The Scottish Parliament
Pàrlamaid na h-Alba

# Official Report

# WELFARE REFORM COMMITTEE

Tuesday 24 April 2012

Session 4

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## WELFARE REFORM COMMITTEE
**5th Meeting 2012, Session 4**

**CONVENER**

*Michael McMahon (Uddingston and Bellshill) (Lab)

**DEPUTY CONVENER**

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

**COMMITTEE MEMBERS**

*Margaret Burgess (Cunninghame South) (SNP)
*Annabelle Ewing (Mid Scotland and Fife) (SNP)
*Alex Johnstone (North East Scotland) (Con)
Drew Smith (Glasgow) (Lab)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jackie Baillie (Dumbarton) (Lab) (Committee Substitute)
David Griffiths (Ecas)
Mike Holmes (Enable Scotland)
Gordon Macrae (Shelter Scotland)
Hanna McCulloch (Capability Scotland)
Tanith Muller (Parkinson’s UK)
Ken Reid (Royal National Institute of Blind People)
Carolyn Roberts (Scottish Association for Mental Health)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

Committee Room 2

# Scottish Parliament

## Welfare Reform Committee

*Tuesday 24 April 2012*

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

## Welfare Reform (Further Provision) (Scotland) Bill: Stage 1

**The Convener (Michael McMahon):** I wish a good morning and welcome to witnesses and members of the public to the Welfare Reform Committee. I have received apologies from Drew Smith, who is at the Health and Sport Committee. Jackie Baillie is in attendance as his substitute, so I ask her to declare any relevant interests.

**Jackie Baillie (Dumbarton) (Lab):** I have no interests to declare other than those that are in my register of interests.

**The Convener:** The substantive item of business is evidence on the Welfare Reform (Further Provision) (Scotland) Bill. I welcome our panel of witnesses: Hanna McCulloch is a senior policy officer from Capability Scotland; David Griffiths is chief executive of Ecas; Mike Holmes is executive director of Enable Scotland; Tanith Muller is parliamentary and campaigns officer in Scotland for Parkinson’s UK; Ken Reid is the chair of the Royal National Institute of Blind People Scotland; Carolyn Roberts is head of policy and campaigns at the Scottish Association for Mental Health; and Gordon Macrae is head of communications and policy at Shelter Scotland. For anyone who thinks that they are having a double take, Hanna McCulloch gave evidence to the committee last week as part of the Scottish campaign on welfare reform umbrella organisation, but today she is representing Capability Scotland. Members might want to bear that in mind if they have any specific questions about that.

Some of the witnesses have provided written submissions, but I give all of you the opportunity to say something before we get into the discussion so that we can get a sense of where you are on the bill, and so that you can state any pertinent points for the record.

**David Griffiths (Ecas):** I thank you for inviting us to give evidence.

Ecas’s evidence is based on the concern that there is a tendency to view each problem and each benefit on its own. I welcome the committee’s letter to the Department for Work and Pensions seeking evidence of the cumulative impact, but I would like the committee to think about taking a holistic view of how we can best utilise the resources that we have in Scotland, which are, of course, limited. I assume that the Government’s and Convention of Scottish Local Authorities’ very welcome extension to council tax benefit and filling of the £40 million gap unfortunately do not exist for all the other benefits that have been reduced by Westminster, which means that difficult moral decisions will have to be made.

We can start by identifying who we are targeting and how and why we are doing so. Will it be based on income, disability or age? That is an issue. We can look at the comparative benefits of various types of expenditure on how people are being supported—the benefits should include preventative benefits. There is definite evidence, for example, that aspects of the disability living allowance enable people to get out of their houses to do things that improve their wellbeing, thereby reducing decline in their health.

We could consider the national concessionary card, which costs £180 million a year, I believe, and the benefits that it provides to some of its recipients—perhaps people who are between 60 and pension age. Could a small saving made from that £180 million a year make a bigger difference if it were used to increase the income of community transport operators in Scotland? Community transport operators provide support for elderly and disabled people, who often cannot use public transport, and their income is £10 million a year.

I am not sure how much universal free prescriptions cost, but the Scottish Parliament information centre briefing says that, in 2009-10, about half the applications for community care grants were awarded. There were 41,450 awards from 82,370 applications. Community care grants cost around £25 million a year. That can be compared with £142 million for legal aid. Are we getting the best preventative spend value out of those awards? Can we look at all of those things and decide where the best expenditure would be?

I know that the committee is keen on passported benefits. I have given evidence on passporting before and it is an important issue. If we do not use the United Kingdom Government’s measure—which we do not like—it will be difficult to identify where the goalposts should be and how we will assess who fits. I am not convinced that the right answer is to say that current recipients should keep the award: the list of people to whom you should give it would be out of date on day 2 as new people qualify and others no longer qualify, but you will not know who is in either group.

Another issue is crisis support. The evidence that the committee has heard suggests that many people will be in crisis. Planning how to deal with that will be required, as will finance for it.

I mentioned in previous evidence—it is still true—that increasing numbers of people who would normally have been supported through community care grants are applying for grants from the third sector. That increase is not sustainable. At the moment, the gap is being filled, but I do not see how that can continue—especially if 50 per cent of community care grant applicants are turned down.

**Gordon Macrae (Shelter Scotland):** I thank you very much for inviting us to contribute to the committee's discussions today.

We welcome the bill. It is necessary and urgent that ministers be able take steps to preserve critical benefits that are often overlooked aspects of the welfare system. The people whom we see day to day through our casework and local services are incredibly reliant on, for example, free school meals, access to travel and education maintenance allowance. Those are the measures that sustain the people who are most vulnerable to changes in their income.

