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, 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.

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. 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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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](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. Equally, 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. 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](http://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
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5 September 2014