



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# WELFARE REFORM COMMITTEE

Tuesday 11 December 2012

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**Tuesday 11 December 2012**

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**WELFARE REFORM COMMITTEE**  
**14<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

\*Michael McMahon (Uddingston and Bellshill) (Lab)

**DEPUTY CONVENER**

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

**COMMITTEE MEMBERS**

\*Annabelle Ewing (Mid Scotland and Fife) (SNP)

\*Linda Fabiani (East Kilbride) (SNP)

\*Iain Gray (East Lothian) (Lab)

\*Alex Johnstone (North East Scotland) (Con)

\*Kevin Stewart (Aberdeen Central) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Nicole Bethune (Midlothian Council)

Colin Brown (Scottish Government)

Margaret Burgess (Minister for Housing and Welfare)

Richard Gass (Rights Advice Scotland)

Tommy Gorman (Macmillan Cancer Support)

Paul Gray (Social Security Advisory Committee)

Ann McVie (Scottish Government)

Professor Janet Walker (Social Security Advisory Committee)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

Committee Room 4



## Scottish Parliament

### Welfare Reform Committee

*Tuesday 11 December 2012*

[The Convener *opened the meeting at 09:30*]

### Fact-finding Visit

**The Convener (Michael McMahon):** Good morning, everyone, and welcome to the 14th meeting in 2012 of the Welfare Reform Committee. I remind everyone to turn off mobile phones and other electronic devices, please.

Our first agenda item is a report back on a fact-finding visit to the Atos Healthcare assessment centre in Edinburgh, which was two weeks ago, I think. The committee agreed that Kevin Stewart should report back on behalf of the group that attended, which consisted of Kevin, Alex Johnstone and me. I will let Kevin take members through his impressions of the visit and then give Alex the opportunity to add comments. We will then have a discussion until we exhaust any questions and issues that come up in Kevin's introduction.

**Kevin Stewart (Aberdeen Central) (SNP):** Thank you, convener.

I thank the clerks for the note that has been provided on the meeting, which was very interesting. I am sure that the convener and Alex Johnstone will have a few bits and pieces to add to what I say.

It is sometimes very difficult to gauge what is going on in role-playing situations, but I pay due respect to the actress who played the part of the person who was being interviewed. She was very good, even though the room was crowded with Atos people and officials—which did not give us a great impression of what would happen.

A number of things were quite surprising to us and would, I think, have been even more surprising to members of the public. The key issue is the division of responsibility between Atos and the Department for Work and Pensions. Because of what they hear from the media and other sources, the general public seem to think that the Atos folk who carry out assessments are also the decision makers. They are not: the decision makers are officials of the Department for Work and Pensions. The fact that the person who makes the assessment is not the decision maker is probably one of the great weaknesses in the system. I will expand on that.

We got the opportunity to see exactly what the assessor wrote down; we saw the boxes that had

been ticked and the comments that were written. I do not know whether the others who were on the visit would agree, but as we went through the tick-box exercise—if you like—it looked very much as though the person was fit for work, although you would have said that they were completely unfit for work if you had seen what happened. What may have swung things for the decision maker—we do not know what the decision maker would have done in the case—was the assessor's ability to write a few bits and pieces. I mean "a few bits and pieces" because there is not a huge amount of room for manoeuvre in the writing. The interpretation of what the assessor has written is what can make the difference for the person who is being assessed.

The software system that is used is called LIMA, which stands for Logic Integrated Medical Assessment. As I said, most of that is based on box ticking. Professor Harrington has, of course, looked at the system in his reviews. I do not think that the system is quite right because many decisions are based on what the assessor has written and writing can be interpreted in different ways. When somebody asked me to describe the system, I suggested that it is like buying something over the internet based only on a description, so the thing that you have bought is a major disappointment. Description is open to interpretation, and I have a difficulty with a faceless bureaucrat basing everything on the writings of the person who has assessed the person in front of them.

During the course of the visit we found that healthcare professionals do not always co-operate fully with Atos; we were told that general practitioners fail to respond in about half of assessed cases. There is a great danger in that because GPs' input to assessments could lead to different outcomes.

It is difficult to explain all the ins and outs to people who have not seen the process. The interaction between the assessor and, in this case, the actress, was extremely good, but I wonder whether every assessor handles everything in the same way. We met a couple of other assessors who seemed to be absolutely fine, too, but the reality is that we have seen only a snapshot. We require that a number of other things be clarified including throughput of claimants, changes that have been made to the assessment following the various Harrington reviews, and how many assessments are undertaken by each type of healthcare professional—doctors, nurses or others. The committee must see a copy of the initial DWP form and a copy of the ESA50 assessment form.

An issue that was raised was the increasing levels of violence in Atos centres. Obviously, as I

said at the beginning, Atos folk are being blamed for making decisions that they do not make, so we need the figures for violence against staff.

The key thing is that it is all fair and well for us to have seen the Atos assessment folks in action, but we must talk to decision makers and find out how they interpret the information in assessments. At the end of the day, we must ensure that the general public are aware that the Atos assessors are not the decision makers and that that function lies entirely with the Department for Work and Pensions.

Convener, I am quite sure that you and Alex Johnstone will have things to add to that.

**The Convener:** Thank you very much, Kevin. That was a fair assessment of what we saw.

**Alex Johnstone (North East Scotland) (Con):** I would not say much different, although I got the clear impression that Atos has been portrayed as the villain of the piece, when probably it is not. Although the process that Atos goes through is open to mistakes in individual cases, we saw it carry out a fairly robust process in a fairly objective manner.