Although we welcome the universal credit in principle—it is good to move towards a simplified benefits system—we are concerned about the pace at which the reforms have been undertaken, and we have increasing concerns that the driver is cost reduction rather than the efficacy of the system. Since the Scottish Parliament decided to withhold legislative consent, those concerns have been supported further by the most recent budget, which indicated that a further £10 billion would in due course be cut from the welfare system.

It is clear that welfare reform is—to borrow a phrase—a process and not an event. It will continue for some time, and it is right that the Scottish ministers should take decisions about how local and important benefits in kind, and other supporting elements of the social sector, are delivered in Scotland. However, we realise that the Scottish Government and local authorities have a set amount of money with which to operate.

It is unlikely that, in the first instance, Scotland will be able to diverge greatly from the direction of policy travel down south, but we should be alive to the increasing divergences in social policy that already exist. For us, a case in point is the 2012 homelessness commitment. The welfare reforms undermine certain choices that local authorities have for where they place people under 35, but such considerations have not been at the forefront of decision making, to date.

We welcome the opportunity that the bill presents to identify the particular Scottish dimension that must be considered, but I am afraid that we remain pessimistic about the space that will be available for the Scottish ministers to take a different view. We welcome, however, the fact that the bill will give them the powers to take decisions that are closer to the needs of the Scottish public.

**Carolyn Roberts (Scottish Association for Mental Health):** Thank you for the opportunity to give evidence today. I will make two points to set some context for our concerns about the bill.

I have said previously to the committee that the concerns that people with mental health problems have about welfare reform are many, varied and quite well justified.

We know that 46 per cent of incapacity benefit claimants receive that benefit because they have mental health problems, and that 60,000 people in Scotland receive disability living allowance because of mental health problems. There is a great deal of fear and concern about what is going to happen and, in many cases, about what is already happening. My point is that the impact is not simply financial: there is also the increasing psychological impact of the repeated assessments to which people are being subjected. That is the context in which we are operating, and the calls and e-mails that we get from people with mental health problems are raising such issues.

On the bill, as Gordon Macrae said, it is clear that a great deal of the power to make changes is reserved to Westminster. We cannot unpick the UK Welfare Reform Act 2012, but there are opportunities to make decisions on passported benefits and to deal with the knock-on effects of some changes that the UK act will introduce. We would like to discuss those opportunities.

We also want to discuss scrutiny of the bill. We understand why it is a skeleton bill and we know that the detail will be in regulations, but we hope that there will be an opportunity to discuss the regulations. We understand that the timetable has largely been set by the UK act, but we hope that there will be opportunities to examine the bill that is before the Scottish Parliament in a lot more detail.

**Mike Holmes (Enable Scotland):** I thank the committee for the opportunity to give evidence. Enable Scotland welcomes the bill and recognises the Parliament's efforts to mitigate the impact of welfare reform and its effects on people with learning disabilities and their carers in Scotland.

On the broader context, our members and other people with learning disabilities and their carers across Scotland face a perfect storm of changes to services, tightening eligibility criteria, fewer college places and a much harder jobs market—when the level of employment among people with learning disabilities is already shockingly low—coupled with the welfare reform that is coming down the tracks. I genuinely cannot recall a time in the past 20 years when there was such a level of anxiety among our members. I suspect that the same is true for SAMH members and members of other organisations.

We are therefore particularly pleased that the Scottish Parliament is considering the issue and is aiming to mitigate somewhat the impact. We know that we will not be able entirely to mitigate the impact, but at least some of it can be mitigated, particularly in relation to benefits to which people are passported through other benefits such as DLA.

**Ken Reid (Royal National Institute of Blind People):** I would echo all that has been said. I also express my gratitude for the RNIB's involvement in the process. Other panel members have expressed very well many of our concerns about what is coming down the line for our members and other blind and partially sighted people. It is worth pointing out that the benefits that people receive are not somehow a supplement or boost to an already healthy income; most of the people who receive the benefits are on low incomes to start with. That is likely to remain the case, given what we have heard about the chances of employment. The money that people receive at present helps to defray some, but by no means all, of the costs of being disabled.

In considering the impact of the changes on people in Scotland, it is important to recognise that, as has been said, the changes are a gateway to a number of other effects; there will be a consequential cost on other parts of the Scottish budget. If people lose the income that enables them to live independently, they will become dependent on the health service, social services and other agencies, so those agencies will have to be geared up for that.

I expect that we will hear more stories of bed-blocking as people who become disabled have to remain in hospital because they can no longer live safely in their own homes. How we cope with that is part of the thistle that we will have to grasp.

10:15

As for the needs of the future disabled, which David Griffiths referred to, we reckon that every day about 100 people in Scotland start to lose their sight. As David pointed out, on day 2, there will be more blind people than there are blind people who have been passported across, so we must ensure that we support those who are going blind or who acquire other disabilities after the changes have been made.

Finally, how will entitlement be measured? DLA has been used to do that in the past, but it is imperfect; after all, many people who live with severe sight loss do not qualify for the benefit. However, under the proposals, fewer people will qualify for the PIP. The question is not just about what happens to those who currently receive benefits but about how we measure those with a disability who require assistance. For example, many people might have uncorrected sight loss but are not registrable as partially sighted; they might well be unable to drive and are therefore dependent on public transport, but still do not qualify for DLA. Although they are already disabled, they do not measure as such in anyone's statistics.

**Tanith Muller (Parkinson's UK):** Parkinson's UK deals with people who have a complex set of issues. Commonly, the condition not only affects people's physical health but has mental health and cognitive aspects that are often hidden. As a result, it is quite a good proxy for a wide range of issues with which people who are currently in receipt of benefits have to live. Because the condition also fluctuates, it creates the kinds of problems with assessing disability that have been well thrashed out.

