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