

# Client experience of Social Security Scotland's redetermination and appeals process

## Submission by The Child Poverty Action Group (CPAG) in Scotland 12 April 2024

The Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

The Early Warning System gathers information and case studies about families and individuals affected by changes to the benefit system. We analyse enquiries made to our advice service, anonymous submissions from advisers and cases referred to us by other CPAG projects to identify emerging problems, areas of concern and examples of particular problems. The examples included in this evidence are all case studies from our Early Warning System.

### Redeterminations

1. Social Security Scotland's client survey suggested that most people who think a benefit decision is wrong do not ask for it to be redetermined, mostly because they thought they wouldn't be successful. **What more should Social Security Scotland be doing to support clients who wish to request a redetermination?**

Evidence gathered through the Early Warning System identified several barriers which may deter individuals from requesting redeterminations:

Assurance that the original determination is correct.

When individuals query a decision with SSS they may be assured the determination they have received is correct. For example:

*A carer's daughter applied for adult disability payment a month before her 18th birthday. Child disability payment should have remained in payment up until she turns 19 or a decision is made on her adult disability payment application, but it stopped as soon as she turned 18. When queried with SSS, Mum was incorrectly advised that this was correct. Mum has now been independently advised to request a redetermination.*

Confirmation that the decision is correct may dissuade individuals from requesting a redetermination, so it is imperative that SSS re-iterate that the individual has a right to a redetermination and offer to help make the request.

## **Difficulty getting confirmation of a decision over the phone.**

*Client confirmed adviser could speak to SSS without him present during a 3-way phone call to request a redetermination. SSS have made the redetermination but won't tell the adviser what it is. They also said the client would be notified in writing but could not also be given the decision over the phone because staff are not trained or equipped to deal with the response from people who disagree with the decision.*

If this is the case, then this is likely to cause issues for individuals who may not have received or lost their decision letter.

Advisers report difficulty obtaining information from SSS and submitting redetermination requests.

*Adviser reports that Social Security Scotland are not accepting letters from representatives as requests for redeterminations but insist that requests be submitted on the paper form or by phone. There is only an online redetermination form for adult disability payment and child disability, which can only be completed by the individual or their appointee, making the process more cumbersome than requesting a mandatory reconsideration of reserved benefits.*

It would be beneficial if advisers could work with SSS to develop processes that better integrate advisers into the client journey.

2. Are there any differences between rural, semi-rural and urban areas in clients' experience of redeterminations?

The barriers to getting decisions and submitting re-determination requests are accentuated in rural areas where advisers are more likely to be supporting clients remotely.

3. 75% of CDP redeterminations are decided in favour of the client. Does this raise any concerns about decision making for this benefit?

The number of changed decisions indicates that something is awry at the initial decision-making stage, but the reasons for this should be ascertained by reviewing the determinations that have been overturned to identify what this might be. For example, poor quality decision making, submission of evidence after the determination has been made, reliance on certain types of evidence when making a determination, or something else?

The case study below provides an example of poor decision making due to a lack of understanding of the regulations:

*Mum reported a change of circumstances for her daughter who was getting child disability payment (high-rate care), believing she should also be getting high-rate mobility as she has a severe mental health impairment and requires constant supervision. SSS lost the form, then only made a determination 9 months later, after Mum made a series of complaints. High-rate mobility was awarded on redetermination but to take effect from the daughter's forthcoming 5th birthday and not from the date the change had been notified. Mum queried this and was told it was correct, but it is only the low-rate mobility component that cannot be awarded*

*until a child turns 5, high-rate mobility can be awarded from when the child turns 3. Mum's only option now is to appeal.*

4. Why do you think most requests for redetermination are about ADP? Does it suggest anything about Social Security Scotland's decision making for this benefit?

Entitlement to the other benefits being delivered by Social Security Scotland (for example Scottish child payment) are based on binary eligibility criteria, whereas eligibility to adult disability payment is much more subjective. It is quite possible for two decision makers to reach a different decision whilst presented with the same set of facts based on their interpretation of the law and guidance.

5. In recent months, Social Security Scotland has been taking longer to complete redeterminations for ADP. Do witnesses have any indications of why that might be the case and what impact this is having on clients? How might these delays be addressed?

