



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### WELFARE REFORM COMMITTEE

Tuesday 2 February 2016



---

**Tuesday 2 February 2016**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>2</b>
Welfare Funds (Scotland) Regulations 2016 [Draft].....	2

---

**WELFARE REFORM COMMITTEE**

**3<sup>rd</sup> Meeting 2016, Session 4**

**CONVENER**

\*Hugh Henry (Renfrewshire South) (Lab)

**DEPUTY CONVENER**

\*Clare Adamson (Central Scotland) (SNP)

**COMMITTEE MEMBERS**

Neil Findlay (Lothian) (Lab)

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

\*Joan McAlpine (South Scotland) (SNP)

\*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

\*Kevin Stewart (Aberdeen Central) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Margaret Burgess (Minister for Housing and Welfare)

Alex Johnstone (North East Scotland) (Con) (Committee Substitute)

Niki Maclean (Scottish Public Services Ombudsman)

Paul McFadden (Scottish Public Services Ombudsman)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Welfare Reform Committee

*Tuesday 2 February 2016*

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Hugh Henry):** Good morning and welcome to the third meeting in 2016 of the Welfare Reform Committee. I ask everyone to make sure that their mobile phones and other electronic devices are silent and switched to aeroplane mode.

Alex Johnstone is substituting for John Lamont and we have received apologies from Neil Findlay.

The first item on the agenda is to agree to take items 4 and 5 in private. Are we agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Welfare Funds (Scotland) Regulations 2016 [Draft]

10:00

**The Convener:** The second item on the agenda is an evidence session on the draft Welfare Funds (Scotland) Regulations 2016. I welcome Niki Maclean, the director, and Paul McFadden, the head of complaints standards at the Scottish Public Services Ombudsman. Do either of you have an opening statement, before we start?

**Niki Maclean (Scottish Public Services Ombudsman):** I thank the committee for its invitation. We will take on the new function of second tier reviews from 1 April 2016 and we are happy to discuss the work that we have done in preparation for that.

**The Convener:** Will the new powers and that new function change the ombudsman's role?

**Niki Maclean:** Scotland's ombudsman scheme is quite unusual compared with others across the United Kingdom, in that the majority of other public service ombudsmen also have other functions. That does not appear to impact significantly on their ability to carry out the classic ombudsman complaint-handling function. We are fairly confident that the new function will not influence the nature or the make-up of the work that we do around complaints.

**The Convener:** Because yours is a non-Governmental body and you are responsible to the Parliament, you have drafted and designed your own appeals procedure. Will those who have been refused by local authorities and who appeal to you have a right of representation?

**Niki Maclean:** They will. Paul McFadden will talk about that.

**Paul McFadden (Scottish Public Services Ombudsman):** On the vast majority of occasions, we expect that the reviews that we will make decisions on will be concluded on the basis of information that has already been collected and presented—that is the experience of the current review stage.

When the scheme was being designed, we specifically asked for the ability to conduct oral hearings for cases in which we felt that fairness would require that. At that stage the Government did not feel that that was necessary, but we wanted to future proof the system to ensure that we had all the available tools to conduct oral hearings—as a future proof against emerging human rights legislation, for example, on the advice of our lawyers.

On occasions when we think that it is necessary to have an oral hearing, people will have the right to representation. The nature of the scheme—the client group and those who will be making applications for the scheme—means that many of them will be represented in their contact with us by advocacy and support groups. That is something that we expect and we are already engaging with those groups to make sure that all their needs are catered for.

**The Convener:** You said that the Government did not think that that facility was necessary, but in a sense it has nothing to do with the Government because you are not responsible to the Government. Why is the Government able to tell you what is appropriate or not?

**Paul McFadden:** I think that that was in relation to the founding legislation—discussions about what the legislation might contain when the proposals were at an early stage. On seeing early drafts of that, we were of the view that the ability to conduct oral hearings was something that would be a good addition. The Government was not directing at that stage, but clearly it was in charge of drafting the legislation to bring to the Parliament.

**The Convener:** Yes, except that it is the Parliament's responsibility to pass the legislation and yours is a body that is responsible to the Parliament, not to the Government. I am perplexed and puzzled about why you had to accede to something that the Government wanted rather than something that the Parliament decided. Ultimately, the Parliament passes legislation on a majority vote, but you are indicating that it was the Government that decided that.