I want to highlight the anxiety that we are having to deal with among people across Scotland who live with Parkinson's. Our information and support workers, who support families in, for example, dealing with benefits issues, are already reporting a massive increase in workload from people making applications or putting in appeals. One of the big issues for us, which will be common to all, is that funding cuts are leading to cuts in other advocacy and advice sources, so our workers are increasingly struggling to find others to whom to refer cases. That is giving them a big workload, but it also raises questions about what is happening to people who do not have the kind of support that we are in a position to provide.

The massive increase in people's anxiety levels is impacting on their health and ability to cope with the condition, and that is likely to be the case for people with other disabling conditions. We predict a big increase in workload for health and care services as a result of the reforms, the anxiety and the uncertainty. In that context, we welcome the bill and the steps that the Scottish Parliament can take to reassure people, to make the transition process as straightforward as possible and to ensure that people do not live with uncertainty about their income for any longer than they need to.

**Hanna McCulloch (Capability Scotland):** Most of what I was going to say has been covered, but I simply want to highlight the value of passported benefits and that, in many cases, they are more valuable than the original benefit. For example, the eligibility criteria that the Department for Work and Pensions has released for the PIP indicate that someone who can walk up to only 50m without the use of a wheelchair might lose their entitlement to the higher-rate PIP. If the PIP is substituted for DLA as the passporting benefit, such a person might well lose their blue badge. That could mean that somebody with cerebral palsy who can just about walk 50m without a wheelchair would lose their blue badge. What if the nearest car park was more than 100m walk from their office? It could be devastating if they could not get to work. There is a need to sit down and look at what the knock-on effects of losing such benefits would be for people.

**Alex Johnstone (North East Scotland) (Con):** I appreciate what Mike Holmes and Tanith Muller said about anxiety. Carolyn Roberts mentioned the proliferation of assessments and her experience of the anxiety surrounding that. That is reflected in what is in my mailbag—I am hearing about that experience from constituents. Can you say a little more about what is happening at the moment? What evidence do you have of the issue around assessments? What might be done to reduce that burden as we start the reform process?

**Carolyn Roberts:** The issue at the moment relates primarily to employment and support allowance. People are being assessed for that as they come off incapacity benefit or as they make new applications. The outcome might be that they are fit for work and will transfer to jobseekers allowance, that they do not qualify for any benefit at all or that they are put into the work-related activity group or the ESA support group. There are a number of different outcomes, and there can be appeals—as I am sure you are aware, a high number of appeals are made—which will lead to further contact with the DWP and further anxiety as people wait for their cases to be dealt with.

If a person finds that they qualify for ESA in one or other of the groups, they will also find that their assessment tends to come round again really quickly. They are not left for two years, but might find themselves being assessed again after six months. At the moment, there is a regular cycle of assessments. A person is not simply put on a benefit and allowed to proceed, but is assessed regularly. That causes a great deal of anxiety and uncertainty, and it can take up a great deal of time in preparation of evidence and in attending assessments, which are often quite stressful experiences in themselves. That is already happening.

As Hanna McCulloch said, we are also starting to see how the PIP might work. We have the proposals for an assessment and know that the PIP is likely to involve much more face-to-face assessment, which will add another layer to what people already have to go through. That is why I agree with Capability's written evidence in that we are not keen to see yet another process of written assessment for passported benefits. We must try to find a way of keeping people on the passported benefits that they would have been entitled to without introducing yet another layer of assessment.

Those are the things that we are seeing already. Alex Johnstone's mailbag is probably a lot like ours in that people are concerned about assessments. They are also concerned about how the assessments are being presented. Reports in the media and, sometimes, statements by the UK Government imply that it is expected that people will be found to have been fit for work all along. People perceive that the process that they are going into is not necessarily going to result in a good outcome for them, so there is a lot of fear and anxiety.

**Kevin Stewart (Aberdeen Central) (SNP):** I have a question on that specific point. Do you have evidence of situations in which the proliferation of assessments has led to the illnesses of folk with whom your organisation has dealt worsening, meaning that the state in other forms has had to pick up an even greater tab than that for the early intervention that would have been required to help out with the initial difficulty?

**Carolyn Roberts:** People who are being assessed find it a difficult and stressful process, and there have been cases in which they have sought further support from us—if we are their social care provider—or from health services. That has had knock-on costs. I am talking about employment and support allowance, which is not an issue that is before the committee. However, the process of assessments that is taking place for that is likely to inform the process of assessments for the PIP, which is why it is relevant.

The review of employment and support allowance that Professor Malcolm Harrington was asked to carry out highlighted specific problems with assessing people for ESA in relation to a mental health problem. It found that the assessments could not always assess mental health difficulties correctly, and that the descriptors that were used to assess people did not always reflect a mental health problem. We are very worried that that process will be repeated in relation to the PIP and that the substantial lessons that we need to learn from the ESA process will not be learned.

**Alex Johnstone:** We all start from the position that the benefits system should be simpler and more efficient. It seems to me that Carolyn Roberts has given an example of how, in trying to achieve that simplicity and efficiency at the level of assessment, the system has been made complex and more expensive.

**Carolyn Roberts:** We are looking at the PIP consultation—in particular, the assessment process for PIP. We are trying to make suggestions that will ensure that it assesses mental health problems correctly without adding another layer of complexity, which is difficult to do. However, we have been told that the direction in which we are going is towards more face-to-face assessments, which makes it inevitable that there will be more anxiety.