Delays in completing redeterminations are often preceded by lengthy delays processing PIP transfers or new applications. For example:

*Client notified DWP of a deterioration in his condition in October 22, resulting in the transfer from personal independence payment to adult disability payment. SSS sent him a change of circumstances form which he returned in March 23. He received a determination that his award would not be increased in June 23. The determination notice failed to adequately explain the basis of the decision and appears to have two pieces of standard reasoning left in, when one should have been deleted. He requested a redetermination at the beginning of August 23 but SSS did not meet the timescale to carry it out, so he has been given notice of his right to appeal to tribunal.*

At present the legislation states that if SSS has not completed the redetermination within 56 days of the request being received the individual must be given the option of proceeding to appeal directly to the tribunal. However, the law leaves ambiguous whether the redetermination process always stops when the right of appeal is notified.

*An individual has received a letter from Social Security Scotland advising they have not been able to redetermine his adult disability payment determination within the 56-day time limit and that he can now appeal.*

*Adviser has several clients who have waited longer than 8 weeks for an adult disability payment redetermination and have been contacted to see whether they want to go straight to appeal.*

We welcome the provision s.6 of the current Social Security (Amendment) (Scotland) Bill ('the Bill' below) that requires a redetermination to be completed unless the individual submits an appeal.

There is some confusion about when the 56-day timescale to complete the redetermination begins. Advisers report being told by SSS that it runs from date the request is logged on their system even if it was received in their mailroom over a month before. #3630

Regulation 54(2)(a) DAWAP(S) Regs states:

"(2) In relation to determining entitlement to Adult Disability Payment, the period allowed for re-determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is 56 days beginning with—

(a) the day that the request for a re-determination is received by the Scottish Ministers,"

SSS guidance doesn't say anything more about when they consider that the 56 days runs from. <https://www.socialsecurity.gov.scot/asset-storage/production/downloads/32.-Re-determinations-for-Adult-Disability-Payment-1.pdf>

6. What other changes, not previously discussed, are needed to the redetermination process?

Deadlines to request a redetermination should be aligned and extended

We welcome s.4 of the Bill which introduces a new right to make a redetermination request or appeal more than a year after the relevant determination in 'exceptional circumstances'. We would like to see other changes made to deadlines to improve rights for individuals. The deadline to request a redetermination is 42 or 31 days depending on the benefit. The difference in deadlines is confusing for individuals and advisers and is too short. The deadlines should be aligned and extended. This would require amendments to regulations.

Introduce option to withdraw and re-instate redetermination requests

We welcome s.5 of the Bill which inserts a new provision allowing an individual to withdraw a redetermination request and preventing Social Security Scotland from carrying out a redetermination if this request is withdrawn but seek assurances that individuals will not be pressurised to withdraw their request for a redetermination and will be given the option of reinstating their request within a reasonable time limit. The option to re-instate the request will require an amendment to the Bill.

Monitor whether the requirement to request a redetermination before appealing is a barrier to challenging determinations

CPAG argued against the introduction of redeterminations during the passage of the Social Security (Scotland) Act. The pre 2013 DWP system of direct appeal, with a duty to make a more favourable decision and lapse the appeal worked well. The introduction of mandatory reconsiderations caused a massive reduction in the number of appeals.<sup>1</sup> We have also not seen any evidence that redeterminations are meaningfully better than mandatory reconsiderations in practice.

Research should be conducted on the reasons individuals do not proceed to appeal following an unsuccessful redetermination.

We do not think that a system of immediate appeal, which could be lapsed by a more favourable decision and generate a further right of appeal would be incompatible with making the correct decision as quickly as possible and would have the added advantage of protecting existing awards in a way that the redetermination process does not.

Accept redetermination requests that have not been made on the official form.

SSS only accept redetermination requests that are made on the phone, online, or on the designated form. This means that redetermination requests (such as letters) are not treated as a request and may result in a reduction in the number of redetermination requests being made.

## **Appeals**

7. What experience do you have of supporting clients with Social Security Scotland benefit appeals? How does it differ from appeals on reserved benefits?