**Paul McFadden:** No. Perhaps I gave the wrong impression of ceding authority to the Government on that occasion. There were discussions about what the proposal might look like and when we saw the early proposals on the ombudsman review function, oral hearings was one of the things that we decided to propose to the Parliament so that it could decide how we should take matters forward.

**The Convener:** You say that you think that most of the appeals or challenges will be determined on the basis of information that is already available. Given the decision that was previously made, is there an appeal function whereby people can have representation should they wish it, or would that require a change to the regulations or procedures?

**Paul McFadden:** No. If people ask for representation in bringing forward a review, we will certainly be open to their doing that, but I really think that that will not be necessary. That is the experience of the existing review function. We will

always be open to people making their case in any way that they wish to.

**The Convener:** With all due respect, you might not think that representation is necessary, but if someone has had a claim refused and feels strongly about that, surely they should have a say on whether they should have the opportunity to put the case to you, particularly if you do not decide in their favour.

There are two aspects to the matter. First, given what you said previously about the Government decision, do you have the powers or is a change required if there is to be representation? Secondly, at what stage in the development will you decide that representation will be allowed?

**Niki Maclean:** Under the principles of natural justice and because of the way in which the process will work, as people bring review requests to us at tier 2 we will share the information that we are considering in reaching our decision, and they could input into that. They will see the evidence on which we are basing our decisions, and they will be able to provide their own evidence. There will be contact with individuals in writing, over the phone or in face-to-face interviews. Significant opportunities are built into the process and the draft statement of practice that we have been working towards that allow people to input into the decision-making process.

**The Convener:** The committee has heard evidence on other benefits from a whole range of organisations that say that not only the organisations but the people whom they represent value the opportunity to have someone representing people. Some members of the committee have had experience of going to tribunals and representing claimants who have been turned down. An almost paternalistic view seems to be coming across that all the information will be looked at, things will be done fairly and people will have the opportunity to provide information, but that is not quite the same thing. If a person is not confident about reading and writing and has difficulty in understanding, someone explaining things on their behalf is sometimes a far better option.

I still have not heard an answer to the first point. Given what was previously said about the Government, do the rules, regulations and procedures allow you to decide that representation is available? At what point in the general development of the scheme will you decide that you will start to have advocates in on behalf of claimants?

**Paul McFadden:** It may help if I clarify how our process and procedures are laid out.

The enabling legislation allows us to develop and consult on our statement of practice and a set

of rules for oral hearings. We are completely in control of that, we have consulted on it and have received broad support for what we have outlined.

The oral hearings point may be a little bit of a red herring. The majority of what we will do will be speaking to people. We have designed our process and service in a completely accessible way. That was our decision. It means that people can phone us for a review. If they would like their advocate, support worker or anyone else who represents them to put forward their case to us, we will agree to that, and we will have full discretion to do that. On most occasions, we will do that.

**The Convener:** Perhaps I am missing something here. In the years that I represented people at tribunals, there was always the opportunity to write in and explain the problem. However, the whole point of an independent tribunal was that people had the chance to explain their case. The tribunal's members listened to the evidence and looked at the issue objectively. I come back to my earlier comment. It sounds a bit paternalistic that you have decided that it is not really necessary for someone to explain their case—they can provide all the evidence they want and get someone to write a letter. Any of us who deal with constituency cases will know that people want to explain things to us face to face. They have the right to do that. However, in a sense you have decided that you will be able to make a decision based on written evidence or from a phone call on someone's behalf. What if someone says, "You've got this wrong. I want to appear with an advocate to challenge the decision." Will they be allowed to do that?

**Niki Maclean:** Yes. They absolutely have the right to request that. As Paul McFadden said, in the present complaints process we regularly deal with representatives rather than complainants. However, people can choose the method by which they wish to communicate with us. Feedback that we have received in the consultation indicates that a lot of people would not be interested in face-to-face representation and might find it intimidating. We are developing a statement of practice that will provide people with a choice about how they are represented. That is in response to the feedback from the range of stakeholders.

