



Social Security Committee consultation response

Introduction

AdvoCard provide independent advocacy for users of mental health services in the Edinburgh area. In 2013 we began the introduction of our Welfare Reform and Social Security advocacy service, providing advocacy, for those who use our service, who had been affected by the current changes to benefits. The aim of this service is to provide timely advocacy support to enable people to accurately describe exactly how their condition affects them when making a claim to benefit or during the assessment process. This results in a more accurate decision being reached and avoids a prolonged process of reconsideration and appeal. This service has seen demand triple over the past year with ESA and PIP assessments continuing to cause a detrimental effect on mental health.

1.The Bill

The Bill aims to provide a framework for the creation of the Scottish social security system. In addition, the Scottish Government has chosen to put most of the rules about the new benefits in Regulations. It believes that putting the rules in Regulations will make things clearer and less confusing. Parliament cannot change Regulations, only approve or reject them. The Scottish Government intends to develop Regulations with external help.

Q. Do you have any views on this approach?

1.1 AdvoCard welcomes the publication of the Social Security (Scotland) Bill and looks forward to the continued opportunity to design a Scottish system that will put the needs of the individual claimant at its core. Over the past year, AdvoCard have facilitated discussions around this topic at local events and meetings. Those who have accessed our service have repeatedly raised concerns over the assessment process, the difficulty in accessing benefits and the work programme, however, one topic that is consistently raised is the continued need for advocacy support throughout the process. Our users have expressed how vital this support was in being able to maintain their mental health whilst navigating a complex system,

1.2 The current UK Welfare Reforms have disproportionately affected mental health service users yet, throughout our discussions with those who have used our service, many have expressed optimism at the chance to make positive change in a Scottish system. Given the continued onslaught of changes, that have detrimentally affected the mental health of those the system claims to support it, is important the Scottish social security system gets it right from the outset. AdvoCard, therefore, have

significant concerns over the choice to put the rules regarding the new benefits into regulations as opposed to solidifying them in legislation. Although this may make things less confusing it also makes it less difficult for opposing parties to change the rules as and when policy changes occur. Relying upon guidance and regulations to ensure that claimants rights are protected can create problems with consistency and interpretation in the future.

1.3 We have very real concerns over rules of entitlement being placed in regulations, having seen first-hand the problems that this has caused with the administration of Personal Independence Payments. The problems that this may cause in the future can be demonstrated by the recent change to PIP regulations, carried out with no consultation period, which left many vulnerable claimants with no future entitlement to the mobility element of PIP. We would like to see a commitment from ministers to bring forward primary legislation in areas that will initially be covered by regulations, especially in relation to entitlement criteria.

1.4 AdvoCard are disappointed by the lack of claimants rights enshrined in the Bill and the lack of Ministerial accountability should those rights not be met. Along with basic rights, the Bill makes no provision for the right to access independent advice and advocacy that is vital for the vulnerable claimants reliant on social security. We feel that to leave the legislation, as it stands, is an erosion of human rights work that has been done previously with no protections for vulnerable individuals contained within the legislation.

1.5 Purpose of the Bill

In light of the lack of consideration given to the purpose of the bill we would support The Poverty Alliance's recommendation that there should be

“a statement of purpose which describes that the purpose of the bill is the contribute to the eradication of poverty in Scotland.”

2.The Bill proposes that the Scottish social security system will be based on the following seven principles:

- 1. Social security is an investment in the people of Scotland.**
- 2. Social security is a human right. It is essential to accessing other human rights.**
- 3. Respect for the dignity of individuals is at the heart of the Scottish social security system.**
- 4. The Scottish Government has a role in making sure that people are given the social security assistance they are eligible for.**
- 5. The Scottish social security system will be designed with the people of Scotland, and based on evidence.**
- 6. The Scottish social security system should always be trying to improve. Any changes should put the needs of those who require social security first.**
- 7. The Scottish social security system is efficient and delivers value for money.**

Q. What are your views on these principles and this approach? Please explain the reason for your answer.

2. Principles

2.1 The principles themselves are a welcome foundation for a more open and supportive social security system. However, to simply have these principles stand alone with no further explanation of what this means in real terms for claimants and no detailing of accountability when the principles are not met could render the principles meaningless.

