—and I agree—can cause embarrassment to the applicant.

In essence, the Scottish welfare fund aims to provide a safety net in an emergency where there is an immediate threat to health and safety, to enable people to continue to live independently and to prevent the need for institutional care and, thus, to provide assistance to families that are facing exceptional pressures.

As members will be aware, the interim Scottish welfare fund was designed to take advantage of local delivery while maintaining a national character. Local authorities can supplement funding from Scottish ministers, but they are under no obligation to do so. The intention is for the funds to link to other local services, thereby providing a better overall service to vulnerable members of the community. The services that applicants are most commonly referred to are advocacy, welfare rights, housing and money or debt management.

Despite being in place on only an interim basis, the Scottish welfare fund has already helped, I am led to believe, more than 100,000 households. The bill will put the fund on a statutory basis to ensure that that vital help continues for the people
of Scotland. As has been stated, the Scottish Government has shown its commitment to the welfare fund by topping it up by a further £9 million, and I am sure that that will be maintained in 2015-16.

I welcome the announcement that the minister made earlier and the Scottish Government’s commitment to the Scottish welfare fund, which contrasts with what is happening south of the border. In England, the discretionary social fund has been abolished and funding has been provided to local authorities for local welfare assistance schemes. However, the funding for that has not been ring fenced and no duty has been placed on local authorities to provide such schemes. Furthermore, the UK Government plans to withdraw dedicated funding to local authorities for such schemes from April 2015. That will result in many English local authorities having to scale back their local welfare fund provision or scrap it completely.

My view, which I know is shared by my colleagues in the chamber today, is that it is completely unacceptable that anyone should be living in poverty in a country as wealthy as Scotland. In light of that, I was pleased to see that this Government is doing something about it by providing £104 million in next year’s budget to tackle poverty and inequality and help those who are affected by welfare changes. I was particularly pleased to note that, in 2015-16, the Scottish Government will provide £35 million to allow full mitigation of the—to my mind—hated bedroom tax for the 71,000 people in Scotland who are affected by it.

I am pleased to be able to say that I am a member of a party that stands up for those on welfare, as opposed to the Tories and Labour, who have signed up to further welfare cuts after the general election. As has been said, the cuts are extensive. My colleague Kevin Stewart mentioned more than £6 billion of cuts.

Save the Children has estimated that, over the next four years, the welfare spending cap will push an additional 345,000 children across the UK into poverty. That is completely unacceptable in this day and age and I am glad that this SNP Government is committed to doing what it can to protect the most vulnerable in Scotland.

I end by relaying a story from a number of years ago. As a councillor, I was called out on Christmas day to a house in my ward that had gone on fire. The lady was left without a home and without clothes and so on—everything was destroyed. Luckily, no one was injured in the fire. The lady was rehoused, but she was left to wait several weeks for a crisis loan. Mr Rennie ably made the point that there can be some time between a person applying and the loan being paid out.

I suggest that the bill will help people such as that lady. I am sure that this Government will use all the powers that it can use and provide all the help that it can provide for people who are in such situations. We must ensure that people who are in crisis are helped by their Government and their politicians. We all wish to help people in poverty. As I said, we have a country that is rich in oil but we still have people who are in poverty. That is not right and we should do something about it.

15:40

Joan McAlpine (South Scotland) (SNP): I am pleased to be able to speak in this stage 1 debate on the Welfare Funds (Scotland) Bill.

I am, of course, a new member of the Welfare Reform Committee and I was not present when it took evidence on the bill, but I endorse the report that the committee compiled at stage 1. It is a reflection of the diligence with which the committee goes about its work that the Government has already indicated that it intends to lodge amendments to make absolutely sure that the Scottish welfare fund cannot be outsourced to third party organisations, particularly the private sector. I know that that was never the minister’s intention, but it is correct that she has responded to concerns and is making things absolutely watertight in that regard.

I may be a new member of the Welfare Reform Committee, but like every other MSP in the chamber, I am all too familiar with the dire consequences of UK Government welfare reform on some of our most vulnerable citizens. We should all be very proud that the Scottish Parliament, working with local government, has stepped in to provide a local welfare safety net in Scotland. It has been mentioned several times that the fund has already helped more than 100,000 households. Putting it on a statutory basis will ensure that that vital help will continue.

It is true that the discretionary elements of the former social fund were abolished, but the funding was devolved and, as other members have mentioned, the Scottish Government has topped it up by £9 million a year. I welcome the fact that that will be maintained in 2015-16.

It is worth noting that the Scottish Government was under no obligation to use the funds to set up a welfare fund for people in crisis. However, the fact that we worked together to meet that need reflects well across the Parliament. It beggars belief that, in England, unlike in Scotland, the funding for local welfare assistance schemes is not ring fenced and no duty has been placed on local authorities to provide such schemes. A survey of councils in England in October by the Local Government Association found that three
quarters of council areas planned to scale back or scrap their local welfare provision next year, and one in 10 or 15 per cent planned to scrap their local schemes entirely. That is a frightening prospect for the vulnerable people who live in those areas.

I am aware that other members have addressed the recommendations in the committee report in detail. The report welcomes the general principles of the bill and makes helpful suggestions about the operation of the fund to date. I hope that they will make the fund work even better in responding to the needs of vulnerable people in a sensitive and appropriate manner in particular.

In reading the report, I was struck that signposting of the fund has been a problem in the past. That came across quite strongly to members who recently attended a Child Poverty Action Group event about welfare reform in the Parliament. Signposting is improving—obviously, that is reflected in the take-up of funds—but more needs to be done.

When the committee took evidence from fund users, they stated that no one had heard about the fund through their local authority. Many were signposted by a third sector organisation that they were already working with, or by a friend or family member. Some users were unaware that crisis funds had not been abolished altogether, but had been reconstituted in the Scottish welfare fund.

When users were asked about the best way to inform potential applicants to the fund, they said that a key point was when they were starting a new tenancy. They suggested that the housing association or landlord could give them information about the fund at that key point. Therefore, I agree with paragraph 106 of the committee’s report, which recommends that

“all social housing providers be provided with information on the Scottish Welfare Fund to be passed onto new tenants.”

The committee acknowledged that private rented tenants are harder to reach, but very sensibly suggested that

“information could be provided to landlords when registering or through the various tenancy deposit schemes.”

The committee welcomed the minister’s assurances, as do I, that she will look at ways in which to improve the flow of information on the fund between local authority departments. As I said, we are making progress on that all the time.

The committee made other practical suggestions. For example, it suggested that the length of the application form should be reviewed. Research by the Scottish Government shows that one in five applicants to the Scottish welfare fund have an identified vulnerability, that one in three have children, that mental health difficulties feature significantly for those who are applying for a crisis grant and that those who are applying for community care grants tend to be lone parents, those suffering from mental illness, homeless people and people with a physical disability. We should do everything in our power to make it easy and not distressing for those people to get the funds at a time when they are at the lowest point in their lives. Obviously, long and complicated application forms do not help.

I agree with those who have said that they support the bill with a heavy heart. We should not have to pass such legislation; in a fairer society, we would not need to pass such legislation.

Others have noted that £100 million will be used by this Government to mitigate welfare reform. However, it is clear that this is a bottomless pit. Kevin Stewart pointed out that families in Scotland have been hit by £6 billion of benefit cuts in the five years to 2014. The autumn statement suggests that worse is to come. Even if one just takes the £6 billion figure, that equals £1.2 billion a year in each of the five years to 2014. That is the equivalent of NHS Lothian’s entire budget, for example. No amount of mitigation by this Parliament can address the devastating cuts that are coming from the UK Government and hitting society’s most vulnerable people.

Although I welcome what others have said about the devolution of new benefits that was suggested by the Smith commission, we need to have the ability to pay for those benefits. Not enough has been done to give this Parliament all the powers that it needs to address what Alex Rowley identified as the causes of poverty rather than its effects.
is startling that most applicants only knew of the fund through professionals or by word of mouth. There appears to be little or no local or national advertising. That point was echoed in the committee report. Witnesses acknowledged that work needs to be carried out to raise awareness of the fund and its availability. Witnesses also told the committee that they had been unaware of the fund despite needing to access money in an emergency.

We cannot be sure that everyone who might need to access the fund is in touch with the statutory services and the professionals who know about it. We know anecdotally that many people accessing food banks, for example, are the working poor, who are less likely to be dealing with the statutory services, less likely to be claiming benefits and may not know that crisis loans are available. The committee pointed out that that is also the case for those wishing to access the fund: because they are not in the system, they might be unaware of the fund in the first place. Although there was agreement that more could be done locally to raise awareness, I suggest that we have a national advertising campaign to make sure that everyone is aware that the fund is there.

There are concerns about the amount of discretion that decision makers have with regard to loans. There is evidence that people have been discouraged from even applying, which is unforgivable, especially given that the fund was underspent last year.

I was interested in the committee’s suggestion that the eligibility criteria should be widened to include disabled people who cannot live independently without a grant, all young people who have been looked after by the state, including people who have experienced kinship care, people who are delivering kinship care to the children of family or friends, and families, many of whom suffer the greatest impact of welfare reform. Surely anyone who is likely to become homeless or unable to live independently needs to be eligible to apply to the fund. It also seems to me that if we are serious about tackling child poverty, families should be eligible.

The committee noted in its report the concerns that were expressed about the use of gatekeepers who put people off applying or turn down applications without giving them adequate consideration. Such cases go unrecorded and there is no right of appeal. It is sad that we presided over an underspent budget last year and that we have no idea who applied and why people were turned down. All applications need to be considered fully. Every applicant who is denied an award should be given the reasons for the decision in writing and should be told of their right to request a review.

Given people’s reluctance to apply for these loans, because of the stigma, applications tend to come only from people who have nowhere else to turn. That should mean that there are more positive outcomes. The results of decisions that have been subject to review tend to bear that out.

The committee looked at how the grant could be paid, for example through the provision of goods, vouchers or cash, all of which seemed to have good and bad points. Like many other members, I think that cash should be the default position. However, it is often the case that people cannot access the best deals when they source goods, especially in rural areas where people might not have access to the internet. In such cases, the provision of goods is a good idea, as long as the recipient is involved in the choice and has a say about the goods and their functions, to ensure that they suit their family circumstances.

I can see that vouchers might be useful for people who are vulnerable as a result of addiction and who might be tempted to use cash for alcohol or drugs, particularly if their circumstances are such that they need to apply to the fund. However the use of vouchers needs to be discussed with the applicant and should happen only in a way that respects their dignity and supports them, while acknowledging the problems that they face. We must help people to succeed and not set them up to fail.

Alex Rowley, Willie Rennie and other members talked about the causes of poverty, and as we consider a bill that will tackle some of the extreme circumstances of poverty, it is important that we consider those causes. We know that every child who grows up in poverty has their life chances damaged, so we must deal with poverty, and there are many things that this Parliament can do to deal with it: we can tackle low wages, unemployment and the lack of affordable childcare. We could take practical steps on such issues now, without waiting for decisions to be taken elsewhere.

I welcome the minister’s change of heart on contracting out. I hope that she listens to members’ concerns and considers amending the bill to take account of them. The bill is welcome, but we need to ensure that it will cover everyone who finds themselves in extreme circumstances and in need of help from the fund.

15:53

Bob Doris (Glasgow) (SNP): I commend the Welfare Reform Committee for its constructive scrutiny of the Welfare Funds (Scotland) Bill. The steady leadership of Michael McMahon and his former deputy convener Jamie Hepburn—now of course elevated to ministerial office—was an
example of constructive cross-party working to provide scrutiny and to challenge where that was needed. Such cross-party working does the Parliament great credit.

I am pleased to report my most direct experience of the interim Scottish welfare fund. The referral was efficiently and effectively taken from me over the telephone, after a vulnerable woman walked into my campaign rooms in Maryhill Road a few months ago. She had been sanctioned by the DWP and was unsure when she would have recourse to public funds again. She was three months pregnant. Thank goodness the Scottish welfare fund was there at that time of crisis. It worked well in that situation, but of course it has to work well in every situation. The report looks at ways of ensuring that it works well consistently—I understand that. However, at least the woman who had that traumatic experience had the Scottish welfare fund to pick up the pieces to an extent.

Let us be clear that when the UK abolished the discretionary social fund in April 2013, a political choice was made to reinstate it in Scotland; that did not have to be done. I am proud that this Parliament and this Scottish Government decided to do that. I was disgusted that the UK Government made the political choice to cut the social fund money available when it passed responsibility for that area to Scotland. Thankfully, the Scottish Government, with cross-party support, topped up that cash by £9 million, so that our most vulnerable would not lose out any more than they already had.

Mention was made of whether there would be a widening of the criteria to support those who do not, or may not, qualify for the fund at present. The Welfare Reform Committee considered that issue but, crucially, did not overtly support the suggestion; indeed, it took no set view. I believe that that was a prudent decision.

The Scottish Government is already spending £100 million a year to try to mitigate the devastating effects of UK welfare reform on Scotland’s most vulnerable. As Scotland feels the full strain of UK austerity, that is cash that could be spent on a series of other priorities, across government, such as local authorities or colleges—the wish list of things to spend more money on from politicians across the chamber is limitless. However, that is £100 million being spent on our most vulnerable—which I believe is the right choice—because of UK cuts to Scotland, which could, in theory, be spent elsewhere if different political decisions were being taken at Westminster.

I will give two examples of how that austerity is biting. First, 100,000 households in Scotland are around £700 a year worse off because of UK reforms to child and working tax credits. Those are people who are in in-work poverty, on the breadline, who must often have recourse to food banks and the like. Secondly, 100,000 working-age adults are set to lose at least £1,120 as a result of changes to disability benefits.

Kevin Stewart gave the overall figure for welfare reforms—a £6 billion cash cut to Scotland in five years. Let us put the Scottish welfare fund in context: it is £38 million a year. When we talk about extending the criteria for the Scottish welfare fund, we should not pretend that doing so will tackle that £6 billion cut. That would be a great lie—a great deception of the poor and vulnerable in Scotland. It is like putting a finger in a dam to stem a tsunami—it just cannot be done.

I have concerns, which I raised earlier, not necessarily in relation to the Smith commission itself but in relation to topping up or creating new benefits under complex UK welfare rules and the potential for clawback. To top up or create new benefits, the money has to be there in the first place.

The Child Poverty Action Group was quoted as saying that families “under exceptional pressure” could perhaps apply to the Scottish welfare fund. Perhaps they could, but would the 100,000 households that are £700 worse off be families “under exceptional pressure”? Would the 100,000 disabled people or their families who are £1,120 worse off be termed as being “under exceptional pressure”? Let us be careful and let us be clear. If we can identify resources and additional criteria to help the most vulnerable, please let us do it, across parties, but let us not sell the big lie that the £38 million—the finger in the dam to stem a tsunami that is sweeping across Scotland—will plug that £6 billion gap, because it simply will not.

People know what solution my party and the Scottish Government propose. I say again, in the context of the debate on the Scottish welfare fund and stage 1 of the bill, that Smith does not even scratch the surface when it comes to defending the most vulnerable people in Scotland and getting them off benefits and into work, or out of in-work poverty and into prospering in work. Short of getting the powers that I think are needed, we must do all that we can across the parties, and irrespective of our various views, to help the most vulnerable. I believe that the new Scottish welfare fund, put in statute, rather than on an interim basis, will do that. I commend it to members.

16:00

Rob Gibson (Caithness, Sutherland and Ross) (SNP): A lot has been said, mostly in support of putting the Scottish welfare fund on a statutory basis. I welcome the Welfare Reform
Committee’s stage 1 report, which lays out the details, and I commend the committee for getting the evidence that shows why the bill is needed.

I will concentrate on examples from my constituency and the north of Scotland. It has been said that average pay-outs in places including Glasgow have been higher than those in other parts, yet in the north of Scotland we have dearer transport with further to go to services such as hospitals, dearer parcel delivery, dearer electricity with a 2p surcharge, colder and wetter weather, broadband difficulties and, often, lower wages than the cities. Indeed, my constituency has eight of the 17 most deprived areas in Scotland, four of which are in Wick. That means that we face in spades the kinds of problems that other areas face, but because we have a much smaller population, it is less noticed.

I have spoken with citizens advice bureaux in Wick, Golspie and Alness in my constituency about those matters, and I have dealt with issues such as food banks. When we look at how much advice Citizens Advice Scotland had to give on the Scottish welfare fund in 2013-14—about 7,400 pieces of advice, compared to the 8,300 issues related to the social fund community care grants and crisis loans in their final year of operation—we can see that that will mean that far more people will be lining up for advice. However, we hope that the way in which the Scottish welfare fund will be structured will make it easier for people to access the help that we can give, however tight that is, given their real needs.

Talking of those real needs, the Citizens Advice Scotland briefing gives an example, which I will give to members. The briefing states:

“A North of Scotland CAB reports of a client who received a Community Care Grant, which was awarded in the form of goods.”

Members have talked about provision of goods, cash or assistance in kind. The briefing continues:

“The client felt that they had no say in the decisions regarding their furniture and were ending up with unsuitable items. The client had requested a table, but as his flat is extremely small would prefer a coffee table to a table and four chairs. The CAB called the Welfare Fund and with some difficulty organised the changes. However, it will have to be a new order so the table and chairs may be delivered and then uplifted and the coffee table will come later.”

Such communication difficulties about basic furnishings for people who are in dire need are a function of the way in which the system works.

I mentioned that we have dearer transport: I will give another example from the north of Scotland. The briefing states:

“A North of Scotland CAB reports of a client who called her local authority to apply for a Crisis Grant for travelling expenses to visit the father of her children who is very seriously ill in hospital in another part of the country. She was told she could not receive a Grant to pay for travel expenses. The CAB adviser then spoke to the Welfare Fund person, who explained that if the client could get the funds to pay for travelling expenses and this caused her to be in a bad financial position, on her return she could apply for a crisis grant. The client decided to use the money she was going to spend on paying her bills to cover the travel costs, and reapply for a Crisis Grant at a later stage.”

Forcing such options on people who are utterly vulnerable is one of the most detrimental ways to treat families in our country. It is detrimental to their potential to become normal tax-paying working persons in our communities.

The example that I gave is of a family that is under exceptional pressure, but how far can we go to do Westminster's work? Westminster has decided to retain control of much of the benefits system and, indeed, to cut benefits by £12 billion in the next Government’s period of office. That is much worse than what people have experienced in the past four years.

We need to discuss the issue that Jackie Baillie raised—the ability to create new benefits. If we had our way, we would be thinking about a very different approach. There would be a basic social wage for each individual over the age of 16. A progressive tax system would enable everybody to have a basic social wage, which would allow them to make decisions not between eating and heating—they would be able to afford the basics—but about going to look for work or training knowing that their benefit was secure. Our being in a position to do that would be far better than creating new benefits and using only one side of the equation. A living wage and the ability to create work are the policy areas that the Smith recommendations do not allow us to deal with.

The argument about support would never have happened had ours been a fairer society but it is not, so I would like people to take account of the folk in my constituency. We have four out of the 17 most deprived areas in Scotland just in the small town of Wick. They need all the help that they can get and I hope that the Welfare Funds (Scotland) Bill will give them that, at least in part.

16:07

Anne McTaggart (Glasgow) (Lab): I am pleased to have the opportunity to contribute to the stage 1 debate on the Welfare Funds (Scotland) Bill, which is vital to many of my constituents in Glasgow. I am broadly in support of the general principles of the bill. However, there are a number of reservations that I and a number of support organisations are of the opinion will have to be addressed.

A principal aim of the interim Scottish welfare fund—the SWF—is to provide a safety net in an emergency when there is an immediate threat to
health and safety, by providing a non-repayable grant known as a crisis grant, and to enable people to live independently, or to continue to live independently, and thereby to prevent the need for institutional care by providing a non-repayable grant known as a community care grant. That includes providing assistance to families that face exceptional pressures—for example, when there has been a breakdown in family relationships, perhaps involving domestic violence, that results in a move.

Although it is a vital issue, the Government has not explained clearly or discussed why the interim Scottish welfare fund was so underspent. Others have already said this, but it merits repeating that in 2013 the SWF was underspent by 12 per cent; it handed out grants totalling £29 million in 2013-14, which amounted to only 88 per cent of the £33 million that was available. Scottish Government figures show that more than 82,000 crisis grants were paid out to 56,000 households, while 36,000 community care grants were awarded to 33,000 applicants.

I am aware that Heriot-Watt University has published a review highlighting a number of concerns regarding the interim scheme, and has made recommendations in relation to those concerns. Although most people who applied to the community care grant found out about the SWF from their existing networks—their social workers or third sector organisations with which they were involved—awareness of the SWF among staff across those organisations was extremely varied. The report found that the applicants did not commonly find out about the SWF through local advertisements or online information. A number of third sector respondents felt there is scope to improve marketing greatly in order to make people less dependent on the third sector or public sector providers for access to and awareness of the scheme.

I strongly believe that, as is recommended in the report, local authorities should pro-actively signpost and advertise existing training and advice and support and should consider developing online training resources. Local authorities should also raise awareness of the SWF through information materials that are provided to their own departments, third sector agencies, Jobcentre Plus and others.

Another concern that was raised concerned the fact that third sector staff commonly felt that not all SWF staff fully appreciated the nature of the poverty and vulnerability of applicants, and that there was an emphasis on strict adherence to rules and criteria, rather than on discretion, in the decision-making process. There were also some worries that some applicants were discouraged from applying. That is a vital issue that should be addressed by the Scottish Government. That could be achieved through anonymised case studies of people who have accessed the scheme and how it has helped them. That would provide third sector staff and applicants with useful insights into how discretion could or should be used.

I also strongly believe that guidance on awarding discretionary grants is needed to ensure that people are treated equally throughout Scotland. I am aware that guidance is an on-going problem with the SWF; I note that it has been changed numerous times, and that it will change again in the passage of the legislation. It is therefore vital that the bill incorporate permanent guidance arrangements, which would benefit from more clarity on the roles and responsibilities of the SWF.

In conclusion, although I am broadly in agreement with the aims of the bill, in order to ensure that the SWF operates properly in the coming years, the Scottish Government must clarify why there has been a repeated underspend, and it should also address the concerns that I have just expressed, in order that the bill fulfil its principal aim, which is to provide through crisis grants a safety net for people on low incomes during a disaster or emergency.

16:13

Nigel Don (Angus North and Mearns) (SNP): I am enormously grateful to Bob Doris, who eloquently put everything in context. As he said, tens of millions of pounds in a fund will do no more than scratch the surface of a problem that is measured in billions. He is right to put the issue in that context and say, “Look—we are doing a little bit. It is important, and we need to get it right, but let’s not pretend that this is any more than marginal.”

What it is, perhaps, is the start of things to come. We are talking about crisis grants because crisis is the right word for the folk who need them. The situation is going to get worse. Public funding is going to drop, whether we like it or not, and we are going to have to get better at distributing it appropriately, in ways that are efficient and effective.

Section 4 of the bill refers to the second-tier review by the Scottish Public Services Ombudsman. Several members have referred to that; I would like to do so at slightly greater length. First, I suggest that when we have a good review mechanism—of anything, but certainly of anything lawful—it improves decisions. Anybody making an administrative decision will be looking over their shoulder and asking, “Who’s checking this?” If they know that the checking system is good, they
are much more likely to think carefully and come to the right answer in the first place. Review mechanisms are therefore extremely important. It is also very important that the review itself works well, and I am sure that the SPSO will ensure that it does.

I also note that Jackie Baillie is right—it is no surprise to say that—because the bill describes a different role for the SPSO. It is not just about reviewing a decision; the SPSO has the opportunity to overturn a decision—section 4(4) tells us that. That is very useful and is what one would have expected, but it does beg the question whether the other SPSO powers remain.

That is probably put in context by looking at the wording in section 4(4), which is that “the Ombudsman may quash the decision ... and direct a local authority to reconsider” or direct it in another way. I put it to the Government that it might reflect on whether “may quash” is the right wording. If the ombudsman, on reviewing the decision, concludes that a different decision should have been made, the ombudsman probably should quash the decision, rather than just be able to do so. The other options—to direct the local authority to reconsider or to decide what the original decision should have been—are normal ones that one would expect from a court. I wonder whether the minister might reconsider the issue.

In that context, I note that paragraph 63 of the stage 1 report—which is a model of report writing, for which I thank the clerks—says:

“The SPSO said in its written submission that it intends to ask the Scottish Government to include a provision in the legislation allowing the SPSO to produce rules, after appropriate consultation, showing how it will consider reviews.”

I am sorry, but I am struggling. The SPSO knows perfectly well how to do reviews—that is what it does. Any student of administrative law would be able to tell us that we need an independent investigator, who will assemble and review the information from both parties, reach an objective and explicable decision, and communicate that decision and its explanation to the parties. They do all of that as fast as is reasonably practicable. Maybe I have missed something but I am not quite sure why the SPSO needs to consult on a set of rules—never mind have them provided for it—to do what is actually mainline stuff in its job.

Section 5(2)(f) may not mean very much to the casual observer, but it is the subsection that talks about the “circumstances in which amounts may require to be repaid or recovered”.

Several members have talked about the issue of fraud. I think that is generally recognised that, when something has been obtained by fraud, it should be repayable. Members have also commented that it would be good if it were clarified that that is the case. I endorse that. It seems to me that if section 5(2)(f) refers to fraud, or is meant to refer to fraud, it would be a very good idea if it actually said so. If that is the reason why we might want to recover amounts, why do we not say so and take the ambiguity out of the bill? I may be being very simple this afternoon, but I believe that there is some merit in saying what we mean.

Correspondence reached us about the cost effectiveness of the process. Looking at the data that have been assembled, I hope that I am correct in saying that the average crisis grant is of the order of £80 and the average community care grant is of the order of £650, although I note comments from other members that the amounts seem to vary considerably between local authorities.

If those sums are anything like right—I am sure that they are—it really would pay local authorities to ensure that they have a pretty slick process for coming to those decisions. If it is costing a lot to get those kinds of sums out, it is better simply to pay the money and not to have another person checking; otherwise, there is a real risk that we spend our time paying officials rather than those who are in crisis. I think that I echo other members’ comments on that.

The same thing therefore applies to the idea of involuntary gatekeeping that members have referred to. It is probably not terribly helpful to have advisers in one capacity or another saying to a possible claimant that it is just not worth trying to claim. It might be very much better if advisers said, “Maybe you should apply,” because if people are in crisis, that is where the money should be going. If we have a sensible system for paying money out, we should be taking the opportunity to do so.

I have also taken a look at the statistics in the documents, which are online. Statisticians might say that the statistics are very variable. They seem to cover all four corners of the graph—I think that the technical term is “a plum pudding”. The speed with which funds are paid out and the amount that is paid out vary quite significantly across councils, and the correlation does not seem to apply in the same way to different councils. Some consistency is required, and I am sure that the Government will be aware of that. I am not sure how the Government will get the information—if management of the fund is delegated to councils, it is the responsibility of councils—but some consistency and some understanding of why the inconsistency is there would be helpful to all concerned.
Finally, there is the issue of the funding of signposters. There are various agencies, citizens advice bureaux perhaps in particular, that are often the first port of call—apart perhaps from MSPs—for those who need help. It costs money to provide that advice; it is important that the advice is good and that facilities are available. Again, it is a matter of cost effectiveness. I am not inviting the Government to spend the money more than once, but we need to have a serious look at where the advice is coming from and we need to make sure that is properly and effectively funded.

At the end of the day, I am sure that every member in this chamber shares my view that, although in the grand context of austerity the sums involved are not huge, they are enormously important. The fund is dealing with people and families who are in crisis, and the system really needs to be good at the point of delivery.

The Deputy Presiding Officer (Elaine Smith):
We now turn to the closing speeches.

16:22

Alex Johnstone: This has been—as we often say at such events—an interesting debate. It is a debate that has existed in two halves. There are those of us who have been talking about the legislation and the stage 1 report that is in front of us, and there are those who have been pursuing a rather different agenda. Nonetheless, those two halves are significant and important, and I welcome and will take the opportunity to comment on both.

I will point out something that was pointed out by many during the debate but ignored by some. The predecessor scheme to the interim scheme, which was administered by the DWP, was of course not abolished but devolved—yes, it was devolved—and the funding for the scheme came too, having been top-sliced. The £24 million that initiated the fund came from that predecessor scheme. The further £9 million that has been added by the Scottish Government is welcome and has made a significant difference to the ability of the scheme to cope with demand.

We have heard a number of speakers express concern about the fact that the scheme, at the end of 2013-14, was £4 million underspent. Of course it is a disappointment that that £4 million was not spent, but I do not share the concerns that have been expressed by some. If we look at the record of the interim scheme, we see that there was great difficulty in getting the funds in place and to people in the earlier part of 2013-14. That was driven by the fact that many people did not know what the scheme was and many people did not know what the eventual funding level of the scheme was. Consequently, some local authorities found it difficult to make awards in that early period.

In the second half of 2013-14, the scheme performed much more efficiently than it had done previously. It is important to recognise that the scheme is now spending at the level that it was supposed to be spending at and that the £4 million that was unfortunately not spent was underspent at a time when the scheme was being built up.

Alex Rowley: Does Alex Johnstone not agree that it is absolutely disgraceful in 2014 that more than 100,000 people in Scotland are having to access such crisis grants? Should we not be tackling poverty at source rather than creating more poverty?

Alex Johnstone: I have tremendous respect for the view that Alex Rowley expressed, but perhaps our common view is that welfare payments should not be necessary because everybody should have a level of income above that requiring payment of welfare. That is a basic point on which we will always agree.

As we look at individual schemes, we have to recognise that some are there for one purpose and some for another. The Scottish welfare fund provides two methods of support. The first method is the crisis grant, which is designed to provide a safety net when someone experiences a disaster or a health emergency or, as we heard from Anne McTaggart during her speech, a relationship breakdown because of domestic violence.

Those incidents will happen to individuals unexpectedly and regardless of the level of their income. I therefore suggest that that is a measure of support that will remain necessary, even if we achieve our objective of significantly cutting the level of welfare through reduced demand. The crisis grant is therefore a scheme that is and will continue to be important.

The second method—the community care grant—is designed to enable continued independent living and prevent the need for people to go into care. That is also an example of worthy expenditure that will continue to be a responsibility that we need to take seriously, even if we can increase standards of living and reduce overall demand for welfare. Those who have criticised the scheme because of a broader view on welfare that I share are wrong to criticise this particular provision. It is important that we continue to provide resources for those purposes into the future.

Let us look at more of the debate. Alex Rowley mentioned the variation in performance between local authorities. That takes us to another version of a discussion I was having with members in the chamber earlier in the debate about devolving decision making to a local level.
One purpose behind the Westminster Government’s decision to pass down the funding was to allow local decision making because local decision making can be good. There can be good understanding of local needs and things can be done in a way that is appropriate and fits with local needs. Of course, Alex Rowley also used the phrase “postcode lottery”. We cannot have both; the situation will be one thing to one person and another to another person.

We also heard the same issue raised in a slightly different way by Rob Gibson, who told us some horror stories that he had come across in the Highlands. My criticism of those who are responsible for administration is that the decision-making criteria are, to a significant extent, in their own hands. If bad decisions are being made in a particular area, perhaps it is time that we worked to ensure that best practice in the best areas of Scotland is understood and can be copied by those who are struggling to put best practice in place and who appear to be making poor decisions.

Some of the broader criteria that Rob Gibson set out for paying benefits more generally began to remind me of the terms that are the basis of universal credit, which will be introduced progressively in the years to come. They have been the source of many a complaint in the chamber, but they could deliver a great deal of what Rob Gibson has asked for.

Rob Gibson: With all due respect, the idea is not to save money by cutting benefits but to give people a basic social wage that is paid out of the progressive taxation of those who can afford to pay it and who do not pay enough at the moment.

Alex Johnstone: Indeed.

Let us move on to cover briefly some of the other areas that were discussed today. There was, of course, the myth put about by Kevin Stewart and other members that there have been £6 billion of cuts. During the debate, other members clarified that that £6 billion has accrued over a total of five years so, in annual terms, the figure is rather lower than £6 billion.

In order to get that figure, one would have to count up all the cuts that are being made and not count any of the ways in which money is being passed back. For example, we heard at some length that the reduction in child tax credits and working tax credits has resulted in a £700 fall in income per household. However, that calculation does not take into account the fact that raising the tax threshold will mean that those same households will, by April next year, each have an additional £820.

Bob Doris: I have direct experience of dealing with constituents in that situation. Some families in my constituency who are employed and receive tax credits are now, because of Tory changes to tax credits, worse off than they would be if they were unemployed. Is that not appalling?

Alex Johnstone: The balance between the reduction in tax credits and the increase in tax thresholds should have delivered for the majority of householders. If there are individuals who have suffered as a result, we need to know about them, but on balance the figures that are quoted regularly are simply inaccurate.

It is important that we realise, as we move forward, that the Scottish Parliament and the Scottish Government are about to gain a great deal more power to enable them to use their resource to pay benefits and welfare. However, in the system that we are about to enter, if we want to pay more we will have to tax more. Many of the speeches from back-bench members in the debate have failed to address that prickly subject. If we choose to do something differently, we will have to explain how it will be paid for. There is a great deal that we can do differently, but we will have to find ways to pay for it.

Once again, I commit to supporting the bill at 5 o’clock.

16:31

Ken Macintosh (Eastwood) (Lab): I thank the minister for her foresight in instigating a debate on welfare reform within one hour of my promotion to the social justice brief, thereby elevating me to the job of closing the debate. I say to Jackie Baillie, my immediate predecessor in the role, that she should read absolutely nothing into the fact that the tone of today’s debate, on a subject that is normally very fractious and disputatious, has been very consensual. There is no link between my appointment and the consensual tone of the debate.

Nigel Don: I find Ken Macintosh’s claim about the normal tone of the debate on this subject very disappointing, because my experience would indicate that he probably will be very consensual. I hope that he will carry on being so, because it is much better that way.

Ken Macintosh: Thank you, Mr Don—I was in fact being ironic. On that consensual note, it is worth noting that not only Labour, but every party in the chamber, supports the general principles of the bill and will vote for it at decision time.

Although there have been relatively heated discussions between SNP and Labour members on such matters in the Welfare Reform Committee, we are broadly aligned in opposing the Tory welfare reforms and on taking action to
mitigate their effect in Scotland. Our position on this bill is no exception.

The bill is relatively straightforward. The UK Government has decided to abolish the old social fund and to devolve responsibility for emergency welfare payments, along with most—if not all—of the funding, to Scotland and to local authorities in England. The Labour Party supports the Scottish Government in passing on the administration of emergency welfare payments to our local authorities; in replacing the system of loans with a system of grants; and—crucially—in trying to make good at least some of the shortfall in funding.

In taking evidence, the committee found a broad consensus on that general approach from most stakeholders, including welfare recipients, local authorities and the voluntary sector. It is fair to say that a few misgivings were expressed about the bill’s other notable feature: namely, the appointment of the SPSO as the body responsible for adjudicating on second-tier appeals. However, as several members have highlighted, we also broadly agreed that, on balance, the SPSO is probably best placed to take on the task in the circumstances.

That said, a few issues have emerged in evidence in relation to which the Scottish Government could undoubtedly make improvements to the bill. The committee’s convener, Michael McMahon, listed a few, including the importance of reviewing eligibility criteria, notwithstanding Bob Doris’s comments in defence of not doing so. The convener also highlighted the need to reconsider the redistribution of funding among local authorities and the need for regulations to be subject to affirmative procedure. My colleague Jackie Baillie also made the important point that the current fund has been underspent. Although the Government has made funds available, if we do not advertise their availability to recipients, they will not help to satisfy the need that exists in Scotland.

I will focus on three issues in particular. The first and most notable is the minister’s odd insistence, initially, that she should take powers in the bill that would allow her to privatise the service at some future date. Witnesses from the third sector were unanimous in opposing that measure and were universally hostile to the prospect of allowing private companies to deliver state benefits for profit. Given the vocal comments of SNP backbenchers on the issue both this afternoon and previously, I do not think that I was alone in being surprised when the SNP committee members at Westminster voted to keep the proposal in the bill at stage 1.

**Kevin Stewart**: Will the member give way?

**Ken Macintosh**: The very person—Mr Stewart. I will give way to him.

**Kevin Stewart**: Mr Macintosh is well aware that although SNP members looked at the possibility of outsourcing to the third sector, which is a proposal that some of the third sector supported, they were clear all the way through the process that they would be against handing any of the contracts to private companies.

**Ken Macintosh**: That must be why Labour suggested removing the proposal from the bill but the SNP voted instead for this trenchant line:

“However, in light of the evidence received the Committee recommends that the Scottish Government consider the issue of outsourcing in light of EU procurement laws”.

That was a bold statement from Mr Stewart, who is not jumping to his feet this time.

**Kevin Stewart** rose—

**Ken Macintosh**: Oh, he is!

**Kevin Stewart**: The end of that sentence reads:

“to ensure that private companies are not allowed to undertake the work.”