**The Convener:** I do not doubt that people find personal representation intimidating—that is the whole point of having advocates and representatives, because these procedures are very challenging. However, people also find it intimidating if they have to write and explain and do not have the chance to put forward their case. I am pleased that you have accepted that people have the right to a hearing and to have an advocate represent them at the hearing. Will it be

made clear at the beginning that someone can choose whether their case is dealt with through written correspondence or by phone, or by coming to a hearing and bringing a representative with them?

**Paul McFadden:** We have made it clear that people can choose a representative to engage with us. People responding to the consultation have been widely supportive of our approach on openness and accessibility.

On the concept of a more formal oral hearing, will meet representatives and applicants. On the more formal oral hearing, it is clear to people when they can request that and the circumstances in which we will take such a hearing because it is in the interests of fairness.

**The Convener:** Forgive me, Mr McFadden, but I think that you are saying something slightly different from what Ms Maclean said. Ms Maclean gave a clear commitment that people could have an oral hearing, should they want it, and you are now starting to put conditions on that.

**Niki Maclean:** They can request an oral hearing.

**The Convener:** And it will be made clear to them at the beginning—

**Niki Maclean:** Yes.

**The Convener:** If they wish, they can have an oral hearing with a representative.

**Niki Maclean:** We need to be careful to ensure that we give sufficient information in our communication materials. We are using our stakeholders to trial the communication materials that we are developing. We need to be careful about the level and clarity of the information that we are providing. People will have the right to request an oral hearing. The decision on whether an oral hearing will be held will remain ours, as the statement of practice is written at this point in time.

10:15

**The Convener:** It would be an interesting concept if, in relation to claimants challenging the Department for Work and Pensions on a range of things, the power to determine whether there should be representation rested with the DWP. We would be outraged about that, but you are saying that you will retain that power.

**Niki Maclean:** That is certainly the intention, and that has been included in the document that has gone out for consultation.

**The Convener:** For a range of independent benefits, or Westminster-related benefits, there are independent tribunals and people can access

those if they wish but, in relation to this one, you will decide whether there will be an oral hearing.

**Paul McFadden:** That is right. It might be helpful if I say that we have consulted on that point throughout this development over the past year with both third-sector agencies and local authorities. We have talked it through and consulted fully on the circumstances in which we would use our discretion to have an oral hearing, and we have had a broadly supportive response. People recognise that it is a fair way to proceed.

**Niki Maclean:** I do not believe that the particular concern has been raised at any point up to this stage.

**The Convener:** Okay. I open the questioning to others.

**Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP):** On a point of clarity, is the system that you are proposing for tribunals or hearings the same as the procedure that exists for DWP hearings? Does it mirror that procedure? I ask that because not everyone gets a hearing with the DWP in the way that you have described. Is that right? Have I picked it up correctly?

**Paul McFadden:** Is your question whether we have modelled our process on the DWP's?

**Christina McKelvie:** Yes. The convener suggested that there are two different procedures in play and that people can request a hearing from the DWP. From what I am hearing this morning—sorry to use the word “hearing” again—you are using exactly the same procedure that exists for anyone who challenges a DWP decision.

**Niki Maclean:** No—I do not think that it would be fair to say that. However, as Paul McFadden suggested, this is slightly a red herring. Through the consultation process and the discussions that we have had with the third sector and other stakeholders, it is anticipated that the majority of review cases will be dealt with over the phone, through discussion with the applicant and in correspondence with local authorities.

You should bear it in mind that, with the payments that we will make, we will be working to tight timescales, so we have to ensure that we will be able to process reviews as quickly as possible. If we make a comparison with the existing interim scheme, these decisions are already being made in a similar vein by local authorities. Broadly speaking, there is general acceptance that, although some tweaks and changes might need to be made to the interim scheme, it has been working relatively effectively.

I do not think that what we are proposing in relation to dealing with the majority of reviews through telephone contact, face-to-face meetings or written correspondence is not a sensible move.

We are talking about a small number of cases where it is difficult to establish the facts in any way other than through an oral hearing. It would be a shame if we spent the majority of the discussion on this point because I think that it will arise on very few occasions. We want the ability to use the option if there is no other way of establishing the facts in a fair way.

**Christina McKelvie:** At a previous meeting, the committee heard from some of the third sector and other organisations that either support or deliver services, and some of them said that, although the interim scheme had some challenges at the start, they had been ironed out and it had started to progress pretty well.