**Alex Johnstone:** That was interesting. Thank you.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** In his second report, Professor Harrington said that, in his view, the work capability assessment had

“noticeably changed for the better”.

He acknowledged that there was still much work to be done but urged people to be patient. I understand that things have moved on since then in that, on 2 April, Paul Farmer of the mental health charity Mind resigned from the Harrington review’s scrutiny panel. He argued that the WCA process “isn’t working” and that there is

“insufficient recognition of the need to change the approach.”

Would you care to comment on that recent development concerning the WCA?

**Carolyn Roberts:** We are aware of that. We work closely with Mind and we entirely support Paul Farmer’s decision.

The WCA has been the subject of a number of reviews. It is only fair to say that there have been some improvements, but a number of suggestions to improve the WCA have not yet been acted on and we are not seeing a great sense of urgency to act on them. We think that it is extremely important that that happen. People are being assessed for fundamental benefits using a process that we know is not correct and which does not assess mental health correctly.

**Ken Reid:** I would echo much of what has been said. In relation to blind and partially sighted people, anecdotally it has been shown many times that the people who are doing the WCA assessments do not understand the severity of the impact of sight loss on a person’s capabilities, and that people are being passed as fit to work because they can walk and pick things up with their hands. It is being forgotten that they have to be able to see things. The next time someone passes a blind or partially sighted person as fit for work, we might ask them whether they would like to be operated on by a blind surgeon or driven in a taxi by a blind driver. We find that blind people are being told that they are fit for work all the time, but there is no work that they are fit for.

**Tanith Muller:** The previous two contributions reflect what is happening to people with Parkinson’s. I will give a couple of examples. I know of someone who is such a frequent flyer in his local accident and emergency department that he practically has a bed set aside for him. He has Parkinson’s, diabetes and a complicated skin condition. He has been put in the work-related activity group. Another person who has Crohn’s disease and Parkinson’s has a significant tremor and cannot cross a road unaccompanied. He, too, has been put in the work-related activity group. Deeply inappropriate assessments are being made, often by practitioners who do not have knowledge of the conditions that they are dealing with and who have no appreciation of the impact that they have on people’s lives and their ability to work.

10:30

**Mike Holmes:** The points that have been made about the assessment process being flawed are confirmed by the statistics on the success of appeals. About 40 per cent of appeals are successful, of which 60 per cent have come from people who were assessed as having 0 points, when they needed to achieve 15 points.

It seems to me that the initial assessment is almost intended to drive people out of the system. In effect, there seems to be an acceptance that the system is flawed: there will be an attempt to drive as many people out of it as possible and people who go through the appeals process will get through.

Our concern is that many people with learning disabilities—and other people—just get scared and give up. They are anxious and fearful about the assessment process, the bureaucracy that they must go through and what they might be told. Professor Harrington commented after his second review that form ESA50 and the face-to-face assessments are not working and do not take account of the communication difficulties of people with learning disabilities. There is a huge need to make the system user friendly, but we think that it is almost deliberately not being made user friendly, in order to drive people out of the system.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** It is clear from what we have heard that there are concerns about the assessment process and its outcomes. The submission from Parkinson’s UK mentioned people’s difficulties in even getting to the assessment stage. You said:

“We have found significant issues around lack of disability proofing of the application/assessment process.”

What did you mean by that?

**Tanith Muller:** This is anecdotal evidence, because we have not done specific work in the area. People are certainly reporting that going to the assessment can be difficult. For example, some people are not wheelchair users but occasionally struggle with stairs, and how letters are framed can make communications difficult to understand for people who have cognitive impairment or difficulties with reading. There are physical barriers and there are barriers to do with people's ability to understand.

There is also a lack of support. Because people find it difficult to face an assessment, they tend to make sure that they are well medicated and that their symptoms are well under control. They will time the appointment to ensure that they are at their best. Most people do not understand the benefits system before they get into the assessment process, so it is easy for their lack of knowledge to work against them when they fill out the forms. When they subsequently consult a citizens advice bureau or one of our information and support workers, they might be asked, "Why did you talk about how you are when you are at your best? You need to be much more realistic."

It is often hard for people to face up to and express what is happening to them, particularly when issues are stigmatised and difficult. For example, continence problems are common for people with Parkinson's, but people probably do not want to put that down on a form for anyone to read—they might not have entirely faced up to the issue themselves.

**Jamie Hepburn:** I see that a number of the witnesses concur with you, so that is obviously an issue throughout the sector.

The system whereby people qualify for passported benefits on the back of benefit entitlement will change as we go through the process of welfare reform. That is an important issue for the committee, as I think Ken Reid and Hanna McCulloch said. David Griffiths said that he is not convinced that an approach whereby people who are currently in receipt of passported benefits simply continue to receive them is necessarily the best one. Such an approach was proposed as an interim measure, at least, during our previous meeting. If that is not the best system, what is?

**David Griffiths:** You are right. I said that I do not think that it is the best system. I said that because people come and go with these benefits. Some people will no longer be entitled to them and, as Ken Reid said, given that the number of people whose sight deteriorates increases daily in Scotland, new people will become entitled to them. The list that is used on day 1 will be out of date on day 2.

We are saying that somebody has to draw a line and decide that people on one side of the line get the benefit, whereas people on the other side do not. That is not a good system, but it is the system that we have used in the UK since time immemorial.

The UK Government has decided to move the line to somewhere that we do not like. We must either put up with that—I am not advocating that we do so—or create our own line. If we decide—I say "we", but I should say you, meaning the Parliament, because it is your privilege not mine, and I do not envy you. If you decide to draw a line in a different place, you must make the difficult moral decision about where the line should be.