**Ken Macintosh**: The point is the caveated statement versus the minister’s actions. The minister has now removed the measure from the bill. [**Interruption.**] I was just trying to tease Mr Stewart.

**The Deputy Presiding Officer**: Order, please.

**Bob Doris**: Will the member take an intervention?

**Ken Macintosh**: Mr Doris, please calm down. I was just trying to tease former members of the committee and Mr Stewart, who is still a committee member. We were in agreement on the proposal, but Mr Stewart’s principles were clearly compromised by the minister’s instructions. The minister has now changed her mind, and the chamber should welcome that.

The second issue that I want to highlight, which came up a number of times, is that of making cash payments as opposed to providing support in kind. For community grants, which help to furnish a new flat in an emergency, for example, I have no doubt that good arguments were put for providing white goods, furniture packages and so on. However, the evidence in favour of that approach was much weaker when it came to crisis grants. Many witnesses talked openly about being judged and stigmatised by the welfare system, and many voluntary organisations such as Oxfam said that, if we are serious about wanting to maintain the dignity of and respect for individuals and families in the system, we could consider allowing clients to exercise choice. That theme was expanded on
by Alex Rowley, Jackie Baillie and other members. In a particularly thoughtful speech, Willie Rennie talked about the difficulty of grappling with such issues and said that our fine words need to be reflected in our actions if we want to end stigma and build a system that is based on trust and respect.

The argument was put most succinctly by the Scottish campaign on welfare reform. In its evidence to the Scottish Government, it stated:

“There is a risk that by systematically ... allocating goods rather than cash payments local authorities will remove choice and undermine the dignity of the individual.”

For instance, handing out vouchers can not only limit the choice available to applicants but create stigma, undermine dignity and lead people to feel that they are receiving handouts rather than exercising a legitimate right to assistance during a crisis. I leave the minister with the thought that the Scottish Government’s own statistics show that, in the first year of the interim scheme, more than 80 per cent of the spend was in kind rather than by way of cash, cheque or bank transfer.

The final issue that I want to highlight is the decision by the Scottish Government to set a two-day deadline for turning round crisis payments, rather than the 24-hour target that the DWP laid down. I do not doubt the minister’s good intentions in wanting the process to be as speedy as possible, but when I asked her about the issue in committee, she said:

“The DWP’s 24-hour deadline for decisions applied only once all the information was there. Sometimes such a decision could take three weeks because the DWP said that it did not have all the information. I am simply saying that that is not happening now.”—[Official Report, Welfare Reform Committee, 4 November 2014; c 40.]

According to the Child Poverty Action Group,

“This is not entirely accurate.”

I should stress that that is a quote from written information that CPAG provided after we had taken evidence from it. It pointed out that the current SWF guidance and the draft regulations state that the deadline kicks in only after all the information has been gathered. In other words, there is no difference between what they say and what the DWP says in that respect.

CPAG went on to point out that any lengthy delays in the processing of crisis loans under the old DWP system were more likely to have related to the need to make a decision about whether the applicant was likely to be able to repay the loan rather than their eligibility for an award. It said that, as ability to repay was clearly not a concern in relation to the Scottish welfare fund, it should not slow down the process of decision making.

Crucially, CPAG highlighted the Scottish Government-produced crisis loan statistics that show that, in the last year of the DWP scheme’s operation, a decision was made within two days in 98.6 per cent of cases whereas, in the quarter to June 2014, the SWF achieved only 94 per cent against the same measure. CPAG concluded:

“There is no implicit reason that processing times should be longer in relation to crisis grants than they were for crisis loans.”

It also made the point that Alex Johnstone made earlier. It was concerned that the inclusion of a reference to a 48-hour time limit once all relevant information is received might lead some decision makers to request evidence when it is not needed.

That is not a minor or unimportant matter. Just in the last week, the “Feeding Britain” report on the use of food banks across the UK highlighted the impact of benefit delays and the number of people who are left with no income at all, forcing them to turn to food banks. The Scottish Government’s own review of the interim scheme, which was carried out by Heriot-Watt University, made a number of recommendations on that very point, including the recommendation that

“The maximum target processing time for Crisis Grants should be ‘by the end of the working day’.

The Parliament will have the opportunity to return to the subject of welfare later this week. I hope that we will have a broader discussion on our approach to the powers that will be delivered under the Smith agreement. I recognise that there are differences to explore in that debate but, today at least, we have before us a relatively uncontroversial bill, on the need for which we all agree. We all agree on the broad approach, and I hope that we can focus in a practical and collaborative manner to get the proposed legislation right.

The Deputy Presiding Officer: I call Margaret Burgess to wind up the debate. Minister, you have until 4.54 pm.

16:43

Margaret Burgess: Thank you, Presiding Officer.

I congratulate Ken Macintosh, who is to shadow my portfolio, and Jackie Baillie on her new post; I will miss our exchanges.

Ken Macintosh said that it is a consensual bill, but he went on to be controversial in criticising me and SNP members of the Welfare Reform Committee for actions that they have taken. I do not regard that as being consensual.

I am grateful to members for contributing to the debate; it is encouraging that the benefits of having a statutory Scottish welfare fund have been recognised across the chamber. The fund is
designed to help the most vulnerable people in our society by allowing them to meet short-term financial needs and by putting them in touch with other services that might help. A number of members, including Clare Adamson and Kevin Stewart, spoke about destitution and what it means for individuals. The bill will give permanence to the fund at a time when other forms of support are being eroded, as Bob Doris and others said.

I will try to address some of the points that members have made. It is a high-level bill, so the bulk of the discussion has been about what will be included in the regulations and guidance, but I will touch on what the bill sets out to do. The bill reproduces the wording of the section 30 order that provided the Scottish Parliament with powers to legislate for welfare provision. That means that it will give the funds the broadest possible scope to operate within the reservation. This Parliament can legislate on welfare funds only because of the exception to the social security reservation that is set out in the section 30 order; it is not possible to go wider.

A lot of speeches have dealt with families under exceptional pressure. The bill does not exclude families under exceptional pressure from making applications. Under the social fund, “families under exceptional pressure” was a criterion and there was guidance that gave examples of exceptional pressure. The regulations that we will publish alongside the bill when it is passed, and on which we will consult, clearly and explicitly mention families under exceptional pressure. We are looking at how local authorities currently record things. At the moment, 44 per cent of the money that is paid out for community care grants goes to households with children, but not all those households are recorded as families under exceptional pressure. We are working very hard with local authority partners to get the definition correct so that we can deal with the issue. It is not the case that the issue is not being addressed, and families under exceptional pressure can apply to the Scottish welfare fund.

I will say a bit more about outsourcing. I think that Ken Macintosh mentioned my “insistence” on outsourcing to the private sector. When I appeared at committee I made it clear that it was never my intention—I had never even had the thought—that there would be outsourcing to the private sector. Like my colleague Kevin Stewart, I had considered the idea that local authorities might have the option of having the third sector administer the fund. After getting back information from the Welfare Reform Committee and looking at what third sector administration might mean under EU legislation, the best thing to do was to remove that option. There was never any intention to outsource to the private sector; neither I nor committee members would ever have considered that. However, local authorities will still have the power to work together to administer the funds, if they feel that that is best.

Joan McAlpine and a number of other members talked about access to the fund. We want to make the fund as accessible as possible to everybody. There is no intention that people should be turned away or that there should be any gatekeeping. We will make that very clear in the guidance. There will be no gatekeeping; anybody who makes an application should be recorded as having made an application and should have the right to have their application reviewed if it is turned down.

There has been some criticism of how local authorities are administering the fund, although Jackie Baillie thanked local authorities and their workers for delivering the fund. As I said to the committee, I spent a good part of my time in the recess speaking to local authority teams on the front line. I can tell you that nobody in all those teams had envisaged doing the job; they had not foreseen that they would be so close to the people in the community whom they represent. They are busting a gut to get the money out to people and they completely recognise the difficulties that families in their area face. They are doing all they can to get the money out.

Ken Macintosh mentioned the 48-hour target. The 48-hour target does not mean that people have 48 hours to deal with an application. Clearly an application should be dealt with as quickly as possible—certainly, within 24 hours where possible. If there is a suggestion that I misled the committee, I must say that there was no intention ever to do that. I am well aware that Scottish welfare fund decisions are made only once all the information is gathered. The point that I made goes back what to Quarriers said: there is a “night and day” difference between how we are dealing with things and how the DWP dealt with things.

Alex Johnstone: Will the minister take an intervention?

Margaret Burgess: I will take an intervention in a moment, if Alex Johnstone lets me finish this point.

The Scottish welfare fund officers in our local authorities are proactively getting the information; they are not waiting on it being collected. That is the point that I made at the committee.

Alex Johnstone: I would not suggest for a moment that the minister misled the committee, but it has to be said that we took evidence from users of the fund and were left with the clear impression that some of them believed that their applications had been held until the end of the 48 hours rather than being dealt with in a much quicker time.
Margaret Burgess: Again, that is something that we will be looking at and dealing with in the regulations and guidance. It is clearly not a matter for the bill. I do not want to there to be a deadline that people work to, which could mean that they do not get all the information or that they make quick decisions that are perhaps not right because they are pushed for time. I have not said that I will not look at the matter again; what I have said is that it is something to include in regulations, and not in the bill.

A number of members including Jackie Baillie, Ken Macintosh and Alex Rowley talked about the underspend in the first year of the Scottish welfare fund. In the first year, it was a new fund. It was new to local authorities and to the Scottish Government, so I make no apology for changing the guidance. We should not have guidance that is permanent and that will never be altered. We learn, so we should change guidance when we see what is happening in practice, as we are doing.

All that said, our local authorities still paid out more money in the first year of the Scottish welfare fund than was paid out in the last year of the social fund for grants and loans. We have to look at that. Although we did not spend the £32 million, the money is not underspent; it is now being spent and will be spent by local authorities in the current year in the Scottish welfare fund. It is ring fenced for that purpose, and for that purpose only.

As members have said, the best way to address the problem is, of course, to address the root causes of poverty, which we are doing through our child poverty strategy and the appointment of a poverty adviser to the Government to ensure that poverty is considered across every single portfolio.

There will be areas where the operation of the scheme can and should improve, so we will work with local authorities to ensure that people who need help do not come up against unintended barriers. There should also be no stigma attached to anyone who applies to the scheme. Again, we will address that in guidance.

Points have been made about grants being made in the form of cash or goods. Again, we will cover that in the guidance. There are arguments on both sides, but it is clear that the vast majority of crisis grants are paid out in cash. However, there are sound reasons for some goods being provided. Evidence from Heriot-Watt University and users of the fund has made it clear that people have found that to be helpful, but of course they should be involved. People should not be provided with stuff that they do not need or that is not suited to their needs. We can look again at addressing that to ensure that what happens is appropriate.

On variation in the levels of funding that have been paid out in different areas, I do not think that it would be appropriate for us to put a figure on every item and say, “This is how much should be paid out.” Local authorities need that flexibility. What is paid out is what the person who has made the application needs; it is not about saying that because a person makes an application for a certain amount for goods, that is all they will get. We need to be careful about that. It is about what is required.

I am being told to wind up, so I will do that. If Parliament is content to approve the general principles of the bill, I will work with the committee to amend it where necessary in order to ensure that it does what we want it to do, and I will listen carefully to the further evidence that we will get during the consultation on regulations and guidance.
Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are three questions to be put as a result of today's business. The first question is, that motion S4M-11877, in the name of Margaret Burgess, on the Welfare Funds (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Welfare Funds (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-11311, in the name of John Swinney, on the financial resolution to the Welfare Funds (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Welfare Funds (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.
January 2015

Dear Michael

SCOTTISH GOVERNMENT RESPONSE TO THE WELFARE REFORM COMMITTEE STAGE 1 REPORT ON THE WELFARE FUNDS (SCOTLAND) BILL

I am writing to provide you with a response to the stage 1 report on the Welfare Funds (Scotland) Bill that was published by the Committee.

I very much welcome both the Committees conclusion that the Bill provides a suitable framework for establishing the Fund on a secure statutory framework, and their acknowledgment that the existing interim scheme is viewed positively by the Parliament, relevant partners and users of the scheme.

The report contained a number of recommendations/suggestions for the Scottish Government to consider. The Scottish Government response to the report is attached at Annex A.

I hope you find this useful.

Kind regards

Margaret Burgess

MARGARET BURGESS

I am grateful to the Committee members, and to all those who gave evidence, for their work regarding the Welfare Funds (Scotland) Bill, and subsequent stage 1 report published on 8 December 2014.

I very much welcome both the Committees conclusion that the Bill provides a suitable framework for establishing the Fund on a secure statutory framework, and their acknowledgment that the existing interim scheme is viewed positively by the Parliament, relevant partners and users of the scheme.

The Scottish Government has considered the suggestions and recommendations made by the Committee, and our response to those which apply to the Bill is shown below with the relevant recommendation numbers being taken from the listing in the executive summary of the report.

General Principles

7. The Committee recommends that the Scottish Government reconsiders the eligibility criteria in section 2 of the Bill in light of all the written and oral evidence received to ensure that all those in legitimate need of the fund are able to access it.

8. The Committee recommends that the Scottish Government make every effort to integrate the work of the Scottish Welfare Fund with the Children and Young People Act 2014 and the upcoming guidance related to this Act.

While noting the concerns of stakeholders and the Committee, the Scottish Government does not have a free hand in being able to provide for everyone who might benefit from welfare funds.

Section 2 of the Bill replicates the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No 2) Order 2013 which gives the powers to the Parliament to legislate in this area. This is commonly known as the section 30 order.

Section 2 of the Bill reproduces the wording of the Section 30 order. This means that it gives the Funds the broadest possible scope to operate within the reservation.

The Bill sets out a high level framework for welfare funds. The regulations and guidance which will be published under the Bill will set out the details of the operation of the funds and we will do all that we can to ensure that the guidance is framed in such a way as to integrate the work of welfare funds into existing Scottish Government policy.
Outsourcing the operation of the fund

9. The Committee acknowledges the benefits that may be drawn from local authorities working jointly to administer the fund. It also takes some comfort from the view of the Minister that the Scottish Government does not envisage the fund being outsourced to a private company.

10. The Committee recommends that the Scottish Government consider the issue of outsourcing in light of EU procurement laws and thresholds to ensure that private companies are not allowed to undertake the work.

11. The Committee would also suggest that the Scottish Government issue guidance to help steer local authorities through the outsourcing process and to provide consistency in approach.

It is not possible under EU public procurement rules to specify in the Bill that a contract for the provision of a service like welfare funds be reserved solely for third sector organisations to tender for.

In light of this, and after careful consideration of the evidence presented before the Committee and the Committee's recommendation, the Scottish Government intends to bring forward an amendment at stage 2 of the Bill which would remove the section relating to outsourcing.

This amendment would not prevent local authorities making arrangements to administer welfare funds jointly, since section 56(5) of the Local Government (Scotland) Act 1973 provides a general power for two or more local authorities to discharge functions jointly.

Local Authority first tier reviews

12. The Committee is content with the continuation of local authorities conducting first tier reviews. However, it recommends that the Scottish Government and COSLA monitor the number of reviews and if necessary explore the reasons for the low numbers. The Committee recommends that notification of the right of appeal is included in all rejection letters to applicants.

13. The Committee notes the view of the Delegated Powers and Law Reform Committee that it is preferable to require, rather than allow, Scottish Ministers to regulate regarding local authority reviews. It is encouraged that the Scottish Government does not foresee any difficulties with this change in language.

The Scottish Government intends to bring forward an amendment at stage 2 which will put a right for applicants to welfare funds to require a first tier review on the face of the Bill.

The Scottish Government continues to work with COSLA and local authority practitioners to monitor the number of both first and second tier reviews. The guidance for the interim scheme requires that local authorities include notification of the right of review in decision letters to applicants. Model decision letters have been
developed and shared with the Scottish Welfare Fund Practitioners’ Network. We have also produced and printed a leaflet detailing applicants’ rights to review which we have distributed to local authorities to include with their decision letters.

The draft regulations which were published to support the Bill also require that all decisions must be made in writing and must include details of how applicants can ask for a review if dissatisfied.

**Scottish Public Sector Ombudsman (SPSO) conducting second tier reviews**

15. *The Committee welcomes the commitment of the SPSO to carry out a full consultation and publish guidance on how it will conduct reviews in which it will set out their obligations, timescales and processes. It also supports the SPSO in its call for an appropriate provision to this effect to be included in the legislation.*

16. *The Committee suggests to the Scottish Government that it would be useful to include the SPSO on the list of groups to consult on changes to regulations or guidance. It would also be helpful to include in regulations or guidance a requirement for local authorities to provide information or representation to the SPSO when required.*

The Scottish Government intends to address the role and responsibilities of the SPSO in respect of welfare funds by bringing forward stage 2 amendments to the Bill. These amendments will deal with procedural matters in connection with the SPSO undertaking second tier review.

These amendments will amongst other things include SPSO in the list of groups to be consulted before guidance is issued, and will include relevant evidence gathering powers for the SPSO to obtain information from local authorities.

**Fraud, the recovery of funds and loans**

17. *The Committee recognises the need to be able to act accordingly if there is fraud or abuse of the fund to the detriment of genuine fund users. However, it believes that the fund should preserve an ethos of trust and respect and should not start from the assumption that Scottish Welfare Fund users intend to defraud.*

18. *The Committee understands and supports the Scottish Government’s clear intention that the fund is a grant making scheme and that it has no wish to revert to loans. However, in the interests of clarity, and to future proof the grant making aspect of the fund, it would recommend a tightening of the language in section 5 to clarify that the provision is indeed concerned with fraud.*

The Scottish Government’s intention is that welfare funds operate as grant schemes and not loan schemes. However noting concerns that have been expressed, we intend to bring forward a stage 2 amendment to ensure that local authorities are precluded from using welfare funds to provide loans.
Administrative Funding

19. The Committee supports the Finance Committee’s view that it is vital that administration of the fund is supported by the appropriate resource levels and that growth in demand for assistance is recognised.

20. The Committee welcomes the assurance of the Minister that the Scottish Government is happy to reconsider the distribution of administrative funding pending any strong evidence which arises through the benchmarking exercise from COSLA. It encourages COSLA to make its findings publically available as soon as possible.

The Bill is a high level framework which will put the welfare funds on a statutory footing, and as such not the vehicle to address administrative funding. The Scottish Government has committed to reconsidering the administration funding if COSLA provide evidence through their benchmarking exercise that the fund cannot be administered with the funding provided. That benchmarking information was received on 14 January and is now under consideration. However, it remains our view that at around 15% of the overall programme funding, the current administration budget allocation should be enough to deliver the Scottish Welfare Fund.

We continue to support local authorities to share best practice in relation to administration of the Scottish Welfare Fund.

Funding to set up the SPSO as a second tier reviewer

23. The Committee notes that uncertainty about the number of cases will have a significant, yet currently unquantifiable, impact on the funding, resource and space requirements for the SPSO.

24. The Committee supports the recommendation from the Finance Committee and the SPSO that, once the legislation is in place, reviews should be conducted to allow the true nature of demand for second tier reviews to be established.

The Scottish Government has, in consultation with the SPSO, estimated set up costs and annual running costs for a separate unit within the SPSO to deal with second tier reviews.

These estimates are based on the SPSO experience of setting up new functions, and the costs of delivery of a similar scale review function for a different fund in Northern Ireland. The estimates will be subject to reconsideration as more information becomes available on second tier review numbers.
Review

25. The Committee is aware of the increasing administrative workload which is being placed on local authority staff. In light of this the Committee recommends on-going monitoring, rather than a review clause. This would allow the Scottish Government and local authorities to keep a close eye on performance and respond more proactively to any needs.

26. The Committee suggests that the Scottish Government may wish to work with COSLA to consider how its benchmarking evidence may be useful in this process.

The Scottish Government is undertaking an ongoing monitoring programme in respect of the Scottish Welfare Fund. We currently fund a dedicated development officer post in COSLA, and a quality improvement officer to oversee a quality improvement programme, which includes a series of visits to local authorities with case observations, twice-yearly workshops with all local authorities and bi-monthly practitioner meetings. This work is in addition to the comprehensive statistical publications that are published quarterly on the Scottish Welfare Fund.

The annual report on welfare mitigation activity, which is required by the Welfare Reform (Further Provision) (Scotland) Act 2012 also includes material on the Scottish Welfare Fund which provides Parliament and interested parties with information on how the Fund is operating.

We would also anticipate that the operation of welfare funds and the legislative framework surrounding them would be considered within the changing environment that may be brought about due to the implementation of the Smith Commission recommendations.

We will scrutinise the COSLA benchmarking exercise, which we hope will inform many aspects of the future welfare funds.

Power to make regulations

27. The Committee notes the view of the Delegated Powers and Law Reform Committee that the regulations should be subject to the affirmative procedure. As the Bill provides a framework and the majority of the operational detail will be contained in regulations the Committee feels it is important that they receive a detailed level of scrutiny.

28. The Committee looks forward to seeing the full Scottish Government response to the enquiries from the Delegated Powers and Law Reform Committee. It welcomes the Scottish Government interim response that it foresees no difficulties in moving to the affirmative procedure.

The Scottish Government intends to bring forward an amendment at stage 2 which will provide for regulations made under the Act to be subject to the affirmative procedure.
ISSUES FOR REGULATIONS AND GUIDANCE

As the Committee report points out, the detail of how welfare funds will be administered is not set out in the Bill. However, the evidence that the Committee took raised a number of important points for consideration.

The Committee has made a number of further recommendations relating to issues it believes should be taken into account during the development of the regulations and guidance that would be published under the Welfare Funds (Scotland) Act.

The Scottish Government is already working in a number of these areas, such as awareness raising, accessibility and consistency to address the concerns raised in respect of the current interim scheme, and will fully consider the recommendations in the Committee report when producing draft regulations and guidance. Subject to the passage of the Welfare Funds (Scotland) Bill, the Scottish Government intends to carry out a consultation on the draft regulations and guidance in summer 2015.

Scottish Government
January 2015
Welfare Funds (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 8 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 1

Margaret McDougall
Supported by: Ken Macintosh

24 After section 1, insert—

<General principles
In exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2, a local authority must take reasonable steps to facilitate the following principles—

(a) that the right to dignity of the applicant is to be respected,
(b) that the particular needs and choices of the applicant are to be considered.>

Section 2

Ken Macintosh
Supported by: Margaret McDougall

25 In section 2, page 1, line 9, leave out <or other>

Ken Macintosh
Supported by: Margaret McDougall

26 In section 2, page 1, line 9, after <assistance> insert <or, in such circumstances as may be prescribed in regulations under subsection (3A), other assistance>

Ken Macintosh
Supported by: Margaret McDougall

27 In section 2, page 1, line 14, after <individuals> insert <—

(a) who are part of a family facing exceptional pressure, or
(b)>

Margaret Burgess

1 In section 2, page 1, line 17, at end insert—

<( ) The assistance which a local authority may use its welfare fund to provide does not include making loans.>
In section 2, page 1, line 18, leave out subsection (3) and insert—

\[(3A) \text{The Scottish Ministers may, by regulations, make provision about the circumstances in which a local authority may—} \]
\[(a) \text{provide goods or services to or in respect of an individual, or} \]
\[(b) \text{make a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.} \]

\[(3B) \text{Regulations under subsection (3A) are subject to the affirmative procedure.}\]

**Section 3**

Margaret Burgess

2 Leave out section 3

**Section 4**

Margaret Burgess

3 In section 4, page 2, line 4, leave out subsections (1) and (2) and insert—

\[(2A) \text{Where an applicant for assistance in pursuance of section 2 from a local authority applies to it to do so, the local authority must review its decision on the application.} \]
\[(2B) \text{Subsection (2A) is subject to subsection (2C).} \]
\[(2C) \text{The Scottish Ministers may by regulations—} \]
\[(a) \text{provide as to circumstances in which a decision made in pursuance of section 2 is not to be reviewed under subsection (2A),} \]
\[(b) \text{provide as to how an application for review under subsection (2A) is to be made,} \]
\[(c) \text{provide as to time limits for the making of applications for review under subsection (2A).}\]

Margaret Burgess

4 In section 4, page 2, line 10, leave out subsections (3) and (4)

Margaret Burgess

5 In section 4, page 2, line 20, leave out <negative> and insert <affirmative>

**Section 5**

Margaret Burgess

6 In section 5, page 2, line 23, leave out <this Act> and insert <sections 1 to 4>

Margaret Burgess

7 In section 5, page 2, line 37, leave out <this Act> and insert <sections 1 to 4>
Margaret Burgess
8 In section 5, page 2, leave out line 39

Margaret Burgess
9 In section 5, page 3, leave out lines 1 and 2

Margaret Burgess
10 In section 5, page 3, line 2, at end insert—
   \(<( ) \text{ about the procedure which local authorities are to follow in relation to reviews in}\>
   \text{pursuance of section 4, or applications for such reviews, including the period}
   \text{within which they are to take any particular steps,}>\)

Ken Macintosh
Supported by: Margaret McDougall
29 In section 5, page 3, line 7, at end insert—
   \(<( ) \text{ Regulations making provision of a type described in subsection (2)(b) must provide that}\>
   \text{a local authority is to make its decision on an application for assistance in pursuance of}\>
   \text{section 2(1)(a)—}
   \((a) \text{ immediately after the authority has received all information allowing a decision to}\>
   \text{be made, and}\>
   \((b) \text{ in any event, no later than the end of the next working day,}>\)

Margaret Burgess
11 In section 5, page 3, line 12, leave out subsection (4)

Margaret Burgess
12 In section 5, page 3, line 14, leave out <negative> and insert <affirmative>

After section 5

Kevin Stewart
30 After section 5, insert—
   \(<\text{Respect for, and dignity of, applicants for assistance}\>
   \text{In exercising its functions under sections 1 to 4, or any regulations under section 5, a}\>
   \text{local authority must take reasonable steps to ensure—}\>
   \((a) \text{ that applicants for assistance in pursuance of section 2 are treated with respect,}\>
   \text{and}\>
   \((b) \text{ that their dignity is preserved,}>\)

Section 6

Margaret Burgess
13 In section 6, page 3, line 17, leave out <this Act.> and insert—
   \(<(a) \text{ sections 1 to 4,}\>

3
Margaret Burgess

14 In section 6, page 3, line 23, after <fit,> insert—

<( ) the Ombudsman,>

After section 6

Margaret Burgess

15 After section 6, insert—

<Further review by Scottish Public Services Ombudsman

Application to Ombudsman for further review

(1) Subsection (2) applies where an applicant for assistance in pursuance of section 2 is dissatisfied with the outcome of a review by a local authority in pursuance of section 4.

(2) An application for a further review may be made to the Ombudsman—

(a) by the applicant, or

(b) by a person authorised for the purpose by the applicant.

(3) An application under subsection (2) may be made orally or in writing.

(4) The Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 4, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.

(5) It is for the Ombudsman to determine whether an application under subsection (2) has been duly made.>

Margaret Burgess

16 After section 6, insert—

<Ombudsman’s powers

If, on a review in pursuance of an application under section (Application to Ombudsman for further review)(2), the Ombudsman considers that a different decision should have been made by the local authority, the Ombudsman may quash the decision and—

(a) direct the local authority to reconsider the application to which the decision relates, or

(b) direct the local authority to use its welfare fund to provide—

(i) the assistance concerned, or

(ii) any other assistance (being assistance which may be provided by the local authority under section 2).>
Statement of practice

(1) The Ombudsman must prepare a statement of practice setting out the approach which the Ombudsman intends to take to the conduct of reviews in pursuance of applications under section (Application to Ombudsman for further review)(2).

(2) Before preparing the statement of practice, the Ombudsman must consult—
   (a) local authorities, and
   (b) such other persons as the Ombudsman considers appropriate.

(3) The Ombudsman must publish the statement of practice in such manner as the Ombudsman considers appropriate.

(4) The Ombudsman may revise the statement of practice.

(5) Subsections (2) to (4) apply to a revised statement of practice as they apply to the original statement of practice.

Margaret Burgess

18 After section 6, insert—

Procedural matters

(1) The procedure for conducting a review in pursuance of an application under section (Application to Ombudsman for further review)(2) is to be such as the Ombudsman thinks fit.

(2) The Ombudsman may, in particular—
   (a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit,
   (b) hold an oral hearing or determine the review without one.

(3) The Ombudsman may require any of the following persons to supply or produce information or documents which the Ombudsman considers is or are, or may be, relevant to the review—
   (a) the local authority concerned,
   (b) the applicant for assistance,
   (c) any other person.

(4) The Ombudsman may administer oaths at an oral hearing held in relation to the review.

(5) The Ombudsman may make rules setting out—
   (a) factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing in relation to a review in pursuance of applications under section (Application to Ombudsman for further review)(2),
   (b) the procedure to be followed in connection with an oral hearing.

(6) Before making such rules, the Ombudsman must consult—
   (a) local authorities, and
   (b) such other persons as the Ombudsman considers appropriate.

(7) The Ombudsman must publish any such rules as soon as reasonably practicable.
Margaret Burgess

19 After section 6, insert—

<Obstruction and contempt

(1) Where—

(a) a person, without lawful excuse, obstructs the Ombudsman in the exercise of the Ombudsman’s functions in relation to a review in pursuance of an application under section (Application to Ombudsman for further review)(2), or

(b) a person does any act or fails to take any action in relation to such review by the Ombudsman which, if the review were a proceeding in the Court of Session, would constitute contempt of court,

the Ombudsman may apply by petition to the Court of Session for the person to be dealt with in accordance with subsection (2).

(2) Where such a petition is presented, the Court of Session may inquire into the matter and after hearing—

(a) any witnesses who may be produced against or on behalf of the person in question, and

(b) any statement which may be offered in defence,

may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.>

Margaret Burgess

20 After section 6, insert—

<Notice of decision and publication of report

(1) After conducting a review in pursuance of an application under section (Application to Ombudsman for further review)(2), the Ombudsman—

(a) must notify the applicant for assistance and the local authority concerned of the Ombudsman’s decision, and

(b) may publish a report of the review.

(2) Apart from identifying the local authority concerned, a report of a review must not—

(a) mention the name of any person, or

(b) contain any particulars which, in the Ombudsman’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.>

Margaret Burgess

21 After section 6, insert—

<General Interpretation

In this Act, “the Ombudsman” means the Scottish Public Services Ombudsman.>

Margaret Burgess

22 After section 6, insert—
<Consequential modifications>
(1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.
(2) In section 14(1)(a), after “functions” insert “under sections 2 to 13”.
(3) After section 16G, insert—

“Other functions of the Ombudsman

16H Reviews under the Welfare Funds (Scotland) Act 2015

As well as the functions conferred by sections 2 to 16G, the Ombudsman has the functions in relation to the review of decisions by local authorities conferred by the 2015 Act (see sections (Application to Ombudsman for further review) to (Interpretation) of that Act).”.

(4) In section 18(1), after paragraph (c) insert—

“(d) any statement made by the Ombudsman in pursuance of section (Notice of decision and publication of report) of the 2015 Act,
(e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,
(f) any statement made by any person in communicating with the Ombudsman for the purposes of such a review.”.

(5) In section 19—

(a) in subsection (2), after paragraph (d) insert—

“(e) where subsection (2A) applies, the purposes of a welfare fund review.”

(b) after subsection (2), insert—

“(2A) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and
(b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman’s advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

(2C) Those purposes are—

(a) the purposes of the review,
(b) the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
(ii) an offence of perjury alleged to have been committed in the course of the review,
(c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),
(d) the purposes of any proceedings under section (Obstruction and contempt) of the 2015 Act,

(e) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.

(2D) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.”,

(c) in subsection (3), after “(1)” insert “or (2B)”,

(d) after subsection (5), insert—

“(5A) It is not competent to call upon the Ombudsman or the Ombudsman’s advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.”.

(6) In section 20(1), after “Act” insert “or the 2015 Act”.

(7) In section 23(1)—

(a) before the entry for “action” insert—

“the 2015 Act” means the Welfare Funds (Scotland) Act 2015,”

(b) after the entry for “the Ombudsman” insert—

“the Ombudsman’s functions” includes the Ombudsman’s functions under the 2015 Act,”,

(c) after the entry for “request” insert—

“welfare fund review” means a review in pursuance of an application under section (Application to Ombudsman for further review)(2) of the 2015 Act.”.

Margaret McDougall
Support by: Ken Macintosh

After section 6, insert—

<Delivery of welfare funds: annual reporting

(1) The Scottish Ministers must prepare an initial report giving information about the delivery of welfare funds.

(2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2016.

(3) The Scottish Ministers must prepare an annual report giving information about the delivery of welfare funds.

(4) An annual report is—

(a) starting with 2017, required each year,

(b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.
(5) The initial report and an annual report must include information about—
   (a) the amount paid out of the welfare funds,
   (b) the number of applications for assistance in pursuance of section 2 that have been received,
   (c) the number of applications—
       (i) in respect of which financial assistance was provided,
       (ii) in respect of which other assistance was provided,
       (iii) that were rejected.

(6) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.

Section 7

Margaret Burgess

23 In section 7, page 3, line 31, leave out <incidental, supplementary, consequential,>
Welfare Funds (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**General principles: respect for, and dignity of, applicant**
24, 30

**Use of welfare funds: financial or other assistance**
25, 26, 28

**Use of welfare funds: “qualifying individuals”**
27

**Use of welfare funds: loans**
1

**Administration of welfare funds**
2, 8

**Review of decisions by local authority**
3, 5, 9, 10

**Further review of decisions by Scottish Public Services Ombudsman**
4, 6, 7, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22

**Timescale for dealing with applications for assistance**
29

**Procedure for making regulations under section 5**
12

**Guidance issued by the Scottish Ministers**
14
Annual reporting
31

Making of incidental, supplementary or consequential provision
23
Amendments in debating order

General principles: respect for, and dignity of, applicant

Margaret McDougall
Supported by: Ken Macintosh

24 After section 1, insert—

<General principles

In exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2, a local authority must take reasonable steps to facilitate the following principles—

(a) that the right to dignity of the applicant is to be respected,

(b) that the particular needs and choices of the applicant are to be considered.>

Kevin Stewart

30 After section 5, insert—

<Respect for, and dignity of, applicants for assistance

In exercising its functions under sections 1 to 4, or any regulations under section 5, a local authority must take reasonable steps to ensure—

(a) that applicants for assistance in pursuance of section 2 are treated with respect, and

(b) that their dignity is preserved.>

Use of welfare funds: financial or other assistance

Ken Macintosh
Supported by: Margaret McDougall

25 In section 2, page 1, line 9, leave out <or other>

Ken Macintosh
Supported by: Margaret McDougall

26 In section 2, page 1, line 9, after <assistance> insert <or, in such circumstances as may be prescribed in regulations under subsection (3A), other assistance>

Ken Macintosh
Supported by: Margaret McDougall

28 In section 2, page 1, line 18, leave out subsection (3) and insert—

<(3A) The Scottish Ministers may, by regulations, make provision about the circumstances in which a local authority may—

(a) provide goods or services to or in respect of an individual, or

(b) make a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.
(3B) Regulations under subsection (3A) are subject to the affirmative procedure.

**Use of welfare funds: “qualifying individuals”**

Ken Macintosh  
Supported by: Margaret McDougall

27 In section 2, page 1, line 14, after <individuals> insert <—

(a) who are part of a family facing exceptional pressure, or

(b)>  

**Use of welfare funds: loans**

Margaret Burgess

1 In section 2, page 1, line 17, at end insert—

<(  ) The assistance which a local authority may use its welfare fund to provide does not include making loans.>  

**Administration of welfare funds**

Margaret Burgess

2 Leave out section 3

Margaret Burgess

8 In section 5, page 2, leave out line 39

**Review of decisions by local authority**

Margaret Burgess

3 In section 4, page 2, line 4, leave out subsections (1) and (2) and insert—

<(2A) Where an applicant for assistance in pursuance of section 2 from a local authority applies to it to do so, the local authority must review its decision on the application.

(2B) Subsection (2A) is subject to subsection (2C).

(2C) The Scottish Ministers may by regulations—

(a) provide as to circumstances in which a decision made in pursuance of section 2 is not to be reviewed under subsection (2A),

(b) provide as to how an application for review under subsection (2A) is to be made,

(c) provide as to time limits for the making of applications for review under subsection (2A).>
In section 4, page 2, line 20, leave out <negative> and insert <affirmative>

In section 5, page 3, leave out lines 1 and 2

In section 5, page 3, line 2, at end insert—

<(  ) about the procedure which local authorities are to follow in relation to reviews in pursuance of section 4, or applications for such reviews, including the period within which they are to take any particular steps,>

Further review of decisions by Scottish Public Services Ombudsman

In section 4, page 2, line 10, leave out subsections (3) and (4)

In section 5, page 2, line 23, leave out <this Act> and insert <sections 1 to 4>

In section 5, page 2, line 37, leave out <this Act> and insert <sections 1 to 4>

In section 5, page 3, line 12, leave out subsection (4)

In section 6, page 3, line 17, leave out <this Act.> and insert—

<(a) sections 1 to 4,
   (b) any regulations made under section 5.>

After section 6, insert—

<Further review by Scottish Public Services Ombudsman

Application to Ombudsman for further review

(1) Subsection (2) applies where an applicant for assistance in pursuance of section 2 is dissatisfied with the outcome of a review by a local authority in pursuance of section 4.