You said that you have had to make some wee tweaks and things in the system. Did anything come up as a particular challenge? Do you have an example of good practice that you have now incorporated into the new procedures? Where challenges have arisen, how have you dealt with and resolved them?

**Niki Maclean:** In referring to tweaks in the system, I meant in relation to the Scottish Government's own guidance for local authorities. There has been some feedback and exchange about changes to that guidance.

Our service does not commence until 1 April. We will have an on-going review and there may be changes to our statement of practice as we begin to see cases coming through.

Because the new structure includes tier 2 reviews assessed by a national body, it will provide a national picture that the existing interim arrangements do not.

**Christina McKelvie:** One of the key factors in developing and delivering a new social security system for Scotland is to have dignity and respect built in. I am sure that you will monitor that. Have you picked up anything in the interim scheme that has helped you in the work that you will do from 1 April to ensure that dignity and respect remain in the system and that the claimant and their needs are key?

**Paul McFadden:** As Niki Maclean has outlined, our experience of the interim scheme has been limited to our role on complaints. We have seen a relatively small number of complaints over that time, and most have been about dissatisfaction with the decision. We have seen issues about procedural matters, such as the guidance not being followed or being misinterpreted or misapplied.

Until 1 April, we cannot change a decision or review the discretion applied, but we have discussed with or made recommendations to local authorities where it appeared that a procedural



failing meant that there had been unfairness. On those occasions, local authorities have changed the awards or made other decisions as a result.

We do not yet have experience of where the scheme may be failing in general on dignity, respect, fairness and reasonableness. That will be our role from 1 April. Once we have had a body of cases through to give the team some experience, we will be able to reflect on that.

**Kevin Stewart (Aberdeen Central) (SNP):** In your written evidence, you go through the steps that you have taken to prepare for the task that you are about to undertake. You say that you have consulted local authorities and the third sector, including advocacy representatives. You have also looked at the independent review service for the social fund and at the scheme that still operates in Northern Ireland. You rightly say that the IRS had a fairly “good reputation” and that you were “keen to learn lessons” from it. What lessons have you learned during the course of your interactions with practitioners in local authorities, the third sector and the IRS?

**Paul McFadden:** For our consultation throughout the past year, the first thing that we did was to set up sounding boards—one for the third sector representatives and one for local authorities. A key thing that came out clearly through our engagement with those sounding boards, the consultation responses and the discussions with the IRS and the Office of the Social Fund Commissioner in Northern Ireland was the need for good communication in all its forms. Other things that came out strongly were the importance of being open and accessible and the importance of timeliness. The nature of the decisions and the nature of the circumstances that lead people to make the decisions mean that quick and robust decisions are crucial.

The IRS was held in high regard. That was clear from the responses to the Government’s initial consultation on its proposals, in which the SPSO was one option. The IRS came across well on reputation and timeliness, and we have adopted its timescales. Although our scheme is new and we will have to get up to speed, we are aiming to replicate the IRS timescales. We have been able to take a lot of key lessons and we continue to talk to local authorities about how they operate the existing second-tier review system.

**Kevin Stewart:** Have you any idea in percentage terms how many times a complaint would lead to an oral hearing in the IRS system?

**Niki Maclean:** Karamjit Singh gave evidence to the committee about that in 2014. My understanding, and the evidence that Karamjit Singh gave, is that the commissioner in Northern

Ireland does not have the power to hold oral hearings.

**Kevin Stewart:** You have that power, however.

**Niki Maclean:** Yes.

**Kevin Stewart:** Your paper refers to

“an Equalities and Human Rights Assessment to make sure our process takes full account of the rights and needs of users.”

What has your equalities and human rights assessment found? Is it complete? Are you satisfied with its findings?

**Paul McFadden:** The equality and human rights impact assessment is not yet complete, largely because we are still finalising the process and our approach. The feedback from the consultation very much made it clear that it needed to be kept open. Particularly through the first year, it will be a live document that will be added to. Aspects such as fairness, reasonableness and accessibility are certainly coming across, but we will continue to monitor the matter and speak to third sector organisations about it.

**Kevin Stewart:** Obviously, we are not yet up and running, but your intention is to monitor all aspects of this from 1 April, when the process will start, and to continue to monitor the impacts.