2.2 We would welcome a more detailed explanation of what each principle actually means to be included in the legislation. For example –

Principle 1 - Social security is an investment in the people of Scotland – ideally this should also contain some form of commitment to annual uprating.

Principle 3 - Dignity and respect are subjective terms and are therefore meaningless unless they are defined in the legislation, further explanation should be included in the legislation detailing exactly what these terms mean for claimants.

Principle 5 – The Scottish social security system will be designed with the people of Scotland, and based on evidence - There needs to be recognition in the legislation that this can only be achieved if the most vulnerable people have a voice. Including the right to access independent advocacy would ensure that the most vulnerable are supported to take part in the design of the social security system.

Q. Are there other principles you would like to see included?

2.3 For AdvoCard many of the recommendations that we made in the social security consultation were based around a more inclusive approach to designing a social security system, one that can only be achieved when every voice is heard. We would therefore support adding an extra principle to the effect below

“Those who are affected by changes to the social security system will have the right to be supported by an independent advocacy worker”

3.The Bill proposes that there will be a publicly available social security ‘charter’. This will say how the Scottish Government will put the seven principles above into practice. It will also say what is expected from people claiming benefits. A report on the charter will be produced by the Scottish Government each year.

Q. Do you agree with the idea of the charter? Please explain the reason for your answer.

3. The Charter

3.1 Whilst we agree with the idea of the charter in principle there have been some concerns, amongst those who use our service, over the contents of the charter. It is recognised that the Scottish Government has attempted to include claimants in the design of the charter by the introduction of experience panels. However, there have been some expressed concerns over the accessibility of initial focus groups, with some feeling that they were not given the chance to be heard. The Scottish Government must continue to work openly with all third sector agencies to ensure access to the views of their service users. They must provide timely information on

any changes that they propose to make and allow for input from all involved and they must ensure that advocacy is provided for those who have difficulty being heard.

3.2 The charter must set out how people can exercise their rights and there must be a level of accountability if the Scottish Government does not meet the conditions stated in the charter.

3.3 The Charter must be publicly available to ensure that all claimants are aware of their rights and how to exercise them.

Q. Is there anything specific you would like to see in this charter?

3.4 Those who use our service have expressed the view that the following should be included in the charter

- a commitment to look at the possibility of uprating benefits above inflation when possible.
- Measures of accountability for when things go wrong.
- Clear guidance on how claimants can exercise their rights

4. The Bill proposes rules for social security which say:

- *how decisions are made and when they can be changed*
- *how to apply and what information people have to provide*
- *how decisions can be challenged*
- *when overpayments must be repaid*
- *what criminal offences will be created relating to benefits.*

Q. Do you have any comments on these rules?

4.1 We are concerned that the process of Mandatory Reconsideration, (or redetermination in the Bill) has been included in the benefit process. Whilst it is recognised that the redetermination period is time limited and that payment will be available during this period, introducing a redetermination stage to the benefit process merely reproduces what has already been acknowledged to be a flawed process and is contradictory to the principle of placing dignity and respect at the heart of the social security system. As we have seen by the statistics on mandatory reconsiderations, this additional stage increases the level of stress and anxiety for the claimant and does little to improve the claimant journey. We would support making appeals an automatic process where every negative decision is automatically sent for appeal unless the claimant opts out. This is more in line with a rights based approach to social security.