(2) An application for a further review may be made to the Ombudsman—

   (a) by the applicant, or
   (b) by a person authorised for the purpose by the applicant.

(3) An application under subsection (2) may be made orally or in writing.
(4) The Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 4, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.

(5) It is for the Ombudsman to determine whether an application under subsection (2) has been duly made.

Margaret Burgess

16 After section 6, insert—

<Ombudsman’s powers>

If, on a review in pursuance of an application under section (Application to Ombudsman for further review)(2), the Ombudsman considers that a different decision should have been made by the local authority, the Ombudsman may quash the decision and—

(a) direct the local authority to reconsider the application to which the decision relates, or

(b) direct the local authority to use its welfare fund to provide—

(i) the assistance concerned, or

(ii) any other assistance (being assistance which may be provided by the local authority under section 2).

Margaret Burgess

17 After section 6, insert—

<Statement of practice>

(1) The Ombudsman must prepare a statement of practice setting out the approach which the Ombudsman intends to take to the conduct of reviews in pursuance of applications under section (Application to Ombudsman for further review)(2).

(2) Before preparing the statement of practice, the Ombudsman must consult—

(a) local authorities, and

(b) such other persons as the Ombudsman considers appropriate.

(3) The Ombudsman must publish the statement of practice in such manner as the Ombudsman considers appropriate.

(4) The Ombudsman may revise the statement of practice.

(5) Subsections (2) to (4) apply to a revised statement of practice as they apply to the original statement of practice.

Margaret Burgess

18 After section 6, insert—

<Procedural matters>

(1) The procedure for conducting a review in pursuance of an application under section (Application to Ombudsman for further review)(2) is to be such as the Ombudsman thinks fit.

(2) The Ombudsman may, in particular—
(a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit,
(b) hold an oral hearing or determine the review without one.

(3) The Ombudsman may require any of the following persons to supply or produce information or documents which the Ombudsman considers is or are, or may be, relevant to the review—
   (a) the local authority concerned,
   (b) the applicant for assistance,
   (c) any other person.

(4) The Ombudsman may administer oaths at an oral hearing held in relation to the review.

(5) The Ombudsman may make rules setting out—
   (a) factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing in relation to a review in pursuance of applications under section (Application to Ombudsman for further review)(2),
   (b) the procedure to be followed in connection with an oral hearing.

(6) Before making such rules, the Ombudsman must consult—
   (a) local authorities, and
   (b) such other persons as the Ombudsman considers appropriate.

(7) The Ombudsman must publish any such rules as soon as reasonably practicable.

Margaret Burgess

19 After section 6, insert—

<Obstruction and contempt

(1) Where—
   (a) a person, without lawful excuse, obstructs the Ombudsman in the exercise of the Ombudsman’s functions in relation to a review in pursuance of an application under section (Application to Ombudsman for further review)(2), or
   (b) a person does any act or fails to take any action in relation to such review by the Ombudsman which, if the review were a proceeding in the Court of Session, would constitute contempt of court,

   the Ombudsman may apply by petition to the Court of Session for the person to be dealt with in accordance with subsection (2).

(2) Where such a petition is presented, the Court of Session may inquire into the matter and after hearing—
   (a) any witnesses who may be produced against or on behalf of the person in question, and
   (b) any statement which may be offered in defence,

   may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.>
After section 6, insert—

<Notice of decision and publication of report

(1) After conducting a review in pursuance of an application under section (Application to Ombudsman for further review)(2), the Ombudsman—
(a) must notify the applicant for assistance and the local authority concerned of the Ombudsman’s decision, and
(b) may publish a report of the review.

(2) Apart from identifying the local authority concerned, a report of a review must not—
(a) mention the name of any person, or
(b) contain any particulars which, in the Ombudsman’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.>

After section 6, insert—

<General

Interpretation

In this Act, “the Ombudsman” means the Scottish Public Services Ombudsman.>

After section 6, insert—

<Consequential modifications

(1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.

(2) In section 14(1)(a), after “functions” insert “under sections 2 to 13”.

(3) After section 16G, insert—

“Other functions of the Ombudsman

16H Reviews under the Welfare Funds (Scotland) Act 2015

As well as the functions conferred by sections 2 to 16G, the Ombudsman has the functions in relation to the review of decisions by local authorities conferred by the 2015 Act (see sections (Application to Ombudsman for further review) to (Interpretation) of that Act).”.

(4) In section 18(1), after paragraph (c) insert—

“(d) any statement made by the Ombudsman in pursuance of section (Notice of decision and publication of report) of the 2015 Act,
(e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,
(f) any statement made by any person in communicating with the Ombudsman for the purposes of such a review.”.

(5) In section 19—

(a) in subsection (2), after paragraph (d) insert—
“(c) where subsection (2A) applies, the purposes of a welfare fund review.”

(b) after subsection (2), insert—

“(2A) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman’s advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

(2C) Those purposes are—

(a) the purposes of the review,

(b) the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,

(ii) an offence of perjury alleged to have been committed in the course of the review,

(c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),

(d) the purposes of any proceedings under section (Obstruction and contempt) of the 2015 Act,

(e) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.

(2D) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.”,

(c) in subsection (3), after “(1)” insert “or (2B)”,

(d) after subsection (5), insert—

“(5A) It is not competent to call upon the Ombudsman or the Ombudsman’s advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.”.

(6) In section 20(1), after “Act” insert “or the 2015 Act”.

(7) In section 23(1)—

(a) before the entry for “action” insert—

““the 2015 Act” means the Welfare Funds (Scotland) Act 2015,”
(b) after the entry for “the Ombudsman” insert—

“‘the Ombudsman’s functions’ includes the Ombudsman’s functions under the 2015 Act,”,

(c) after the entry for “request” insert—

“‘welfare fund review’ means a review in pursuance of an application under section (Application to Ombudsman for further review)(2) of the 2015 Act.”.

Timescale for dealing with applications for assistance

Ken Macintosh
Supported by: Margaret McDougall
29 In section 5, page 3, line 7, at end insert—

<(  ) Regulations making provision of a type described in subsection (2)(b) must provide that a local authority is to make its decision on an application for assistance in pursuance of section 2(1)(a)—

(a) immediately after the authority has received all information allowing a decision to be made, and

(b) in any event, no later than the end of the next working day.>

Procedure for making regulations under section 5

Margaret Burgess
12 In section 5, page 3, line 14, leave out <negative> and insert <affirmative>

Guidance issued by the Scottish Ministers

Margaret Burgess
14 In section 6, page 3, line 23, after <fit,> insert—

<(  ) the Ombudsman,>

Annual reporting

Margaret McDougall
Supported by: Ken Macintosh
31 After section 6, insert—

<Delivery of welfare funds: annual reporting

(1) The Scottish Ministers must prepare an initial report giving information about the delivery of welfare funds.>
(2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2016.

(3) The Scottish Ministers must prepare an annual report giving information about the delivery of welfare funds.

(4) An annual report is—
   (a) starting with 2017, required each year,
   (b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.

(5) The initial report and an annual report must include information about—
   (a) the amount paid out of the welfare funds,
   (b) the number of applications for assistance in pursuance of section 2 that have been received,
   (c) the number of applications—
      (i) in respect of which financial assistance was provided,
      (ii) in respect of which other assistance was provided,
      (iii) that were rejected.

(6) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.>

Making of incidental, supplementary or consequential provision

Margaret Burgess

23 In section 7, page 3, line 31, leave out <incidental, supplementary, consequential,>
WELFARE REFORM COMMITTEE
EXTRACT FROM THE MINUTES
2nd Meeting, 2015 (Session 4)
Tuesday 27 January 2015

Present:

Clare Adamson   Annabel Goldie
Joan McAlpine   Margaret McDougall
Christina McKelvie   Michael McMahon (Convener)
Kevin Stewart

Also present: Margaret Burgess, Minister for Housing and Welfare and Ken Macintosh

Welfare Funds (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 30, 13, 14, 15, 16, 17, 18, 20, 21, 22 and 23.

Amendment 2 was agreed to (by division: For 6, Against 1, Abstentions 0).

The following amendments were disagreed to (by division)—

24 (For 2, Against 5, Abstentions 0)
25 (For 2, Against 5, Abstentions 0)
27 (For 3, Against 4, Abstentions 0)
29 (For 3, Against 4, Abstentions 0)
31 (For 3, Against 4, Abstentions 0)

Amendment 19 was moved and, no member having objected, withdrawn.

The following amendments were not moved: 26 and 28.

The following provisions were agreed to without amendment: sections 1, 8 and the long title.

The following provisions were agreed to as amended: sections 2, 4, 5, 6 and 7.

The Committee completed Stage 2 consideration of the Bill.
Welfare Funds (Scotland) Bill:
Stage 2

10:05

The Convener: Our second agenda item is consideration of the Welfare Funds (Scotland) Bill at stage 2.

I remind ministerial officials that they are not permitted to participate in proceedings. I remind everybody that they should have copies of the bill, the marshalled list of amendments and the groupings of amendments. The groupings set out the amendments in the order in which they will be debated, and the marshalled list sets out the amendments in the order in which they will be disposed of.

I will briefly remind all those present of some of the main points of procedure so that we are all as clear as possible—this will also help me quite a lot.

There will be a debate on each group of amendments, and I will call members to speak in turn. Members who have not lodged amendments in the group but who wish to speak should catch my eye or the clerk’s attention. Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press or withdraw it. If they wish to press it, I will put the question on the amendment. If the member wishes to withdraw their amendment after it has been moved, they must seek approval to do so. If any member who is present objects, the committee will immediately move to a vote on that amendment.

If any member does not want to move their amendment when they are called to do so, they should say “not moved”. However, any other member may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Voting in any division will be by a show of hands, and only committee members are allowed to vote. The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will therefore put a question on each section at the appropriate point.

Section 1 agreed to.

After section 1

The Convener: The first group of amendments is on general principles on respect for and the dignity of the applicant. Amendment 24, in the name of Margaret McDougall, is grouped with amendment 30. I call Margaret McDougall to move
amendment 24 and to speak to both amendments in the group.

Margaret McDougall (West Scotland) (Lab): I will move both the amendments in my name.

Amendment 24 would insert, under the heading “General principles”, the following provision:

“In exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2, a local authority must take reasonable steps to facilitate the following principles—
(a) that the right to dignity of the applicant is to be respected,
(b) that the particular needs and choices of the applicant are to be considered.”

The amendment ensures that, while “exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2,” a local authority must take all reasonable steps to ensure that respect for and the dignity of the applicant are taken into account, and that the needs and choices of the applicant are considered.

That principle is supported by organisations such as the Scottish Council for Voluntary Organisations, the Scottish campaign on welfare reform, the Scottish Churches Parliamentary Office, Engender and the Poverty Alliance, which, like me, believe that dignity and respect should be the cornerstone of our approach to welfare. It is crucial that we embed the principles of dignity and compassion in the proposed legislation at this stage.

Furthermore, in chapter 4 of the Scottish Government’s document “Scotland’s Future”, there are numerous references to welfare and dignity, such as:

“the benefits system should be fair, transparent and sympathetic to the challenges faced by people receiving them, respecting personal dignity, equality and human rights”.

Paragraph (b) in the proposed new section relates to that point, as it means that the applicant would have a degree of choice in the matter. I have spoken to some people about the issue, and I am sure that many others around the table will have heard about the experiences of constituents. Under the old system, someone could be provided with an item such as a cooker that did not fit into their kitchen or a washing machine that did not suit them, as they had disabilities and could not operate it. If they had a degree of choice and were able to go and buy an item that suited their needs, that would allow them an option.

The bottom line is that we are dealing with vulnerable people and people who have fallen on hard times. To uphold their dignity and respect, we must also uphold the choice and the needs of the individual. One size does not fit all when it comes to welfare.

Given the wide range of organisations that want dignity to be enshrined in the welfare system and the fact that the Scottish Government’s own document highlights dignity and respect in the welfare system as a key tenet, I think that it is reasonable and responsible to include the principles at the front of the bill.

There has already been an example: in the Social Care (Self-directed Support) (Scotland) Act 2013, the general principles are on page 1.

That was amendment 24, which I move. On amendment—

The Convener: We are just dealing with amendment 24, Margaret. Are you also speaking to amendment 30 in the name of Kevin Stewart?

Margaret McDougall: No.

The Convener: We will come to your other amendment in another group. Kevin Stewart will speak to amendment 30.

Kevin Stewart (Aberdeen Central) (SNP): I share the belief that applicants should be treated with respect, and I would like to ensure that their dignity is preserved at all times. With the changes that have come from Westminster and the use of language that comes from that place, we have seen that folks are often not treated with the dignity and respect that they deserve.

I have some difficulty with Margaret McDougall’s amendment 24 and the issue of choice. We would all like to maximise folk’s choices to the nth degree but the reality is that we have a limited budget of £30 million-odd to deal with welfare cuts of £6 billion. The more choice that we put in place means that fewer people are helped. We have to balance everything out very carefully.

I wish that the Scottish Parliament had all the powers and budget to deal with welfare because we would deal with it differently from how it is being dealt with by Westminster. We have to recognise that we have limited abilities, room for manoeuvre and budgets. Amendment 30 recognises that. Although I would always like to go further, we must be aware of where we are at.

The Convener: I will open it to other members to comment.

Annabel Goldie (West Scotland) (Con): I have a lot of sympathy with both the intention and objectives of both amendments 24 and 30, but I have a technical concern. What is the sanction if a claimant feels that a local authority has failed to discharge its duties in accordance with the proposed provisions? I ask that question because I am not sure how a court would interpret it, and I do not want a local authority to be distracted from
the work that we all want it to be doing, by facing
defensive legal actions that claim that the
provision has been breached.

I therefore have two questions. First, are you
satisfied about the ability of the court to interpret
the proposals? Secondly, what is the sanction?

Margaret McDougall: Can I—

The Convener: Margaret, you will get an
opportunity to wind up at the end of the
discussion. I will come back to you after the
debate. Ken Macintosh wishes to speak.

Ken Macintosh (Eastwood) (Lab): Thank you
very much, convener—[Laughter.] They seem to
have turned up the microphones since I left the
committee.

I congratulate both Margaret McDougall and
Kevin Stewart on amendments 24 and 30, and I
speak in support of amendment 24 in particular. It
is good to see that we are starting this morning's
discussion with an overview of what the bill is
trying to achieve and the principles underpinning
it. In some ways the bill is a simple and pragmatic
measure to replace the social fund, but it also
offers the Scottish Parliament the opportunity to
lay down the direction of travel, putting dignity and
respect at the heart of our thinking on welfare.

As more powers come to the Scottish
Parliament giving us responsibility for welfare, it is
important to establish what sort of welfare state
and what sort of society we wish to build in
Scotland. It is important that those principles are
part of the bill.

I support both amendments 24 and 30. Amendment 30 in the name of Kevin Stewart uses
the words "respect and dignity", and I would be
interested to hear what the minister makes of that.

I was slightly concerned that Mr Stewart did not
support Margaret McDougall's amendment 24
and, in particular, that he seemed to hesitate over
the word "choice". Treating people with dignity and
respect is about allowing them to exercise choice.
It is not about people choosing to make demands
on the fund, because that would simply be about
choice within the decisions that the local authority
had already made. It is about choice in a local
authority

"exercising its functions under sections 1 to 4 in respect of
an applicant".

In other words, it is not about an applicant
choosing to make demands; it is a requirement for
the state to ensure that, in assessing their needs,
it listens to the applicant's views and allows them
to make a choice from the choices that are open to
us as a society. It is an important word.

10:15

Not only is choice an important word; it is the
word that the Scottish Government used in a
previous measure. The reason why Margaret
McDougall lodged amendment 24 is that it copies
the wording and principles that the Scottish
Government put in place in the Social Care (Self-
directed Support) (Scotland) Act 2013. We thought
that, if it was good enough for that act, it was good
enough for the bill, too.

To reply to the point that Annabel Goldie made,
as with any act the matter would be open to
judicial review. If an applicant felt that their dignity
and respect were not upheld by the way that they
were treated, they would be open to take the
matter to judicial review. That is a difficult course
of action, but it would be the course and I have
confidence—as I am sure Annabel Goldie does—
in the courts' ability to interpret our legislation.

I certainly do not think that applicants are likely
to abuse the sanction of judicial review. It is
important that we state the principle and that,
therefore, local authorities and others who
implement the bill are aware of the principles and
have the sanction of judicial review in the back of
their minds. That will make them more focused on
ensuring that we put the principles into practice.

For those reasons and because the proposed
measure has been supported by the wider
voluntary sector—the SCVO and the many others
that Margaret McDougall quoted—it is important
that we take the step. I recommend that we
support amendment 24.

The Minister for Housing and Welfare
(Margaret Burgess): It has always been a priority
that welfare funds should be delivered in such a
way that the dignity of welfare fund users is
preserved. I agree with the committee's
suggestion that we have an opportunity to take a
different approach to welfare in Scotland.
Regardless of the funds available, our services will
be delivered with respect and understanding.

I have been considering the issue for some
time, and we have been working with local
authority practitioners through the series of
decision-making workshops that we have been
running to raise awareness of the challenges that
some of the applicants to the fund face and to try
to ensure that decision makers put applicants and
their needs at the centre of their work.

On my visits to local authorities, I have seen the
efforts that local authority staff make to ensure that
applicants are assisted in a timely and appropriate
way. That said, I appreciate how important it is to
send a clear signal about the need to treat
applicants with dignity and respect. I have thought
carefully about the matter for some time and I
believe that it is right to give priority to that aspect
of the fund by including appropriate reference to it in the bill. However, there are two similar amendments to consider.

Amendment 24, which Margaret McDougall has lodged, is laudable in its intention, but my concern with it centres on the impact that it could have on local authority resources. The reality of the situation is that, as Kevin Stewart said, there is a limited budget for welfare funds, which is coming under pressure. We have to acknowledge the demands on the fund and the opportunities for savings through local authorities bulk buying goods that they can distribute through it. That is alongside the added administrative burdens that local authorities would have to bear if we accepted amendment 24.

The guidance on the current interim scheme makes it clear that, if an individual has particular needs, they should be met, and I am determined that that will continue under the permanent arrangements. We will reconsider the guidance for the permanent arrangements to determine whether we can do more to ensure that, where applicants have a genuine need for a non-standard product, there is a clear understanding of how it should be provided.

Therefore, I support amendment 30, which captures the essence of what stakeholders have called for without bringing additional pressure to bear on local authority budgets. I urge Margaret McDougall to seek to withdraw amendment 24, and I ask the committee to accept amendment 30.

The Convener: We come back to Margaret McDougall to wind up the debate and to press or withdraw her amendment 24. Margaret, it is your opportunity to answer the questions that have been raised.

Margaret McDougall: Ken Macintosh answered Annabel Goldie’s question on sanctions. The judicial review option is there, and the user can appeal, so I have no concerns in that regard.

Kevin Stewart and the minister have said that there are limited funds available to local authorities. We know that, but I am not asking for people to be able to demand an excessive amount so that they can go out and buy the very best items. I am saying that it should not cost any more to enable people to have choice. That would give people a little more respect: they could say, “This is what I need in my kitchen, as it suits my needs. This is how much it costs—will the authority please fund it?” If the cost was above a certain level, the local authority would be perfectly within its rights to say, “No—that is outwith our funding allocation, and you can’t have it.”

That choice should be there. Choice does not mean that things will cost more—at times, they might actually cost less.

I press amendment 24.

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Ken Macintosh: Do I get a vote?

The Convener: No. You get the opportunity to speak, but not to vote.

For
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against
Adamson, Clare (Central Scotland) (SNP)
Goldie, Annabel (West Scotland) (Con)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 24 disagreed to.

Section 2—Use of welfare funds: assistance for short term need and community care

The Convener: Amendment 25, in the name of Ken Macintosh, is grouped with amendments 26 and 28.

Ken Macintosh: As we know, the bill places no restrictions on the circumstances in which a local authority can decide to make an award in kind to an applicant; that is, in goods or vouchers, rather than in cash. Amendment 25 would not prevent councils from doing so, but would simply enable the Scottish Government to produce regulations detailing the circumstances in which a local authority could make a non-financial award.

The power could be used to ensure, for example, that local authorities take applicants’ circumstances and preferences into account in deciding the nature of the award, and—following on from our previous discussion—to ensure that the applicant has more say and more choice in the process.

It is clear from the discussion on the previous group of amendments that all colleagues on the committee, and the minister, share my belief that the principles of dignity and respect should underpin our approach to welfare in Scotland. On the other hand, it is unfortunately clear in the evidence from witnesses who gave evidence to the committee that a more common experience for people who rely on state support at times of difficulty is that they feel judged and stigmatised, and are made to feel small.
Every bit as important—if not more so—than the principles that we state is how we put them into practice. We heard direct evidence that for people using vouchers or tokens in local shops the experience can be stigmatising and embarrassing, and can undermine applicants’ sense of dignity.

In some circumstances, non-financial awards may be the most practical and cost-effective way of meeting applicants’ needs. However, we also heard that such awards can be problematic and difficult. We heard, for example, that issuing vouchers instead of cash can undermine a family’s ability to achieve best value by budgeting, spreading payments or shopping around for goods. Items that are awarded do not always meet the identified needs of the applicant and their household. Disabled applicants and other people who have very specific needs may be better placed than the local authority to identify and purchase items that meet their needs. For families in rural areas, the ability to find a shop that takes vouchers is likely to be limited, as well as stigmatising.

Surely our intention with our approach to welfare in the bill is to build up resilience by, at the very least, leaving as much choice as possible in the hands of the recipient. The minister and I do not get paid in furniture or tokens: if we were, we might feel offended or patronised, so why should we be surprised if applicants for welfare feel similarly? Are we trying to make people feel worse or give them a hand up in their time of need? The SCVO briefing put it well:

“For many, having cash to buy what they need is by far the best option—not least because it gives people some semblance of control and dignity at a time when they cannot control the factors which have led them into hardship.”

Whatever our good intentions, what is also clear from the voluntary sector organisations that gave evidence is their concern that in-kind awards from the fund seem to have become the default position. Only half of all crisis grants and less than 20 per cent of community grant awards are made by way of cash, cheque or direct bank transfer.

If people are looking to furnish a flat and need a whole pack of goods, a community grant award might be the best option. Amendment 25 does not rule that out: I want to make it clear that the amendment would not disbar local authorities from providing support in kind rather than in cash. The amendment will allow the Scottish Government to specify the conditions that would need to be satisfied before a non-financial award could be made. Such an approach would not prevent local authorities from making awards in kind, but it would ensure that proper consideration was given to the needs of the applicant in each case, and that decision making was more transparent. It would also provide recipients with a clear basis on which to challenge unsuitable awards and any lack of consideration on the part of local authorities.

I move amendment 25.

Kevin Stewart: We heard a lot during the course of evidence taking and read a number of written observations about those issues. One of the key things that we need to put on record is that many of the folks who gave evidence were thankful for the in-kind contributions that they had received. The best examples are probably young folk who having left the care sector felt that the furniture packages that they received from local authorities were the best way to deal with their situation.

I return to a point that I made previously: we have a very limited amount of money to deal with cuts that amount to some £6 billion. My great fear is that if we restrict local authorities in their ability to strike deals to bulk-buy goods, we will help fewer and fewer people. The key thing is to help as many people in need as we possibly can.

I have some sympathy for the intention behind the amendments in the group, but I do not think that the bill is the correct place to address the issues. In some regards, we must allow local authorities their independence to apply common sense and logic to their day-to-day business in helping folks who are in need.

Annabel Goldie: I have no doubt whatsoever about the good intentions behind the amendment, but I return to my observations about amendment 24, in the name of Margaret McDougall. I want local authorities to have the widest possible latitude and discretion in how they meet need, but I am worried that amendment 25 would restrict that latitude and breadth of decision making. Amendment 24 aimed to ensure that the particular needs and choices of the applicant would be considered. Perversely, however, if that amendment had been agreed to, amendment 25 would then restrict the ability of the local authority to respond in that way. I am troubled that Mr Macintosh’s amendment is inflexible and would restrict local authorities. I am therefore unable to support it.

10:30

Joan McAlpine (South Scotland) (SNP): As other members have done, I acknowledge the good intentions behind amendment 25. It is important to remember that the people about whom we are talking are facing absolute destitution. The pot that we have to help them is limited—I think that it is £38 million, against cuts of £6 billion—so if we do not use it cost-effectively, other people who face absolute destitution will be deprived of help. Although we would, in an ideal
world, have things be different, we have to be pragmatic.

I bow to the knowledge of my colleague Kevin Stewart who heard the evidence from people who told the committee that payment in kind often suited them. For that reason, I cannot support amendment 25, either.

Margaret McDougall: I support Ken Macintosh’s amendment 25. I have heard the arguments against it, but choice does not have to mean more cost. Some of the bulk purchases are set, and that is it. However, we all know that sales go on and that there are opportunities to reduce the cost. Ken Macintosh also made a point about use of vouchers in rural areas. How much would it cost an individual to travel to a city so that they could use the vouchers, which they will not be able to use in local shops?

We are saying that local authorities should be able to consider each individual case by case, and to exercise discretion accordingly. I know that there will be cases in which a person who has had assistance in the past has not spent the money as they should have done. In such cases, the local authority would have reason to provide any further assistance in kind or in vouchers. However, we want to give individuals who are in situations such as we are talking about a bit more control over their lives, so that they can decide what they want and what is best for them. Therefore, I support Ken Macintosh’s amendment.

Clare Adamson (Central Scotland) (SNP): I have listened to the arguments. On the view that choice would not cost more, I think that that flies in the face of evidence that was provided by the Convention of Scottish Local Authorities about some of the difficulties that might be involved, in particular with regard to some people’s payment methods—the bank card or post office account.

The bill is intended to put the individual at the heart of the decision-making process. The examples that we have been given—the issuing of vouchers in rural areas and cookers that do not fit or are not suitable—point to failures in the process, rather than to something that should be included in the bill. I agree with my colleagues that the decision should be in the hands of local authorities, who know how best to provide the fund in their areas.

Margaret Burgess: There are a number of things to take into account when considering amendments 25, 26 and 28, which would, taken together, result in limits being placed on the circumstances in which local authorities could make non-financial assistance available to applicants.

I was interested in the evidence that the committee heard from users of the interim Scottish welfare fund, who came out in support of local authorities providing goods to fulfil community care grant awards.

We commissioned Heriot-Watt University to undertake an independent evaluation of the Scottish welfare fund, as part of our on-going work to improve the interim scheme and develop the permanent arrangements. That evaluation suggests that there is support for awards in kind, as long as they are appropriate to the applicant’s needs. We heard that for someone who has children or who has limited mobility, having an item delivered—and installed, because local authorities can also provide such services—can be preferable to a cash award.

I recognise third sector organisations’ concerns about provision of goods, but we must acknowledge the pressures on the fund and take the opportunities for savings that are afforded by local authorities buying in bulk goods that they can distribute through the fund. I am aware that bulk-purchased goods will not meet the needs of all applicants. That is why the guidance for the interim scheme makes it clear that an award should meet the needs of the individual. I am positive that that approach will continue. We will look again at the guidance in the context of the permanent arrangements, to see whether we can do more to ensure that there is clear understanding of how to support applicants who have a genuine need for a non-standard product.

I am not minded to change our approach in respect of community care grants. However, I have been giving thought to how awards for crisis grants are made. I do not think that the issue needs to be addressed in the bill, but when we consult on the regulations and the statutory guidance that will support the legislation we will explore ways of ensuring that the principles of amendment 25 are taken on board in respect of crisis grant payments.

I understand and sympathise with the intention behind amendments 25, 26 and 28, but the bill is not the correct place in which to address the issues that they raise. Therefore, I do not support the amendments in this group and urge the committee not to agree to them.

Ken Macintosh: I have been both slightly encouraged and slightly discouraged by the debate. First, I am slightly concerned that I perhaps did not explain, or that people misinterpreted, my proposed approach. Amendments 25, 26 and 28 would not restrict a local authority’s ability to provide goods in kind. They would put the onus on authorities at least to consider giving a cash award first, and they would allow the Government to stipulate the conditions under which in-kind awards could be made. There would be no restriction of freedom whatever.
I did not follow Annabel Goldie’s logic when she suggested that amendment 25 would restrict the choice that was sought in amendment 24. It would not do so. It echoes exactly the principles that we were trying to promote through amendment 24: choice, dignity and respect. My proposed approach does not contradict those principles—

Annabel Goldie: Am I allowed to intervene?

The Convener: It is a debate, so you can take an intervention if you want to do so, Ken.

Ken Macintosh: Why not?

Annabel Goldie: I was merely pointing out that if amendment 24 in Margaret McDougall’s name had been accepted we would have created a paradox, because on one hand we would be saying to a local authority that it must consider the applicant’s particular needs and choices—which might be for goods, services or particular support—while on the other, Mr Macintosh’s proposed approach would restrict a local authority’s ability to look holistically at a claimant’s needs. That is the paradox that I identified.

Ken Macintosh: It is clear that Annabel Goldie has totally misunderstood the effect and intention of amendment 25: it would not do what she suggests. It would instead give the local authority the ability to take all the needs of the applicant into account, rather than patronising the applicant by deciding that the local authority knows best. I repeat that that is exactly how we can put dignity and respect into the bill in practice. If we mean what we say when we talk about respecting people in our welfare system, we must treat them as we would treat anyone else in society and give them an element of choice.

The approach is supported by the Child Poverty Action Group, Poverty Alliance Scotland, SCVO, Inclusion Scotland, One Parent Families Scotland and Barnardo’s Scotland. We heard evidence from many people—Oxfam was very good in that regard—that in any society support is better given in cash because doing so builds resilience, dignity and respect. That is as true in Scotland as it is in any other country.

Amendment 25 does not insist that authorities give cash.

Kevin Stewart: Will Mr Macintosh take an intervention?

Ken Macintosh: Is that all right, convener?

The Convener: It is up to you.

Ken Macintosh: I am happy to take the intervention.

Kevin Stewart: You should also recognise that a number of witnesses, including folks who have access to the Scottish welfare fund, felt that the package of goods that they were offered was absolutely the right thing. We must take cognisance of the fact that, in the vast bulk of places, the approach is working well. The fact is that local authorities are being helpful in relation to what is offered.

The difficulty in putting common sense into legislation is that we cannot—

The Convener: Interventions are supposed to be brief, Kevin—not speeches.

Kevin Stewart: What Mr Macintosh is looking for is common sense, which I hope would apply across the board. As Clare Adamson said, COSLA seems to be well aware of the logic that needs to be applied, which is why it has its best practice group.

Ken Macintosh: If I may say so, Mr Stewart, I am looking for far more than common sense: I am looking to put dignity, choice and respect into the bill in terms of both principles and practice.

I will give an example. I was in Aberdeen yesterday, and I visited Instant Neighbour, which I am sure Mr Stewart knows well.

Kevin Stewart: I do.

Ken Macintosh: It is a fantastic example. It is an organisation that has been around for 30 years that supplies people with exactly the goods that we have been discussing—furnishings, floor coverings—and assists people when they are moving into a house. However, the local authority no longer allows welfare fund applicants to use Instant Neighbour, but instead insists on bulk purchasing brand new items from a place in Broxburn. I am sure there is nothing wrong with that, but the goods are cheaply made, mass-produced items and they do not last.

The effect is that Instant Neighbour ends up putting reconditioned goods into landfill, which is environmentally unsustainable, all choice is removed from the applicants and an organisation that has been around for 30 years—it is a social enterprise and it employs great people in Aberdeen—no longer gets to provide the service and no longer gets money going into the local economy. That is an example in which I question the decisions that have been made.

In any case, however, under my amendments, both choices would be open to local authorities. I have specifically stated that. In many circumstances—for example, a young man moving into a flat for the first time—what people want is not money but somebody to say, “Here’s a pack of goods. Here are the furnishings, the plates, the crockery and the cooker that you need.” If that is what they want, they will be able to choose that. They would be asked and their views would be taken into account. In the end, the decision would
still be for the local authority, but at least the person’s choice would be considered. That is what I am suggesting.

A number of other points have been made. Both the minister and Mr Stewart talked about cost-effectiveness as though what I propose would somehow place extra demands on the system. It would in no way increase the demands on the Scottish budget but would operate entirely within the cash limits of the system.

In health and social care, we are moving to self-directed support specifically because we recognise that the personalisation agenda is very good for people’s health and wellbeing. We have recognised that it is good for people’s health to have more control over the carers that they employ. Why cannot we apply exactly the same principle to welfare? Margaret McDougall and I are not saying that we should give people extra money; we are asking only that they be given a say and a bit of choice. If that is good for people’s health, surely it is good for their wellbeing, too.

I will end on a positive note. The minister acknowledged the spirit in which I moved amendment 25, and I agree with her that it is far more important for crisis grants than it is for community care grants. I was encouraged by her remark that she will consider putting the matter in regulations, so I look forward to hearing more at stage 3. That said, I hope that she will not mind if I remark that she will consider putting the matter in regulations, so I look forward to hearing more at stage 3. That said, I hope that she will not mind if I press amendment 25 to a vote.

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against
Adamson, Clare (Central Scotland) (SNP)
Goldie, Annabel (West Scotland) (Con)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse)(SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 25 disagreed to.
Amendment 26 not moved.

The Convener: Amendment 27, in the name of Ken Macintosh, is in a group on its own.

10:45

Ken Macintosh: Thank you, convener—third time lucky. The effect of amendment 27 would be to include families facing exceptional pressure among the list of groups classed as qualifying persons for the purpose of a community care grant. The interim Scottish welfare fund, which was introduced by the minister and which the bill puts on a statutory footing, lists five categories of applicant who can be awarded a community care grant. Four of those categories are explicitly included in the bill. The only group of applicants that is left out, and which is not mentioned anywhere in the bill, is families facing exceptional pressure.

That would mean, for example, that individuals who are part of a family facing homelessness would qualify for an award, but someone looking after a disabled child would not. An individual at risk of ending up in prison would be given support, but somebody fleeing domestic violence would not. Given that people in the circumstances that I described would have been eligible for support under the original UK social fund, as well as under the current interim scheme, which ministers drew up to replace it, I am not sure that that effect is what the minister intended.

As members are aware from evidence to the committee, many people, particularly in the voluntary sector, believe that that omission from the bill could affect the health and wellbeing of some families who are already vulnerable. The Scottish Council for Voluntary Organisations, the Child Poverty Action Group and One Parent Families Scotland are just some of the organisations that highlighted their concern that the proportion of grants made to families with children is already relatively low. For example, the annual Scottish welfare fund figures for last year show that only 20 per cent of those applying for a community care grant are categorised as being a family under exceptional pressure. The statistics are not directly comparable, but figures for the United Kingdom social fund show that that compares with more than 53.5 per cent of the community care grant budget being spent on families facing exceptional pressure in the previous year. In fact, the figures strongly suggest that families are underrepresented among all the five current categories of community care grant claimant.

Measured by those who are in receipt of child benefit for example, possibly only around a fifth of all claimants are families with children. Carers Scotland is another group that is worried that the bill could make that situation worse, inadvertently or otherwise. It gave us direct examples. It quoted one carer who said:

“My husband’s movement and coordination leads to a high number of breakages—crockery, furniture and fittings. I constantly need to fix or replace ... items.”

Another described how
"The washing machine is on every day. It isn’t designed for that sort of use and this means it breaks, but when it breaks I have piles of soiled laundry building up."

Those are the occasions when community care grants are needed. Those are the very families who have little or no savings to use to respond to unexpected expenses and for whom the bill is a lifeline. I urge members to support my amendment.

I move amendment 27.

Clare Adamson: I absolutely commend Ken Macintosh for his reasons behind amendment 27. We recognise the situations that he described. However, having examined his proposal, I do not feel that it is within the legislative competence of the Parliament to introduce another category. I hope that we will present a bill that is competent and can go through the process. Unfortunately, therefore, I will not be able to support the amendment.

Annabel Goldie: I am going to give Mr Macintosh some perhaps unexpected encouragement. I wanted to listen to the debate. I think that he has identified a category of circumstance that could be of great distress to an individual or family but is not covered adequately by the provisions as they currently define an exceptional event or circumstance. I have no idea whether it is ultra vires but—do you know what, Mr Macintosh?—I think that we should give it a shot, so I will support you.

Kevin Stewart: The debate has been very interesting thus far. I would be grateful if the minister could talk to us about whether the amendment would take section 2 beyond legislative competence. My understanding is that there is a complication in terms of the wording of the section 30 order that grants the Parliament the power to legislate in this area.

The last thing that I would want is for us to agree to amendment 27 and then for the entire bill to fall. I wish that we did not have to rely on section 30 orders and that we had complete competence in the area of welfare, but that is not the case at present. I would be grateful for the minister’s comments in that regard.