**Paul McFadden:** That is right.

**Niki Maclean:** We have done a significant amount of work so far on understanding and anticipating some of the blocks and barriers to people accessing our service but, as you have suggested, we need to review the matter on an on-going basis.

**Kevin Stewart:** Has that kind of monitoring happened in, for example, Northern Ireland? Do the people there continue to monitor those aspects? Did you find out anything about that when you looked at what they were up to?

**Paul McFadden:** That is not something that I am aware of. They look on an on-going basis at issues such as accessibility and identify equality impact assessment issues with regard to the data that they collect, but they do not have a formal process in that respect.

**Niki Maclean:** Something that they do, which can be seen as good practice and which we ourselves will endeavour to do, is to maintain significant contact with interested stakeholders and to have a lot of engagement. That is what we have done to date, but we need to continue to do it and ensure that we are routinely receiving feedback on what our service feels like to users.

**Kevin Stewart:** So you are going to follow their lead in that regard.

**Niki Maclean:** Yes. That stakeholder engagement is key to getting feedback on what it feels like to use our service.

**Kevin Stewart:** And you will go beyond their system by allowing oral hearings to take place, if required.

**Paul McFadden:** We will go beyond the system in a number of respects. Parliament obviously decided that oral hearings should be introduced, but in any case our verbal approach to reviews and applications goes beyond the approach taken by the IRS and certainly the Northern Ireland commissioner, who mainly takes written applications. We have tried to improve on certain aspects.

**Kevin Stewart:** With regard to parliamentary scrutiny of your work in the area, the Local Government and Regeneration Committee bases its scrutiny on your annual report, and obviously you are responsible to the Scottish Parliamentary Corporate Body. Will this line of work feature in the annual report, or will it be separate from that? Will Parliament be able to scrutinise regularly what you are doing?

**Paul McFadden:** We hope so. We will certainly report on our performance, accountability and transparency in our annual report but, as for the scheme, we regularly report back to all the bodies under the jurisdiction on what we have learned from the complaints that we have received and areas where we feel improvements can be made. I think that the area would merit its own distinct report on key issues, case studies and facts and figures that we have seen. In any case, we regularly engage with local authorities and Government on things that we have identified that might be barriers to people's fair and reasonable access to the review system or the scheme itself.

**Kevin Stewart:** Because you have a universal reporting function, everyone will be able to learn from a single body's mistake. Is that right?

**Paul McFadden:** Yes. We do not have a statutory role in monitoring best practice for the welfare fund in the same way as we do with complaints, but we will look to identify areas of good practice as well as areas of concern and to feed them back at national level. We are already engaging with practitioners through a practitioners network and we continue to feed back our experience to them and help them to learn collectively from that.

**Kevin Stewart:** Thank you.

**The Convener:** Thank you for that helpful commitment.

10:30

**Clare Adamson (Central Scotland) (SNP):** Mr Stewart kind of stole my thunder with that last question, but I would like to dig into the issue a little bit more. If you felt that there was a systemic failing, particularly in relation to a local authority, or a problem relating to misinterpretation across Scotland, what would be the mechanism and the timescale for feeding that back to the local authorities or the Government, given that, as you have just said, you do not have that statutory duty?

**Paul McFadden:** If the issue relates to an individual's circumstances, the action would be immediate—it would involve picking up the phone and speaking to a local authority. If the issue involved more than one individual in a local authority area, we would engage with that local authority, make decisions and set out recommendations for improvement quite quickly.

We regularly engage with local authorities and the Government. Decisions about when we do that and how quickly we do that will be based on need and the urgency of the issues around the blockage to the system and whether people are being treated in a way that is not fair and reasonable or which does not respect their dignity.

**The Convener:** When you make a decision about an issue concerning an individual, do you need to have any regard to how much is left in a local authority's budget? Can you determine the level of payment that is to be made?

**Paul McFadden:** Obviously, there are finite budgets. If local authorities have run out of money, they have run out of money. We are not dealing with an entitlement; it is a discretionary scheme.

We make decisions based on the information that is available at the time, the state of the scheme at the time and the priority that the scheme had at the time when the original decision was made and the person brought their circumstances to the local authority. There might be occasions on which we are looking back slightly to a time when there were funds, even though there are now no funds.