For example, I do not accept the premise that disability living allowance is a proxy for disability. A lot of disabled people do not get disability living allowance. They are defined as disabled under the Equality Act 2010, so they are disabled, but they do not meet DLA requirements. Therefore, where do you draw the line?

**Jamie Hepburn:** To be fair, that was my question to you.

**David Griffiths:** Sorry. If I may go back to Mr Johnstone's point, you will have to create another assessment to decide whether people meet your criteria in addition to the UK Government deciding whether people meet its criteria. One way of approaching that is for the Scottish Government to continue to use the DLA assessment—you would implement the current DLA assessment yourself. However, that will involve the cost, pain, stress and time of another assessment. I do not have a better answer—I wish that I did.

**Gordon Macrae:** We think that there may be a requirement to look at a two-speed process. Under the Welfare Reform (Further Provision) (Scotland) Bill, Scottish ministers will have the power to look again at what the best trigger is in Scotland, but we need to be aware of the process of bringing in the UK legislation. It could be that the universal credit is the best worst system available at the start of the process, and the Scottish Parliament may wish to consider whether to take further time to deliberate on the longer-term position, especially in the light of future welfare reform and cuts that might come further down the line.

Our principal concern at this stage is that there should not be a cliff edge. We should ensure that people who come into the system and might get lost have an easy route to the incredibly important benefits in kind. That point cannot be overstated in relation to universal credit and housing benefit. Most people do not see their existing benefits—they see the things that they rely on daily, such as free school meals, access to transport and the education maintenance allowance. The rent is largely paid, although that is changing under the new system, whereby the money goes into the tenant's account rather than the landlord's account. Most people do not have to deal with the challenge of having to manage various payments and outgoings—although there is an exception for a lot of passported benefits. How we ensure that people are not presented with a multitude of complex decisions on day one must therefore be part of the discussion. That will require the Scottish Parliament to consider how it funds any decision that it takes in the area. We are already hearing real concerns about what is, in effect, a cut in the social fund to enable it to be administered in Scotland, and any decision will have a knock-on effect in terms of short-term mitigation.

**Ken Reid:** We have a system that does not work and we are about to replace it with another system that will not work, as far as passported benefits are concerned. This might be an opportunity for us to say that linking the additional benefits to the financial benefit has never been the right thing to do.

We talked earlier about the Equality Act 2010 and the definition of disability, which is the crux of the matter. A disability is something that prevents somebody from carrying out their day-to-day life in a normal manner, and it is a long-term condition. Our starting point should be to accept that what people need is assistance to be able to carry out their day-to-day life, so we need to consider what difficulties people have in doing that. How do we go about doing that? As we have just heard, that is perhaps a longer-term debate that needs to be had. We need to move away from linking travel benefits, blue badges and so on to the UK benefits scheme.

**Hanna McCulloch:** I agree with everything that Ken Reid said. In the long term, that issue needs to be addressed. In the shorter term, there is a need to consider how people who need passported benefits can access them in the simplest possible way and whether expanding the range of benefits that can be used as passported benefits might be an option.

An example is the PIP and the blue badge. At present, DLA passports to a blue badge if the person is found to be eligible for the higher rate. I am not saying that this is the definitive answer, but I wonder whether it would be possible to expand that to include people who are found to be eligible for either the enhanced rate or the standard rate of the PIP. That would probably have a cost implication. However, the DWP estimates that about 1 million people would be eligible for DLA at the higher rate in 2015-16, and the number who will be eligible for the enhanced, or higher rate, PIP is 760,000, so there will be a reduction in the UK of about a quarter of a million people who will lose their blue badges. Under the DWP's figures, the number who will be eligible for any PIP is about 1.3 million, so the difference is about 0.3 million on either side. When we take into account the expense of setting up a new system, we have to wonder whether the option that I mentioned should be considered.

**Kevin Stewart:** Can I play devil's advocate, convener? Has anyone done any studies on linking the likes of blue badges to the condition instead of the benefit? Should it not be the case that the person becomes eligible once a doctor diagnoses their condition as being pretty severe, rather than their being required to complete a huge assessment programme, which is often immensely bureaucratic? We perhaps spend more money on the bureaucracy than we do on delivering the service to people. Has that been thought about in Scotland? Do you know whether it has happened elsewhere?

**Hanna McCulloch:** I do not think that that would be a good approach. It uses a medical model of disability, under which we would say to people, "You have this disability, so you must have these symptoms, and this is the help that you need." We prefer to take a social model approach to understanding disability. Rather than just looking at what is wrong with someone and what their illness is, we look at the barriers that they need help to overcome. That is what assessing people and finding out what benefits they need should be about—it should consider what obstacles they face, rather than what the doctor says is wrong with them.

**Jamie Hepburn:** I am sorry, but I cannot follow that logic. What do you mean by that? Just to back up Mr Stewart's devil's advocate approach, a medical assessment would not have to be involved—for example, social work could be involved. Kevin Stewart can correct me if I am wrong, but surely his point—which you and Mr Reid have already made—is that we are trying to disaggregate passported benefits from the formal benefits system. Surely an effective way in which to do that would be for the national health service and social work to have a greater role. Does that not make sense? I would have thought that it might.

10:45

**The Convener:** A lot of people want to come in on that, now that we are opening up the discussion.

**Hanna McCulloch:** I would not rule out assessment altogether, but I do not think that basing eligibility on a person having a particular medical condition is the way to go.