Margaret McDouggall: I support amendment 27. I do not understand how there can be a constitutional reason for not including the provision. It will add to the bill someone who may be a member of a family who would not be covered by the bill as it is drafted.

The Child Poverty Action Group is very keen that the provision should be added. I am sure that members will have received the same correspondence as I have, which mentions the type of families that would be affected by the change. They include lone parents with young children who need household items following the violent breakdown of a relationship; a family in which the sudden deterioration in the condition of a disabled child justifies an award for a washing-machine; and a family that is experiencing hardship as the result of a localised disaster and urgently needs the replacement of essential household items.

None of those families would be covered under the bill. If we included the further category as specified in amendment 27, it would include them all.

Joan McAlpine: I am very concerned about this issue. I want to support amendment 27, as it stands to reason that one would want to support families in such circumstances. If agreeing to the amendment would put the bill beyond the legislative competence of the Parliament, my natural instinct would be to say, “So what?”, but that will not get us anywhere if the bill falls, which is the real risk.

I am torn on the issue, because I would like to support the amendment, but I do not want to do anything that would result in the bill falling. Like Mr Stewart, I would welcome some comments from the minister to explain why the amendment would put the bill outside the legislative competence of the Parliament, and what we will be doing to help those families that are clearly in exceptional need.

The Convener: I have a specific question on the issue of competence that I hope the minister will be able to answer. I would be grateful if you could clarify the situation. If the amendment was agreed to and the bill was deemed to be outwith the competence of the Scottish Parliament, who would bring that challenge? Only an external challenge would bring the bill into disrepute.

You can also reply to the debate.

Margaret Burgess: Okay—I will respond to your question at the end, convener.

I understand why stakeholders are pressing for families under exceptional pressure to be included in the bill. The term is a descriptor in the interim scheme guidance, but the Scottish Government does not have a free hand to make the same provision explicitly in the text of the bill for everyone who might benefit from welfare funds.

If we were to accept amendment 27, it would, in our view, take the provisions of the bill beyond the competence of the Scottish Parliament. Section 2 of the bill replicates the amendment of schedule 5 to the Scotland Act 1998 that was made by the Scotland Act 1998 (Modification of Schedule 5)
(No 2) Order 2013, which gives the powers to the Parliament to legislate in that area. It is commonly known as the section 30 order. In response to your question, convener, I say that anyone could challenge the competence of the Parliament.

Section 2 reproduces the wording of the section 30 order, which means that it gives the fund the broadest possible scope to operate within the reservation. I state clearly that there is no barrier now, nor under the permanent arrangements by virtue of the bill’s wording, to prevent families under exceptional pressure from accessing welfare funds. Regulations and guidance will ensure that applications from that group continue to be given priority. The families in the examples that Ken Macintosh and Margaret McDougall have given are not currently excluded under the interim arrangements and will not be excluded under the permanent arrangements.

The bill sets out a high-level framework for welfare funds, but the details of how it will operate will be set out in regulations and statutory guidance. The current draft regulations, which we produced to give an indication of the areas that would be covered in regulations, include families under exceptional pressure as one of the five circumstances in which a community care grant can be paid. It is my intention to retain that in the regulations and to work with stakeholders such as the Child Poverty Action Group to ensure that the guidance for the permanent arrangements captures the concerns of stakeholders and deals with them effectively.

To compare the number of awards to families under exceptional pressure under the Department for Work and Pensions social fund with the number of such awards under the Scottish welfare fund, as indicated by Ken Macintosh, is not to compare like with like. There are significant differences between the guidance and monitoring framework for the Scottish welfare fund and that for the DWP social fund. The acid test is where the money is going. The Scottish welfare fund statistics show that, under the interim scheme, 38 per cent of households receiving community care grants contain children, but the comparable figure for crisis grants is 30 per cent. However, under the old DWP scheme, 32 per cent of households that were awarded community care grants in 2012-13 were households with children, and the proportion of crisis grant awards that went to such households was only 16 per cent. That indicates that we are effectively targeting families under pressure now, and it is my belief that we will continue to do so under the permanent arrangements.

I therefore ask members not to support amendment 27.

The Convener: I ask Ken Macintosh to wind up and to press or withdraw amendment 27.

Ken Macintosh: Thank you for what was a far more encouraging discussion, minister. It is quite clear that everybody round the table wants families facing exceptional pressure to receive support from the welfare funds available, whether that be community care grants or crisis grants. I was pleased to hear the statistics that the minister quoted, and I hope that they are more accurate than the ones that I was given by the SCVO, CPAG and others.

As far as I can work it out, the main argument, which I thought Joan McAlpine put perfectly, is that we want to support amendment 27 but are slightly concerned about its legislative competence. Joan McAlpine is tempted to say, “So what?” about that and support the amendment, which I urge her to do. The only real argument against amendment 27 is around its legislative competence. However, like Kevin Stewart, I question whether the entire bill would fall because of amendment 27—that just would not happen.

The minister did not address the key point. She said that anybody could bring a challenge. That is a theoretical possibility, but who is going to bring a challenge? Would it be the families who are being denied welfare? I do not think so. Would it be the local authorities or the Government? Who exactly would bring a challenge to provision for families under exceptional pressure being included in the bill?

Again, I do not intend to try to stop this, but the minister’s current guidance has five categories that specifically include helping families under exceptional pressure. She assured us that she would include that in regulations. If the minister believes that she has the authority to put that in regulations and that it should be implemented by local authorities, what authority is she quoting? The only authority that this Parliament has comes through the very act that she is quoting. In other words, if it is outwith legislative competence for amendment 27 to be included in the bill, because it is not in the section 30 order, it is outwith the minister’s legislative competence to put in regulations provision for helping families under exceptional pressure—there is no difference between the two situations.

We get our powers through statute and the minister cannot quote one against the bill and then quote the other to say that the provision is better off in regulations. If the argument applies for regulations, it applies for the bill. If the minister wishes to respond to that, I am happy to listen.

The Convener: The invitation is there, minister.
Margaret Burgess: I am not a legal person and I know that the legal people are unable to comment at this stage in the process, but what is in the regulations is a subset of what is in the bill, and I am told that that is the legally competent way to do this. I do not know whether I can say this now that I have moved various amendments, but I am willing to look at the provision again and set it out in more detail. However, I want to make it absolutely clear that we intend the Scottish welfare fund to help families under exceptional pressure and that we believe that the way to do that is to ensure that we have the bill right to meet the section 30 order and have the regulations right as well. It is our clear intention that families under exceptional pressure will be assisted from the Scottish welfare fund of the Welfare Funds (Scotland) Bill.

11:00

Ken Macintosh: I am very reassured by the minister’s intentions and her words, but I hope that she will not mind if I put this to the vote and test it.

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Goldie, Annabel (West Scotland) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McDougall, Margaret (West Scotland) (Lab)

Against
Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 27 disagreed to.

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

Margaret Burgess: Amendment 1 has been proposed in response to evidence that the committee heard during stage 1 raising concerns about the wording of section 5(2)(f). Section 5(2)(f) relates to the power to make regulations “about circumstances in which amounts may require to be repaid or recovered in respect of assistance” that has been provided through a welfare fund. Concerns were raised that that regulation-making power could be used at a later date to allow local authorities to administer loans through the welfare funds. That was never the intention and I have always been clear that awards under welfare funds should not be provided in the form of loans. Amendment 1 puts that intention beyond any doubt by specifying that local authorities may not use welfare funds to make loans.

I move amendment 1.

Ken Macintosh: The issue was flagged up to the committee and we put it in our report, and I am very pleased that the minister recognised the issue. I think that we are all pleased that the intention of the bill is to move from loans to grants and I think that we should support the amendment.

Amendment 1 agreed to.

Amendment 28 not moved.

Section 2, as amended, agreed to.

Section 3—Administration of welfare funds

The Convener: Amendment 2, in the name of the minister, is grouped with amendment 8.

Margaret Burgess: Amendments 2 and 8 are linked. Amendment 2 removes section 3, which relates to the outsourcing of welfare funds and joint working across local authorities.

The intention behind section 3 was to allow local authorities to outsource provision of welfare funds. I never envisaged the power being used to allow private sector companies to administer welfare funds. However, concerns were raised during stage 1 regarding the possibility of the provision of welfare funds being outsourced to the private sector.

As the Scottish Government response to the committee’s stage 1 report pointed out, it is not possible to specify on the face of the bill that outsourcing should be restricted to third sector organisations only, so the options available to me were to retain section 3, which would leave open the possibility of outsourcing to the private sector, or to remove the provision. Given the strength of feeling that was expressed against private sector companies administering the welfare funds, I believe that removing the option to outsource is the right thing to do.

By removing all of section 3, references to local authorities jointly administering welfare funds are being removed from the bill. However, amendment 2 would not prevent local authorities from making arrangements to administer welfare funds jointly, as section 56(5) of the Local Government (Scotland) Act 1973 provides a general power for two or more local authorities to discharge functions jointly.

I move amendment 2.

The Convener: Does anyone wish to comment?
Annabel Goldie: Can I just clarify whether the effect of the amendment would also be to exclude charitable organisations?

Margaret Burgess: Yes, that would be the effect. The third sector charitable organisations argued that it was not something that they would wish to do. As I said before, there is no way to separate it out. The option was to remove the section totally or not at all and there was clear strength of feeling that we could not leave it in as it would allow private organisations to administer the funds.

Kevin Stewart: I am pleased that the minister has lodged amendment 2.

Miss Goldie makes a point about the third sector. Although none of the committee members was in favour of any private company taking over the running of welfare funds, we did talk about the third sector. Eventually, we built into the report the fact that, as the bill stood, it might fall foul of European Union procurement rules. The best way to ensure that there are no challenges at all is to remove the provision. That still gives local authorities the ability to run funds jointly, which some smaller authorities may wish to do. It is right and logical that that is left in.

I am glad the minister has moved her position. If we had been left in a situation where the third sector could apply, we might have faced challenges from various bodies under EU procurement rules.

Ken Macintosh: I, too, welcome the minister’s remarks and the fact that she has listened to the evidence and to the views of the committee. In this case, she listened to the minority of the committee and our recommendation, rather than just to the specific majority vote of the committee. I commend the minister for using common sense in this case.

Annabel Goldie: I seek clarification, convener. Has the Scottish Government obtained specific legal advice that the bill as framed would contravene European law?

Margaret Burgess: I have nothing further to add.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Annabel Goldie: No. There is a point of principle about the freedom of local authorities, so I do not support the amendment.

The Convener: There will be a division.

For
Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

Against
Goldie, Annabel (West Scotland) (Con)

The Convener: The result of the division is: For 67, Against 1, Abstentions 0.

Amendment 2 agreed to.

Section 4—Review of decisions

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 5, 9 and 10.

Margaret Burgess: This group of amendments covers local authority reviews of decisions that they have made on welfare funds applications.

Amendment 3 creates a right of review of a local authority decision. That replaces a previous provision that provided that ministers may make regulations on reviews. Amendment 3 also allows ministers to make regulations setting out the circumstances in which a local authority decision on a welfare funds application does not have to be reviewed, how applications for a review should be made, and time limits within which applications should be made.

Amendment 9 is made in consequence of amendment 3. The substance of the provision that is removed by amendment 9 is recreated in the regulation-making powers that are provided by amendment 3.

The Delegated Powers and Law Reform Committee and the Welfare Reform Committee called for regulations that are made under the bill to be subject to affirmative procedure, given that much of the detail of how the welfare funds will operate will be set out in regulations and guidance. Amendment 5 changes the procedure for regulations that are made under section 4, which, subject to the amendments being agreed to, will relate only to reviews undertaken by local authorities, from negative to affirmative procedure.
Amendment 10 enables ministers to make provision in regulations setting out the procedure that local authorities should follow in reviews and applications for reviews and the timescales that would apply to them when carrying out reviews.

In summary, the group contains a range of amendments that are intended to clarify how the Scottish Government will approach setting out the framework within which local authority reviews should operate.

I move amendment 3.

The Convener: No members wish to comment. Do you have anything further to add, minister?

Margaret Burgess: I have nothing to add.

Amendment 3 agreed to.

The Convener: Amendment 4, in the name of the minister, is grouped with amendments 6, 7, 11, 13 and 15 to 22.

Margaret Burgess: The amendments in this group relate to the role of the Scottish Public Services Ombudsman in undertaking independent review of local authority decisions on welfare funds applications. The bill as introduced had few provisions relating to the role of the ombudsman. It was always our intention to come back at stage 2 with amendments following discussions with the ombudsman on how best we could set out its role in undertaking independent review.

Amendments 4, 6, 7, 11, 13 and 16 do not alter the content or policy intent of the bill, but they are necessary to reflect structural changes to accommodate the substantive amendments that set out the specifics of the ombudsman’s role. Amendment 21 is a technical amendment that specifies the definition of the ombudsman for the purposes of the bill.

Turning to the substantive amendments regarding the ombudsman, amendment 15 creates a right to review, by the ombudsman, of a local authority decision on a welfare funds application. It sets out when, how and by whom an application can be made, and the timescales in which an application should be made. It provides for the ombudsman to determine whether an application for independent review has been made, and to make exceptions to the time bar on applying for independent review.

Amendment 17 requires the ombudsman to prepare a statement of practice setting out the approach that he intends to take in carrying out the review function under the bill. He must consult local authorities, and other persons as he considers appropriate, before preparing and publishing such a statement, and if any revisions are to be made to the statement of practice.

The ombudsman already has the power to consider a complaint about the way in which a local authority has dealt with an application. The new power to review that application will not change that. The ombudsman already has extensive powers to gather evidence in relation to complaints. Amendment 18 provides, amongst other things, that broadly the same powers will apply to reviews. That is important because the legislation means that the ombudsman will have two jurisdictions over the welfare funds. The ombudsman will be able to deal with complaints and reviews. In practical terms, if the ombudsman obtained information in relation to a review but did not have that power, it would be for him to use that information in relation to a complaint about the same application or vice versa. That would be particularly problematic if the same document contained evidence relevant to a complaint and evidence relevant to a review, or if the same people were required to give evidence in relation to both a complaint and a review.

On the theme of matching the ombudsman’s current powers, amendment 19 replicates, for reviews of welfare funds decisions, the power that he has in the Scottish Public Services Ombudsman Act 2002, in relation to obstruction and contempt by people providing information in connection with a complaint investigation.

Amendment 18 also gives the ombudsman powers to hold oral hearings, and to make rules about when an oral hearing would be appropriate and about the procedure to be followed. The ombudsman would have powers to administer oaths at such hearings. Where the ombudsman makes rules in relation to hearings, he must consult local authorities and any other persons he considers appropriate, and must subsequently publish those rules. Although hearings are likely to be extremely rare, it is important that that option is available.

We have been advised by the ombudsman that the scheme does not need to comply with European Court of Human Rights requirements, but ensuring that hearings are available when needed, and also that rules are made about them, will ensure that the legislation meets that standard.

Amendment 20 requires the ombudsman to notify the applicant and the local authority of the result of a review. It also provides that the ombudsman may publish a report of the review. It does not require that in every case, but for unusual cases it will be beneficial for stakeholders to be aware of the ombudsman’s view. The section also places limits on what information the ombudsman can publish, in order to protect the identity of those involved.
Amendment 22 provides for consequential amendments to the Scottish Public Services Ombudsman Act 2002, to ensure read-across between the powers that the ombudsman will obtain under the bill and the powers that the ombudsman currently has under the 2002 act. That includes powers relating to obstruction, defamation, reporting, disclosure of information by the ombudsman and confidentiality.

Amendment 22 also contains provisions on confidentiality, which will allow the ombudsman to use information that is gathered in consideration of a complaint in order to inform the investigation of a complaint and vice versa. The final part of the amendment updates the interpretation provision in the 2002 act as a result of the changes that are made to that act by the bill. Amendment 22 reduces the risk of there being a situation in which the ombudsman holds information but cannot use it and, indeed, needs to try to make a decision on the basis that it has not seen the information. It also means that local authorities have some clarity too, as they will know that a request from the ombudsman for information has the same status whether it is about a complaint or a review.

Although it is important for practical purposes to ensure that the information-gathering provisions are the same, local authorities should be reassured that the requirements in relation to what the ombudsman can take complaints about, and ensuring that local authorities have a chance to respond to complaints before a final decision is made, will remain.

I was pleased to note that during stage 1 proceedings there was support for the ombudsman taking on the independent review function for welfare funds decisions. Accordingly, I trust that committee members will support the amendments.

I move amendment 4.

Ken Macintosh: I have only one query, which is about the powers over obstruction and contempt that are listed in amendment 19. The Child Poverty Action Group flagged up the issue. CPAG felt that the powers to take a proceeding to the Court of Session and, where someone does not provide information, to consider it a contempt of court, were extreme for such a minor, rather technical matter. Under the old system—the social fund—there were no such powers.

If someone does not provide information and does not want to participate in the process, the local authority can make a decision anyway—it does not need to take action against a person. Under amendment 19, we are talking about threatening to take the matter to the Court of Session and contempt of court. We are dealing with vulnerable people, who may not understand the situation and who may be scared. The amendment seems way too heavy handed.

The minister seemed to make the argument that she was assured by the ombudsman that he needs the powers. That argument does not strike me as convincing. It is a bit like the chief constable telling us that the police need to wear guns at all times. That is not for him to decide; it is for us to decide. In this case, it is for the minister to decide.

Do we really need these powers? The social fund operated for years without any such powers and without difficulty. Why are we introducing such huge powers for the ombudsman when we already have concerns about that? I ask the minister to reconsider amendment 19.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): I come to this from the opposite point of view from my colleague Ken Macintosh.

One of the issues that I have at constituency level is the element of trust that people have in the system. I have met many people who feel that they have not had a fair hearing. I welcome the proposal to include the review function. The review is very important and it is just as important that it is done independently from the local authority. On the human rights aspect of the bill, anything that has an appeal mechanism appeals to me, because there should be such a mechanism to ensure that people get the fairest of treatment and that we rebuild trust in the system.

Duncan Dunlop gave evidence to the committee—although I was not able to attend the committee, I have caught up with the stage 1 evidence—and said that when people have been rejected once by a system, they do not have the trust to return to the system and have any confidence in it. They need to have that confidence, and that is what the amendments give.

I have a couple of questions about local authorities. Can they be compelled to give information to the ombudsman, and should that be the case? What would be the timescale for them doing so? In my experience, if people attempt to appeal or if they go to citizens advice bureaux or other organisations for support in reapplication or appeal, the length of time that it takes can put great pressure on them at a time when they might not be receiving any funds at all. Some local authorities that I know, although not all, might drag out that process in the hope that the person will drop the appeal. That is a concern that I have, coming from a different point of view from Ken Macintosh, on the need for the ombudsman to be there.
The Convener: Minister, do you want to wind up?

Margaret Burgess: I have a couple of comments. All those issues about the ombudsman came up at stage 1, too. We have been in negotiation for a considerable time with the ombudsman service about the matter. That is why the proposals are in the bill—we wanted to do some of this in regulation, but it was felt that, as the service is independent, that was not appropriate. Negotiation has been going on for a considerable time with the ombudsman, about its taking on this role as an independent decision maker to whom people who are making an appeal can go.

Ken Macintosh made a point about extreme cases in the Court of Session. I absolutely agree that that is not appropriate for some of the vulnerable people we are dealing with. The ombudsman requested that power on the basis that it required to have it because it matches the other powers that it has in some of its other functions. I am more than willing to go back and look at the matter again if the committee is saying that it is not happy with that particular power, but we have taken a long time to negotiate with the ombudsman to get it to agree to take on this role. The SPSO wants to be able to maintain its independence, and it wants its functions to be clear across the board with the services that it provides. That is why that proposal is in the bill. I accept that the situation seems extreme, and I would hope that the power would never be used in the circumstances that Mr Macintosh outlined.

On Christine McKelvie’s point, the ombudsman is required to draw up how it will handle appeals, and it is very much aware that timescales require to be in place and that local authorities will be required to supply evidence if the ombudsman requests it. We think that some of that can be required to supply evidence if the ombudsman requested that power on the basis that it is required to have it because it matches the other powers that it has in some of its other functions. I am more than willing to go back and look at the matter again if the committee is saying that it is not happy with that particular power, but we have taken a long time to negotiate with the ombudsman about its taking on this role as an independent decision maker to whom people who are making an appeal can go.

Ken Macintosh: The effect of amendment 29 would be to ensure that decisions on applications for crisis grants should be made immediately, where possible and, if not, by the end of the next working day. As committee members will know from evidence, under the interim Scottish welfare fund scheme local authorities have 48 hours in which to process a claim. However, under the previous DWP scheme, the deadline was 24 hours.

The issue first came to my attention when figures were presented to the committee that revealed that the interim fund was not meeting applicants’ needs as timeously as the previous scheme. The point has been echoed by the SCVO, which urged the minister to take all necessary action to ensure that 24-hour processing times become the norm, and by Quarriers, which I think the committee quoted in its report. Quarriers is particularly worried that if a 48-hour deadline were to be applied, an application that is made on Thursday or Friday might not be processed until late on Monday, after the weekend.

I thought that the strongest evidence came from CPAG, which said:

“In the experience of our advisors, applications for crisis loans made over the phone were processed very quickly by the DWP. Delay was sometimes caused by difficulties getting through on the phone in the first place but, once connected, the process was generally very quick. Decisions were often made at the end of the initial phone call, with the claimant given an office from which an award could be collected on the same day. This also happens with some (though not all) SWF crisis grant applications.”

The figures for the old DWP crisis loans system show that payments were made in two days—I am using the 48-hour backstop—in 98.5 per cent of cases, compared with 94 per cent for the SWF.

CPAG said, more anecdotally, that its advisers “also suspect ... that any lengthy delays processing crisis loan applications”—that is, under the old system—“are more likely to have related to the need to make a decision about whether the applicant would be able to repay the loan (rather than their eligibility/priority for an award).”

Repayment is not an issue in the new system, so it is counterintuitive to think that the new system should be slower than the old system. If anything, it should be the other way round.

CPAG concluded:

“there is no implicit reason that processing times should be longer in relation to crisis grants than they were for crisis loans. We are also concerned that the reference to a 48 hour time limit once all relevant information is received may lead some decision makers to request evidence when it is not needed.”

Amendment 4 agreed to.

Amendment 5 moved—[Margaret Burgess]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Welfare funds: further provision

Amendments 6 to 10 moved—[Margaret Burgess]—and agreed to.

The Convener: Amendment 29, in the name of Ken Mackintosh, is in a group on its own.
In other words, although this is clearly not the minister’s intention and she has made it abundantly clear that she expects all decisions to be made as soon as possible, the 48-hour backstop will become a target and will inadvertently have the effect of slowing down the process rather than speeding it up.

I urge members to support amendment 29, which would replace the 48-hour backstop with the original 24-hour timescale.

I move amendment 29.

Annabel Goldie: I would like clarification. Your proposition sounds quite technical, but if I understand it correctly it would bring the situation into line with the proven DWP approach, which has worked effectively with a 24-hour processing time.

Ken Macintosh: Precisely.

Kevin Stewart: We must be cognisant of the fact that the former system was a loans system and not a grants system. The local authority must manage its funding effectively and ensure that the proper checks have been made. If that does not happen, folks who should not get grants might receive them—and grants are not paid back.

We have to be very careful. The minister has said that she will do everything possible to ensure that grants are paid as timeously as possible; I hope that she will say it again today. I have spoken to folk in local authorities and I know that that is what they strive to do. I would be alarmed that we might, if we were to set a shorter timescale, end up with folks not getting the awards that they need and deserve.

Margaret McDougall: Ken Macintosh said that the DWP made decisions very quickly on occasions. I am not suggesting that decisions were always made quickly, but they could be made quickly. We are moving to a grants system from a loans system, so there would be no requirement to investigate whether the award can be paid back and, therefore, it should be possible to process applications more quickly. The limit of 24 hours should be met—it should not be extended to 48 hours.

11:30

The Convener: We debated this issue quite extensively at stage 1, when the minister was clear about her view that the proposal will be an improvement. I believe that the minister gave examples from her experience of working in the sector of the DWP taking up to three weeks to collate information and the 24-hour decision-making period kicking in only after that had taken place. The minister gave the impression that the provision in the bill will be quicker, and that the 48-hour process will allow decisions to be made more swiftly.

However, evidence that we have subsequently received indicates that the processes for collating information that are used by local authorities and the DWP are similar, and that going from a 24-hour period to a 48-hour period could extend the period because the decision-making process that existed under the DWP arrangements would not alter—it would be exactly the same, because collation of information could still take days. Obviously, you would not want it to take longer than that but, given that the time period for a decision kicks in only once the information has been collated, and the collation of information takes exactly the same amount of time—or more time, according to some evidence that we received—I cannot understand why moving from 24 hours to 48 hours would speed that process up.

Margaret Burgess: Amendment 29 seeks to impose a deadline on processing times. I know that some users of the interim fund suggested that local authorities were not processing applications as quickly as they should, which has led to a call to introduce a legislative requirement for processing.

We have been clear from the start of the interim fund that speed of processing is key because of the risk of harm to applicants. The guidance on the interim fund requires local authorities to process crisis grants as soon as possible, and it requires that urgent applications for living expenses be prioritised. The maximum processing time of two working days is to make it clear that long processing times are not acceptable. It is in no way a target or a waiting time.

We know that, under the interim fund, 64 per cent of crisis grants have been processed on the same working day and that another 24 per cent are processed the next day. I have spoken to staff who have demonstrated dedication and commitment in dealing with all crisis grant applications in order to process them within the day—especially on Fridays, so that applicants are not left in crisis for extended periods.

I am mindful that local authorities have a complex job to do in considering applications, assessing eligibility and need, gathering and recording evidence to support their decision and considering and organising the other forms of support that applicants might benefit from. That is more complex than assessing affordability for a crisis loan, which involves only consideration of whether the person could pay the loan back. In setting timescales, we need to recognise that a short target decision time could result in less scrutiny of cases and poorer understanding of applicants’ situations.
The move from crisis loans under the social fund to grants under the Scottish welfare fund means that, as Kevin Stewart said, the funds will not be recoverable. Local authorities are therefore required carefully to balance their obligation to manage their budgets effectively and ensure that proper checks have been made, with a quick turnaround for applicants. They must be satisfied that they are awarding grants to those who need them most.

As the committee is aware, we are, with COSLA, monitoring the quality of the decisions that are made by local authorities, including processing times, as part of our quality improvement measures, and we continue to share good practice across local authorities. As we make the transition to the permanent funds, we will continue to work with local authorities, focusing on the importance of quick, sound decision making, with the aim of increasing the number of applications that are processed within 24 hours.

We will also carefully consider target processing times as the regulations are developed. I believe that any target or deadline for processing times should be in the regulations, not in the bill—the 48-hour limit that Ken Macintosh referred to is in the draft regulations. This will be an area on which we will consult actively, as regulations require a hard and fast timescale, rather than the more considered approach that we have in the guidance at present. As I have just outlined, this is a complex issue.

In summary, I do not believe that we should, in effect, set a timescale for processing applications in the bill, as amendment 29 seeks to do. Rather, I believe that we should think carefully about the issue and consult more widely as we develop the regulations and guidance that will be produced under the bill. For that reason, I urge the committee not to support amendment 29.

Ken Macintosh: I welcome some of the comments that I have heard in what has been a quite interesting discussion. Annabel Goldie revealed that the DWP did this better than the Scottish Government, which has to be a first for this committee.

The old social fund system does have a better record of paying out. We are talking about people in crisis, and I am sure that every MSP around the table has received calls on a Friday afternoon after the social work offices have closed, or has had people who are in desperate need coming in and asking, “Where do I go now?” It happens all the time.

The old DWP system was very prompt; in fact, I believe that there were originally no timescales associated with it and decisions were meant to be immediate. The 24-hour deadline was introduced to speed up the process. We are now seeking to introduce a 48-hour deadline, which could—whatever the minister’s intention—inadvertently slow things down.

I am not sure that I followed Kevin Stewart’s argument. It is interesting that he sounded more like George Osborne than John Swinney—in fact, he has done so all morning. He has talked about the importance of paying back grants, which I assume was a slip of the tongue. The awards will be grants, not loans, so they will not have to be paid back.

Kevin Stewart: That is exactly the point that I was making.

Ken Macintosh: In that case, I accept that it was a slip of the tongue, but I have to say that I did not follow his logic at all.

Kevin Stewart: Do you want me to give you the logic?

Ken Macintosh: I am happy for you to correct your previous mistake, Mr Stewart.

Kevin Stewart: One of the key points is that, previously, the DWP had a loans system and folk had to pay back the money. This is a grants system. As the minister has rightly pointed out, folks have to ensure that applicants are eligible, and they are dealing with the applications as promptly as possible. That is certainly the case in the local authority in Aberdeen that covers my constituency. If amendment 29 is agreed to, decision makers might well feel under pressure to reject an application from someone in need because they do not have all the information that they feel that they need.

Ken Macintosh: I fail to follow that argument. Mr Stewart often confuses assertion with argument, and in this case, I do not follow his argument at all. I fully accept that local authority officials are trying to do the best job they possibly can; I am sure that they also did so under the DWP. Theirs is a difficult job, and we should be trying to make it easier. If they do not have to assess the affordability of paying back loans, they will have one fewer criterion to meet and one fewer assessment to make. As Margaret McDougall and the convener have pointed out, the process should therefore be faster.

I absolutely recognise the point that the minister made several times that the system is there to address people’s needs at the point of crisis, and I also recognise that she is very keen to ensure that that is done as speedily and timeously as possible. However, although I accept that that is the intention, I am slightly worried that the bill will not have that effect. I am very pleased that the minister is going to consult more widely and will consider the possibility of addressing the matter in
regulations, and I thank her for making that commitment, but I still believe that until we see that in practice the committee should express this view on the matter.

I press amendment 29.

**The Convener:** The question is, that amendment 29 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Goldie, Annabel (West Scotland) (Con)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

**Against**
Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 29 disagreed to.

Amendment 11 moved—[Margaret Burgess]—and agreed to.

**The Convener:** Amendment 12, in the name of the minister, is in a group on its own.

**Margaret Burgess:** Amendment 12 seeks to make subject to affirmative procedure regulations that will be made under section 5. Regulations under section 5 will, in conjunction with the guidance that we will produce under the legislation, set out the detail of operation of welfare funds, and the change has been made in response to calls from both the Delegated Powers and Law Reform Committee and this committee for regulations that are made under the legislation to be subject to affirmative procedure.

I move amendment 12.

Amendment 12 agreed to.

Section 5, as amended, agreed to.

**After section 5**
Amendment 30 moved—[Kevin Stewart]—and agreed to.

**Section 6—Guidance**
Amendment 13 moved—[Margaret Burgess]—and agreed to.

**The Convener:** Amendment 14, in the name of the minister, is in a group on its own.

**Margaret Burgess:** Amendment 14, which has been lodged in response to a recommendation that was made by the committee in its stage 1 report, seeks to add the Scottish Public Services Ombudsman to the list of bodies that Scottish ministers must consult before issuing, varying or revoking guidance that will be produced under the eventual act. As the ombudsman will have to interpret the guidance when carrying out its review function, it is right that it will have the opportunity to be aware of, and to comment on, any proposed changes to the guidance.

I move amendment 14.

Amendment 14 agreed to.

Section 6, as amended, agreed to.

**After section 6**
I invite the minister to move amendments 15 to 22 en bloc.

Amendments 15 to 22 moved—[Margaret Burgess].

**Ken Macintosh: Convener, can I object?**

**The Convener:** I was going to say that the amendments can be moved en bloc, but I will separate out some that will be voted on en bloc and others that will be voted on individually. I was about to suggest that the committee agree to having a single question on amendments 15 to 18. Do members agree to that?

**Members indicated agreement.**

Amendments 15 to 18 agreed to.

Margaret Burgess: I am willing to look again at amendment 19 before stage 3 and discuss it with the ombudsman, as I outlined in discussion with Ken Macintosh.

**The Convener:** You can ask to withdraw the amendment, if you wish.

**Margaret Burgess:** I will do so. I am not saying that I will not bring it back at stage 3 but, at this point, I am willing to ask to withdraw it so that I can discuss it more.

Amendment 19, by agreement, withdrawn.

**The Convener:** Does the committee agree to take amendments 20 to 22 en bloc?

**Members indicated agreement.**

Amendments 20 to 22 agreed to.

**The Convener:** Amendment 31, in the name of Margaret McDougall, is in a group on its own.

**Margaret McDougall: Amendment 31 relates to the production of an annual report. It requests that the Scottish ministers**

"prepare an initial report giving information about the delivery of welfare funds."
That report should be put before Parliament on or before 30 June 2016, with subsequent reports being laid before Parliament on or before 30 June annually.

The initial report should include information on the amount that has been paid out from the welfare funds, the number of applications for assistance in pursuance of section 2 that have been received, the number of applications that have been rejected and the number of applications in respect of which financial and other assistance has been provided. That information is the bare minimum that the report should include, but the Scottish ministers could include additional information if they considered it appropriate to do so.

11:45

Amendment 31 is pretty self-explanatory. It would allow the Parliament to conduct proper scrutiny of how the welfare funds perform and their effectiveness. It seeks to promote openness and transparency. Ensuring that the statistics are kept on record and reported to Parliament annually would be good practice. In particular, in the light of this morning's discussion, I think that it would be useful for the data to include the number of cases in which financial assistance has been given and the number in which assistance in kind has been provided. The amendment would ensure that information on that formed part of the annual report and would enshrine the preparation of an annual report in legislation.

Consistent annual reporting would allow us to find out what was and was not working while keeping Parliament updated. I ask committee members to support amendment 31, even if they do so solely on the principle of following good practice.

I move amendment 31.

Ken Macintosh: I speak in favour of amendment 31. It is important that the minister and the Parliament have the opportunity to keep welfare funds under review. It is probably worth restating—it is sometimes difficult to tell that this is the case from our exchanges at stage 2—that the bill has received widespread support from colleagues from all parties and certainly from those in the Labour Party. The minister's approach has been broadly welcomed. She has acted transparently, and she involved the voluntary sector and others in making sure that the interim scheme was effective before the statutory scheme was drawn up.

The key point is to ensure that that approach continues. I do not doubt that the minister will continue to keep the matter under review, but there are all sorts of issues about gate keeping—I am talking about local authorities putting people off applying because the authorities do not think that they will meet the criteria, rather than assessing them formally. Another issue is who is drawing on the funds. There have been slightly different takes on whether vulnerable families can access the funds.

It is important not just that the minister commits to reviewing the operation of the welfare funds, which she has done, but that she does so formally. If she does so formally, the Parliament will have a role to play in the process. We should remind ourselves that we are starting out on a new path in Scotland. We are going to get more and more responsibility for welfare powers, so it is important that we set out the principles at an early stage.

The Government put in place the idea of having an annual report in its Welfare Reform (Further Provision) (Scotland) Act 2012. All that we ask is that the minister repeats that practice and provides for an annual report to be produced under the Welfare Funds (Scotland) Bill. I think that that would be welcomed by all sides and all those who are involved in the sector.

Joan McAlpine: I think that we all agree that we want the funds to be monitored, but I understand that the Scottish Government has already established a statistical—that is always a tricky word to say—monitoring framework that covers the information that amendment 31 suggests should be provided in an annual report. We all know that the Parliament will scrutinise the funds, as will civic Scotland, not least as the new welfare powers are devolved.

Clare Adamson: I agree in principle with Joan McAlpine. We all want scrutiny and openness in relation to what the Government does, but I understand that the information in question is already covered. I would welcome the minister's comments on that and on what local authorities and the Scottish Public Services Ombudsman might report on, given that they fall within the bill's scope.

Kevin Stewart: The committee and the minister might be aware that local government has recently put together a new suite of benchmarks, and I hope that the welfare funds can be added to that. We sometimes have the habit of possibly overbureaucratising things, which might lead to less scrutiny, because we see the same things time and again.

It is the job of the committee and the Parliament to ensure that the current monitoring is scrutinised regularly, and I am sure that the public will do likewise. As my colleague Joan McAlpine said, we will have to do that more and more as new welfare powers come to the Parliament. Unfortunately,
they are not all the welfare powers that I would like to come here.

Annabel Goldie: Amendment 31 seems to be a genuine attempt to provide transparency. We are talking about an important new system and none of us is sure just how it will work in practice, although we hope that it will work well. The amendment is a welcome proposal to assist us all in understanding how the system is working. Unless the minister can point to some impossible bureaucratic burden from the proposed timescales—although, frankly, with electronic data now available, I do not think that the issue is insurmountable—I am strongly drawn to supporting the amendment.

Margaret Burgess: On amendment 31, I tend to agree with the views that were expressed in the committee’s stage 1 report, which recommended that on-going monitoring is preferable to a review clause. We have put a lot of time and effort into establishing the statistical monitoring framework, which already captures the information that the amendment suggests that we lay in a report before the Parliament. In fact, our latest quarterly publication, which contains significantly more detail than would the reports that the amendment proposes, was released this morning. It has 91 pages. There is a considerable amount of detailed information—a lot more than Margaret McDougall is asking for.