In our decisions on whether the situation is fair and reasonable, whether discretion has been used correctly and whether the merits of the decision are correct, we take into account the level of award, what is being awarded and how that is awarded. We will be able to make decisions on those grounds.

**The Convener:** As well as challenging whether a payment has been made, can the claimant challenge the level of payment?

**Paul McFadden:** Yes. Those are going to be the difficult decisions, because we will be dealing

with 32 local authorities and a discretionary scheme with various points of discretion on which decisions are made by decision makers using their judgment about the facts and individuals' circumstances. The range of circumstances is huge. However, we will be able to consider what the applicant tells us, what the representatives tell us and what we feel is fair and reasonable under the guidance and the regulations and, over and above that, under the aims of the scheme, which are to provide support to, for example, people in crisis or people who are coming out of care.

**Niki Maclean:** We will look for the local authority to have clearly set out its decision and stated its reasons for reaching a decision, which would include its reasons for thinking that the level of payment was appropriate in that individual's circumstances. We would expect to see that in the decision.

**The Convener:** If, for example, you noticed that the claims that were being determined in Edinburgh were resulting in a different pattern of levels of payments from the claims that were being determined in West Lothian, would you be able to start making awards based on what might be perceived to be the most favourable payments, or is that purely for a local authority to determine?

**Niki Maclean:** That comes back to the previous point that I made. Our role is very much about assessing whether a level of payment has met a particular individual's needs, given their specific circumstances. It is very much about the individual at that given time, as well as the level of priority that the local authority has in place at the specific point in time when the original decision was made.

**The Convener:** Thank you for your contribution, and good luck with the implementation of the new scheme.

We will suspend for a few minutes to allow the panels to change.

10:34

*Meeting suspended.*

10:36

*On resuming—*

**The Convener:** I welcome Margaret Burgess, the Minister for Housing and Welfare, who is joined by Will Tyler and Stuart Foubister. I invite the minister to make an opening statement.

**The Minister for Housing and Welfare (Margaret Burgess):** Thank you for the opportunity to discuss the Welfare Funds (Scotland) Regulations 2016. Since April 2013, the Scottish welfare fund has provided a safety net to some of the most vulnerable people in our society

by helping around 178,000 low-income households, including 59,000 families with children. In the face of continued austerity imposed by the United Kingdom Government, the fund acts as a lifeline for communities across Scotland; it helps people in some desperate situations to buy everyday things such as food, clothes and beds and keeps families afloat at difficult times.

Not only does the fund meet a real need, but it signals the Scottish Government's commitment to creating a social security system that treats individuals with dignity and respect. The recent report by the Scottish Government's independent adviser on poverty highlights the Scottish welfare fund as providing critical practical support with a more person-centred and holistic approach than equivalents elsewhere. Developed in partnership with the Convention of Scottish Local Authorities and with the support of the third sector, the fund is an excellent example of collaborative working. That is also evident from the supportive remarks made by the organisations that have given evidence to the committee.

The determination to do things differently resulted in Scotland's first substantive example of social security legislation. The Welfare Funds (Scotland) Act 2015 places a statutory responsibility on each local authority to maintain a welfare fund and establishes a new, independent review process. Importantly, it requires those who deliver the scheme to treat applicants with dignity and respect. That sends a clear message about the kind of social security system that we seek to create, which is very much one that is centred on the individual.

Almost half the £81 million that has been spent to date has gone to communities in the 20 per cent most deprived areas of Scotland. The Scottish welfare fund is an example of action already taken in Scotland that provides a firm basis for tackling poverty effectively. The regulations will help to secure that by underpinning the act, which will make the scheme permanent and statutory.

It has always been our intention to set out the rules for the fund's operation through regulations and statutory guidance. Although the regulations may be the last legislative piece of the jigsaw, the fund and its statutory guidance will be subject to on-going review and scrutiny.

We intend to review the guidance annually and to take account of feedback from local authorities and third sector stakeholders and any points that the Scottish Public Services Ombudsman has identified. I welcome the committee's on-going interest in the fund and I am happy to answer questions on it.

**The Convener:** I welcome the commitment to review the guidance annually, which is extremely helpful. A matter that we have heard about in a number of sessions and on which Who Cares? Scotland has provided written evidence is the need for flexibility. As part of the annual consideration of the guidance, will you look to ensure that there is flexibility in the system and that, if changes need to be made, they will be made?