**Carolyn Roberts:** I support Hanna McCulloch's point. I understand why the suggestion about medical assessment would be made. However, basing entitlement to a passported benefit on a person being assessed by a doctor assumes that everyone with a disability will be in regular contact with the NHS and a doctor, when that is not necessarily the case. People can have many disabilities that do not involve having any diagnosis or regular medical contact.

I understand that the suggestion was made constructively to try to deal with the situation in which we find ourselves. However, to answer the question specifically, I do not know of any system in which a link has been made between a medical certificate and passported benefits. I wonder whether there is a way forward through the suggestion in Capability Scotland's written evidence that people could make a written application for their passported benefits. Perhaps we could make that one of a menu of options. Not every disabled person will have regular contact with social care or the NHS, but many will, so that might be one of the options in relation to people's entitlement to passported benefits. We may need a menu of options to ensure that people do not lose out on benefits that they would otherwise have received. Medical and social care evidence could be a part of that, but we would certainly be reluctant to say that the entire process should be based on that, because that approach does not recognise the social nature of disability.

**Ken Reid:** There is an area in which medical assessment is already in play in the way that has been suggested, in that the qualification for a blind person to get some benefits is registration as a blind person. I understand that it is the only disability that is still registered in that way. Registration is optional: those who choose to be registered as blind or partially sighted get qualification in that way. That process is under review, so we will have to wait and see what happens to it in the longer term. That is one aspect of my answer to the question about having a medical assessment.

The other aspect is that I would far rather have a medical assessment from an eye doctor who knew something about my condition—that is what the member was suggesting—than a midwife. I have heard of people with sight loss being assessed by midwives for work capability. However, there is one way in which the medical assessment process is valid and relevant.

**David Griffiths:** Off the top of my head, the only example of such medical assessment that I can think of is the taxi card, for which a person's general practitioner can state they meet the required conditions. However, I am slightly concerned about going down that route in its entirety. I agree with Carolyn Roberts that we need a menu of options. I can think of a number of conditions whose severity is a bit variable—a person with a particular condition might need no support or a lot of support. For such assessments, we draw a line and ask the GP to decide which side of it the person with the condition is on.

A menu of options would not apply to everybody for the reasons that have been given—for example, not everybody is in touch with social work. However, a good approach would involve the drive towards personalisation and outcomes in the social care field, whereby we try to assess what people want to do and how they can best achieve that with state support. The people making an assessment would have to work out how, for example, a person who wanted to watch a football match would get there. The whole person is considered in that approach. Perhaps we could tap into that approach, which is moving ahead in local authority social care departments.

**Jackie Baillie:** I want to ask about mitigation and the various levels of entitlement. It seems to me that we are struggling to define what is actually quite a simple issue. With concessionary travel, for example, people who qualify for the new PIP will make up a particular category of entitlement that, one hopes, the Scottish Government will retain. A second category will be made up of people who currently qualify for concessionary travel but will not in future qualify for the PIP, and the question is how we capture that cohort. I suspect that there will be a third cohort of new claimants who will not qualify for the PIP but who, under the old system, would have qualified for community transport. Going back to David Griffiths's analogy, I wonder where the witnesses will draw the line when they lobby the Scottish Government about what they expect it to do.

**Mike Holmes:** We know where we would draw the line, but we do not make the decision.

The question takes us to the nub of the matter. About 20 per cent of people—by case and by spending—will lose their DLA and might subsequently lose their passported benefits. The important point that we need to make is that this is not a plea for the Scottish Government to spend additional money on some of those people. That money is already in the system and being spent; given that those people currently benefit from concessionary travel, I assume that they have been taken account of in the budget. As a result, there is a consequential benefit to the Scottish budget from welfare reform. Do you see what I mean?

**Annabelle Ewing:** I understand where you are going with the point but, looking at the bigger picture, I think that there will almost certainly be a significant net loss to the Scottish budget.

**Mike Holmes:** I appreciate that £2 billion will come out of the Scottish economy but money is currently being spent on providing concessionary travel to a group of people who will lose the benefit. As a result, that money will not be spent on them. We argue that those who currently benefit from concessionary travel should continue to do so. Notwithstanding the £2 billion that will come out of the Scottish economy, I do not think that such a move will have any consequences for the Scottish budget.

**Kevin Stewart:** But it will have consequences in following years—

**The Convener:** Everyone else is waiting to speak. Please do not jump in.

**Mike Holmes:** As for where we draw the line, the issue is about those who qualify for concessionary travel and other benefits if the welfare reforms were not being made.

**Carolyn Roberts:** Given that I am not aware of any stated Scottish Government policy to drive down the number of people who receive passported benefits—and given that I have seen no credible evidence to suggest that too many people receive them—we would draw the line to ensure that everyone who previously received such benefits continued to do so.

**Ken Reid:** One might make a credible argument for drawing the line after cohort 4, which, as we have already discussed, is the group of people who are disabled but do not qualify for anything at the moment and will not qualify for anything in future. I know of partially sighted people who do not—indeed, cannot—drive but who do not qualify for the national entitlement card, and I would not like to exclude them either.

**Hanna McCulloch:** I think that this gives the Scottish Government an opportunity to consult disabled people, take a social model approach and think about the benefits of giving certain benefits to a particular range of people. We have talked a lot about the preventative approach; local authorities could save themselves money if they can manage to target benefits at people who might otherwise be housebound or unable to heat their homes. As I have said, this provides a good opportunity to reassess eligibility.