The majority of case studies received by the Early Warning System in relation to SSS appeals pertain to SSS's inability to 'lapse appeals.' Presently if SSS is responding to an appeal and wishes to change the determination, the legislation prevents it from doing so. The case must proceed to appeal. SSS may invite the tribunal to make a particular award, but ultimately the decision rests with tribunal who may, and do sometimes, make a different award.

*A client is currently awaiting a Scottish child payment appeal. The SSS appeals officer is of the view that that the determination was incorrect and should have been changed at redetermination. SSS currently do not have the power to make a new determination and 'lapse' the appeal (stop it from going ahead).*

*Client's award was reduced from 10 to 4 points at redetermination, so she appealed. SSS's response to the appeal invites the tribunal to award 11 points. The client would be happy 'to accept this, but SSS do not have the power to change the decision now. It must go to the tribunal, who are not bound to award 11 points but could make an award higher or lower than this, or not at all.*

*Client was awarded 6 points for daily living for adult disability payment at mandatory redetermination. He appealed because he thought he should get 8 points. SSS agreed but the tribunal did not and said the redetermination was too generous. The client requested permission to appeal from the First-tier Tribunal but was refused so will now have to appeal directly to the Upper Tribunal. This would not be necessary if SSS had been able to lapse the appeal in the first place.*

There is the ability to lapse appeals in reserved benefits, so the fact that there is not in Scottish benefits causes confusion for individuals and advisers, particularly when individuals or their advisers see SSS supporting the appeal and recommending an award in the submission to the tribunal. Our advice line is regularly asked whether

the individual still needs to take part in the appeal hearing. The answer is always yes as the tribunal does not need to follow the recommendation made by SSS.

S.7 of the Bill introduces the ability for SSS to lapse appeals if:

- it has been identified that the original determination is less generous than it should have been due to an error,
- and the individual has consented to a new determination being made.

We support this provision, subject to removal of the requirement for there to have been an 'error' and the requirement for the individual to consent.

8. In their written submission CAS refer to: "prolonged wait times for an appeal to be listed, poor communication and administrative 'hold-ups' emanating from both Social Security Scotland and the Tribunal Service. **Can they expand on the issues clients are facing? Do witnesses have any evidence of whether such problems are widespread?**

No response

9. The Committee has heard concerns that Tribunal hearings are being held over the phone rather than in person. How does this practice affect the quality of decision making?

It will be harder for a tribunal to get a sense of the person the more 'remote' the hearing (as is the case with any other kind of interaction). So, it seems likely that there will be a hierarchy of quality from in-person hearings, down through videoconference to teleconference. Research should be carried out to identify whether different forms of hearing result in more negative experiences for appellants, and less robust outcome decisions.

In keeping with the principles of dignity, fairness and respect, individuals should be given the choice as to whether their appeal is heard in person or remotely. These are the options presented on the [Social Security Chamber's website](#). If a choice cannot be given, this should be made clearer on the website to allow appellants to assist the tribunal.

10. In their written submission, Voiceability raised concerns about the availability of interpretation services. **What is witnesses experiences of supporting clients who needed interpretation or translation services?**

No response

11. One innovation in the Scottish system is the availability of Short Term Assistance which 'tops-up' people's benefits while they are challenging a decision. Do witnesses have any views on whether it is working as intended?

We do not have any evidence to ascertain whether Short Term Assistance is working as intended. [We recently wrote to the Committee](#) to outline our concern that as the legislation stands claiming Short Term Assistance could have a negative knock-on impact on an individual's entitlement to carer's benefits.

12. What other changes are needed that would improve the appeals process?

No response

Reviews

13. What experience do witnesses have of supporting clients to request reviews of Best Start Grant or Job Start Payment?

It should be possible to request a Best Start Foods or Job Start Payment review in writing as well as by phone. There is nothing in the law to prevent that and it would align with the other benefits being delivered by SSS. Consideration should be given to allowing a right of appeal to an independent tribunal, which might require changes to the legislative basis of these payments.

14. What are witnesses views on having a review process for these benefits as opposed to a redetermination and appeals process?

Having different challenge processes for different benefits, with different time limits causes unnecessary confusion for individuals and their representatives. It would be much simpler if there was one challenge process with unified time limits.