**Margaret Burgess:** Absolutely—that is the intention of the review. From the scheme's outset, we have very much taken on board the need for flexibility. The aim of the voluntary scheme and the statutory scheme is to be consistent across Scotland but allow an element of flexibility, which has been very much welcomed by local authorities. We want to maintain that flexibility. If that were slipping away or if the scheme were not acting in the way that we expected it to, we would see that in the review and we would take on board stakeholders' comments.

**The Convener:** If, for whatever reason, demand was much greater than expected and local budgets were struggling to cope, who would be responsible for topping up those budgets? Would that be for the individual local authority or would the Scottish Government contribute if the budgets were not sufficient?

**Margaret Burgess:** The Scottish Government sets the level of the overall fund for Scotland and we have an agreed formula for distributing it to local authorities. Local authorities are then expected to keep an eye on and manage their budget annually. They can top it up, but we have not said that we will continually top it up. We will always look at the situation and the position for future years—budgets are looked at annually in any case, as I have said—and whether the funding is sufficient to maintain the scheme.

We have looked at altering the distribution method. Rather than basing distribution on the historical social fund, we are looking at spend. For the next few years, we will look at local authorities' spend, so a percentage will be based on spend and a percentage will be based on needs. We have agreed that with local authorities.

**The Convener:** In future years, the allocation to individual local authorities could change, depending on the level of spend and demand.

**Margaret Burgess:** That will be the case for the next three years until the fund builds up to a fully needs-based model.

**Kevin Stewart:** We have probably scrutinised the Scottish welfare fund much more than any piece of social security legislation has been scrutinised at Westminster. We have seen change during the development of the new fund, which

has, as you said, included putting dignity and respect at the forefront of the social security system that we are establishing. Because of the amount of scrutiny, lessons have been learned. Will you assure the committee that best practice is being exported throughout every local authority to ensure that the fund is the best that it possibly can be?

**Margaret Burgess:** The exporting of best practice is a continual process. We have a practitioners group, which meets to discuss matters in different local authority areas. It looks at how different authorities would deal with case studies, in order to identify best practice. That work is on-going, as it should be in relation to such a fund. The ombudsman will do the second-tier reviews, so that expertise will be built in, along with the ombudsman's views on what could be done differently, which will be taken on board.

Social fund teams across Scotland are keen to learn from other teams and best practice. I have met a huge number of front-line staff, who appreciate getting together with people in other areas to discuss how to handle cases and how the guidance might be improved to make things clearer. We have a role in that regard, and we hope that we have made the statutory guidance clearer. There has been huge input; I think that every local authority was represented, as well as a huge number of stakeholders, in the consultation on the guidance.

10:45

**Kevin Stewart:** I am hugely impressed by how the welfare rights team in Aberdeen shares information and best practice.

In evidence, we heard from Who Cares? Scotland about the ability of care leavers to access the fund. Councils have a role as corporate parents, as do we, and they have obligations to meet as a result of recent legislative changes. Can we ensure that all the folks who deal with the fund in the 32 local authorities are aware of their responsibilities as corporate parents, to ensure that care leavers are treated as best they can be when they try to access the fund?

**Margaret Burgess:** We absolutely can. We included in the guidance a bit about care leavers and the obligations of corporate parents. We listened carefully to the evidence from Who Cares? Scotland, which suggested that the guidance could be made clearer by, for example, including a case study. We will consider doing that and we will work with Who Cares? Scotland. I think that another of its suggestions was about a requirement for training, which we are certainly willing to take on board.

**Kevin Stewart:** Many local authorities have told us about the need to direct people who apply to the Scottish welfare fund to other services and funds. Through the practitioners group and other bodies, can we ensure that such signposting continues, to help folk not just to get through a crisis but to avoid reaching crisis point in the future?

**Margaret Burgess:** Absolutely. That kind of holistic service is critical and is what makes the approach different from what was previously done. It is about identifying support needs and sometimes not just signposting but referring so that, rather than just tell a Scottish welfare fund applicant to approach another organisation, staff can contact the organisation on the applicant's behalf. Lots of that work goes on and I want it to continue. A crucial part of the service is not just dealing with the immediate crisis but ensuring that the person gets support and assistance so that they can get on with their life without having to access the fund.