The current statistical monitoring, which we intend to continue under the permanent arrangements, provides an excellent mechanism for highlighting any issues that arise with the operation of the Scottish welfare fund. Some of the issues that were raised with the committee in stage 1 evidence came directly from the quarterly statistics that we publish. Third sector organisations have been actively scrutinising the published statistics and feeding back thoughts and concerns. We have responded to several ad hoc requests for further information to assist with scrutiny of the fund, and we will continue to do that whenever possible.

In conjunction with COSLA, we are undertaking a series of visits to local authorities to observe their casework. Those visits, alongside the statistical publications, should allow local authorities and the Scottish Government to respond to issues as they arise. The introduction of an independent review of disputed local authority decisions by the Scottish Public Services Ombudsman provides another mechanism for scrutiny of the operation of local authorities and of any patterns in complaints and reviews that indicate unintended consequences of regulations and guidance.

I envisage that the workings of the permanent arrangements will be the subject of on-going parliamentary scrutiny through the committee process and consideration of Scottish Government budgets. It is inconceivable that the operation of the permanent arrangements would not be the subject of scrutiny from civic Scotland and from the Parliament as it considers Scottish Government plans for implementing the new welfare-related powers that will flow from the Smith commission process.

I believe that sufficient opportunities for review exist through the Parliament, the Scottish Government’s statistical publications and the invaluable input that we all have from the third sector, so an on-going requirement to lay an annual review before Parliament would not add significantly to our knowledge on how welfare funds are operating. Indeed, it might divert scarce resources from the established continuous improvement work that is taking place. On that basis, I ask Margaret McDougall to seek to withdraw amendment 31.

The Convener: I ask Margaret McDougall to wind up.

Margaret McDougall: I note everything that has been said, but the third sector wants the review and was disappointed that that was left out of the bill. It has said that the welfare fund is part of wider welfare reform mitigation activity and that it could form part of the ministerial requirement to report annually under the Welfare Reform (Further Provision) (Scotland) Act 2012. Section 4(5) of that act allows for ministers to include whatever information they feel relevant in the report. It is not asking much more to have a review.

The minister says that the information is already available and that I am not asking for anything more. In fact, I said that the Scottish Government could include what information it saw fit but that it should include the specific areas that I mentioned.

As I said, the third sector says that a review should happen. If the information could be looked at in one report, perhaps that would provide more consistency across local authorities. If the minister is not minded to support the amendment and we will not have such a measure, what will be the formal opportunity to scrutinise the Scottish Government?

The Convener: If the minister wants to respond, she can, but I remind Margaret McDougall that she is winding up.

Margaret Burgess: The opportunity to scrutinise would arise in a committee such as this. We publish quarterly statistics that are scrutinised by the entire third sector and anyone else who wants to scrutinise them. We are absolutely transparent about the Scottish welfare fund and we will continue to be transparent. We will have
continuous monitoring rather than a report once a year.

**Margaret McDougall:** If that means that the information would be brought to the committee regularly, that would suffice.

**The Convener:** Do you want to press or withdraw your amendment?

**Margaret McDougall:** I will press the amendment, to test it.

**The Convener:** The question is, that amendment 31 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
Goldie, Annabel (West Scotland) (Con)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

**Against**
Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

**The Convener:** The result of the division is: For 3, Against 4, Abstentions 0.

*Amendment 31 disagreed to.*

**Section 7—Commencement**

**The Convener:** Amendment 23, in the name of the minister, is in a group on its own.

**Margaret Burgess:** Amendment 23 is a technical amendment. It removes the scope to make incidental, supplementary or consequential provision in orders made by ministers to bring provisions of the act into force. If necessary, such provision can be made, in respect of sections 1 to 4, under section 5(3)(b).

I move amendment 23.

*Amendment 23 agreed to.*

*Section 7, as amended, agreed to.*

*Section 8 agreed to.*

*Long title agreed to.*

**The Convener:** That ends our stage 2 consideration of the bill. I thank the minister and her team, and the committee, for taking us through the amendments so swiftly—we finished ahead of schedule.
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Welfare Funds (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

Welfare funds

1 Welfare funds

Each local authority is to maintain a fund (called a “welfare fund”) comprising—

(a) any grants paid into the fund by the Scottish Ministers, and
(b) any amounts paid into the fund by the local authority.

2 Use of welfare funds: assistance for short term need and community care

(1) A local authority may use its welfare fund only in order to provide occasional financial or other assistance to or in respect of individuals for the purposes of—

(a) meeting, or helping to meet, an immediate short term need—
   (i) arising out of an exceptional event or exceptional circumstances, and
   (ii) that requires to be met to avoid a risk to the wellbeing of an individual, or
(b) enabling qualifying individuals to establish or maintain a settled home.

(2) “Qualifying individuals” means individuals who have been or, without the assistance, might otherwise be—

(a) in prison, hospital, a residential care establishment or other institution, or
(b) homeless or otherwise living an unsettled way of life.

(2A) The assistance which a local authority may use its welfare fund to provide does not include making loans.

(3) A local authority may exercise its power under subsection (1) by making a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.
Review by local authority

4 Review of decisions
(2A) Where an applicant for assistance in pursuance of section 2 from a local authority applies to it to do so, the local authority must review its decision on the application.

(2B) Subsection (2A) is subject to subsection (2C).

(2C) The Scottish Ministers may by regulations—
(a) provide as to circumstances in which a decision made in pursuance of section 2 is not to be reviewed under subsection (2A),
(b) provide as to how an application for review under subsection (2A) is to be made,
(c) provide as to time limits for the making of applications for review under subsection (2A).

(5) Regulations made under this section are subject to the affirmative procedure.

Supplementary

5 Further Provision
(1) The Scottish Ministers may, by regulations, make further provision in connection with sections 1 to 4.

(2) Regulations made under this section may, in particular, make provision—
(a) about how an application to receive assistance in pursuance of section 2 is to be made,
(b) about the procedure which local authorities are to follow in relation to such applications, including the period within which they are to take any particular steps,
(c) about the eligibility of individuals to receive assistance in pursuance of section 2,
(d) about other circumstances in which assistance may, or may not, be provided in pursuance of section 2,
(e) about the type of assistance which may be so provided,
(f) about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided,
(g) requiring a local authority to provide the Scottish Ministers with such information in connection with the exercise of its functions under sections 1 to 4 as may be specified in the regulations,
(ga) about the procedure which local authorities are to follow in relation to reviews in pursuance of section 4, or applications for such reviews, including the period within which they are to take any particular steps,
(j) requiring persons to provide information for the purposes of a review by a local authority in pursuance of section 4,
(k) about circumstances in which an application to receive assistance or an application for review by a local authority may be made by a person on behalf of an individual.

(3) Regulations made under this section may make—
(a) different provision for different purposes,
(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(5) Regulations made under this section are subject to the affirmative procedure.

5A **Respect for, and dignity of, applicants for assistance**

In exercising its functions under sections 1 to 4, or any regulations under section 5, a local authority must take reasonable steps to ensure—
(a) that applicants for assistance in pursuance of section 2 are treated with respect, and
(b) that their dignity is preserved.

6 **Guidance**

(1) A local authority must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of its functions under—
(a) sections 1 to 4,
(b) any regulations made under section 5.

(2) Guidance issued under this section—
(a) must be addressed to, and apply in the same way to, all local authorities,
(b) may be general or specific,
(c) may be varied or revoked.

(3) Before issuing, varying or revoking guidance, the Scottish Ministers must consult—
(a) such body representing local authorities as they think fit,
(aa) the Ombudsman, and
(b) such other persons as they consider appropriate.

(4) The Scottish Ministers must publish guidance issued under this section in such manner as they consider appropriate.

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**Further review by Scottish Public Services Ombudsman**

6A **Application to Ombudsman for further review**

(1) Subsection (2) applies where an applicant for assistance in pursuance of section 2 is dissatisfied with the outcome of a review by a local authority in pursuance of section 4.

(2) An application for a further review may be made to the Ombudsman—
(a) by the applicant, or
(b) by a person authorised for the purpose by the applicant.

(3) An application under subsection (2) may be made orally or in writing.
(4) The Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 4, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.

(5) It is for the Ombudsman to determine whether an application under subsection (2) has been duly made.

6B Ombudsman’s powers

If, on a review in pursuance of an application under section 6A(2), the Ombudsman considers that a different decision should have been made by the local authority, the Ombudsman may quash the decision and—

(a) direct the local authority to reconsider the application to which the decision relates, or

(b) direct the local authority to use its welfare fund to provide—

(i) the assistance concerned, or

(ii) any other assistance (being assistance which may be provided by the local authority under section 2).

6C Statement of practice

(1) The Ombudsman must prepare a statement of practice setting out the approach which the Ombudsman intends to take to the conduct of reviews in pursuance of applications under section 6A(2).

(2) Before preparing the statement of practice, the Ombudsman must consult—

(a) local authorities, and

(b) such other persons as the Ombudsman considers appropriate.

(3) The Ombudsman must publish the statement of practice in such manner as the Ombudsman considers appropriate.

(4) The Ombudsman may revise the statement of practice.

(5) Subsections (2) to (4) apply to a revised statement of practice as they apply to the original statement of practice.

6D Procedural matters

(1) The procedure for conducting a review in pursuance of an application under section 6A(2) is to be such as the Ombudsman thinks fit.

(2) The Ombudsman may, in particular—

(a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit,

(b) hold an oral hearing or determine the review without one.

(3) The Ombudsman may require any of the following persons to supply or produce information or documents which the Ombudsman considers is or are, or may be, relevant to the review—

(4) The Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 4, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.

(5) It is for the Ombudsman to determine whether an application under subsection (2) has been duly made.

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(a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit,

(b) hold an oral hearing or determine the review without one.

(3) The Ombudsman may require any of the following persons to supply or produce information or documents which the Ombudsman considers is or are, or may be, relevant to the review—
(a) the local authority concerned,
(b) the applicant for assistance,
(c) any other person.

(4) The Ombudsman may administer oaths at an oral hearing held in relation to the review.

(5) The Ombudsman may make rules setting out—

(a) factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing in relation to a review in pursuance of applications under section 6A(2),

(b) the procedure to be followed in connection with an oral hearing.

(6) Before making such rules, the Ombudsman must consult—

(a) local authorities, and

(b) such other persons as the Ombudsman considers appropriate.

(7) The Ombudsman must publish any such rules as soon as reasonably practicable.

6E Notice of decision and publication of report

(1) After conducting a review in pursuance of an application under section 6A(2), the Ombudsman—

(a) must notify the applicant for assistance and the local authority concerned of the Ombudsman’s decision, and

(b) may publish a report of the review.

(2) Apart from identifying the local authority concerned, a report of a review must not—

(a) mention the name of any person, or

(b) contain any particulars which, in the Ombudsman’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.

General

6F Interpretation

In this Act, “the Ombudsman” means the Scottish Public Services Ombudsman.

6G Consequential modifications

(1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.

(2) In section 14(1)(a), after “functions” insert “under sections 2 to 13”.

(3) After section 16G, insert—

“Other functions of the Ombudsman

16H Reviews under the Welfare Funds (Scotland) Act 2015

As well as the functions conferred by sections 2 to 16G, the Ombudsman has the functions in relation to the review of decisions by local authorities conferred by the 2015 Act (see sections 6A to 6F of that Act).”.

(4) In section 18(1), after paragraph (c) insert—
“(d) any statement made by the Ombudsman in pursuance of section 6E of the 2015 Act,

(e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,

(f) any statement made by any person in communicating with the Ombudsman for the purposes of such a review.”.

(5) In section 19—

(a) in subsection (2), after paragraph (d) insert—

“(e) where subsection (2A) applies, the purposes of a welfare fund review.”

(b) after subsection (2), insert—

“(2A) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman’s advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

(2C) Those purposes are—

(a) the purposes of the review,

(b) the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,

(ii) an offence of perjury alleged to have been committed in the course of the review,

(c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),

(d) the purposes of any proceedings under section (Obstruction and contempt) of the 2015 Act,

(e) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.

(2D) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.”;

(c) in subsection (3), after “(1)” insert “or (2B)”;

(d) after subsection (5), insert—
“(5A) It is not competent to call upon the Ombudsman or the Ombudsman’s advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.”.

(6) In section 20(1), after “Act” insert “or the 2015 Act”.

(7) In section 23(1)—
   (a) before the entry for “action” insert—
       ““the 2015 Act” means the Welfare Funds (Scotland) Act 2015,”
   (b) after the entry for “the Ombudsman” insert—
       ““the Ombudsman’s functions” includes the Ombudsman’s functions under the 2015 Act,”,
   (c) after the entry for “request” insert—
       ““welfare fund review” means a review in pursuance of an application under section 6A(2) of the 2015 Act.”.

7 Commencement

(1) This section and section 8 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order made under this section may include transitional, transitory or saving provision.

8 Short title

The short title of this Act is the Welfare Funds (Scotland) Act 2015.
Welfare Funds (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

Introduced by: Nicola Sturgeon
Supported by: Margaret Burgess
On: 10 June 2014
Bill type: Government Bill
REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Welfare Funds (Scotland) Bill (which was introduced in the Scottish Parliament on 10 June 2014) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These revised Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

4. The Bill makes provision for the establishment of welfare funds which will be maintained by local authorities and will be established to reflect the amendment of Schedule 5 to the Scotland Act 1998 made by the Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013: SI 2013/192. The Bill is comprised of fifteen sections. It confers duties on local authorities to maintain and administer welfare funds in particular fashions. It confers powers on the Scottish Ministers to make regulations, and publish guidance which will set out how welfare funds should be administered. It requires local authorities to review their decisions on provision of assistance under welfare funds if an applicant for assistance requests a review. It also requires the Scottish Public Services Ombudsman (SPSO) to carry out second tier reviews, on request, in relation to local authority decisions on provision of assistance under welfare funds.

5. The detail of how welfare funds will be administered is not set out in the Bill. However, the intention is that the package of the Bill, associated regulations and guidance which the Scottish Ministers intend to make, will set out in legislation arrangements that have been in place on an interim basis since April 2013. Those interim arrangements are known as the Scottish Welfare Fund (SWF) and are based on a voluntary agreement between the Scottish Ministers and the Leaders of the Convention of Scottish Local Authorities (COSLA). The intention is that the legislative package will allow for these arrangements to continue, notwithstanding a change in how second tier reviews will be undertaken. A summary of the interim scheme is provided in paragraphs 6 to 11.
Summary of the interim Scottish Welfare Fund

6. The interim SWF aims to—
   - provide a safety net in an emergency when there is an immediate threat to health and safety through the provision of a non-repayable grant which is known as a Crisis Grant (CG); and
   - enable people to live independently, or to continue to live independently, preventing the need for institutional care, through the provision of a non-repayable grant which is known as a Community Care Grant (CCG). This includes providing assistance to families facing exceptional pressures. For example where there has been a breakdown in family relationships, perhaps involving domestic violence, which is resulting in a move.

7. CGs are awarded to meet expenses that have arisen as a result of an emergency or disaster in order to avoid serious damage or serious risk to the health or safety of the applicant or their family.

8. CCGs are awarded to—
   - help people establish themselves in the community following a period of care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
   - help people remain in the community rather than going into care where circumstances indicate that there is a risk of the person not being able to live independently without this help;
   - help people set up home in the community, as part of a planned resettlement programme, following an unsettled way of life;
   - help families facing exceptional pressures, such as the breakdown of a relationship, or repair and replacement of items damaged by behavioural problems within the family; and
   - help people to care for a prisoner or young offender who is living with them on release on temporary licence.

9. The interim SWF is aimed at supporting people on low incomes. Some of the main users of the interim SWF are—
   - disabled people
   - lone parents
   - unemployed people
   - older people
   - care leavers
   - homeless people
   - ex offenders
   - carers.
10. The interim SWF operates on a discretionary, budget-limited basis, with applications being prioritised according to need. Local authorities are expected to manage expenditure in such a way as to ensure effective budgetary management of funds over the financial year. They are able to supplement funding from the Scottish Ministers, but are not obliged to do so. The intention is for the funds to link to other local services and provide a better service to vulnerable members of the local community. The most common services that applicants are signposted or referred to are advocacy, welfare rights, housing and money or debt management.

11. The interim SWF was designed to take advantage of local delivery, while maintaining a national character. The Scottish Government has sought to standardise the decision making and notification process for the interim SWF by providing comprehensive guidance, a standard application form, a guide for decision makers and model documentation. In addition to this a national training programme and funding for a dedicated Development Officer, based in COSLA, in order to promote consistency and support implementation has been provided by the Scottish Government. However, local authorities have full discretion over local arrangements for delivery i.e. the arrangements for taking and processing applications and the arrangements for paying grants or fulfilling them by other means. This allows local authorities to align the SWF with other relevant services, make effective links with local organisations and to ensure that their delivery meets local needs, for example in terms of geography.

COMMENTARY ON INDIVIDUAL PROVISIONS

Section 1: Welfare funds

12. This section establishes the concept of a “welfare fund”. It requires each local authority to maintain a fund. The funds are to be made up of any grants paid into the fund by the Scottish Ministers, and any amounts paid into the fund by the local authority.

Section 2: Use of welfare funds: assistance for short term need and community care

13. This section sets out the circumstances in which a local authority can provide financial or other assistance to or in respect of individuals.

14. It repeats relevant text from the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013: SI 2013/192 which set out an exception from the social security reservation in the Scotland Act 1998 so as to give the Scottish Parliament competence to legislate for welfare provision. Section 2 sets out the general scope of the funds.

15. Subsection (1) allows local authorities to use their welfare funds to provide occasional financial or other assistance to, or in respect of, individuals for the purposes of meeting, or helping to meet an immediate short term need arising out of an exceptional event, or exceptional circumstances. The short term need must also be one that would mean there would be a risk to the wellbeing of an individual if it were not met.

16. This section also allows local authorities to use their welfare funds to provide occasional financial or other assistance to, or in respect of, individuals to enable qualifying individuals to establish or maintain a settled home.
17. Subsection (2) provides that welfare funds can be used to provide assistance to qualifying individuals who have been or, without the assistance, might otherwise be in prison, hospital, a residential care establishment or other institution such as foster care, or be homeless or otherwise living an unsettled way of life.

18. Subsection (2A) provides that a local authority may not use its welfare fund to provide assistance through loans.

19. Subsection (3) provides that a local authority may pay third parties to provide assistance to qualifying individuals by either providing goods or services. For example, a local authority may pay a contractor to provide furniture or carpets to fulfil a grant.

Section 4: Review of decisions

20. Subsection (2A) of this section provides that a local authority must, if requested by the applicant, carry out a review of its decision on a welfare fund application.

21. Subsection (2B) provides that the right of review under subsection (2A) is subject to subsection (2C).

22. Subsection (2C) gives the Scottish Ministers the power to make regulations setting out the circumstances in which a local authority decision on a welfare fund application does not have to be reviewed; how an application for review of a local authority decision is to be made, and setting time limits within which applications for review of a local authority decision should be made.

23. Subsection (5) specifies that regulations made under this section are subject to the affirmative procedure.

Section 5: Further provision

24. This section provides the Scottish Ministers with the power to make regulations to set out how welfare funds should operate, and what local authorities’ functions are in relation to the funds.

25. Subsection (2) sets out a number of particular matters about which the Scottish Ministers may make provision in regulations. Any regulations made under this section will in effect set out the detailed legislative framework for the operation of the welfare funds.

26. Regulations may in particular make provision about how an application to receive assistance is to be made; the procedure which local authorities are to follow in relation to applications; eligibility to receive assistance; other circumstances in which assistance may, or may not be provided; the type of assistance which may be provided; and circumstances in which payments or assistance may or may not be repaid or recovered. They may also make provision requiring local authorities to provide the Scottish Ministers with information for monitoring and reporting purposes; about the procedure which local authorities are to follow in relation to reviews or applications for reviews, including the period within which they are to take particular steps; requiring applicants to the funds to provide information for the purposes of a review by a local
authority and about circumstances in which an application to receive assistance or an application for review by a local authority may be made by a person on behalf on an individual.

27. Subsection (3) provides that the regulations may make different provision for different purposes. They may also make incidental, supplementary, consequential, transitional, transitory or saving provision.

28. Subsection (5) provides that regulations under this section are subject to the affirmative procedure.

Section 5A: Respect for, and dignity of, applicants for assistance

29. This section provides that, while exercising their functions under sections 1 to 4 of the Bill and any regulations made under section 5, local authorities must take reasonable steps to ensure that applicants for assistance are treated with respect and that their dignity is preserved.

Section 6: Guidance

30. This section provides that local authorities must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of functions under sections 1 to 4 of the Bill and any regulations made under section 5.

31. Subsection (2) provides as to the guidance that the Scottish Ministers can issue. The guidance must apply in the same way to all local authorities, may be general or specific and can be varied or revoked, subject to consultation requirements contained in subsection (3).

32. Subsection (3) provides that the Scottish Ministers must consult such body representing local authorities as they think fit, the Scottish Public Services Ombudsman (the Ombudsman), and other persons as they consider appropriate before issuing, varying or revoking guidance.

33. Subsection (4) provides that the Scottish Ministers must publish guidance in such manner as they consider appropriate.

Section 6A: Application to Ombudsman for further review

34. This section provides for applications to the Ombudsman for a further review of a local authority decision (following initial review by the local authority).

35. Subsection (2) provides that an application for further review may be made by the applicant, or a person authorised by the applicant.

36. Subsection (3) provides that an application may be made orally or in writing.

37. Subsection (4) provides that the Ombudsman must not consider an application for further review if it is made more than one month after the applicant was first informed of the outcome of a
local authority review, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith the one month period.

38. Subsection (5) provides that it is for the Ombudsman to determine whether an application for further review has been duly made.

Section 6B: Ombudsman’s powers

39. This section gives the Ombudsman the power, where the Ombudsman considers that the decision made by the local authority is not the one that should have been made, to direct the local authority to make an award out of its welfare fund or to remit the case to the local authority so that it can re-consider its decision.

Section 6C: Statement of practice

40. This section requires the Ombudsman to prepare a statement of practice setting out the approach the Ombudsman intends to take to carrying out the independent review function that is provided for in section 6A. It will be for the Ombudsman to determine the content of the statement of practice, but it could include details of timescales for carrying out reviews, and methods of exchanging information with local authorities and applicants for reviews.

41. Subsections (2) and (3) provide that the Ombudsman must consult local authorities and such other persons as the Ombudsman considers appropriate before preparing the statement of practice, and must be published in a way that the Ombudsman considers appropriate.

42. Subsection (4) provides that the Ombudsman may revise the statement of practice.

43. Subsection (5) provides that subsections (2) to (4) apply to a revised statement of practice. This means the consultation and publication requirements in these subsections also apply to a revised statement. It also provides that the Ombudsman can further revise a revised statement of practice.

Section 6D: Procedural matters

44. Subsection (1) provides that the Ombudsman can set out the Ombudsman’s own procedure for conducting a review of a local authority decision.

45. Subsection (2) provides the Ombudsman with powers to obtain evidence and make inquiries as the Ombudsman thinks fit. These powers are broadly equivalent to the powers the Ombudsman has to obtain evidence on complaints. It also provides that the Ombudsman may hold oral hearings, or determine a review without an oral hearing. Subsection (4) provides that the Ombudsman may administer oaths at an oral hearing held in relation to the review.

46. Subsection (3) provides that the Ombudsman may require the local authority concerned, the applicant for assistance, or any other person to provide information or documents which the Ombudsman considers relevant to the review.
47. Subsection (5) provides that the Ombudsman may make rules setting out the factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing, and the procedure to be followed for conducting an oral hearing.

48. Subsection (6) provides that the Ombudsman must consult local authorities and such other persons as the Ombudsman considers appropriate before making the rules provided for under subsection (5).

49. Subsection (7) provides that the Ombudsman must publish the rules under subsection (5) as soon as reasonably practicable.

Section 6E: Notice of decision and publication of report

50. Subsection (1) provides that, after carrying out a review of a local authority decision, the Ombudsman must notify the applicant and the local authority concerned of the Ombudsman’s decision. It also provides that the Ombudsman may publish a report of the review.

51. Subsection (2) provides that a report of a review must not, apart from identifying the local authority concerned, mention the name of any person, or contain details which, in the Ombudsman’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.

Section 6F: Interpretation

52. This section provides that in this Bill “the Ombudsman” means the Scottish Public Services Ombudsman.

Section 6G: Consequential amendments

53. This section makes a number of consequential amendments to the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”).

54. Subsection (2) amends section 14 of the 2002 Act. It restricts application of that section, which provides the Ombudsman with powers in relation to unlawful obstruction of the Ombudsman’s functions, to the functions of the Ombudsman under sections 2 to 13 of the 2002 Act.

55. Subsection (3) inserts a new section in the 2002 Act. This new section 16H provides that the Ombudsman has further powers in relation to review of decisions by local authorities under the Bill.

56. Subsection (4) amends section 18(1) of the 2002 Act which provides for certain statements to be absolutely privileged for the purposes of the law of defamation. It provides that any statement made by the Ombudsman in a report under the Bill, any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review, and any statement made by any person in communicating with the Ombudsman for the purposes of such a review are absolutely privileged for the purposes of the law of defamation.
57. Subsection (5) amends section 19 of the 2002 Act which concerns confidentiality of information. It inserts a number of new subsections in respect of a welfare fund review carried out by the Ombudsman. It provides that information obtained by the Ombudsman or any of the Ombudsman’s advisors in connection with a welfare fund review must not be disclosed except for purposes listed in section 19. It also provides that it is not competent to call upon the Ombudsman or the Ombudsman’s advisors to give evidence in any proceedings, other than those listed in section 19 of the 2002 Act, in respect of information they have gained in connection with a welfare fund review.

58. Subsection (6) amends section 20 of the 2002 Act so that the disclosure requirements of the 2002 Act also apply to information obtained by, or supplied to, the Ombudsman or any of the Ombudsman’s advisers under the Bill.

59. Subsection (7) amends section 23 of the 2002 Act by adding certain new definitions.

Section 7: Commencement

60. This section provides for commencement of the Bill. Sections 7 and 8 will come into force on the day after Royal Assent.

61. Subsection (2) provides that the other provisions of the Bill will come into force on such day as the Scottish Ministers may by order appoint.

62. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 8: Short title

63. This section gives the short title of the Bill.
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

WELFARE FUNDS (SCOTLAND) BILL

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee (DPLRC) in its consideration of the Welfare Funds (Scotland) Bill. This Memorandum describes a new provision in the Bill conferring power to make subordinate legislation which was added at Stage 2. It also describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INSERTED OR AMENDED AT STAGE 2

2. The delegated powers provisions in the Bill which were inserted or amended at Stage 2 are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

Section 4(2C) – Review of decisions

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations made by Scottish statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure of the Scottish Parliament</td>
</tr>
</tbody>
</table>

Provision

3. Section 4(2C) was inserted in the Bill at Stage 2. It provides that the Scottish Ministers may make regulations setting out the circumstances in which a local authority decision on a welfare fund application is not to be reviewed under section 4(2A); how an application for review of a local authority decision is to be made, and setting time limits within which applications for review of a local authority decision should be made.

Reason for taking power

4. The reason for taking the power is to ensure that the Scottish Ministers can make regulations which would set parameters around when a local authority would have to carry out a review of a decision it has made on a welfare fund application.
5. The power has been included in the Bill in response to comments made at Stage 1 by the DPLRC on section 4. The DPLRC suggested that a right of review by local authorities should be provided for on the face of the Bill and that the detail of the types of decision subject to review and the circumstances of review could then be set out in regulations made by the Scottish Ministers.

6. Section 4 of the Bill, as introduced, was amended in the following way. Subsections (1) and (2) were omitted and three new subsections (2A), (2B) and (2C) were inserted in their place. The new subsection (2A) provides a right of review for applicants to welfare funds, where subsection (1) as introduced provided that the Scottish Ministers may make regulations requiring local authorities to review decisions made under section 2. New subsection (2B) makes the right of review subject to new subsection (2C). As explained at paragraph 3 above, new subsection (2C) enables the Scottish Ministers to make regulations limiting the circumstances in which a local authority decision on a welfare fund application must be reviewed. Regulations under subsection (2C) may also make provision about how an application for review is to be made and set time limits.

Choice of procedure

7. At Stage 2, the procedure for regulations under section 4 was changed from negative procedure to affirmative procedure. This responds to the DPLRC recommendation that the regulations which will set out the detail of how welfare funds will operate should be subject to a higher level of scrutiny than that afforded by the negative procedure.

Section 5(1) – Further provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Affirmative procedure of the Scottish Parliament

Provision

8. Section 5(1) provides the Scottish Ministers with the power to make regulations which would make further provision in connection with sections 1 to 4 of the Bill. Section 5(2) lists certain matters about which the Scottish Ministers may make provision in regulations under section 5(1).

Reason for taking power

9. The reason for taking the power, as introduced, to make regulations under section 5 was to allow further provision to be made as to how the welfare funds will operate. It is considered that it is more appropriate to provide for the eligibility, administrative, and procedural aspects in relation to the welfare funds in regulations as opposed to the Bill, given the level of detail likely to be required. It is also considered that it would be useful to have the flexibility to change these aspects of the welfare funds if the need arises. For example, there may be a wish over time to make different detailed provision as to the eligibility of individuals to receive financial assistance from a fund.
10. At Stage 2, section 5(1) was amended so that regulations under section 5 may make provision only in connection with sections 1 to 4 and not in connection with other sections of the Bill. This ensures that regulations may not include provisions about reviews by the Scottish Public Services Ombudsman and consequently, section 5(4) was no longer required and was removed from the Bill. These two changes to section 5 were made to reflect structural changes made to the Bill by other Stage 2 amendments. The structure of the Bill was altered because the Bill was amended to include more detailed provision about reviews by the Scottish Public Services Ombudsman.

11. Section 5(2)(h) provided that regulations under section 5 may make provision about arrangements which may be made in pursuance of section 3. Section 3 would have enabled local authorities to make arrangements for third parties to administer their welfare funds but it was removed from the Bill at Stage 2. Consequently, section 5(2)(h) was no longer required and was also removed from the Bill.

12. Section 5(2)(i) provided that regulations under section 5 may make provision about how an application for review by a local authority is to be made. Section 5(2)(i) was removed from the Bill at Stage 2 because this type of provision may be made under the new section 4(2C).

13. Section 5(2)(ga) was inserted in the Bill at Stage 2. It is to enable Scottish Ministers to make provision, in regulations under section 5, about the procedure which local authorities are to follow in relation to reviews, or applications for reviews, including the period within which they are to take any particular steps.

**Choice of procedure**

14. At Stage 2, the procedure for regulations under section 5(1) was changed from negative procedure to affirmative procedure. This responds to the DPLRC recommendation that the regulations which will set out the detail of how welfare funds will operate should be subject to a higher level of scrutiny than that afforded by the negative procedure.

**Other relevant amendments**

15. The amendments described above are amendments which insert or substantially alter provisions conferring powers to make subordinate legislation. In addition, the DPLRC will wish to note that there was an amendment to the order making power in section 7 so that an order under that section may not include incidental, supplementary or consequential provision. This amendment was lodged in response to the DPLRC’s suggestion, at Stage 1, that subordinate legislation making incidental, supplementary or consequential provision should be subject to Parliamentary procedure. The effect of the amendment is that incidental, supplementary or consequential provision may not be made in an order under section 7. This type of provision may be made in regulations under section 5 and regulations under that section are subject to the affirmative procedure.

16. The DPLRC will also wish to note that there was an amendment to insert section 6D in the Bill. Section 6D(2)(b) provides that the Ombudsman, in reviewing a local
authority’s decision, may hold an oral hearing or may determine the review without an oral hearing. Section 6D(5) confers on the Ombudsman a power to make rules setting out factors to be taken into account in deciding whether to hold an oral hearing and the procedure to be followed in connection with an oral hearing. It is considered appropriate for the relevant factors and the procedure to be set out in rules given the level of detail likely to be required. Having discussed the independent review function with the Ombudsman on a number of occasions, and having taken into account the importance of the Ombudsman being independent from the Scottish Ministers, it is considered appropriate for it to fall to the Ombudsman to make these rules. Before making such rules, the Ombudsman must consult local authorities and such other persons as the Ombudsman considers appropriate and the Ombudsman must publish any rules which are made.
Delegated Powers and Law Reform Committee

15th Report, 2015 (Session 4)

Welfare Funds (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 25 February 2015
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Nigel Don (Convener)
John Mason (Deputy Convener)
Margaret McCulloch
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

15th Report, 2015 (Session 4)

Welfare Funds (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

1. At its meeting on 24 February 2015, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Welfare Funds (Scotland) Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. In outline, the Bill is designed to make provision for the establishment of welfare funds which will be maintained by local authorities. Welfare funds will operate on a discretionary basis, and are intended to (1) provide a safety net in an emergency when there is an immediate threat to health and safety and (2) enable people to live, or to continue to live, independently preventing the need for institutional care.

3. The Policy Memorandum notes that this Bill, together with associated regulations and guidance which will be produced in due course, are designed to set out arrangements which have been in place on an interim basis since April 2013 (“the interim scheme”). Following abolition by the Department for Work and Pensions of elements of its Discretionary Social Fund covering this type of relief, funding for Scotland was transferred to the Scottish Government to establish systems. This led to the establishment of the interim scheme, currently administered by local authorities under section 20 of the Local Government in Scotland Act 2003.

4. The Scottish Government now wishes to legislate to put the interim scheme on a permanent footing. The Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013 (“the Order”) widened the legislative competence of the Scottish Parliament to enable it to legislate on the provision of local welfare assistance.

¹ Welfar Funds (Scotland) Bill [as amended at Stage 2] available at: http://www.scottish.parliament.uk/S4_Bills/Welfare%20Funds%20(Scotland)%20Bill/b51as4-stage2.pdf
5. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”).

6. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 57th report of 2014.

DELEGATED POWERS PROVISIONS

7. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

8. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:

- Section 4(2C) and (5) – Review of decisions by local authority
- Section 5(1) – Further provision
- Section 7(3) – Commencement
- the powers of the Scottish Ministers to issue guidance contained in section 6 as amended
- the powers of the Ombudsman to make rules contained in new section 6D(5) to (7).

9. The Committee therefore reports that it is content with the provisions in the Bill which have been amended at Stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation and other delegated powers.

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Welfare Funds (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 8 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Ken Macintosh
Supported by: Margaret McDougall

2 In section 2, page 1, line 10, leave out <or other>

Ken Macintosh
Supported by: Margaret McDougall

3 In section 2, page 1, line 10, after <assistance> insert <or, in such circumstances as may be prescribed in regulations under subsection (3A), other assistance>

Ken Macintosh
Supported by: Margaret McDougall

4 In section 2, page 1, line 15, after <individuals> insert <—
   (a) who are part of a family facing exceptional pressure, or
   (b)>

Ken Macintosh
Supported by: Margaret McDougall

5 In section 2, page 1, line 21, leave out subsection (3) and insert—
   <(3A) The Scottish Ministers may, by regulations, make provision about the circumstances in which a local authority may—
   (a) provide goods or services to or in respect of an individual, or
   (b) make a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.
   (3B) Regulations under subsection (3A) are subject to the affirmative procedure.>
Section 5

Ken Macintosh
Supported by: Margaret McDougall

6 In section 5, page 2, line 39, at end insert—

<( ) Regulations making provision of a type described in subsection (2)(b) must provide that a local authority is to make its decision on an application for assistance in pursuance of section 2(1)(a)—

(a) immediately after the authority has received all information allowing a decision to be made, and

(b) in any event, no later than the end of the next working day.>

Section 5A

Margaret McDougall
Supported by: Ken Macintosh

7 In section 5A, page 3, line 9, at end insert—

<( ) that the particular needs and choices of applicants are to be considered, and>

Before section 6F

Margaret McDougall
Supported by: Ken Macintosh

8 Before section 6F, insert—

<Delivery of welfare funds: annual reporting

(1) The Scottish Ministers must prepare an initial report giving information about the delivery of welfare funds.

(2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2016.

(3) The Scottish Ministers must prepare an annual report giving information about the delivery of welfare funds.

(4) An annual report is—

(a) starting with 2017, required each year,

(b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.

(5) The initial report and an annual report must include information about—

(a) the amount paid out of the welfare funds,

(b) the number of applications for assistance in pursuance of section 2 that have been received,

(c) the number of applications—

(i) in respect of which financial assistance was provided,

(ii) in respect of which other assistance was provided,
(iii) that were rejected.

(6) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.