**The Convener:** I call Margaret Burgess, who waited patiently while other people jumped in front of her.

**Margaret Burgess (Cunninghame South) (SNP):** My point is not on the topic that has just been discussed. Given what has been said and given the written evidence about people giving up and not knowing the rules and about online applications, is the panel concerned that some people will drop out altogether for some time? I have seen that when people have been assessed as no longer qualifying for ESA but have not been told to claim JSA. When they are told to claim JSA, they go along and say that they are not fit for work, so they are batted from pillar to post and can be without money for several months. Is there a concern that that could increase? People could lose out not only on passported benefits but on other benefits to which they might be entitled.

**Gordon Macrae:** We are already seeing an element of that in the housing and homelessness field. Welfare reform changes that have taken place—in relation to the shared room rate, for instance—have directly resulted in under-35-year-olds finding themselves unable to meet a shortfall in their rent.

On passported benefits, it is important to understand that the welfare system is used as a proxy to allow speedy access to the courts and to other systems of redress, in addition to access to a number of other key services. Unless we have a simple trigger point for eligibility for legal aid, help with court costs and benefits in kind, such as travel vouchers, people will be unable to represent themselves in court to keep a roof over their head.

An increasing number of people are falling out of the system entirely. We at Shelter Scotland are getting ready for an increase in street homelessness, which Scotland had got close to eradicating. That is not because a safety net is not there to help people but because the system is now making it incredibly difficult for people to access support.

**Tanith Muller:** What has been described is already happening. Our information and support workers report that the DWP and, in relation to ESA, Atos seem to be actively obstructing people from appealing and getting the benefits to which they are entitled, by not including information on what they should apply for instead and by using criteria for rejecting applications that are not in the legal criteria—by suggesting that people are ineligible for reasons that are not in the legislation. People who lack support are trying to navigate the system without any help from the agencies that are rejecting claims, and we expect that to get worse.

**Margaret Burgess:** That makes me think that, even when we make representations to the DWP, we should ask how it will explain to individuals who are not entitled to one benefit what they can do and where they can access help with online applications, for example. People are often turned away from the DWP and told to go to the CAB or somewhere else to get help to apply for a benefit. If applications are made online but people do not have access to a computer or are not able to use one, that will put many people off. I noticed that a number of people referred to that in their submissions. Do the witnesses have any way of dealing with that?

**David Griffiths:** Having only online application will not work for my clients. If they had a computer, they could not use it, for numerous reasons. Despite advances in technology, a lot of people are still, unfortunately, unwilling or unable to tackle simple e-mails and logging on, let alone filling in a form online. I have concerns about that. I have heard too often the answer that people can go to their local library. That assumes that a person can get to the library, that it is accessible for them to get into and that, once they are plonked in front of a computer, they can use it. I am afraid that that is often not the case on all three of those points. There must be another system. We do not have connectivity at a decent speed throughout Scotland anyway.

**Annabelle Ewing:** I read the RNIB's submission on that point and on online application, which raises particular issues. What is the DWP saying that people with visual impairments are to do? Is it just going to exclude a swathe of society from applying for universal credit?

11:00

**Ken Reid:** To be honest, I am not sure what the solution is, but there is legislation for accessible formats, and we will not be excluded by there being solely online application. That would simply be against our human rights. We will be included. You might see us in the streets in order to ensure that we are included, but we will be. That has to be the case for all the applications. For many of the reasons that David Griffiths described, online is not the single solution. For me to be able to access that submission process, I have to spend £800 to make my computer work in that way. At the moment, that is paid for by the DLA—thereby hangs another tale. A range of alternative formats—online, Braille, face-to-face meetings—must be available.

**Annabelle Ewing:** Thank you for that explanation, and for the information about the personal cost to you and, I suspect, many people who are in a similar position.

I am sorry to be the one who suggests extra work for the clerk every week but, to pick up on Margaret Burgess's point, I agree with her implicit suggestion that we should write to the DWP to present it with the helpful information that we have gathered from this evidence-taking session and ask it what it suggests that people do, as a matter of practice, in order to avoid having a mass demonstration in the streets, as enjoyable as that would be.

**Jamie Hepburn:** I have a specific question for Carolyn Roberts, which arises from SAMH's written submission. I was interested to read that a Westminster parliamentary question identified that, although mental health champions should have been introduced in every Jobcentre Plus assessment centre, there are only two such posts across Scotland's 20 centres. Clearly, SAMH has raised that issue because it believes that we should be concerned about that. Could you explain why we should be? Given that we are just past the first quarter of 2012, do we have a more up-to-date figure?

**Carolyn Roberts:** We have been pursuing that issue, but we do not have a more up-to-date figure. However, I do not expect that number to go up. We are hearing that there are no plans to increase the number of champions. We are being told that Atos believes that, for logistical reasons, it is not possible to have a champion in every centre. We can understand some of those reasons—for example, the champions are not used frequently enough and it would be impractical to have them in every centre. However, we continue to raise the issue because we are not sure that having only two across the 30 centres is quite enough.

We are making further inquiries to find out whether there is a difference—in terms of the number of people who go into work or are put into a particular group—between the experience that someone has in a centre that has a champion compared with one that does not. It is an on-going issue. We are still not happy with the situation, but I do not have a definitive answer on how the situation is progressing.

**Jamie Hepburn:** We would like to see any further information that you gather.

With respect, I did not really get out of your answer any information about what a mental champion is meant to be doing and why it is concerning that there are only two.

**Carolyn Roberts:** Sorry, I will explain that a bit more. The mental health champions were introduced as a result of Professor Harrington's review, in direct recognition of the fact that the WCA and the process of assessment for ESA were not correctly serving people with mental health problems and were not identifying the issues that they face. The champions are people who have expertise in mental health and can give information and advice about particular mental health conditions to people who are doing the assessments.

**Jamie Hepburn:** Did I pick you up correctly as saying that Atos employs those people and that they are the same people who are undertaking the assessment? Is there any concern about that?