**Alex Johnstone (North East Scotland) (Con):** A great many lessons were learned during the operation of the interim scheme. It is impressive to see how improvements to the approach have informed the scheme that we are introducing. However, some people have been surprised by the proportion of the total cost of the scheme that goes on administration. Now that we are dealing with the regulations that will put the new scheme in place, are we in a position to say that everything has been done to keep administration costs to a minimum, so that the highest possible proportion of the funding will go on grants for claimants?

**Margaret Burgess:** That is what currently happens. The DWP initially transferred £5 million for administration, which we passed on to local authorities. The DWP then cut that funding to—I think—£4.6 million, but we topped that up so that local authorities would still have £5 million to administer the scheme. We think that that amount is sufficient and is a reasonable proportion of the overall budget.

**Alex Johnstone:** I have heard from some local authorities—in fact, such evidence was given some time ago, when I was a regular member of the committee—that they feel that they could do with more financial support to cover the administration responsibility. Has that been discussed with local authorities and has the matter been brought to a conclusion?

**Margaret Burgess:** We have had a number of discussions with local authorities about the costs of administering the scheme. We have agreed that they will continue to get the £5 million and that they will no longer have to do any second-tier reviews, so they will not face any costs for that. That responsibility is being passed to the

ombudsman, but we are continuing to provide the same level of funding for administration costs.

As the scheme moves on, over the years, we will discuss the matter with local authorities if they come to us. However, the absolute focus and priority is that the bulk of the money should go to the people out there in our communities who desperately need it.

**Alex Johnstone:** With the new responsibilities for other aspects of welfare that are coming along, is there a possibility of using the skills that have been gained by people working in local authorities to spread their responsibility slightly and make the process more efficient?

**Margaret Burgess:** We always look at efficiency as we move on. At the moment, the scheme is administered by local authorities in all 32 local authority areas, and a huge deal of expertise has been built up. However, it is up to each local authority to decide in which sectors to deploy its staff. In some local authorities, benefits and revenues officials administer the Scottish welfare fund, whereas in other local authorities, the social work department does that. It is entirely up to local authorities to decide how they can most efficiently operate the scheme in their areas.

**Alex Johnstone:** However, when there appears to be a wide variation in administration costs between local authorities, you will continue to cap the scheme to ensure that there is not too great a burden on finances.

**Margaret Burgess:** The funding is agreed, and the local authorities have their share of the £5 million, which is what they use to administer the scheme. How they operate is up to them, but that funding is agreed and they get an amount out of the £5 million.

**Joan McAlpine (South Scotland) (SNP):** The SPSO's written evidence talks about the first-tier internal reviews, which

"should be in writing and signed"

except in "exceptional" circumstances. The SPSO expresses some reservations about the process, but it will work with that. Why are we going down a road whereby it is not possible, except in exceptional circumstances, to appeal orally?

**Margaret Burgess:** We have made it clear that an oral appeal to review a decision can be made over the telephone or whatever. Even at a first-tier review, the applicant can use an advice agency or someone else to assist them to put forward the grounds for a review. Someone can correct me if I am wrong but I think that, as it stands, there is nothing to prevent anyone from asking for a review over the telephone, in writing or with the assistance of a third party.

**Joan McAlpine:** Thanks very much for clarifying that.

**The Convener:** As there are no further questions, we move to item 3, which is the formal debate on the instrument. I invite the minister to move motion S4M-15227.

*Motion moved,*

That the Welfare Reform Committee recommends that the Welfare Funds (Scotland) Regulations 2016 [draft] be approved.—[*Margaret Burgess.*]

*Motion agreed to.*

**The Convener:** Minister, thank you for your evidence. I believe that this is your last appearance at the committee before you stand down.

**Margaret Burgess:** I believe so.

**The Convener:** I thank you for your contribution to the committee and wish you well in whatever you do after you stand down.

**Margaret Burgess:** Thank you.

10:54

*Meeting continued in private until 11:04.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body

All documents are available on  
the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

Information on non-endorsed print suppliers  
Is available here:

[www.scottish.parliament.uk/documents](http://www.scottish.parliament.uk/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

---