Section 6G

Margaret Burgess

1 In section 6G, page 6, leave out lines 30 and 31
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Use of welfare funds: financial or other assistance
2, 3, 5

Group 2: Use of welfare funds: “qualifying individuals”
4

Group 3: Timescale for dealing with applications for assistance
6

Debate to end no later than 40 minutes after proceedings begin

Group 4: Needs and choices of applicants
7

Group 5: Annual reporting
8

Group 6: Minor and technical amendment
1

Debate to end no later than 1 hour 5 minutes after proceedings begin
Amendments in debating order

**Group 1: Use of welfare funds: financial or other assistance**

Ken Macintosh  
Supported by: Margaret McDougall

2 In section 2, page 1, line 10, leave out <or other>

Ken Macintosh  
Supported by: Margaret McDougall

3 In section 2, page 1, line 10, after <assistance> insert <or, in such circumstances as may be prescribed in regulations under subsection (3A), other assistance>

Ken Macintosh  
Supported by: Margaret McDougall

5 In section 2, page 1, line 21, leave out subsection (3) and insert—

<(3A) The Scottish Ministers may, by regulations, make provision about the circumstances in which a local authority may—

(a) provide goods or services to or in respect of an individual, or

(b) make a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.

(3B) Regulations under subsection (3A) are subject to the affirmative procedure.>

**Group 2: Use of welfare funds: “qualifying individuals”**

Ken Macintosh  
Supported by: Margaret McDougall

4 In section 2, page 1, line 15, after <individuals> insert <—

(a) who are part of a family facing exceptional pressure, or

(b)>}

**Group 3: Timescale for dealing with applications for assistance**

Ken Macintosh  
Supported by: Margaret McDougall

6 In section 5, page 2, line 39, at end insert—

<( ) Regulations making provision of a type described in subsection (2)(b) must provide that a local authority is to make its decision on an application for assistance in pursuance of section 2(1)(a)—

(a) immediately after the authority has received all information allowing a decision to be made, and

(b) in any event, no later than the end of the next working day.>
**Group 4: Needs and choices of applicants**

Margaret McDougall  
Supported by: Ken Macintosh  

7  
In section 5A, page 3, line 9, at end insert—  

< ( ) that the particular needs and choices of applicants are to be considered, and>

**Group 5: Annual reporting**

Margaret McDougall  
Supported by: Ken Macintosh  

8  
Before section 6F, insert—  

<Delivery of welfare funds: annual reporting>  

(1) The Scottish Ministers must prepare an initial report giving information about the delivery of welfare funds.  

(2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2016.  

(3) The Scottish Ministers must prepare an annual report giving information about the delivery of welfare funds.  

(4) An annual report is—  

(a) starting with 2017, required each year,  

(b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.  

(5) The initial report and an annual report must include information about—  

(a) the amount paid out of the welfare funds,  

(b) the number of applications for assistance in pursuance of section 2 that have been received,  

(c) the number of applications—  

(i) in respect of which financial assistance was provided,  

(ii) in respect of which other assistance was provided,  

(iii) that were rejected.  

(6) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.>

**Group 6: Minor and technical amendment**

Margaret Burgess  

1  
In section 6G, page 6, leave out lines 30 and 31
Business Motion: Joe Fitzpatrick, on behalf of the Parliamentary Bureau, moved S4M-12487—That the Parliament agrees that, during stage 3 of the Welfare Funds (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 40 minutes.
Groups 4 to 6: 1 hour 5 minutes.

The motion was agreed to.

Welfare Funds (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 6 and 1

The following amendments were disagreed to (by division)—
   2 (For 37, Against 80, Abstentions 0)
   3 (For 38, Against 80, Abstentions 0)
   4 (For 54, Against 62, Abstentions 0)
   5 (For 37, Against 80, Abstentions 0)
   7 (For 37, Against 79, Abstentions 0)
   8 (For 50, Against 66, Abstentions 0).

The Minister for Parliamentary Business moved a motion without notice under Rule 9.8.5A to extend the time limit for amendments by 10 minutes. The motion was agreed to.

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(a).

Welfare Funds (Scotland) Bill - Stage 3: The Minister for Housing and Welfare (Margaret Burgess) moved S4M-12485—That the Parliament agrees that the Welfare Funds (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Welfare Funds (Scotland) Bill: Stage 3

14:30

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 of the Welfare Funds (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list of amendments, and the groupings of amendments. The division bell will sound and proceedings will be suspended for five minutes before the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group. Members should now refer to the marshalled list.

Section 2—Use of welfare funds: assistance for short term need and community care

The Deputy Presiding Officer: We start with group 1, naturally. Amendment 2, in the name of Ken Macintosh, is grouped with amendments 3 and 5.

Ken Macintosh (Eastwood) (Lab): Under the bill, when an individual who is in crisis applies to the Scottish welfare fund because they have run out of money, local authorities are not restricted in any way in how they decide to support the applicant; they can do so through an award of goods, vouchers or whatever type of in-kind payment they choose, rather than in cash. The effect of the three amendments in the group would not be to change or restrict that range of options, but would simply be to give ministers the authority to produce regulations about the circumstances in which councils can make non-cash awards. I would hope to see that power being used to ensure that local authorities treat all applicants with dignity and respect by taking their circumstances, their preferences and their views into account in deciding on the nature of awards.

I have no doubt that in many circumstances—for example, when someone applies for a community care grant or is looking to move into a new flat—an individual may welcome a moving-in pack with all the plates, cutlery, bedding, furniture and everything else to make a home habitable, but they should have some say in that. When it comes to crisis grants as opposed to community care grants, there is strong evidence that applicants would fare much better if they were given money, rather than cards or vouchers.
One of the strongest themes that emerged from the witnesses who gave evidence to the Welfare Reform Committee was that turning to the state for support in times of difficulty made them feel judged and stigmatised. We heard direct evidence that the experience of using vouchers or tokens in local shops could be embarrassing, and it can make people feel small and undermine their sense of dignity. Is that really what we are trying to achieve? Are we trying to make people feel worse, or to give them a hand up in their time of need?

If anyone in the chamber received their salary in furniture or tokens, in all probability they would feel offended or patronised, so why should we be surprised if applicants for welfare feel similarly? Surely our intention through our approach to welfare in the bill is to build up resilience by, at the very least, putting as much choice as possible in the hands of the recipient.

Two years ago, a back-bench Conservative tried to introduce a bill in the House of Commons that would have seen all benefit recipients being paid using a card system through which the purchase of goods such as alcohol, cigarettes or Sky television would be prohibited. He justified that approach by talking about the "idleness of the shirkers". I suspect that most liberal-minded members here would be horrified by such a judgmental approach, but how far away is that proposal from what happens day to day in Scotland? How easy would it be for some future Administration to head in that direction?

The anti-poverty organisations are clear that in-kind awards from the interim welfare fund have already become the default position. Only half of all crisis grants and less than 20 per cent of community grant awards are made by way of cash, cheque or direct bank transfer. In committee, some Scottish National Party members tried to defend that practice by suggesting that it is more cost effective. However, we heard evidence that such awards often do not produce best value for the recipient; indeed, they reduce independence and have proved to be problematic and difficult. We heard, for example, that issuing vouchers instead of cash undermines a family's ability to get the best deals or the cheapest bargains by budgeting, spreading payments or shopping around for goods.

We also heard that items that are currently awarded do not always meet the identified needs of the applicant and their household; in fact, disabled applicants and other people who have very specific needs suggested that they are far better placed than the local authority to identify and purchase items that meet their needs.

In rural areas, the process is not only stigmatising, but families are likely to be limited in their ability to find a shop that takes vouchers.

In health and social care, we are moving to self-directed support specifically because we recognise that the personalisation agenda is very good for people's health and wellbeing. We have recognised that it is good for people's health to have more control over the carers that they employ; why cannot we apply exactly the same principle to welfare? A briefing from the Scottish Council for Voluntary Organisations put it well:

"For many, having cash to buy what they need is by far the best option—not least because it gives people some semblance of control and dignity at a time when they cannot control the factors which have led them into hardship."

To my mind, whatever our fine words about the principles of respect and dignity that we wish to underpin our approach to welfare in Scotland, the real test comes in the practice. I was reminded at the weekend of the motto of the poverty truth commission:

"Nothing about us, without us, is for us."

The commission knows that poverty will never be truly addressed until those who experience it first hand are at the heart of the process. The SNP's approach to the subject can at best be described as paternalistic. This is the first in a number of new powers over welfare. Let us get the foundations right from the start.

I move amendment 2.

**Alex Johnstone (North East Scotland) (Con):** I enjoyed hearing Ken Macintosh speak in support of his proposals because much of his argument was exactly the same as arguments that Conservatives are currently using for universal credit. We say, for example, that housing benefit should be paid directly to tenants rather than to their landlords in order to allow them to make choices about their priorities and what they do with their money. However, I observe that inconsistency without influence on the broader argument.

Ken Macintosh: What choice do recipients of housing benefit have when all of it has to go on rent?

Alex Johnstone: Let us carry on that argument at another time. I would be delighted to do so.

Let us talk about the arguments for cash versus kind. During the course of evidence taking, at a time when I was a member of the committee, it was obvious that Ken Mackintosh has an agenda. I understand that agenda. Ken Macintosh is keen to ensure that, wherever possible, cash rather than kind is the means by which support is given to individuals who apply to local authorities for it.

I take the view that, in certain circumstances, giving benefits or support in kind is quite often the correct approach. If someone requires a washing
machine or a fridge, and one can be delivered to them at short notice, that approach is entirely desirable.

Similarly, if—as Ken Macintosh suggested as an example—someone lives in a rural community, they may well be unable to source the relevant product or device locally. If they live in an island community, it is doubly difficult. It is therefore essential that local authorities be left with discretion about how they provide support. No two local authorities are the same and no two circumstances are the same. As a consequence, many people may prefer to be supported in kind, while others may prefer to be supported in cash. However, the decision about what can best be delivered locally is best left to local authorities. For that reason, it is essential that we do not constrain local authorities in their decision-making process and that we ensure that the best decisions are made locally, for local people, based on local circumstances.

I therefore oppose the amendments in group 1.

Kevin Stewart (Aberdeen Central) (SNP): We must remember that we are discussing today a £38 million fund that is having to mitigate £6 billion of benefit cuts. I believe that we should treat everybody with dignity and respect; I lodged an amendment in that vein at stage 2, and it was agreed to.

However, we must be realistic in considering how far £38 million of funding can actually go, and how many people out there require help because of the £6 billion of benefit cuts. I for one want that £38 million to be stretched as far as possible so that we can help as many as possible of the people who are facing the cuts.

I believe that we should not constrain councils, and I hope that common sense and compassion would apply with regard to payment of money or giving of goods to help individuals and families. In my experience, when folks on the front line are administrating the welfare fund, common sense and compassion do come into play.

During evidence, the Welfare Reform Committee heard from many folks about how happy they had been to receive goods rather than cash; we heard from folks who had left care and had received furniture packages from the local authority in the area where they lived, and they were quite happy with that situation. Again, I think that common sense should apply.

There are good aspects of payment being made in kind. In its briefing, the Convention of Scottish Local Authorities notes that there are, in providing goods, benefits that extend beyond the individuals and families concerned. Again, provision of goods has probably enabled us to do more within the constraints of the £38 million fund.

COSLA also highlights the creation of more than 140 full-time jobs that are a direct result of the Scotland Excel framework, and the fact that more than 8,420 hours of work experience has been afforded to individuals throughout Scotland. COSLA mentions donations of furniture and flooring that have come in free of charge along with free person hours to allow installers and carpet fitters to help charitable organisations in assisting vulnerable young adults to set up home. It also mentions the opening of satellite stores in order to service councils, which has provided substantial efficiency benefits through enabling deliveries from local premises. That has led to significant reductions in carbon footprints, and has resulted in savings of approximately 170 tonnes of CO₂ emissions. COSLA also mentions recycling and reductions in landfill.

Those are particularly good things. The picture that Mr Macintosh painted suggests that nobody wants goods, but that is not what has come out in evidence. The key, quite simply, is the fact that we have a duty to help as many folk as we can within the constraints of that £38 million fund’s having, as I said, to mitigate £6 billion of benefit cuts.

If Mr Macintosh was truly serious about resolving some of those problems, his Labour colleagues would not have walked through the lobby at Westminster with the Tories the other week to vote for £30 billion more of austerity cuts.

The Minister for Housing and Welfare (Margaret Burgess): I make it clear at the start that the guidance on the Scottish welfare fund states that local authorities must ensure that items awarded meet applicants’ needs. For example, if people need specific items because of a medical condition or their family make-up, that is a question not of choice but of need. I wish that we did not need a welfare fund and that applicants did not need the support that they do. However, the Scottish welfare fund is the safety net for people in need, and in most cases it is their last resort.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The minister will be aware that, according to the quarterly report to 30 September, £1 million was provided to applicants for food. That is a disgrace in our society. Is there not a degree of urgency about feeding the weans and feeding families who are hungry through the welfare fund, and is it not the case that we should do nothing to make the process any lengthier, because urgent action is needed in those circumstances?

Margaret Burgess: I absolutely agree with Stewart Stevenson. The fund deals with people in emergency and crisis situations.

The welfare fund is a budget-limited fund that is operating in a time of increasing need, so it has to
help as many people as it can in the most efficient way possible. Local authorities have found, particularly with community care grants, that that means awarding goods rather than cash grants. COSLA estimates that local authorities save about 20 per cent by using bulk buy versus cash payments.

That is not to say that there is no choice. Local authorities provide choice where they can. In the majority of local authority areas, applicants have choices about a range of goods. They also have a choice of fabrics and colour for curtains and towels.

Examples of where customers with specific needs have received different items to ensure that what is awarded meets their needs include a family with three children being offered a 10kg washing machine as opposed to a standard 5kg washing machine. Large families can choose bunk beds instead of single divans to allow more floor space for children to play in. Disabled customers who request hard flooring to allow ease of use for wheelchairs receive laminate flooring, not carpets, which could be unsuitable.

As Kevin Stewart said, many applicants appreciate the service provided by local authorities. The delivery and installation of goods can relieve a lot of stress and anxiety that come with people having to arrange that for themselves, particularly at times of vulnerability. Many simply cannot access shops to choose goods.

To sum up, I would rather that local authorities were able to provide community care grants to 1,200 households by providing goods.

**Stewart Stevenson:** I am grateful to the minister for allowing me to make a technical intervention. I note that the bill introduces the affirmative procedure for new secondary legislation. Given that that implies a 40-day delay before legislation can become effective, should the Delegated Powers and Law Reform Committee have had the opportunity to consider what form of secondary legislation should apply?

**Margaret Burgess:** I do not know how helpful Mr Stevenson’s technical intervention was, but we certainly took on every recommendation that the Delegated Powers and Law Reform Committee made about regulations and the affirmative procedure and we introduced changes accordingly at stage 2.

As I was saying, I would rather help 1,200 households by providing goods than have 1,000 choosing how they are helped while 200 people are left with no help at all. We are talking about helping as many people as we can from the funds available.

However, in respect of crisis grants, I consider cash or cash equivalent to be the most appropriate method of payment, and I have committed to ensuring in regulations that cash is the default position for crisis grant payments, unless it suits the applicant to have an award fulfilled in another manner. I therefore ask Ken Macintosh not to press amendment 2.

**Ken Macintosh:** A number of comments have been made. Alex Johnstone suggested that I have an agenda; I do have an agenda, but it is nothing to do with cash payments versus payments in kind. It is simply to empower individuals to make the most of their own abilities, and to move away from a welfare system and a welfare reform programme that are punitive and undermine people’s sense of their own self-worth.

Alex Johnstone suggested that he is more concerned about local authorities being constrained than about helping individuals. Bizarrely, Kevin Stewart agreed that he does not want to constrain local authorities. The issue is not about local authorities.

**Kevin Stewart:** The member fails to miss the point. The folks on the front line have a real recognition of the difficulties that people are going through; I said that we should not constrain them and that common sense should apply.

One of the key questions that Mr Macintosh must answer is why he pontificates here about the issue when his colleagues in Westminster go through the lobbies with the Tories to vote for more benefit cuts and more austerity in this country. That does not match up.

**Ken Macintosh:** I am not sure, from what Mr Stewart said, whether he thinks that I failed or did not fail to miss the point in his opening remarks. I clarify that Mr Stewart suggested that he was concerned about the constraint that the amendments would place on local authorities—not on individuals. He said that we have to be realistic and stretch the money as far as possible. There is no evidence—I say this to the minister as well—to suggest that my proposal would be less cost effective or more expensive or that it would draw more on public resources than the current system.

**Alex Johnstone:** As we heard in evidence, if I give someone the money to buy a washing machine, they can buy a washing machine. If I am a local authority and VAT registered, I can give someone a washing machine and claim the 20 per cent VAT back. How is that not more efficient?

**Ken Macintosh:** I do not know whether Mr Johnstone bought his own washing machine or does his own shopping, but what if I were to suggest to him that he was to leave his spending decisions on washing machines—or on any other purchase that he wants to make—to his local
authority? Does he believe that the local authority is better placed than he is to make purchases on his behalf?

I do not believe that there is one person in the chamber who would trust a council or any other body, no matter how much they might admire it, to purchase goods on their behalf, so why do we apply that double standard to local authorities and benefit recipients? There is no logic behind it and it is not cost effective. The amendments would not draw extra from the public purse and there is no evidence whatsoever for the idea that somehow, by refusing the amendments, we would help 1,000 people rather than 200. That is a paternalistic, producer-led mentality.

Margaret Burgess: Will the member take an intervention?

Ken Macintosh: Can I take an intervention, Presiding Officer?

The Deputy Presiding Officer: Yes, but briefly, please, because we need to make progress.

Margaret Burgess: I did not say that we would help 1,000 people rather than 200; I said that we could help 200 more people through councils buying goods in bulk. If we did not buy goods in bulk, we could help only 1,000 people instead of 1,200; 200 more people could be helped, which is important. The fund has to stretch as much as possible.

The Deputy Presiding Officer: Mr Macintosh, can you please come to a conclusion?

Ken Macintosh: I suggest that the minister has presented no evidence to back up her statement. I refer to the evidence that I gave in committee just a few weeks ago about a local authority no longer using the Instant Neighbour organisation in Aberdeen, which is in Kevin Stewart’s neighbourhood. Bulk purchasing of cheap, shoddily produced goods is not necessarily the sustainable solution that people wish for.

Kevin Stewart: Will the member take an intervention?

Ken Macintosh: I think that we have heard quite enough from Mr Stewart on this point—

The Deputy Presiding Officer: Please wind up now, Mr Macintosh.

Ken Macintosh: The Presiding Officer seems to agree with me. If Mr Stewart wants to side with the Tories yet again—as the SNP so often does to get amendments through or to defeat amendments—that is his choice.

To strike a slightly different note to conclude, I have no doubt that the minister wishes to do her best by welfare recipients. I have no doubt about her intentions. However, if we do not allow ourselves to put the individual—the benefit claimant—at the heart of our thinking, we are doomed to repeat the mistakes of the current welfare system. I take encouragement from her last remark that she will try to encourage local authorities to deliver cash, not in-kind, payments. However, I urge members to put that in legislation.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division, I will suspend the meeting for five minutes.

14:54

Meeting suspended.

14:59

On resuming—

The Deputy Presiding Officer: We now proceed with the division on amendment 2.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mailk, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Donald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Meline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Amendment 2 disagreed to.

Amendment 3 moved—[Ken Macintosh].

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Aberdeen Central) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glascow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Christine (Highlands and Islands) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGregor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salamond, Alex (Aberdeenshire East) (SNP)
Scanlon, Derek (Highlands and Islands) (Ind)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 38, Against 80. Abstentions 0.

Amendment 3 disagreed to.

The Deputy Presiding Officer: Before we move to group 2, I am minded to accept a motion without notice under rule 9.8.5A of standing orders, to propose that the time limit for debate be extended by 10 minutes.

Motion moved.

That, under Rule 9.8.5A, the time limit for debate on amendments be extended by 10 minutes.—[Joe FitzPatrick.]

Motion agreed to.

The Deputy Presiding Officer: We move to group 2. Amendment 4, in the name of Ken Macintosh, is the only amendment in the group.

Ken Macintosh: The effect of accepting amendment 4 would be to add families facing exceptional pressure to the legislative list of those who qualify for a community care grant.

To clarify what that means, the Child Poverty Action Group suggests that families in the kind of situations that we are talking about include lone parents with young children who need household items

“following the violent breakdown of a relationship”
or, in another example, families in which

“the sudden deterioration in the condition of a disabled child justifies an award for a washing-machine”.

For members who did not follow our discussion of the matter at stage 2, I point out that the interim Scottish welfare fund lists five qualifying criteria. Four of those categories are explicitly described in the bill and the only group that is omitted—the only group that is not mentioned at all in the bill—is families facing exceptional pressure. In other words, under the bill, someone who faces the possibility of prison would qualify for support but someone who is looking after their disabled husband or child would not. Someone who is at risk of becoming homeless would qualify but someone who is fleeing domestic violence would not.

At stage 2, the minister presented two arguments. She seemed to suggest that, as an alternative to accepting our amendment, she could include families facing exceptional pressure in guidance but not in the bill. I ask her what authority she draws on to be able to name that group in regulations but not in statute. If she
believes that the section 30 order that was passed two years ago does not give her the power to name families facing exceptional pressure as a qualifying category in the bill, she has no authority to direct or guide local authorities through regulations. Conversely, if she believes that she can use guidance to help that group of people, she should do so clearly in legislation and give families equal status and equal priority with other vulnerable groups.

The minister presented a second argument at stage 2. She suggested that what data there was indicated that the interim scheme was currently successful in targeting families that face exceptional pressure. The trouble with that argument is that the interim scheme specifically includes that category on an equal footing with the other four categories of people who qualify for assistance.

We do not have an issue with the interim scheme. It is only the bill before us today that demotes vulnerable families and clearly indicates to those who will have to interpret the law that they are not on a par with others who need assistance. In fact, we are in a bizarre situation in which the needs of vulnerable families were recognised under the old Department for Work and Pensions social fund system and continue to be recognised under the interim system but are omitted in the new legislation that is before us today.

Whatever the minister’s intentions, as the Scottish Council for Voluntary Organisations has clearly stated:

“Such a situation would give rise to a risk that local authorities—or future governments—might deprioritise applications from such families in order to protect their budgets or increase the share of community care grants that are applicable to other categories of applicants”.

I would like the minister to clarify one other point in her reply. At committee, she highlighted her concerns about the competence of the amendment. One of the committee members then suggested that the whole bill could fall if we were to indicate our support for the amendment. Could the minister clarify that that is not the case and that it does not do our discussion any favours to hyperbolise the potential impact of one disputed section?

The Poverty Alliance has highlighted that the minimum cost of raising a child rose by 4 per cent in 2013, while the minimum wage rose by less than 2 per cent and, for those needing support, benefits were capped at 1 per cent. Quite simply, families are under ever-increasing pressure. They have little or nothing in the way of savings to call on and they are relying on us. They need to know that they can turn to the Scottish welfare fund for support in a crisis or an emergency.

This amendment has the support of the SCVO, the Poverty Alliance, Inclusion Scotland, CPAG, One Parent Families Scotland and Carers Scotland. I urge the chamber to support it.

I move amendment 4.

The Deputy Presiding Officer: Given the constraints on time, I am afraid that I am going to have to limit speakers to one minute in this debate.

Kevin Stewart: Something that really frustrates me is when this Parliament is not given the competence to do something. Obviously, I think that the Parliament should have competence over everything that affects the people of Scotland. However, what we have clearly been told is that this amendment would take section 2 beyond the legislative competence of Parliament and could put the bill at risk of not receiving royal assent.

I want there to be protection for families who are facing exceptional pressure, and I hope to hear from the minister how we will be able to do that. However, what I do not want to do is to risk this bill not becoming law.

Mr Macintosh mentions things such as the minimum wage, which we do not control. He also mentioned the benefit cap that affects families, so it is rather strange that his party voted for that benefit cap in Westminster. What we are hearing today from the Labour benches is hypocrisy, hypocrisy, hypocrisy.

Tavish Scott (Shetland Islands) (LD): I want to put two questions to the minister in line with Ken Macintosh’s remarks. The first concerns the legal question of placing something in guidance versus placing it in statute. There seems to be a fundamental point there about the consistency of the bill, and I am sure that the minister will want to clarify for Parliament the approach that she wants to take on all of the issues that the Parliament is debating this afternoon.

Secondly, as Ken Macintosh also mentioned, CPAG and other groups have sought clarity on the Government’s position that the amendment could be considered by some lawyers to be outwith the powers of the Parliament. If that is the case, is this not a case in which the sensible and constructive arrangements that are being put in place under the Smith agreement to ensure that Governments can resolve these kinds of issues should be brought to bear?

Alex Johnstone (North East Scotland) (Con): We talk a lot about welfare issues in this Parliament but today, in talking about the Welfare Funds (Scotland) Bill, we are talking about the safety net that lies below the safety net. It is the last line of defence and, therefore, it is essential that no one should be allowed to fall through it.
Ken Macintosh has identified a group of people who he believes were covered by previous provisions and the interim Scottish welfare fund but are not covered by the proposals in the bill.

Kevin Stewart is concerned that the Queen might somehow be offended by the amendment and not grant royal assent. By stage 3 we should have had more clarity about whether or not the amendment is competent. Therefore, unless the minister can come up with a very good answer, it would be sensible for this Parliament to proceed by supporting the amendment.

Margaret Burgess: The intention behind the amendment has been the subject of much discussion throughout the passage of the bill, and I know that many stakeholders and MSPs would like to add explicitly to the bill families under exceptional pressure. Although I might have liked to have been able to include in the bill a specific reference to families under exceptional pressure, as with many decisions about welfare, it is not within the gift of the Scottish Parliament to legislate without having regard to the limits on its competence, as Kevin Stewart alluded to.

The qualifying groups in the bill mirror what is in the section 30 order, and we must stay within that to keep the competence of the bill. To accept the amendment would take the bill outwith the competence of the Scottish Parliament. The risk of the bill not gaining royal assent—which is not about the Queen—is just too great. It would result in the funds having no statutory basis and applicants having no right to an independent review by the ombudsman.

That is not to say that we will not try to amend the terms of the bill in future. The Smith commission agreed that this Parliament should have new powers to make discretionary payments in any area of welfare, and clause 18 of the draft clauses published by the United Kingdom Government goes some way towards delivering that. However, we do not think that it goes far enough and I have asked my officials to start discussions with the Scotland Office about widening its scope appropriately, so that this Parliament can revisit the terms of the bill in future. The Smith review by the ombudsman.

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The Deputy Presiding Officer: As members will be aware, whether or not the subject matter of an amendment is within the legislative competence of the Parliament is not one of the criteria that determine an amendment’s admissibility. I hope that that is helpful.

I call Ken Macintosh to wind up and press or withdraw his amendment, as briefly as possible.

Ken Macintosh: Thank you, Presiding Officer. Those comments were slightly helpful. Perhaps it would be more helpful for Patrick Harvie to know that the amendment was drawn up by the Parliament’s own lawyers, so its competence is in no doubt.

I do not know whether Mr Harvie has ever served on what used to be known as the Subordinate Legislation Committee, but every single week a number of instruments that go through this Parliament are challenged by the Scottish Parliament’s lawyers as incompetent and ultra vires, and the Government blithely ignores those ultra vires claims and says that they will not be challenged. It presents that particular argument: it says that they will not be challenged. I say to the minister, who will challenge this?

Having said all that, I take the opportunity to put beyond doubt the capacity of welfare funds to support low-income families who face exceptional pressures. As I said at stage 2:

“there is no barrier now, nor under the permanent arrangements by virtue of the bill’s wording, to prevent families under exceptional pressure from accessing welfare funds. Regulations and guidance will ensure that applications from that group continue to be given priority.”—[Official Report, Welfare Reform Committee, 27 January 2015; c 19.]

That means that families under exceptional pressure will continue to be able to access welfare funds in the same way as they do now.

Indeed, Scottish welfare fund statistics show that under the interim scheme 38 per cent of households receiving community care grants contain children, in comparison with 32 per cent of households under the social fund, and 30 per cent of households receiving crisis grants contain children, compared with 16 per cent of households that received social fund crisis loans.

For the reasons that I have outlined, I ask Ken Macintosh not to press his amendment.

Patrick Harvie (Glasgow) (Green): On a point of order, Presiding Officer. Given the questions about competence, it would be helpful to members who have not been part of the committee’s scrutiny of the bill if you could indicate whether the amendment’s presence on the marshalled list indicates that the Presiding Officer has ruled that it is competent.

The Deputy Presiding Officer: As members will be aware, whether or not the subject matter of an amendment is within the legislative competence of the Parliament is not one of the criteria that determine an amendment’s admissibility. I hope that that is helpful.

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Bruce Crawford (Stirling) (SNP): On a point of order, Presiding Officer. Can you please confirm to me that we are dealing with two completely different matters here? There is an absolute difference between something that is competently put down in an amendment and something that is competent under the Scotland Act. Will you confirm that those two things are completely different and that Ken Macintosh is talking a lot of nonsense?

The Deputy Presiding Officer: As you will be aware, the competence in this set of circumstances is a matter of debate and the Presiding Officer has made her ruling on it.

Mr Macintosh, please resume.

Ken Macintosh: Thank you, Presiding Officer. I ask the minister yet again, who exactly is going to challenge the competence or otherwise of this particular measure? We are trying to include families under exceptional pressure on the face of the bill. Does the minister believe that families will challenge this? Does the minister believe that benefit claimants will challenge this?

Sandra White (Glasgow Kelvin) (SNP): Will the member take an intervention? [Interruption.]

The Deputy Presiding Officer: Can we have order, please, to allow Mr Macintosh to make his points?

Ken Macintosh: Does the minister believe Mr Stewart's far-fetched claim that the Queen will challenge this?

Margaret Burgess: Mr Macintosh is asking whether families are going to challenge this. Of course I do not think that, but what we are saying is that the amendment is outwith the competence of what we are able to do just now. I do not want to put the bill under threat because of that. Families under exceptional pressure are not excluded from help through the permanent welfare fund bill that we are putting through today.

The Deputy Presiding Officer: Mr Macintosh, you must come to your conclusion very quickly now please.

Bruce Crawford: On a point of order, Presiding Officer. Will the Presiding Officer please confirm that it is actually the Advocate General who would decide upon whether a matter contravenes the Scotland Act or not; that the power and responsibility lie in that office; and that it is highly likely that if a body of legislation that was passed here did not meet his particular rules, he would rule against that act?

The Deputy Presiding Officer: Once a bill has been passed, there are various processes in place, as set out in the Scotland Act 1998, that may be initiated if someone views a bill or any of its provisions as being outwith the Parliament's legislative competence.

Mr Macintosh, please wind up now.

Ken Macintosh: Somebody who might use the bill might offer a challenge. Well, I put it to Mr Crawford, exactly who? Perhaps Mr Crawford will get on his feet again and tell me who is going to challenge the competence. Mr Crawford seems to suggest that his Government's own Advocate General is going to challenge the competence of a measure passed by this Parliament to help families under exceptional pressure. [Interruption.] I will take an intervention from Mr Salmond, if that is all right.

Alex Salmond (Aberdeenshire East) (SNP): I would have thought that a parliamentarian of Ken Macintosh's long experience would know that the Advocate General is a post of the Westminster Government.

The Deputy Presiding Officer: That is not a point of order, but thank you.

Mr Macintosh, you must close within the next 20 seconds.

Ken Macintosh: Thank you, Presiding Officer. I was quite pleased to hear Mr Salmond making a contribution to the debate, given that he supports the welfare cap that Mr Stewart talked about just a few minutes earlier. I was delighted to see him come into the debate. [Interruption.]

The Deputy Presiding Officer: Order! Are you pressing or withdrawing your amendment, Mr Macintosh?

Ken Macintosh: I see that the back benches seem very comfortable to sit on for Mr Salmond when he is challenged.

I suggest to the minister that she did not answer any of my questions.

The Deputy Presiding Officer: Press or withdraw your amendment, Mr Macintosh.

Ken Macintosh: Very well, Presiding Officer. I will press the amendment.

The Deputy Presiding Officer: Thank you.

The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a one-minute division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Amendment 4 disagreed to.
Amendment 5 moved—[Ken Macintosh].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (West Scotland) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Wilson, John (Central Scotland) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biggar, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbarchan) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
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MacDonald, Gordon (Edinburgh Pentlands) (SNP)
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Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
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McAlpine, Joan (South Scotland) (SNP)
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McMillan, Stuart (West Scotland) (SNP)
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Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urqhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 54, Against 62, Abstentions 0.
grant South Scotland (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Amendment 5 disagreed to.

Section 5—Further provision

The Deputy Presiding Officer: As we have passed the agreed time limit under rule 9.8.4A(a), I consider it necessary to allow the debate on group 3 to continue beyond the limit in order to allow those with a right to speak on the amendment in the group to do so. In this case, that will be only the minister and Mr Macintosh.

We now move to group 3. Amendment 6 is the only amendment in the group.

Ken Macintosh: I hope that amendment 6 is slightly less contentious or that it will provoke slightly less reaction than the other two amendments seem to have. I say to Mr Johnstone that I may be being too optimistic.

The effect of amendment 6 would be to ensure that decisions on applications for crisis grants should be made immediately when possible and, if
not immediately, by the end of the next working day in any event.

As some members will know from evidence to the Welfare Reform Committee, under the interim Scottish welfare fund local authorities have 48 hours in which to process a claim. However, under the previous DWP scheme, the deadline was 24 hours.

The issue first came to light when figures were presented to the committee that revealed that the interim fund was not meeting applicants’ needs as timeously as the previous scheme. For example, the figures for the old DWP crisis loan system show that payments were made in two days in 98.5 per cent of cases. That compares with a figure of just 94 per cent for the Scottish welfare fund.

The point was picked up by a number of voluntary and anti-poverty organisations. For example, Quarriers highlighted its concern that, if a 48-hour deadline is to be applied, “an application that is made on a Friday or a Thursday ... may not be processed until late on Monday.”—[Official Report, Welfare Reform Committee, 7 October 2014; c 4.]

That would be after the weekend.

The strongest evidence probably came from the Child Poverty Action Group, which said:

“In the experience of our advisors, applications for crisis loans made over the phone were processed very quickly by the DWP. Delay was sometimes caused by difficulties getting through on the phone in the first place but, once connected, the process was generally very quick. Decisions were often made at the end of the initial phone call, with the claimant given an office from which an award could be collected on the same day. This also happens with some (though not all) SWF crisis grant applications.”

CPAG concluded:

“there is no implicit reason that processing times should be longer in relation to crisis grants”—

that is, under the new system—

“than they were for crisis loans. We are also concerned that the reference to a 48 hour time limit once all relevant information is received may lead some decision makers to request evidence when it is not needed.”

In other words, although this is clearly not the minister’s intention, the 48-hour backstop will become a target that will inadvertently have the effect of slowing down the process rather than speeding it up.

In her remarks to the Welfare Reform Committee, the minister suggested that she was going to consult actively on the area and that she intended to think carefully about the issue before including it in regulations. Has the minister had time to think about the matter further? Can she share any of those thoughts with members? If not, I urge members to support my amendment 6, which would replace the current 48-hour backstop with the original 24-hour timescale.

I move amendment 6.

Margaret Burgess: We have made it clear, from the start of the interim fund, that the speed of processing is key because of the risk of harm to applicants. The guidance on the interim fund requires local authorities to process crisis grants as soon as possible, and it requires that urgent applications for living expenses be prioritised. The maximum processing time of two working days is to make it clear that long processing times are not acceptable—it is in no way a target or a waiting time.

Under the interim fund, 64 per cent of crisis grants are processed on the same working day and a further 24 per cent are processed the next day. Only yesterday, I visited a Scottish welfare fund team and spoke to the staff, who demonstrated their dedication and commitment in aiming to process all the crisis grant applications within a day, especially on Fridays, so that applicants are not left in crisis for extended periods.

As Ken Macintosh said, I indicated at stage 2 that I would consult on putting a 24-hour processing time for crisis grants in regulations. I have considered the matter further and have looked at the amendment again. The amendment supports the approach that we have taken in our current guidance, and it also fits with the performances of local authorities in processing crisis grants. Given the level of support for the amendment among stakeholders and across the chamber, I am happy to accept the amendment.

Ken Macintosh: Thank you very much, minister—it turns out that I was not too optimistic.

Amendment 6 agreed to.

Section 5A—Respect for, and dignity of, applicants for assistance

The Deputy Presiding Officer: We move to group 4. Amendment 7, in the name of Margaret McDougall, is the only amendment in the group.

Margaret McDougall (West Scotland) (Lab): Amendment 7 seeks to amend the provision inserted by Kevin Stewart’s amendment that was passed at stage 2 on respect for, and the dignity of, applicants for assistance. It adds that the particular needs and choices of applicants are to be considered by the local authority.

The amendment ensures that local authorities can make awards in cash rather than in kind, so that recipients can have some responsibility over choice and control in their lives. At stage 2, it was argued that introducing choice would put pressure on local authority budgets, but I argue that treating
people with dignity and respect is about allowing them to exercise their right of choice. The amendment ensures that a payment can be made either in kind or in money. There is no reason why a crisis grant would cost the local authority any more if the award was in money rather than in kind, so the policy would be cost neutral.