**Carolyn Roberts:** Well, that is the role of Atos and we think that it is a good thing if it employs people who have a better understanding and experience of mental health problems. That is something that we think should happen. We do not perceive a conflict of interest; we want to see more of those people. We were told that they would be in every centre, but they are not, so we continue to pursue the issue.

**Jamie Hepburn:** Perhaps we will reflect on that later, convener.

**Kevin Stewart:** Before I ask my local authority questions, I declare an interest as a member of Aberdeen City Council for a very short while.

We have talked about the difficulties of dealing with the process. David Griffiths has said that, if we directly transfer folk over, the lists will not quite be null and void but will need to be refreshed on day 2. Ken Reid has mentioned that there are folk who probably should be entitled to passported benefits who are not, for various reasons. In a lot of cases, local authorities are in the front line of dealing with those passported benefits. Are there any areas where there is really good practice in making determinations about certain things, which may be different from practice in other places? Does anybody have any examples of that?

**The Convener:** I do not see anyone saying yes.

**Kevin Stewart:** As well as talking to lots of people, I wonder whether we could write to local authorities to ask where they would draw lines in terms of the passported benefits. I am sure that those in the front line who are dealing with them have some immensely good ideas about how to resolve the difficulties that exist. It might be wise for us to do that.

**The Convener:** We can talk about that after the evidence session.

**Jackie Baillie:** I turn to my favourite anorak subject of subordinate legislation. Most of you have acknowledged that most of the detail of the reform will come forward in regulations, and you have expressed a desire to be involved in that process. However, much of the bill relies on negative rather than affirmative instruments, and there has been a suggestion that the level of scrutiny that is required is beyond the negative procedure. Several people—me included—have mentioned the super-affirmative procedure. How do you hope to be involved in the regulations that flow from the bill?

**Gordon Macrae:** We would be sympathetic to the choice of the procedure for affirmative instruments. As I said in my opening remarks, it is clear that welfare reform is a process rather than an event, and a negative instrument might have unintended consequences that ministers would wish to revisit quite quickly. Enabling full scrutiny that captures the breadth of potential unintended consequences would be to the benefit of ministers and the local authorities, which will be required to deliver on the decisions.

**Carolyn Roberts:** We agree that we want there to be as much scrutiny as possible. If that means using the affirmative procedure or even the super-affirmative procedure, if time allows, we support that. We have just submitted further written evidence on the bill to the committee this week—I suspect that members will not have seen it yet. In that written evidence, we highlight the fact that the Westminster Joint Committee on Human Rights made the point that the approach to welfare reform at the UK level had been very much to have a skeleton bill and put lots of detail in the regulation. It expressed substantial concerns about that, as it had not allowed sufficient time for scrutiny. We hope not to see that repeated at this level, as we would like there to be as much opportunity as possible to engage and be involved in the debate.

**David Griffiths:** We were critical of the Welfare Reform Bill for exactly that reason—that it was a skeleton bill and that things could go through without scrutiny. I echo Gordon Macrae’s point that there is a lot of expertise out there. The affirmative procedure might allow better scrutiny by allowing us to talk to our clients and other people who would be affected and to spot any issues, which I am sure would be unintentional. It would be much easier to debate those issues in the Parliament at that stage rather than try to fight it out later. Therefore, using the affirmative procedure, if that is possible, would help us all.

**The Convener:** As well as having the honour of being on this committee, I have the delight of being a member of the Subordinate Legislation Committee, which has been considering that issue. The rule of thumb by which the Government operates is that instruments that amend primary legislation are dealt with under the affirmative procedure, while those that amend subordinate legislation are negative. Under that rule of thumb, much of the subordinate legislation for welfare reform would be negative and therefore not subject to the detailed scrutiny that all the witnesses would welcome. Is it your view that the rule of thumb should be set aside in this case and that as much as possible of the subordinate legislation should be considered under the affirmative procedure so that a more open approach can be taken?

**David Griffiths:** Yes. I suppose that I am biased, but we are talking about exceptional legislation. We have heard during this evidence session and in others about the hundreds of thousands of people out there who are very worried about their future. This is an exceptional circumstance, so there certainly is an argument for changing the rule of thumb.

**Gordon Macrae:** It is a rule of thumb rather than a rule that is set in stone. Ensuring that the broadest possible debate takes place is beneficial to securing good policy. However, we should not overlook the responsibility that that places on organisations in the sector and on members of this committee to ensure that space is timetabled to allow the process to take place. I understand the anxiety of civil servants and ministers in the Scottish Government, who want to ensure that the legislation is put in place in a timely fashion. We should reflect that to ministers, but we should all accept our responsibility to play a part in smoothing the process.

**Mike Holmes:** I will give my personal view, because my organisation is more concerned about the impact on our members, so the details of process are left to the Parliament and the anoraks—forgive me for using that term—who deal with subordinate legislation and so on. To me, the preferred option is to provide greater transparency and openness on the issue and the maximum chance to participate for the agencies that deal day in, day out with people who are affected in what is an extremely complex area. The welfare benefits system is in effect a safety net. It is preferable to get the net as tight as possible and to prevent people from falling through it by the greatest use of experts. Therefore, to me, it makes sense to get affirmative procedures in place.

**The Convener:** That ends the public part of our discussion. I thank our witnesses for their evidence, which has been informative and helpful. Many concerns have been raised and anxieties expressed. We will take all of them on board. As things proceed, please keep us posted on your organisations' position. If you want to submit anything to us at any time, please do so. We appreciate your giving us your time.

11:15

*Meeting continued in private until 11:27.*

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