4.2 There are also concerns that the legislation being introduced around recovery of overpayments and subsequent sentencing is too harsh. The issue of liability even in the face of department error is concerning especially in a climate of a new benefit when it will be confusing for claimants to know whether they have been given the correct payments or not. Whilst we recognise that the policy intent is not to recover where overpayments result from agency error, there is no power in the bill to

regulate on the circumstances where recovery should be sought. It should therefore be made clear that in cases where an overpayment has occurred due to department error, all correct information has been submitted by the claimant and the claimant could not have known that they were being overpaid then recovery should not be an option.

4.3 Although we recognise that the policy intent is not to criminalise genuine error, the bill as introduced seems to suggest that not reporting a change in circumstances will be treated as an offence regardless of the reasons. In the current system there are different sets of rules for reporting change and fraudulent claims. The bill as it stands has only one set of rules and could effectively treat all non reported change as an offence, therefore, a fraudulent claim. This fails to recognise the many complex reasons why some changes are not reported, e.g. mental illness, learning difficulties, domestic abuse. We would welcome a rethink of the rules regarding recoverability and what is and isn't treated as an offense.

5. The Scottish Government will take over responsibility for some current benefits. The Bill does not explain how they will work in detail. This will be set out in Regulations at a later date. The current benefits which will be run by the Scottish Government are:

- ***disability assistance (including disability living allowance, personal independence payment, attendance allowance and severe disablement allowance)***
- ***carer's allowance***
- ***winter fuel payments***
- ***industrial injuries disablement benefit***
- ***cold weather payments***
- ***funeral payments***
- ***sure start maternity grants***

Q. What are your thoughts on the schedules in the bill in regard to these benefits?

5. Schedules

5.1 There is concern that Schedule 4 - 2(6) states that eligibility (for disability benefits) could be dependent on the individual being in receipt of another type of assistance. The entitlement criteria for all benefits should be included, in full, in the legislation to avoid any confusion and changes in policy affecting claimants who have already been through a prolonged period of uncertainty and change.

5.2 There is no legislative provision to prevent the use of private companies in benefit assessments

5.3 Payment in kind should be available as an opt in choice only such as the Motability scheme and should never be a default option.

6. The Bill proposes that a new type of short-term assistance will be introduced. This will be for someone who is challenging a decision to stop or reduce a Scottish benefit.

Q. What are your views on this proposal?

6 Short term assistance

6.1 While we support this assistance in principle, we are opposed to the introduction of the period of redetermination that appears to be introduced by the bill that would necessitate this

7. The Bill includes the power for the Scottish Government to be able to top up 'reserved' benefits (ones controlled by the UK Government), but the Bill does not include any provisions on how this will be used. The Scottish Government also has the power to create new benefits. This is not included in the bill.

Q. Do you agree with these proposals?

7 Top up benefits

7.1 We would support the SCoWR recommendation that there is an opportunity to use the Bill to legislate for a top up to child benefit. Child benefit has a high take-up rate and provides near-universal support with the costs of raising children. Increasing its value would protect family incomes from erosion. This would strengthen the role of universal benefits within the Scottish social security system in line with the SCoWR principle to 'radically simplify the social security system'.

8. The Bill proposes that carer's allowance should be increased as soon as possible to the level of jobseeker's allowance (from £62.10 to £73.10 a week).

Q. What are your thoughts on this proposal?

8 Carers allowance

8.1 We support this proposal, however, any increase must be a real increase to the carer. Currently any increase in carers allowance would result in a reduction in other means tested benefits for the those on the lowest incomes. It is important to ensure that any increase to Carers allowance does not affect other means tested benefits.

9. The Bill proposes that discretionary housing payments continue as they are. They will still be paid by local authorities. The Bill does not require any local authority to have a discretionary housing payments scheme but if they do, they must follow Scottish Government guidance on running it.