The amendment is supported by the Poverty Alliance, which has stated:

“The refusal to trust applicants with monetary grants increases stigma and can make the applicant feel like they are receiving hand-outs rather than accessing legitimate support from the state social security system. We believe it is important that all decisions are made around what is best for the individual and the applicant’s voice should be heard throughout the decision making process.”

In evidence, the Welfare Reform Committee heard of many incidents in which lack of choice resulted in increased stigma for the individual living in poverty. SCVO argued that the argument against choice focused primarily on administrative convenience. The bill will be the benchmark for any future benefits legislation in the Scottish Parliament, so it should be an exemplar for welfare legislation in Scotland. As such, it needs to show that the needs and choice of the individual are at the centre of the legislation. Being allowed choice and how people are supported must drive the fund and the supporting legislation.

I hope that the Scottish Government sees fit to support the amendment at stage 3, to remove the stigma and to support the applicants’ right to choice. I would argue that cost is not an issue, as this amendment to include choice is cost neutral.

I move amendment 7.

**Alex Johnstone:** I seek clarification on the amendment. If the purpose is merely to ensure that flexibility exists in the system, I can understand why we would want to pursue that. However, is it the intention of the amendment to bring in a guaranteed right of an applicant to have payment in cash from a local authority if they make that choice, or am I misreading it?

15:30

**Ken Macintosh:** I echo the point that this is about getting the principles behind the bill right. This is the first of a series of bills implementing a new welfare system in Scotland, so it is important that we get the principles right.

The minister accepted a stage 2 amendment on dignity and respect, which was lodged by Kevin Stewart. However, she left out the needs and the choices of the individual, yet that is very much in keeping with Scottish Government policy.

The Social Care (Self-directed Support) (Scotland) Act 2013 talks about individuals being able to “make an informed choice”. The Public Bodies (Joint Working) (Scotland) Act 2014, through integration principles, encourages integrated health and social care services to take account

“of the particular needs ... and circumstances”

of individuals. The NHS quality strategy mentions “improved patient choice”. What is wrong with having the word “choice” as a principle in the bill?

**Margaret Burgess:** It has always been a priority that welfare funds should be delivered in such a way that preserves the dignity of welfare fund users. That is why I was happy to accept the stage 2 amendment lodged by Kevin Stewart at the Welfare Reform Committee. That amendment accorded with my view that, regardless of the funds available, welfare services should be delivered with respect and dignity. That is now clearly established in the bill.

The issues that are relevant to the amendment have been covered in the debate on the group 1 amendments that were lodged by Ken Macintosh. As I said then, it is simply not the case that allowing increased choice for applicants would not lead to increased costs for local authorities.

Local authorities would have higher administrative costs if they had to discuss choices with applicants and had to deal with queries and people changing their minds. Even getting out the cash in some instances—I am talking here about community care grants—at the levels required would result in additional administrative charges.

The Scottish welfare fund is a budget-limited fund operating in a time of increasing need. It needs to help as many people as possible. As I have said, local authorities have found that—this applies to community care grants in particular—they can help more people by awarding goods rather than cash grants. I have also made it clear that, when it comes to crisis grants, we will introduce in regulation that the default position should be cash.

COSLA estimates that local authorities broadly save 20 per cent by using bulk buy versus cash payments. We cannot discount that. Furthermore, that cannot be done unless local authorities can guarantee certain volumes. It was also clear that local authorities should be providing specific items when they are required. That is in the current guidance, and it will also be included in the statutory guidance that we will issue under the bill.

I do not want to go over all the ground again—

**The Deputy Presiding Officer:** Indeed, I would be happy if you would come to a close.

**Margaret Burgess:** I am happy to restate that we will look again at the guidance for the
permanent arrangements to see whether we can do more to ensure that, when applicants have a genuine need for a particular product, there is a clear understanding about what should happen.

I was happy to support Kevin Stewart’s stage 2 amendment. It captured the essence of what stakeholders have been calling for without bringing additional pressure to bear on local authority budgets. Amendment 7 does not achieve that aim, so I urge Margaret McDougall to withdraw it.

The Deputy Presiding Officer: I ask Margaret McDougall to wind up and indicate whether she wants to press or withdraw her amendment.

Margaret McDougall: In answer to Alex Johnstone’s question, the gist of which was whether a local authority must provide a monetary crisis loan if that is what an individual chooses, I point out that the amendment allows for choice to best suit the needs of the individual in discussion with the local authority. There will be circumstances when the individual’s choice will be overruled by the local authority—for example, if that individual has a history of losing their purse, which is often why a crisis loan is given, or they have a health issue—but the choice would at least be discussed.

There has been wide support for amendment 7 from the third sector. As I said, there is no reason why a crisis grant would cost the local authority any more as a result of the award being made in monetary terms rather than in kind. The proposal would be cost neutral, so there would be no additional cost to the local authority.

The Deputy Presiding Officer: I am afraid that I must rush you.

Margaret McDougall: I heard nothing in the minister’s arguments that makes me want to reconsider, so I press amendment 7.

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biągi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Golding, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
the number that were rejected. That information is resulted in assistance in kind being provided and assistance being provided, the number that were received for the amount that was paid out of the welfare funds; every year.

Government to prepare an initial report, giving annual reporting. It would require the Scottish Government to do so before Parliament on or before the same date that would be laid before Parliament on or before 30 June 2016.

The initial report should include information on the delivery of the welfare funds, information about the delivery of the welfare funds, and we will end up having to do it. Scotland will recommend it in three years' time not do what amendment 8 proposes, Audit parliamentary scrutiny of that. Secondly, if we do transparency to its policy making and, indeed, to Government's interests to introduce a new form of agreement will create more opportunity in this area amendment 8 for two reasons. First, the Smith as briefly as possible, please. I support Margaret McDougall's The Deputy Presiding Officer: We move to group 5. Amendment 8, in the name of Margaret McAlpine, Joan (South Scotland) (SNP) McDonald, Mark (Aberdeen Donside) (SNP) McGirgror, Jamie (Highlands and Islands) (Con) McKeilvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP) McLeod, Aileen (South Scotland) (SNP) McLeod, Fiona (Strathkelvin and Bearsden) (SNP) McMillan, Stuart (West Scotland) (SNP) Milne, Nanette (North East Scotland) (Con) Mitchell, Margaret (Central Scotland) (Con) Neil, Alex (Airdrie and Shotts) (SNP) Paterson, Gil (Clydebank and Milngavie) (SNP) Robertson, Dennis (Aberdeen West) (SNP) Robison, Shona (Dundee City East) (SNP) Russell, Michael (Argyll and Bute) (SNP) Salmon, Alex (Aberdeenshire East) (SNP) Scanlon, Mary (Highlands and Islands) (Con) Smith, Liz (Mid Scotland and Fife) (Con) Stevenson, Stewart (Banffshire and Buchan Coast) (SNP) Steward, Kevin (Aberdeen Central) (SNP) Thompson, Dave (Skye, Lochaber and Badenoch) (SNP) Torrance, David (Kirkcaldy) (SNP) Urquhart, Jean (Highlands and Islands) (Ind) Watt, Maureen (Aberdeen South and North Kincardine) (SNP) Wheelhouse, Paul (South Scotland) (SNP) White, Sandra (Glasgow Kelvin) (SNP) Wilson, John (Central Scotland) (Ind) Yousaf, Humza (Glasgow) (SNP) The Deputy Presiding Officer: The result of the division is: For 37, Against 79, Abstentions 0. Amendment 7 disagreed to.

Before section 6F

The Deputy Presiding Officer: We move to group 5. Amendment 8, in the name of Margaret McDougall, is the only amendment in the group.

I call Margaret McDougall to speak to and move amendment 8. As we are now extraordinarily tight for time, I ask you to be brief, please.

Margaret McDougall: Amendment 8 relates to annual reporting. It would require the Scottish Government to prepare an initial report, giving information about the delivery of the welfare funds, that would be laid before Parliament on or before 30 June 2016. Subsequent reports would be laid before Parliament on or before the same date every year.

The initial report should include information on the amount that was paid out of the welfare funds; the number of applications that were received for assistance in pursuance of section 2; and the number of applications that resulted in financial assistance being provided, the number that resulted in assistance in kind being provided and the number that were rejected. That information is the bare minimum that the report should include. The Scottish Government could include additional information if it considered that appropriate.

Given that the bill will be the first real piece of welfare legislation that the Scottish Parliament has created, it is correct that we set procedures for proper review. Parliament should be able to scrutinise how the welfare funds are performing and their effectiveness, and annual reporting would allow that to happen.

Amendment 8 is in line with the principles of the Scottish Parliament, as it promotes openness and transparency. It is a matter of good practice to ensure that the statistics in question are kept on record and reported to the Parliament annually.

Such an amendment has been called for by the SCVO, which stated: "Given the critical nature of the Fund and the concerns outlined above, both Government and parliamentary review is vital. We support proposed amendments for review submitted by Scottish Labour. At the very least, we seek a strong assurance from Ministers that the Fund will be comprehensively reviewed and can be scrutinised by the Parliament under the provisions of the Welfare Reform (Further Provision) (Scotland Act) 2012."

The amendment was voted down at stage 2, but I hope that the Scottish Government will reconsider its position, especially given its recent announcements on the reporting of national health service statistics.

I move amendment 8.

Alex Johnstone: The information that amendment 8 requests be provided is information that should be easily available to the Government and which it is not onerous to record. The publication deadline and timetable that are set out would give the Government plenty of time to achieve what is sought. The provision of the information in question would foster and underpin transparency. It is a matter of good practice to ensure that the statistics in question are kept on record and reported to the Parliament annually.

The Deputy Presiding Officer: Tavish Scott— as briefly as possible, please.

Tavish Scott: I support Margaret McDougall's amendment 8 for two reasons. First, the Smith agreement will create more opportunity in this area for new developments that the Scottish Parliament will wish to take forward, so it will be in the Government's interests to introduce a new form of transparency to its policy making and, indeed, to parliamentary scrutiny of that. Secondly, if we do not do what amendment 8 proposes, Audit Scotland will recommend it in three years' time and we will end up having to do it.
Ken Macintosh: We are putting in place a new system for welfare, and I believe that we should have the information to be able to scrutinise and hold the system to account; the Parliament in particular should have a formal role to play in that. I remind the minister that, despite the heated exchanges so far, there is generally broad agreement about the bill but there are concerns about, for example, the underspend of resources in certain areas, gatekeeping by some local authorities and whether information about protected characteristics has been gathered. I urge the minister to accept the idea of a process of review and to give Parliament a role in that. I support amendment 8.

Margaret Burgess: I said at stage 2 that I agreed with the views in the Welfare Reform Committee’s stage 1 report, which said that on-going monitoring was preferable to a review clause. My view on the issue remains the same. Our statistical monitoring framework already captures the information that amendment 8 suggests we lay in a report before the Scottish Parliament. The statistical monitoring that we publish on a quarterly basis will provide an excellent mechanism for highlighting any issues that arise in the operation of the Scottish welfare funds, including those that Ken Macintosh outlined.

Many of the Welfare Reform Committee’s discussions since the welfare funds were launched have come directly from analysis of the statistical reports. Alongside the case observation work that we have been doing with COSLA, the statistical publications have allowed local authorities and the Scottish Government to respond to issues as they arise.

At stage 2, I also highlighted the role of the Scottish Public Services Ombudsman and the independent reviews of disputed local authority decisions that he will undertake. Those independent reviews will provide a mechanism for scrutiny of the operation of individual local authorities and any patterns in complaints and reviews that indicate unintended consequences of regulations and guidance.

I fully expect that the workings of the permanent arrangements will be subject to on-going parliamentary scrutiny through the committee process and future consideration of Scottish Government budgets. It would be very surprising if the permanent arrangements were not to be subject to scrutiny as the Scottish Parliament considers Scottish Government plans for implementing the new welfare-related powers that will flow from the Smith commission process.

I believe that sufficient mechanisms exist through the Parliament, Scottish Government statistical publications and the input that we all have from the third sector in Scotland to mean that an on-going requirement to lay an annual review before Parliament would not add significantly to the knowledge that we have on how welfare funds are operating; in fact, such a requirement could even divert scarce resources from the established continuous improvement that is taking place. On that basis, I ask Margaret McDougall to withdraw amendment 8.

The Deputy Presiding Officer: I am afraid that I must ask Margaret McDougall just to press or withdraw amendment 8.

Margaret McDougall: Oh. May I just thank Alex Johnstone and Tavish Scott for their support? I had hoped that the minister would support having a specific report, given the importance of the welfare funds and the bill. I press amendment 8.

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mailk, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDowall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)

Against
Boyack, Bob (Mid Scotland and Fife) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Goldie, Annabel (West Scotland) (Con)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mailk, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDowall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 50, Against 66, Abstentions 0.
Amendment 8 disagreed to.

Section 6G—Consequential modifications

15:45

The Deputy Presiding Officer: We move to group 6. Amendment 1, in the name of the minister, is the only amendment in the group.

Margaret Burgess: Amendment 1 is a technical amendment that removes a provision that related to a section of the bill that was proposed as a stage 2 amendment. The amendment in question was withdrawn, so there is no requirement for the provision in proposed new section 19(2C)(d) of the Scottish Public Services Ombudsman Act 2002, which the amendment removes.

I move amendment 1.

Ken Macintosh: We support the amendment. The minister recognised the disproportionate nature of the powers to be granted to the ombudsman, and amendment 1 arose as a consequence. I welcome it on behalf of the Labour Party.

The Deputy Presiding Officer: Minister, do you wish to wind up?

Margaret Burgess: No.

Amendment 1 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Welfare Funds (Scotland) Bill

The Deputy Presiding Officer: The next item of business is a debate on motion S4M-12485, in the name of Margaret Burgess, on the Welfare Funds (Scotland) Bill.

15:45

The Minister for Housing and Welfare (Margaret Burgess): I am delighted to open the stage 3 debate on the Welfare Funds (Scotland) Bill. I again thank Michael McMahon and the past and present members of the Welfare Reform Committee for their scrutiny of the bill and of the interim arrangements that are in place.

The bill is important in a number of ways. It is the first substantive welfare bill to come before the Scottish Parliament and it will provide a permanent and reliable safety net for people on low incomes. The bill sets out the high-level framework for welfare funds and lays down some important boundaries within which they will operate. For example, it expressly rules out the use of welfare funds to provide loans to applicants, and it requires local authorities to ensure that welfare fund customers are treated with respect and that their dignity is preserved. That is an important marker for how this Government wants to take forward the new welfare-related powers that are coming to the Parliament.

The detail of how welfare funds will operate, which we intend will be similar to the existing interim Scottish welfare fund, will be set out in regulations and guidance that we will consult on in the summer. By introducing the bill, we have demonstrated a long-term commitment to the Scottish welfare fund and allowed the option of independent review of cases by the Scottish Public Services Ombudsman. The funding for the welfare funds can also be ring fenced, if required.

That approach is in direct contrast to the position in England, where no equivalent systematic local welfare scheme is in operation. I am proud to be part of a Government that is taking a distinctive approach to protecting vulnerable people in Scotland.

At stage 1, the Welfare Reform Committee took evidence from a wide range of organisations and individuals. It is a testament to the successful partnership approach that we have adopted with the Convention of Scottish Local Authorities—and to the hard work that local authorities have put in to develop the service over its short life—that the majority of the evidence that the committee heard at stage 1 was positive.

I also record my thanks to all those who work in the Scottish welfare fund teams across the country. I have visited a number of them and have seen how hard working they are, and how committed they are to the service that they are providing to their local communities.

There have been some amendments to the bill. The largest number of amendments at stage 2 were planned in advance due to the timing of our discussions with the Scottish Public Services Ombudsman. They related to the detail of the ombudsman’s role in undertaking independent reviews of local authority decisions on welfare fund applications. The independent second-tier review function is key to getting the right decisions for individual applicants and holding local authorities to account. It will provide a national overview of how the fund is working, and the feedback will give policy makers an insight into the decisions that are being made and how they relate to the policy intent.

Another key amendment to the bill was the removal of section 3, which related to outsourcing. It was originally included in order to allow local authorities to contract with external parties to provide services on local authorities’ behalf in the future. Many of our stakeholders were clear in their view that private sector companies should not be allowed to administer welfare funds. I had never envisaged that it would be private sector companies that would do that. However, as it was not possible to specify in the bill that private sector firms could not bid for those contracts, the bill was amended to remove that section.

We also took on board the views of the Delegated Powers and Law Reform Committee by establishing in the bill a right of review of a decision by a local authority. We acknowledged that, as the bulk of the detail of how welfare funds will operate will be set out in regulations and guidance, regulations under the bill should be subject to affirmative procedure.

I return to the issue of families under exceptional pressure. There have, of course, been discussions about other amendments that were proposed. We debated that earlier. I know that many stakeholders and MSPs wanted families under exceptional pressure to be added to the bill as an explicit group. The competence issue surrounding amendments relating to families under exceptional pressure has been well rehearsed and I do not want to go over it again. However, I want to restate that families under exceptional pressure will continue to be able to access welfare funds in the same way as they do now.

Michael McMahon (Uddingston and Bellshill) (Lab): I thank the minister for trying to clarify the situation but, in doing so, she is making the situation more bizarre. If it is the case that families under exceptional pressure can currently access
the Scottish welfare fund, if an amendment had created a difficulty for the passage of the bill, all that would have happened is that the welfare fund would have continued to operate as it does, and families under exceptional pressure would have continued to access that fund. Why, then, was the minister so resistant to including families under exceptional pressure in the bill?

Margaret Burgess: There are several issues here. The Scottish Parliament has always introduced competent legislation and we want to, and will, continue to do that. That is important for the Scottish Parliament.

The interim arrangements that we have now with COSLA operate on a discretionary basis. We have no arrangement that that would continue further. We are aware that some councils are coming out of COSLA. We want to ensure that we get the situation on a statutory footing: that is important. It is also important that we get the legal right of review into the process, which is what we are currently doing with the SPSO. That does not exist under the interim scheme.

It is important that we get the legislation right and make clear at the outset that families under exceptional pressure are not excluded from accessing permanent arrangements. We have been clear on that from the start. We are in discussion with third sector groups on that and they understand the issue involved. Their concern is that we should ensure that families under exceptional pressure are not excluded from accessing funds. All the information that we have is that they are not currently excluded and will not be excluded from the statutory fund.

On families under exceptional pressure, the statistics show that 38 per cent of households that receive community care grants contain children, compared to 32 per cent under the social fund. The figure for crisis grants is 30 per cent compared to 16 per cent under the social fund.

Another area that has been the subject of much debate is the provision of goods versus grants for community care grants, and how that links to choice for individuals. First, I repeat that the guidance on the Scottish welfare fund states that local authorities must ensure that the item awarded meets the need of the applicant. For example, where people need adapted or specialist items because of a medical condition or their family make-up, that item should be provided. It is not a question of choice—it is a need, and that need should be met.

However, the Scottish welfare fund is a budget-limited fund operating in a time of increasing need. For that reason, it needs to be able to help as many people as it can in the most efficient way possible. Local authorities have found that that means awarding goods rather than cash grants, particularly in the case of community care grants. I do not accept that providing choice would not lead to additional costs. Local authorities have given us information on that, and have stated that there would be higher administrative costs for them.

I reiterate that we will look at making cash or cash-equivalent payments the default position for crisis grants to meet immediate needs in the short term.

Many applicants tell us how much they appreciate the service that local authorities provide. Delivery and installation of the goods relieves a lot of stress, and that can often be arranged prior to people moving in to a house.

Margaret McDougall: There are several issues here. The Scottish Parliament has always introduced competent legislation and we want to, and will, continue to do that. That is important for the Scottish Parliament.

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Margaret McDougall: Margaret McDougall has answered my point. The amendments that she and Ken Macintosh have lodged would have put even more pressure on local authorities—as the authorities told us in evidence. Local authorities are trying to help as many people as they can in their area in the most cost-efficient way possible. In administrating community care grants, that is very often done by providing goods and not cash. I would prefer that local authorities be able to help as many people as possible.

The Deputy Presiding Officer: Minister, you are completely out of time now, and I ask you to come to a close.

Margaret Burgess: Margaret McDougall has answered my point. The amendments that she and Ken Macintosh have lodged would have put even more pressure on local authorities—as the authorities told us in evidence. Local authorities are trying to help as many people as they can in their area in the most cost-efficient way possible. In administrating community care grants, that is very often done by providing goods and not cash. I would prefer that local authorities be able to help as many people as possible.

The Deputy Presiding Officer: I urge you to close, please.

Margaret Burgess: Have I to wind up, Presiding Officer?

The Deputy Presiding Officer: Yes.

Margaret Burgess: Okay.

Delivery of the current scheme is generally viewed in a positive fashion. Most people have told us and the committee that local authorities are the right people to deliver the fund, and they have welcomed the independent review function. The approach to the bill has, on the whole, been very consensual, and I look forward to working with members of all parties in the chamber to ensure that the regulations and guidance under the bill help to deliver the best possible outcomes for welfare fund customers.
I move,

That the Parliament agrees that the Welfare Funds (Scotland) Bill be passed.

The Deputy Presiding Officer: I call Michael McMahon. You have up to seven minutes, but less would be more as we are very tight for time today.

15:57

Michael McMahon (Uddingston and Bellshill) (Lab): On behalf of the Scottish Labour Party, I very much welcome what I am sure will be the passage into law this afternoon of the Welfare Funds (Scotland) Bill.

I thank the clerks to the Welfare Reform Committee, who have helped to get the bill to this point so efficiently. I am also grateful to the witnesses who informed deliberations on the bill as it progressed through Parliament.

Having heard all the evidence, I am in no doubt that placing the interim Scottish welfare fund on a statutory basis is the right thing to do. Parliament has heard the message that the interim fund has benefited many vulnerable people throughout Scotland. The fund has had its problems and is by no means perfect, but as the minister said, it has evidently been a comparative success.

I will focus first on the positives. Local authorities told us that creating a statutory duty will enhance the ability to retain staff members who bring expertise and knowledge to practical implementation of the fund. Strange as it may seem, what is no longer in the bill is also a positive outcome—the bill no longer allows for outsourcing. However, the potential benefits that can be derived from joint working between local authorities, such as economies of scale, increased purchasing power, sharing best practice and increasing consistency, will remain in place, and that can only be welcome.

Another constructive aspect of the bill concerns placing the review of decisions with the SPSO and having that organisation take on a new role as the second-tier review body. Views on that were split between local authorities, which thought that it would be more consistent with the principle of local self-governance for secondary reviews to remain in local authority control, and the third sector, which believes that use of the SPSO will make appeals independent, consistent and impartial. The Scottish Labour Party agrees with the third sector in that respect, and our agreement with the third sector does not end there.

However, that brings us to where our disappointments with the bill persist. It is completely beyond my comprehension why the Government has remained so resistant to the principle of dignity being enshrined in the bill.

Although the bill sets out the circumstances in which a local authority can provide assistance, the failure of the Scottish Government to agree to an amendment that would have seen the needs of families facing extreme financial pressure added to those circumstances is a bitter disappointment. The bill clearly addresses needs that are the result of sudden crisis, but many families have needs that are on-going parts of their everyday lives.

The Department for Work and Pensions social fund had a category for such families under exceptional pressure, and although I acknowledge the Government’s assurances that it wants the fund to support that group of people, its absence from the bill means that it is now a commitment that comes without a guarantee. That is why Labour agrees with the third sector and that is why, as I have argued, the Scottish Government should have enshrined in law that all those who are in legitimate need of the fund are able to access it as of right. If the Scottish Government is able to put that in guidance, surely it is not outwith the ambit of the bill. If it is in the guidance, it could be in the bill itself. We now have the ridiculous situation in which a piece of legislation is going to be passed without that principle in the bill, but the powers are going to come to us through the Smith agreement and we may have to come back and amend the act to put in place exactly what is happening under guidance in the bill. What a ridiculous situation has been created this afternoon.

Mark McDonald (Aberdeen Donside) (SNP): Surely Michael McMahon must accept that if, at the moment, we do not have the competence, it would be wrong, lest it risk the legislation, to put that in the bill, on the basis that in a few years, as a result of transfer of powers under the Smith agreement, we will have that competence. The point at which powers are available to this Parliament is the right time to re-examine things, rather than to do it pre-emptively when we do not have the powers.

Michael McMahon: No matter how many times Mark McDonald and his colleagues try to argue that case, it will not make any more sense to say that a bill would be jeopardised by including something that it will already do through guidance and which we will have the power to do at some point in the near future. If that is the case, why will not the Scottish Government do what it boasts of doing at any other time and stand up to the deadly Westminster Government and implement something that will benefit the people of Scotland? That argument is not acceptable. He can make it as many times as he likes, but it will not stand any serious scrutiny.

Quite frankly, to say that a provision can be in guidance but not in the law itself because of the
Westminster wording of the section 30 order is a total cop-out.

Compelling arguments have also been made that it is better for an applicant to receive an award in the form of cash than to receive vouchers or goods.

Kevin Stewart (Aberdeen Central) (SNP): Will Michael McMahon give way?

Michael McMahon: I need to make some progress.

The provision of goods allows councils to ascertain whether an award is being used as intended—and local businesses can benefit from organised procurement and distribution—but that ignores the fact that choice is essential in order to maintain dignity and self-determination and to reduce stigma for applicants. Treating applicants with respect despite their circumstances is vital, so providing options and meeting individual needs should be central to the process.

Given the increasing impact of welfare reforms, many of which are still to be seen, there is genuine concern about the growing level of demand on the fund, and worry has also been expressed about the variation in spend across Scotland. That is why the work of monitoring unmet need, understanding why it may have arisen, and watching out for potential shortfalls in administrative funding—which local authorities have already been supplementing—surely merits support for annual reviews taking place in order to ensure that the wider outcomes that the bill is trying to achieve are not jeopardised. However, for reasons best known to itself, the Scottish Government has yet again turned a deaf ear to that request.

Another positive thing came late this afternoon, however—the reduction in processing time for applications. Local authorities would have had 48 hours in which to process a crisis grant, while for the previous DWP fund the deadline was 24 hours. I welcome the minister’s decision to listen to the people who have said that, when the key word is “crisis”, it is essential that that part of the safety net that is provided to vulnerable people should not be extended beyond a whole day.

As I said at the beginning, Scottish Labour very much welcomes the creation of the Scottish welfare fund, but we agree with the poverty and disability organisations that believe that the principles of dignity and choice for applicants should have been enshrined in the bill. It is a good bill, but it could have been so much better.

16:05

Alex Johnstone (North East Scotland) (Con): This has been an interesting and almost unique process, in that the somewhat surprise devolution of an area of welfare expenditure required the Scottish Government to bring together an interim Scottish welfare fund and put it in place a year before the legislation to formalise it was produced. As a consequence, we have taken the suck-it-and-see approach. We have seen what has been done well and where there have been problems and we have made changes in the legislation in some cases, when it has made good sense to do so.

At the end of the day, not many people opposed the move away from loans to grants, such as community care grants and crisis grants. One local authority argued that it might be appropriate to continue with loans; perhaps we can do something else with loans in the future, but it is right that this scheme should concentrate on grants. I see no problem with that approach.

The key issue that came to the fore even during the interim scheme was the need to incorporate a proper appeals procedure in the scheme. With the bill passing its final stage in Parliament, we can formally put that procedure in place.

Key elements that were discussed during consideration of the bill in committee included the 24-hour versus the 48-hour timescale. I am glad that we seem to have come to a conclusion on that and that the minister has put our minds at rest.

One person—a scheme user—who gave evidence to the committee thought that their application had been completed in the initial phone call yet believed that they were left to wait for 48 hours until news of their successful application was passed back to them. If that happened, that was unacceptable. I hope that it did not happen and that it was merely an impression that was created in error. We have had a clear indication from the minister that that is not the intent, so such cases should not—and hopefully will not—happen.

We have seen from the interim scheme that local authorities are very good at doing this kind of thing. There has been a mix of success rates, and we were in a dangerous situation for a while, when we thought that the interim scheme would be underspent because it took so long for people to understand what was available and for systems to be put in place to pass out that money.

The Scottish Government added money during the year, which resulted in more money being available. However, at the end of the process, we had a scheme that had largely run to budget, supplied support for those who needed it and given us examples of good practice in many local authorities across Scotland. I hope that the scheme is a successful model that we can perhaps adopt for the delivery of other support mechanisms that are yet to be devolved to us.
One area that I am disappointed about is the outcome of the discussion on outsourcing. I perfectly understand that most people in the Parliament—perhaps not including me—object to the private sector’s involvement in the provision of public service. However, such provision could give us the opportunity to include skills and knowledge that are held in the third sector and to use them in the delivery of the scheme. I hope that we have not lost that opportunity completely by virtue of the fact that some have an aversion to private sector involvement.

We discussed at length today the fact that the Government has chosen to go down the road of the affirmative procedure for changes in the legislation once it is brought in. I will go off at a tangent here and say something quite clear—

The Presiding Officer (Tricia Marwick): Not too much, because you have 30 seconds left.

Alex Johnstone: I believe that the negative procedure is underrated and underused. In the bill’s case, the negative procedure would have allowed change to happen more quickly if the need for change was identified.

In the long term, we should be concerned about the very high administration costs of the scheme. In the grand order of things, the scheme is relatively small, and too much of the money will be spent on administration. We have to drive down administration costs in the future, when we will have more responsibilities.

We will support the bill.

The Presiding Officer: We move to the open debate. I remind members that speeches should be of up to four minutes. We have no time in hand.

16:10

Kevin Stewart (Aberdeen Central) (SNP):
Between April 2013, when the interim fund was established, and June 2014, 100,000 households were helped by the Scottish welfare fund. On the bill that is before us, Councillor Norman MacDonald of Comhairle nan Eilean Siar told the Welfare Reform Committee:

“legislation will give certainty not just to local authorities but to the clients about what is in place.”

Dave Berry of Dundee City Council said:

“The proposed legislation would give local authorities assurance. In fact, they will now have a duty that must be done. That can only be good for the continuing development of the Scottish welfare fund.”—[Official Report, Welfare Reform Committee, 30 September 2014; c 18.]

It is absolutely right that we lay out the legislative framework and put the interim scheme in statute.

I am a little disappointed that we are constrained by the powers that we have. We have debated that today. One thing is for sure; I want to make certain that the bill receives royal assent so that the duty is there and local authorities must do all that they can to help those who are in greatest need.

As I mentioned earlier, we have a fund of £38 million to mitigate the effect of £6 billion-worth of welfare cuts. Although good work is being done across the country, it has to be said that the onslaught of austerity and welfare cuts that we are facing is incredible. Families across the country are suffering because of the Westminster Government’s policies.

On some aspects of welfare reform, some Tory ministers have expressed their ire. Today’s Guardian reports that Nick Boles, a Conservative minister, has described sanctions as “inhuman”. It is hardly a system that has dignity and respect at its heart. I am pleased that the Scottish Government was willing to accept the amendment that I lodged at stage 2 to ensure that all welfare fund applicants are treated with respect and that their dignity is preserved. I wish that the Westminster Government would take lessons on that.

The interim scheme did not provide some things that we wanted, including an appeals system. I am glad that the issue of an appeals system has been resolved in the bill.

The Presiding Officer: You need to start winding up.

Kevin Stewart: I am also pleased that we chose not to go down the road of loans, which would have been detrimental to those who are in greatest need.

A fund of £38 million to mitigate the effect of £6 billion of cuts is not all that is required, but it is all that we can do at present. In terms of the future powers of the Parliament—

The Presiding Officer: I am sorry, but I need to move on. Malcolm Chisholm is next.

16:14

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I welcome the fact that the Department for Work and Pensions transferred funds for community care grants and crisis loans to the Scottish Government in 2013; that the interim scheme that was set up then is to be set in statute; and that there has been progress between the interim scheme and the bill that is before us. In particular, I welcome the fact that we are to have second-tier reviews through the Scottish Public Services Ombudsman, which will give the public more confidence in the appeals process, although
we have to advertise all the time people’s right to appeal.

I welcome some of the changes that have taken place during deliberations on the bill—most notably the dropping of section 3, which would have involved outsourcing to the private sector. I was also perhaps a little surprised but certainly pleased that the Government accepted the 24-hour time limit on decision making that Ken Macintosh proposed today.

However, we have gone backwards from the interim scheme in one regard at least—that of families experiencing exceptional pressure, on which we had the most contentious debates today. Ken Macintosh gave graphic examples of such families, such as lone parents facing pressure through a relationship break-up or people fleeing domestic violence. I have still not heard from the minister—perhaps we will hear it in her closing speech—how it can be outwith her powers to put something in primary legislation but not outwith them to put the same words in secondary legislation. I have never heard that in all my many years in Parliament.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Will Malcolm Chisholm give way?

Malcolm Chisholm: I am sure that Stewart Stevenson will enlighten me.

Stewart Stevenson: The issue is not vires but who is a gatekeeper. There are no gatekeepers for secondary legislation except the courts, but gatekeepers exist for primary legislation and they block it. That is why it matters.

Malcolm Chisholm: That is an interesting point, but I still find it strange. As Stewart Stevenson likes this kind of thing, it would be interesting if he could find me a precedent for it happening in the years of the Parliament or even before. I have no doubt that he will do that for homework and tell me tomorrow.

This is the beginning of welfare devolution. I would like there to be quite a bit more, and we will certainly get more from the Smith proposals. It is therefore important that we have clear principles in the bill that will be at the centre of the devolved aspects of the welfare state. That is why the amendments about taking into account needs and choices were important.

Those amendments related to the issue of cash versus vouchers. Inclusion Scotland made an interesting comment when it said:

“the use of vouchers may impact on the dignity and respect of applicants”.

It is striking that we had strong evidence from Inclusion Scotland, the Child Poverty Action Group and others whom the Government might normally heed more. That is an important point, and I was disappointed that all the amendments that Labour proposed on the issue were defeated.

That also applied to our proposal for annual reporting. We have to keep a close watch on how the bill works. The Child Poverty Action Group referred to continuing problems of gate keeping and poor data collection. Another point that has not been mentioned, and which struck me as surprising when I realised it, is that the fund was underspent last year.

We have to keep a careful watch on the fund. The Finance Committee, on which I sit, considered the administrative cost and welcomed the benchmarking exercise that COSLA was doing on that. Perhaps the minister could update us on it in her closing speech.

The Presiding Officer: You need to draw your remarks to a close.

Malcolm Chisholm: I am just coming to a conclusion. I have 20 seconds.

The Finance Committee also asked how the Government arrived at the figure of 2,000 second-tier reviews when there have been only 144 this year.

We have to monitor the bill closely, even if there is to be no annual review.

16:18

Joan McAlpine (South Scotland) (SNP): I welcome the chance to contribute to the stage 3 debate on the Welfare Funds (Scotland) Bill. As members are aware, I am a relatively new member of the Welfare Reform Committee. When I was appointed to it, I met the clerks, who told me that, unlike some other committees of the Parliament, it is a consensual committee. They were not wrong.

The committee’s consensual nature is due in no small part to the issues that it deals with, and the Scottish welfare fund is a good example. People who access the fund are desperate and their individual circumstances must be acknowledged and respected, not politicised. That is not to say that members do not have their disagreements—as we have had today—but, in general, it is fair to say that we are broadly aligned in opposing Tory welfare reforms and taking action to mitigate their effect in Scotland.

Members around the chamber have all dealt with cases that highlight the terrible consequences of United Kingdom Government welfare reform for some of our most vulnerable citizens. As has been mentioned, the Scottish welfare fund has already helped 100,000 households, and it is right that we put it on a statutory basis to ensure that that vital
help continues. It is, of course, not right that so many of our citizens need that help in the first place.

Themes that have arisen in the committee as the bill has progressed are concepts of dignity, choice and respect. I was pleased that the minister lodged amendments at stage 2 to remove the ability to outsource the scheme, so there is no risk that private companies will be left in charge—not that that was ever likely to happen under this Scottish Government, but safeguards are nevertheless welcome.

Those themes were also raised in relation to the ability of local authorities to give support in kind, rather than cash, as has been discussed today. I sympathise with Ken Macintosh’s intentions in amendments 2, 3 and 5 but, as Kevin Stewart and the minister pointed out, most of the in-kind grants are to help people who are leaving institutional care, and choice is available.

Another point that has been made is that we have a £38 million fund to deal with benefit cuts of £6 billion, and we simply have to ensure that as many people as possible are helped by that fund.

The £100 million that the Scottish Government is providing in 2015-16 is a drop in the ocean. There will be huge pressures on the fund and we must acknowledge the opportunities that COSLA outlined in its briefing for bulk-buying goods. I do not believe that the bill is the correct place to address those issues.

I have sympathy for amendment 7, which Margaret McDougall lodged. It would have required consideration of applicants’ particular needs and choices. However, we must be careful when working in the context of extreme budgetary pressures not to increase the administrative burden on local authorities.

It is important to remember that the people who will access the fund can be facing absolute destitution. The pot that we have to help them is limited and, if we do not use it cost effectively, other people who are facing that absolute destitution will be deprived of help.

At stage 2, my colleague Kevin Stewart lodged an amendment to require local authorities to take reasonable steps to ensure that all welfare fund applicants are treated with respect and have their dignity preserved. That goes a long way towards addressing Margaret McDougall’s concerns.

I hope that members across the chamber will be able to support the bill, albeit with a heavy heart. As other members have outlined, and as I have said before, in such a wealthy society as ours, we should not have to pass such legislation.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): When welfare reform at United Kingdom level seems to be incoherent and downright scary for most if not all vulnerable people, it is welcome that the Scottish Government and the Welfare Reform Committee have taken time to consult and be guided by the many excellent third sector organisations across this land that understand and support the victims—I do not use the word “victims” lightly—of welfare reform, which seems to be more about reform and less about the actual welfare of our citizens.

The amended bill that is before us today proposes placing a duty on local authorities to deliver the fund, in line with regulations and guidance that may be issued by Scottish ministers. As we know, local authorities have been delivering the fund on an interim basis. The fund is intended to provide a safety net for vulnerable people in an emergency when there is an immediate threat to health and safety, through the provision of crisis grants.

I thank the Child Poverty Action Group for the advice and information that it has provided to us during the scrutiny of the bill. It said:

“The development of the Welfare Funds bill, with additional Scottish Government investment in a national Scottish welfare funds scheme following the abolition of DWP crisis loans and community care grants has provided a level of support to households in Scotland now sadly lacking in many other parts of the UK.

Currently, the fund provides a vital means of support for vulnerable, low income households who are in or at risk of crisis, facing exceptional pressures or whose ability to live independently is threatened. It plays an important preventative role, providing a safety net to reduce pressure on costly public services such as residential care, homelessness services and the NHS.”

The fund will also enable people to live independently or to continue to live independently, preventing the need for institutional care, through the provision of community care grants.

When I was a training officer in social work services, I delivered a course called “Promoting Independence”. It was about not Scotland’s constitutional future but the value that is placed on personal independence for people with additional support needs and disabilities. I therefore draw the minister’s attention to the concerns that were raised by the many organisations that gave evidence on the bill. I know that she will be well aware of them, but I want to reinforce the need for clear and unambiguous guidance on the needs of people who fall into the category of families under pressure. I know that the minister holds dear the fundamentals of proper wraparound care for families, and I welcome her reassurances on that particular matter.
In her briefing to us, which as usual was excellent and forthright, Lynn Williams, on behalf of the Scottish Council for Voluntary Organisations, said:

“We must not underestimate the importance of this legislation. The Fund is small but its reach is significant. It is the final safety net for people in need. Scotland can take its first steps in creating a more compassionate social security system with a fair, inclusive and empowering safety net established as a result of this Bill, or we can continue to stigmatise those in poverty. As parliamentarians, we ask you to take the lead in this journey and support amendments to this important piece of legislation.”

I say to colleagues and the minister that we have been set a high standard indeed, but it is one that all parties in this Parliament can live up to. If we do not, we have superb advocates in the likes of Lynn Williams, CPAG, Inclusion Scotland and many others to remind us why a welfare state should be just that: a place of safety for our people in need. I commend the bill and the work of all those who have been involved in bringing it to this stage today.

16:25

Tavish Scott (Shetland Islands) (LD): I strongly support the Welfare Funds (Scotland) Bill, which will put in statute measures that have been of an interim nature, and I recognise the minister’s role in introducing it to Parliament.

The parliamentary committee has done important work in scrutinising the bill and listening carefully to those who have been directly affected by so much of welfare reform, which is without doubt painful and extremely difficult for many people. I recognise the submissions that have been made in advance of the stage 3 proceedings and I reflect, as might one or two members who have been involved in the Smith commission but are not here today, that some of the most compelling evidence given in recognition of the changes that Scotland can and should be able to introduce in the future are in the area of the safety net that we provide for those of our citizens who are less fortunate than others. There is no question but that there will be further progress in this broad area of policy and I hope that the Devolution (Further Powers) Committee, under Bruce Crawford’s careful chairmanship, can reach a sensible cross-party accommodation of what is certainly a difficult policy issue. In my view, there is no doubt that that progress will be made.

I also recognise the point, which Malcolm Chisholm first made, about the review mechanism that the Government is introducing through the bill, in the shape of the Scottish Public Services Ombudsman. That body, with which many of us interact on behalf of our constituents daily, does not have a completely blemish-free record. Every person who does not make their complaint stick is less than enamoured with the SPSO, but nevertheless I welcome the Government’s intent to introduce the appeal mechanism and ensure that there is a second-tier reviewer. I am not sure that that welcome will be universally shared by those who make the initial decision, but that is the nature of the game.

In that context, I recognise that local authority officers make difficult decisions in many existing areas of devolved policy, whether on housing allocations or other issues that directly affect people’s lives. The bill has added another tier of responsibility to those officers and with the Smith agreement and what will happen thereafter, more will be added to that workload. We need to recognise that in how we support local government.

I have two points on the amendments that were carefully considered by the Parliament, although whether they were “carefully considered” is a moot point given that the time for back benchers—never mind the ministers—was so limited. We could reflect many times on whether we have ever got that right in the 16 years that we have been in this place.

My first point concerns the debate on goods versus cash and how Government should frame the issue for local authorities to make the decision. The state should not assume that it knows best on these occasions, but when I listened to that debate it seemed that a very top-down approach was being taken. Surely we should do this from the bottom up. That was reflected in some of the submissions that we all read prior to this debate.

My second point is on the annual report, which the minister does not agree with. I understand that; I was a minister too, and I always had civil servants telling me that we could not do something. This is a really good point about parliamentary scrutiny when we introduce something new, to find a different way to do things. We are introducing something new here, and I think that Parliament should adapt and change over time, not just do things the way that we have always done them. Our committee structure is not perfect, but I am absolutely sure that Audit Scotland will pore over all this and we should be ahead of the game, rather than wait for it to happen afterwards.

16:29

Sandra White (Glasgow Kelvin) (SNP): I thank the Welfare Reform Committee, of which I am not a member, and the minister for the work that they have done on the Scottish welfare fund. We welcome the £38 million and I know that the
Scottish Government will use it in the best interests of the Scottish people.

However, we need to highlight the fact that 85 per cent of welfare powers are still in the control of Westminster. I know that Michael McMahon, who has just walked behind me, agreed with the third sector in his contribution. I say to other parties in the chamber that it was a pity that they did not support the 65 voluntary organisations, including the SCVO, Children 1st, Engender, Barnardo’s and the Poverty Alliance, which called for the devolution of welfare powers. As other members said, we are looking at £6 billion of cuts to welfare. Yes, £38 million is something, but what a missed opportunity to be able to say to our people that in a rich country such as Scotland they do not have to scrabble about looking for extra money when they are in dire straits.

Let us look at the benefits that are still reserved: universal credit, employment support, income support, housing benefit, child tax credit, jobseekers allowance, state pension, pension credit, incapacity benefit, child benefit, in-work credit, and maternity and paternity pay—all reserved to Westminster. We had the opportunity to make sure that they were brought to the Scottish Parliament.

However, as I said, I congratulate everyone on the Welfare Reform Committee on the work that they have done. We have the £38 million at the moment and we will use it in the best interests of the Scottish people.

I want to touch on a couple of issues, which I think Tavish Scott also mentioned. I tried to intervene—twice, I think—on Mr Macintosh, but I was not successful, so I will pick up the points just now. Ken Macintosh and, I think, Margaret McDougall, asked whether the fund would be operated through grants or cash. Their colleague Michael McMahon answered their question, because he said that local authorities could work together and purchase using economies of scale. I have seen examples of that in my constituency, as I am sure that others have. People get the goods almost straight away. It creates employment and recycles. People can go and pick up the goods that they desperately need and give over the grant that the local authority gives them.

Ken Macintosh (Eastwood) (Lab): Will the member take an intervention?

Sandra White: I am sorry, but I do not have much time. I would have liked to take an intervention. Ken Macintosh’s colleague answered the question; it is about economies of scale and local authorities working together.

The other issue was competency. I tried to intervene during that discussion. Most people here know that I have been trying to push forward a bill on responsible parking. I have been told on many occasions by the clerks in this Parliament and the legal team in this Parliament that even if the bill went through the Parliament it could still be deemed not competent and someone could still challenge it in court. We have to remember that. It is not stopping me obviously—I am still pushing the bill forward—but it has made it more and more difficult for me to get what I think should be welcome legislation through the Parliament. Those are the constraints that I, and others, have been put under by the advice that we have had from the Parliament that the bill could go through but still be deemed not competent and challenged. I remind members that it does not just happen with the Labour amendment or this bill—it has happened previously.

16:33

Margaret McDougall (West Scotland) (Lab): I am the newest member of the Welfare Reform Committee and it has been a very interesting time for me to join the committee as the bill has made its passage through the Parliament.

This is a significant piece of welfare legislation and it is crucial that we get it right to protect vulnerable people. Therefore, I am disappointed that the Scottish Government decided not to support the Labour amendments today, because they promoted choice, openness and transparency and provided support to families under exceptional pressure.

The argument that my amendment on choice would put additional pressure on local authority budgets is frankly nothing more than a smokescreen. The amendment is effectively cost neutral and would allow a local authority to pay either in cash or in kind based on what the claimant would prefer and what would best suit the needs of that individual, after discussion with the local authority. It goes hand in hand with Kevin Stewart’s amendment that was accepted at stage 2, as choice is crucial to dignity and respect. My amendment was supported by the Poverty Alliance, which argued that the refusal to trust applicants with monetary grants increases stigma and can make an individual at a very low point in their life feel that they are receiving handouts rather than accessing legitimate support from the state social security system. It was also supported by the SCVO, which stated that the fund should be driven forward by choice and should set a benchmark for any future legislation.

Today, the Scottish Government had a choice, and it chose to ignore the calls of Scottish Labour, the Poverty Alliance and the SCVO.

It is also worrying that the Government has voted to block openness and transparency by
refusing to support annual reporting. The Lib Dem member, Tavish Scott, made a good point. The legislation is new, and we should be looking at new ways in which to review and scrutinise it. In my view, we should do that with an annual report. The amendment was supported by the SCVO, which has called on the Scottish Government to ensure that the fund will be comprehensively reviewed and scrutinised by the Parliament, as set out under the provisions of the Welfare Reform (Further Provision) (Scotland) Act 2012.

I understand that that information will be collected and collated elsewhere, but I asked that the Scottish Government bring it in a specific annual report to Parliament to be reviewed and scrutinised. That would have given the Scottish Parliament a formal role to play in the process. We have already heard, for example, that there was a huge underspend last year. It is crucial that we set a clear benchmark for future legislation in the field. The bill was the opportunity to do that, given that the system is new and untested and that the bill is one of our first pieces of welfare legislation. I find it unbelievable that, even though that was proposed in the Welfare Reform Act 2012, it has been blocked today.

To conclude, I am disappointed that the Scottish Government decided to vote against Scottish Labour’s amendments, except for Ken Macintosh’s amendment on processing time, and all the amendments that were widely supported by the third sector. The Government has voted against the principles of choice, openness, transparency and supporting families that are under exceptional pressure. The bill was one to set the future standard of welfare legislation in Scotland. We have witnessed that the Scottish Government’s rhetoric does not match reality.

16:37

Mark McDonald (Aberdeen Donside) (SNP): There we have in a nutshell the problem with the Scottish Labour Party. It assumes that, because we did not agree with its amendment to put something on the face of the bill, ergo we must be opposed to supporting families. That is the kind of Punch-and-Judy, black-and-white approach to welfare issues that does the Labour Party no credit whatsoever.

I have no hesitation in supporting the bill, although, as Joan McAlpine quite rightly pointed out, it is not something that we should feel the need to introduce in a wealthy society. Nonetheless, that need exists because, as has been pointed out, around £6 billion of welfare cuts will affect the most vulnerable people in our society. The bill as it stands allows for a £38 million fund, because that is the limit that we can extend to with the powers and resources that we have. However, we are installing a safety net below a safety net. The welfare system, as administered at the UK level, should be the safety net that catches people, but we are seeing a system at Westminster that is widening the holes of that safety net. That will mean that more people will fall through it, so we have to install our own safety net below that. Although it is a small safety net in comparison with the cuts that are affecting people, it is required and it will deliver real, tangible impacts on some of the most vulnerable individuals in our society.

I want to focus the majority of my remarks on the argument in the debate today over the Labour Party’s amendment that could have seen the bill potentially not being awarded royal assent.

First, there is a difference between legislation and guidance. Guidance to legislation does not require royal assent. That is why the matter can be put into guidance. Secondly, Michael McMahon argued that what we ought to have done today is to pass the amendment and then have a fight with the Westminster Government over it. He said that the Scottish Government should just fight with the UK Government, because apparently what we are all about is just fighting with the UK Government.

Michael McMahon: Will Mr McDonald give way?

Mark McDonald: I will give him the opportunity to clarify the remark that he made, but I am sure that the Official Report will show it accurately.

Michael McMahon: I have no intention of clarifying the remark because I never made that remark. Will the member accept that it is not the Parliament’s authorities that said that the amendment could not be passed? That was only the minister’s advice. No one else has said that we would have the difficulty that he is trying to get the Parliament to accept.

Mark McDonald: The member will note that the clear advice that came back was that the issue is around not admissibility but competence. There is a very big difference between those two things. At the end of the day, the matter is in the gift of the Advocate General rather than in the gift of the Parliament’s lawyers.

The second element of the argument appears to be that powers will come to the Parliament eventually as part of the Smith commission process, so let us act before the powers are transferred. That is exactly the issue that has led to our not being able to agree to the amendment, and it is a risky strategy. It is a risky strategy because the risk is carried not by the Scottish Government but by those vulnerable individuals who would find themselves unable to access the fund were the legislative competence to be challenged. That is why the amendment could not
be agreed to, and I would have hoped that the Labour Party would at least have been able to understand that.

16:41

Annabel Goldie (West Scotland) (Con): The debate has been genuinely interesting. There have been moments of exchange and passion, and it represents the conclusion of an important and interesting process for a number of reasons.

The bill’s scrutiny, which was embarked on by the Welfare Reform Committee, followed the operation of an interim scheme that was the implement of devolution of the social fund. That background is important for both local authorities and the Scottish Government, as it informed them about what works and what does not work. That practical information has informed both the bill and the scrutiny process, and I hope that this legislative process will provide a template for how the Parliament approaches the new and important welfare powers that are being delivered on the back of the Smith agreement.

The bill does something else, too. It rightly recognises the relevance and the importance of using local authorities, with their geographical spread, for the delivery of a key welfare provision. It also recognises that the local authorities have gleaned experience and have built up expertise that forms a solid base for the current system and holds out well for the future. I foresee further opportunities for local authorities when the new powers are introduced.

It is clear that the bill, with the amendments that were passed today, provides a vital local link to people in sudden and perhaps unpredicted need, with the swift provision of help to meet that need. There is also a welcome recognition of the importance of conferring on local authorities flexibility in how to meet that need. We are all agreed that, when extreme difficulty is encountered, help should be at hand that is quick and appropriate. I think that the bill achieves that objective.

However, I was less than impressed by the Scottish Government’s opposition to Mr Macintosh's amendment 4, which would have enabled qualifying individuals to include those who are part of a family facing exceptional pressure. Mr Macintosh argued his point well and identified a need to clarify the definition of qualifying individuals. The Scottish Government said that the amendment would place the bill beyond the scope of the section 30 order and that the whole bill would then become ultra vires. That may be an opinion, but the minister failed to clarify what legal advice had been sought, from whom and what it said. During the passage of the bill, she also failed to clarify whether she had consulted the UK Government on its attitude to such a provision. In short, the Scottish Government’s response was unsatisfactory and unconvincing.

Interestingly, section 2(1) as unamended—this may offer unexpected succour to Ken Macintosh and the minister—seems to refer to “individuals”, so presumably a family, which comprises individuals, could all present themselves, as individuals, and be addressed under the section. How the clarifying amendment creates an ultra vires status is bizarre.

It is equally important to understand that when people find themselves in such distressing situations they might find it difficult to think clearly or to describe what their circumstances are, so providing for a local authority review of decisions and a referral to the Scottish Public Services Ombudsman are important safeguards. They also provide reassurance to the claimant. That is an important aspect of the legislation.

If claimants are entitled to reassurance—and they are—this Parliament and the taxpayer are entitled to be reassured that the system is working effectively and transparently. My party supported Margaret McDougall’s amendment 8 to provide for reports to be laid before the Parliament by the Scottish Government. That seemed to be an entirely reasonable requirement.

The Presiding Officer: I am sorry, but you need to finish.

Annabel Goldie: In short, the Scottish Government’s response explains why all the information is there, but the question remaining is why not put that into a report?

This is a good bill. It is important; it is welcome. It will make a difference and my party supports it.

16:46

Ken Macintosh (Eastwood) (Lab): We will shortly vote on the Welfare Funds (Scotland) Bill. I hope and expect the chamber to be unanimous in its support for the measure.

I thank all those whose speeches have brought us to this stage, the minister and her team, Welfare Reform Committee members and the third sector and anti-poverty organisations that offered their expertise. In particular, I want to thank, as Christina McKelvie did, Lynn Williams from SCVO, as well as Hanna McCulloch from CPAG, for their support, advice and forbearance. Perhaps most important of all, I thank the many individuals with direct experience of welfare who shared their personal life stories and their insights on being on the receiving end of the Scottish welfare fund.
This is not a particularly earth-shattering piece of legislation; nonetheless, it is an important one. I do not want to shatter Mark McDonald’s belief that it was somehow all invented by SNP ministers, but it was the Conservatives and the Liberals who decided to devolve the former DWP-administered social fund to local authorities in England and to pass on to us the power to decide how to provide the support in Scotland.

Ministers have, for the most part, done the right thing. They have topped up the fund and made the welcome change of moving from a system of loans to one of grants. There have also been a number of practical reforms, such as replacing the DWP administration with the service provided by our local authorities and establishing an independent appeals mechanism. It is fair to say that the appointment of the Scottish Public Services Ombudsman to conduct the task was not greeted with unanimous approval, as Michael McMahon said, but there is some optimism that it will prove effective.

I thank the minister for responding to at least some of the stronger concerns raised about the bill. The Scottish Government’s original proposal to allow the administration of community care grants and crisis payments to be outsourced or privatised struck most observers as particularly ill-founded. I thank the minister for recognising the danger inherent in such an approach and the unacceptability of profiting from social misfortune even if, much to our amusement, her SNP colleagues on the committee seemed more dogmatically and unquestionably loyal to the Government’s original will than to the evidence before them.

There was not a huge amount of movement from the minister at stage 2, but I thank her for at least acknowledging some of the arguments and, for example, tempering the powers of the ombudsman to pursue claimants. I also add my thanks to her for accepting my amendment 6 on moving to a 24-hour deadline.

However, I also want to express my disappointment—my misgivings, perhaps—over our approach to the legislation. This is one of the first bills to lay the foundations of welfare in Scotland. We are about to get many more such welfare powers and Malcolm Chisholm talked about the significance of devolving more welfare powers to Scotland. Yes, there has been a nod in the right direction, but it is critical that we get the principles right from the start. I am not convinced that we have, even though the words “dignity” and “respect” are in the bill.

When it came to what that means in practice—when it came to offering welfare claimants some sort of say, choice or control over their own treatment, the minister balked at the prospect. Several members spoke about that, including Michael McMahon, Sandra White and Joan McAlpine; there was also a very interesting speech from Annabel Goldie. I will not rehearse the whole argument, but it demonstrates the two sides to this Administration.

I have no doubt that the minister wants to talk the language of progressivism, and I have no doubt that she and many of her party colleagues see themselves broadly as social democrats, but I worry that many of the actions of this Government are conservative with a small “c”. SNP ministers often seem more concerned about not rocking the boat—not upsetting people—than they are about making the radical change that is needed with the powers that they already have at their disposal. The minister and colleagues such as Kevin Stewart never seem happier than when they are turning an issue on which we can make a practical difference into a constitutional impasse featuring—by and large—the big bad bogeyman, Westminster.

In this case, my fear is that, by replicating the old social fund, we are doomed to replicate some of the faults of the current welfare system. We know that that system and, to a greater extent, the welfare reforms that were introduced by the Tories are overly judgmental. Inadvertently or otherwise, the current system can demean rather than empower, and I am not convinced that we have done enough to put the needs of individuals at the heart of our thinking.

I recognise that these are difficult decisions at a difficult time. When our welfare system is under attack, as it is from the current Conservative Government, in some ways our first duty is just to hold on—to defend what we have got and to stop the vulnerable being further undermined and subjected to political interference. However, by not fully grasping the importance of the principles that are at stake, by not adopting a more rights-based approach and by not looking at the fact that, whatever the original intent of welfare to tackle the big evils of want, squalor and poverty, in some ways it has become a sop to the fact that we now live almost permanently with long-term mass unemployment, we are almost accepting our willingness to live permanently with poverty in our midst. I do not believe that we are prepared to do that or that that is the point of welfare. It should be there to help people to get back on their feet. It should be there as a support. It should not be judgmental, nor should it stigmatise, yet I think that we are in danger of doing exactly that.

The bill is just the first of several new measures. I hope that the Scottish Government will reconsider its approach as we develop welfare powers in Scotland, and that we will all think again about what we are trying to achieve in the long
term. We need to think about how we treat the vulnerable in our society, what status we give them and how we can best help them. On that note, I believe that we should support the bill, because of the benefit that it will bring to the people of Scotland.

16:52

**Margaret Burgess:** I am grateful to members for their contributions to this afternoon's debate. I have been encouraged that, across the Parliament, there has been recognition of the benefits of the statutory Scottish welfare funds. There have been disagreements about some of the detail of what should be in the bill and what might be more appropriate to include in regulations, but the support across the chamber for the principles of the bill is strong.

The bill is also supported by the third sector, organisations from which have worked with us to develop the bill. They will continue to work with us as we produce the regulations and the guidance.

I want to address a couple of the comments that have been made. I do not want to rehash the argument on families who are under exceptional pressure, but I want to make it absolutely clear that those families will be able to access the statutory Scottish welfare funds. That is critical. They can access those funds at the moment, and they will be able to access them in the future.

It has been argued that we should have just gone for it and taken the risk on the amendment regardless of whether the bill would have been competent. Part of me wanted to just say, "Aye, let's go for it—let's take them on," but the issue that we are talking about is far too serious. We are talking about vulnerable people. If we do not get royal assent for the bill, we will not have statutory Scottish welfare funds. We will not have the 24-hour processing time that we have today agreed is the best way forward—that will be part of the statutory funds. I am not willing to take the risk that we might not be able to do any of the things that we want to do.

We want to help vulnerable people. I have given a commitment that families who are under exceptional pressure will not be excluded from the statutory welfare funds.

**Michael McMahon:** If legislation is required to allow the Scottish welfare fund to operate, how has it managed to operate for the past two years? Putting the fund on a statutory basis will provide some protections, but it will not change the rules or the criteria for applications, which have operated for two years.

**Margaret Burgess:** No. At the moment, we have an interim fund that is discretionary; it is not statutory.

The criteria for the Scottish welfare fund are laid out according to what is in the section 30 order, which is why the bill has followed the section 30 order that gives the Scottish Parliament powers over aspects of welfare. I would like the Scottish Parliament to have all powers over welfare; if we did, we would not be in the position that we are in today. However, I have not only given a commitment that we will put the powers in regulation and guidance; I have also given a commitment that, when we get the powers recommended by the Smith commission, we will look at widening the scope of what is in the legislation to remove any vestige of doubt about whether we are caring for families under exceptional pressure.

I do not appreciate the message that Labour members are putting out today that in some way the Scottish Government does not care about families under exceptional pressure. This Government has made sure that the current fund has looked after people in exceptional circumstances and that the statutory fund will.

[Interruption.]

**The Presiding Officer:** Members must stop shouting.

**Margaret Burgess:** On the point that Margaret McDougall made earlier about choice, I outlined clearly in the stage 3 debate some of the choices that exist for people when they apply for a community care grant. Margaret McDougall did not seem to distinguish between a community care grant and a crisis grant.

I have been very clear that, as we move forward with regulation, cash should be the default method for crisis grants, which might be cash neutral for local authorities. However, local authorities have told us very clearly and demonstrated to us just how much more they can get out of the welfare fund and how many more people they can assist by providing goods instead of cash for community care grants when we are talking about large sums of money.

The evidence that we have from the people who have benefited from the Scottish welfare fund is that they very much appreciate that service because it means that they can choose what furniture they want, for example, and decide on the date that it should be delivered—that is currently happening.

**Margaret McDougall:** Does the minister agree that local authorities are underfunded to administer the welfare fund?
Margaret Burgess: Margaret McDougall seems to be talking in circles: one minute she is asking us to take away the right of local authorities to be able to fund goods even though they are telling us that her proposal would cost too much, and then she says that local authorities are underfunded. I do not agree with her.

We provide £5 million for local authorities to administer the Scottish welfare fund. For me, it is very important when we have a limited budget that it is helping those it should help: vulnerable people in Scotland. We believe that they should be treated with dignity and respect at all times, which is why I was very willing to accept Kevin Stewart’s amendment to that effect at stage 2; and third sector organisations have been telling us that they are pleased that we have taken that forward. I would want to ensure that that is understood by Margaret McDougall, because I am not sure that she did understand it.

As we move on, where there are things that could improve in terms of how the fund operates, we need to work with local authorities—

The Presiding Officer: One moment, minister. Can members who are coming into the chamber please do so quietly? It is disrespectful to the minister, who has taken part in the whole debate and been here throughout, that members are just walking in and not listening to her.

Margaret Burgess: We need to work with local authorities to ensure that the people who need help are able to get it when they need it, and we are doing that through a structured programme of improvement work.

The Welfare Reform Committee made a number of recommendations in its stage 1 report that touched on the more operational aspects of the interim scheme. It is right that, among other things, the committee highlighted the length of application forms, processing times—which we have dealt with today—and local authority variation. We are continuing to work with local authorities to get all that right and to have the scheme implemented consistently across the country.

In case I run out of time, I will touch on the issues that members raised around an annual report and transparency. Members said that we are not being transparent about the scheme, but it is one of the most transparent schemes that we have ever had. Every quarter, 84 pages of information are provided publicly and they are scrutinised by members, third sector organisations and the Welfare Reform Committee. I think that that is the right way to work, because we can see at an early stage whether a pattern is developing on something that could be improved or changed, and deal with it at that stage.

I, for one, appreciate the kind of scrutiny that we are getting from the third sector and the Welfare Reform Committee, which is a continuous process. I do not see how putting all that together in a report once a year will make any difference. We should be acting when we know that a problem is happening, and we can do that on a quarterly basis instead of once a year, as has been proposed. There is no lack of transparency in the scheme. It is transparent and we will ensure that it remains so.

We are also working—

The Presiding Officer: You need to end, minister.

Margaret Burgess: Sorry—I did not realise the time. I will wind up.

The bill is a vital piece of legislation. It provides assistance to the most vulnerable people in Scotland and it highlights the stark contrast between how the UK Government has responded to the abolition of the social fund and the nationwide scheme that we are introducing here in Scotland. I hope that all members will get behind us to ensure that we get the scheme absolutely right for those who need it most.
**Decision Time**

17:00

**The Presiding Officer (Tricia Marwick):** There is only one question to be put as a result of today's business.

The question is, that motion S4M-12485, in the name of Margaret Burgess, on the Welfare Funds (Scotland) Bill, be agreed to.

*Motion agreed to,*

That the Parliament agrees that the Welfare Funds (Scotland) Bill be passed.

*[Applause.]*
Welfare Funds (Scotland) Bill
[AS PASSED]

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Welfare Funds (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

Welfare funds

1 Welfare funds

Each local authority is to maintain a fund (called a “welfare fund”) comprising—

(a) any grants paid into the fund by the Scottish Ministers, and

(b) any amounts paid into the fund by the local authority.

2 Use of welfare funds: assistance for short term need and community care

(1) A local authority may use its welfare fund only in order to provide occasional financial or other assistance to or in respect of individuals for the purposes of—

(a) meeting, or helping to meet, an immediate short term need—

(i) arising out of an exceptional event or exceptional circumstances, and

(ii) that requires to be met to avoid a risk to the wellbeing of an individual, or

(b) enabling qualifying individuals to establish or maintain a settled home.

(2) “Qualifying individuals” means individuals who have been or, without the assistance, might otherwise be—

(a) in prison, hospital, a residential care establishment or other institution, or

(b) homeless or otherwise living an unsettled way of life.

(2A) The assistance which a local authority may use its welfare fund to provide does not include making loans.

(3) A local authority may exercise its power under subsection (1) by making a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.
4 Review of decisions

(2A) Where an applicant for assistance in pursuance of section 2 from a local authority applies to it to do so, the local authority must review its decision on the application.

(2B) Subsection (2A) is subject to subsection (2C).

(2C) The Scottish Ministers may by regulations—

(a) provide as to circumstances in which a decision made in pursuance of section 2 is not to be reviewed under subsection (2A),

(b) provide as to how an application for review under subsection (2A) is to be made,

(c) provide as to time limits for the making of applications for review under subsection (2A).

(5) Regulations made under this section are subject to the affirmative procedure.

5 Supplementary

Further provision

(1) The Scottish Ministers may, by regulations, make further provision in connection with sections 1 to 4.

(2) Regulations made under this section may, in particular, make provision—

(a) about how an application to receive assistance in pursuance of section 2 is to be made,

(b) about the procedure which local authorities are to follow in relation to such applications, including the period within which they are to take any particular steps,

(c) about the eligibility of individuals to receive assistance in pursuance of section 2,

(d) about other circumstances in which assistance may, or may not, be provided in pursuance of section 2,

(e) about the type of assistance which may be so provided,

(f) about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided,

(g) requiring a local authority to provide the Scottish Ministers with such information in connection with the exercise of its functions under sections 1 to 4 as may be specified in the regulations,

(ga) about the procedure which local authorities are to follow in relation to reviews in pursuance of section 4, or applications for such reviews, including the period within which they are to take any particular steps,

(j) requiring persons to provide information for the purposes of a review by a local authority in pursuance of section 4,

(k) about circumstances in which an application to receive assistance or an application for review by a local authority may be made by a person on behalf of an individual.
Regulations making provision of a type described in subsection (2)(b) must provide that a local authority is to make its decision on an application for assistance in pursuance of section 2(1)(a)—

(a) immediately after the authority has received all information allowing a decision to be made, and

(b) in any event, no later than the end of the next working day.

Regulations made under this section may make—

(a) different provision for different purposes,

(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

Regulations made under this section are subject to the affirmative procedure.

**5A Respect for, and dignity of, applicants for assistance**

In exercising its functions under sections 1 to 4, or any regulations under section 5, a local authority must take reasonable steps to ensure—

(a) that applicants for assistance in pursuance of section 2 are treated with respect, and

(b) that their dignity is preserved.

**6 Guidance**

(1) A local authority must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of its functions under—

(a) sections 1 to 4,

(b) any regulations made under section 5.

(2) Guidance issued under this section—

(a) must be addressed to, and apply in the same way to, all local authorities,

(b) may be general or specific,

(c) may be varied or revoked.

(3) Before issuing, varying or revoking guidance, the Scottish Ministers must consult—

(a) such body representing local authorities as they think fit,

(aa) the Ombudsman, and

(b) such other persons as they consider appropriate.

(4) The Scottish Ministers must publish guidance issued under this section in such manner as they consider appropriate.

**Further review by Scottish Public Services Ombudsman**

**6A Application to Ombudsman for further review**

(1) Subsection (2) applies where an applicant for assistance in pursuance of section 2 is dissatisfied with the outcome of a review by a local authority in pursuance of section 4.

(2) An application for a further review may be made to the Ombudsman—
(a) by the applicant, or
(b) by a person authorised for the purpose by the applicant.

(3) An application under subsection (2) may be made orally or in writing.

(4) The Ombudsman must not consider an application under subsection (2) made more than one month after the day on which the applicant first had notice of the outcome of the review by the local authority in pursuance of section 4, unless the Ombudsman is satisfied that there are circumstances which make it appropriate to consider an application made outwith that period.

(5) It is for the Ombudsman to determine whether an application under subsection (2) has been duly made.

**6B Ombudsman’s powers**

If, on a review in pursuance of an application under section 6A(2), the Ombudsman considers that a different decision should have been made by the local authority, the Ombudsman may quash the decision and—

(a) direct the local authority to reconsider the application to which the decision relates, or

(b) direct the local authority to use its welfare fund to provide—

(i) the assistance concerned, or

(ii) any other assistance (being assistance which may be provided by the local authority under section 2).

**6C Statement of practice**

(1) The Ombudsman must prepare a statement of practice setting out the approach which the Ombudsman intends to take to the conduct of reviews in pursuance of applications under section 6A(2).

(2) Before preparing the statement of practice, the Ombudsman must consult—

(a) local authorities, and

(b) such other persons as the Ombudsman considers appropriate.

(3) The Ombudsman must publish the statement of practice in such manner as the Ombudsman considers appropriate.

(4) The Ombudsman may revise the statement of practice.

(5) Subsections (2) to (4) apply to a revised statement of practice as they apply to the original statement of practice.

**6D Procedural matters**

(1) The procedure for conducting a review in pursuance of an application under section 6A(2) is to be such as the Ombudsman thinks fit.

(2) The Ombudsman may, in particular—

(a) obtain information from such persons and in such manner, and make such inquiries, as the Ombudsman thinks fit,

(b) hold an oral hearing or determine the review without one.
(3) The Ombudsman may require any of the following persons to supply or produce information or documents which the Ombudsman considers is or are, or may be, relevant to the review—
   (a) the local authority concerned,
   (b) the applicant for assistance,
   (c) any other person.

(4) The Ombudsman may administer oaths at an oral hearing held in relation to the review.

(5) The Ombudsman may make rules setting out—
   (a) factors to be taken into account by the Ombudsman in deciding whether to hold an oral hearing in relation to a review in pursuance of applications under section 6A(2),
   (b) the procedure to be followed in connection with an oral hearing.

(6) Before making such rules, the Ombudsman must consult—
   (a) local authorities, and
   (b) such other persons as the Ombudsman considers appropriate.

(7) The Ombudsman must publish any such rules as soon as reasonably practicable.

6E Notice of decision and publication of report
(1) After conducting a review in pursuance of an application under section 6A(2), the Ombudsman—
   (a) must notify the applicant for assistance and the local authority concerned of the Ombudsman’s decision, and
   (b) may publish a report of the review.

(2) Apart from identifying the local authority concerned, a report of a review must not—
   (a) mention the name of any person, or
   (b) contain any particulars which, in the Ombudsman’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report.

General

6F Interpretation
In this Act, “the Ombudsman” means the Scottish Public Services Ombudsman.

6G Consequential modifications
(1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.

(2) In section 14(1)(a), after “functions” insert “under sections 2 to 13”.

(3) After section 16G, insert—

“Other functions of the Ombudsman

16H Reviews under the Welfare Funds (Scotland) Act 2015
As well as the functions conferred by sections 2 to 16G, the Ombudsman has the functions in relation to the review of decisions by local authorities conferred by the 2015 Act (see sections 6A to 6F of that Act).

(4) In section 18(1), after paragraph (c) insert—

“(d) any statement made by the Ombudsman in pursuance of section 6E of the 2015 Act,

(e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,

(f) any statement made by any person in communicating with the Ombudsman for the purposes of such a review.”.

(5) In section 19—

(a) in subsection (2), after paragraph (d) insert—

“(e) where subsection (2A) applies, the purposes of a welfare fund review.”.

(b) after subsection (2), insert—

“(2A) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman’s advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

(2C) Those purposes are—

(a) the purposes of the review,

(b) the purposes of any proceedings for—

(i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,

(ii) an offence of perjury alleged to have been committed in the course of the review,

(c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),

(e) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.

(2D) This subsection applies if—

(a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and

(b) the welfare fund review relates to the decision made by the authority on that application.”,
(c) in subsection (3), after “(1)” insert “or (2B)”,
(d) after subsection (5), insert—
“(5A) It is not competent to call upon the Ombudsman or the Ombudsman’s advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.”.

(6) In section 20(1), after “Act” insert “or the 2015 Act”.

(7) In section 23(1)—
(a) before the entry for “action” insert—
"
the 2015 Act” means the Welfare Funds (Scotland) Act 2015,”,
(b) after the entry for “the Ombudsman” insert—
"
the Ombudsman’s functions” includes the Ombudsman’s functions under the 2015 Act,”,
(c) after the entry for “request” insert—
"
welfare fund review” means a review in pursuance of an application under section 6A(2) of the 2015 Act.”.

7 Commencement

(1) This section and section 8 come into force on the day after Royal Assent.
(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
(3) An order made under this section may include transitional, transitory or saving provision.

8 Short title

The short title of this Act is the Welfare Funds (Scotland) Act 2015.
Welfare Funds (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

Introduced by: Nicola Sturgeon
Supported by: Margaret Burgess
On: 10 June 2014
Bill type: Government Bill