Q. Do you agree that discretionary housing payments should continue largely as they are?

9. Discretionary Housing Payments (DHP)

9.1 there have been no expressed concerns over the administration and entitlement conditions of DHP however, some regard must be given to the adequacy of the scheme given the intention to use DHP as a vehicle to mitigate the benefit cap and "bedroom tax"

10. Is there anything else you want to tell us about this Bill?

10.1 The lack of detail on the provision of advocacy undermines the Scottish Government's assertion that they are prepared to put the needs of the people who require social security first. Including the right to access independent advocacy in the new Scottish Social Security legislation would provide an excellent opportunity to ensure equal provision throughout Scotland and help ensure that claimants receive the support they need, when they need it.

10.2 The coming years are likely to bring even more challenges to service users who claim benefits as the new powers devolved to the Scottish Government continue to be brought into force and it is important to ensure that throughout this process, claimants are kept well informed and have continued access to this support throughout the whole of Scotland.

10.3 The introduction of experience panels for Social Security is a welcome one and shows a willingness to listen to those who have been affected the most. However, for those who identify as having a mental health condition, engagement of this nature is not always possible, many lack insight into the effects of their illness or have been so traumatised and stigmatised throughout the claim process that they cannot bear to discuss their experience, others suffer from severe social anxiety which makes it difficult for them to engage. As a result, the most vulnerable people, who often have the worst experiences of the system, are often not heard.

10.4 This is where access to independent advocacy is vital. Advocacy can give people a voice and help make sure that they are heard. Not only in collective engagement such as the panels but in all aspects of the individual claim process.

10.5 The advocacy role in Social Security involves, but is not limited to, the following:

- Helping people to know, understand and exercise their rights;
- Discussing aspects of the claim process that the person does not understand;
- helping people explore their options;
- Giving practical help – e.g. filling in claim forms, writing reconsideration requests, assisting people to collect evidence for a claim, make complaints, support to contact benefits agencies etc;
- Supporting people in meetings with agency staff and attending face to face assessments;
- Enabling people to express their views and anxieties and become involved in decisions that affect them

10.6 Since the implementation of our welfare reform advocacy service we have seen first-hand how those with mental health conditions are disadvantaged by the current benefit system as many find face to face assessments traumatic and detrimental to their mental health. Many have problems with social interaction and often provide wrong or misleading information at assessment without support.

10.7 In the year 2016/17, we provided advocacy at 184 face-to-face assessments for mental health service users. Of those, 169 (91.85%) were happy with the decision that they received and did not request a reconsideration. Of the 15 that did request a reconsideration, 10 were successful in having the decision overturned.

10.8 These figures show the difference that having advocacy makes towards ensuring that the most vulnerable claimants are given the right decision first time round. Committing to the provision of vital advocacy support, benefits both the claimant and the social security agency as the costly, time consuming and traumatic process of redetermination and appeal is avoided.

10.9 In addition to this, of the 457 total referrals for welfare reform advocacy in 2016/17, 69% said that they felt more in control as a result of engaging with advocacy. This helped to prevent a deterioration in the mental health condition and helped the claimant to engage effectively with benefit staff.

10.10 In addition to individual advocacy, collective advocacy enables a peer group of people, as well as a wider community with shared interests, to represent their views, preferences and experiences. A collective voice can be stronger than that of individuals when campaigning and can help policy makers, strategic planners and service providers know what is working well, where gaps are and how best to target resources. At AdvoCard this is further evidenced by the provision of support to our service users to help them engage with the social security experience panels and subsequent consultations on social security

10.11 Under the Mental Health Care and Treatment (Scotland) Act (2003) the legal right of access to advocacy must include involvement of the advocate to support the person when important decisions about care and treatment are being made.

10.12 However, in our view this does not go far enough. Alongside support with care and treatment, it has been proven that independent advocacy provides a vital service in Welfare Reform and Social Security and the Scottish Government should commit to ensuring that this is available to all who need advocacy support, regardless of where they live in Scotland. In a time when the Scottish Government claim to be listening to the views and experiences of the service users and benefit claimants, everyone deserves the right to be heard.

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