We learned that Atos is just a link in the chain and that there may be a problem in how it connects to neighbouring links in the chain. At the front end, there is an issue about who is called in for an Atos assessment. We were told that some applicants are called in for assessment because they have put very little information on their form, which makes it difficult for Atos to interpret the information. However, as Kevin Stewart said, the biggest problem for Atos is that 50 per cent of calls to GPs for information result in no response. When there is no response from a GP, it often leaves no alternative but to call the person in for an interview. There is no other way of getting the information. There is an obvious opportunity to tighten the process up there.

The difficulty seems to be at the other end of the Atos process. Although the information that Atos provides may be objective and accurate, we have no way of knowing how that information is used once it has been passed on. The key issue for me is that there needs to be robust quality control in the system to ensure that, in using the information, decisions are not being made that would not meet with the approval of the person who did the assessment in the first place. There has to be continuity and checks that would give us confidence that Atos's input is being properly used as it moves through the process.

**The Convener:** Thank you.

I agree about the issues that Alex Johnstone and Kevin Stewart have identified. When I left the meeting, my biggest concern was the structural

weaknesses in the system. Clearly, Atos had put on its best bib and tucker for us; a very senior person carried out the assessment, who had a nice bedside manner and who took us through the process clearly and concisely. However, I am, as Kevin Stewart is, concerned about the division of responsibility. So few GPs providing information at the outset means that when people turn up to assessments, the assessor has very little knowledge on which to base their questions. It could be that we need to ask the health service what it can do to improve the level of response from GPs. It was made absolutely clear to us that whether a person is called in for an assessment can depend on the information that is provided by the GP at the outset. If the GP does not respond—

**Alex Johnstone:** It is virtually certain that the person will be called in.

**The Convener:** That means that Atos has to call the person in. Atos is making assessments based on very little information. One of the statistics that struck me was that 15 per cent of people who are called in for assessment appeal the outcome and 40 per cent of those decisions are overturned by the tribunal. Of that 40 per cent, 90 per cent are overturned on the basis that information that was not available at the outset has become available to the tribunal. That shows me that there is a structural weakness in the system; people are getting to the end of the process and it is only then that the information on which the assessment was based becomes clear.

We are talking about Atos, but we could talk about any generic health assessor because whoever was doing the job would have the same problem. We need to get GPs to inform the assessors so that the assessors have the best information before they take people through the process. That is one of the structural weaknesses in the system.

Another weakness is that the information from the assessment, wherever it is collected, is passed to a civil servant, who makes a decision on the basis of that limited information. There is no direct communication between the assessor and the decision maker. The assessors make it clear that they have no knowledge of the outcome of assessments and decisions that are made.

09:45

The third thing that concerns me is the level of violence that is being reported. People are turning up in anticipation of there being a problem; they are carrying that morning's newspaper with the latest headline against Atos and expecting it to be ready to strike them off their benefits. That culture has started to develop and is becoming quite a cause for concern. We have to raise that issue.

It might be appropriate for us to contact the Cabinet Secretary for Health and Wellbeing to ask whether something can be done within the national health service to get GPs to engage with the process, because I think that that would help. However, Atos needs to do a lot of work on its public relations to try to clarify exactly where it sits in the system.

I open the meeting up to colleagues who want to ask questions.

**Linda Fabiani (East Kilbride) (SNP):** On your point about whether something can be done to make the system a bit better by removing structural weaknesses, I am aware—as you are, convener—that NHS Lanarkshire will do some of the work for Atos. Would it be worth our while making contact with that health board to find out how it intends to approach the situation and—in the background—whether it is enabled to do anything differently or whether it will be forced to follow the same procedures that Atos uses?

**The Convener:** I can partly answer that. A couple of weeks ago—I know that you were unable to attend—the Lanarkshire MSPs met the health board, and a representative of Salus was at the meeting to answer our questions. It struck me that that representative said that it is going to do things differently—it will input to the decision-making process and so on. When we turned up three or four days later to meet Atos, it told us exactly the same as what Salus had said; the impression that has been given is that Atos is the decision maker, which even Salus believed. Salus has been told that it will be able to give input and that it will be able to talk to the DWP and try to inform the decision-making process—Atos told us exactly the same thing—but in reality it will not.

One of the criteria was changed, because Atos was feeding information back—I think that it was on cancer patients. Atos told us that, when it sees issues arising, it feeds information back to the DWP, which is exactly what Salus said it would be doing. The position remains that the DWP draws up the questions and the assessments, and both Atos and Salus will do their work according to the criteria that are set by the Department for Work and Pensions.

When I met the official from Salus, I suggested to him that he might receive an invitation from us to come here and give evidence. Salus will not start doing assessments until the middle of next year and we will probably need to wait for a while to see how they are rolled out, but we will need to get Salus here at some point.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** Although Salus will not start to do assessments until the middle of next year, it will be making preparations now. It would be interesting

to hear what those preparations are. Also in that vein, it might be useful to get the British Medical Association back to discuss the issue.

In your report back, convener, you mentioned the involvement or otherwise of GPs and the relationship of that to the success or otherwise of appeals. Irrespective of whether there is input from GPs, how can the questions be so out of kilter with individuals' actual situations? That is an important question to bear in mind. The DWP sets the questions, but is any differentiation made as to whether, in a particular case, there is input at the start from a GP? Does that determine which suite of questions is proceeded with? I think that there are further investigations that we can helpfully make here.

**Kevin Stewart:** I will give a personal opinion, convener; it may well be that you and Alex Johnstone will disagree with me. In my view, some of the tick-box questions are pretty irrelevant—for example, the ones that ask how the person has presented themselves, whether they are clean and tidy and all the rest of it. The assessor said to us afterwards that he has to dig below the tick-box answers to find out whether such situations are the norm. Obviously, we met someone who was probably one of the organisation's top-notch assessors. There are probably other folk—I am just guessing here—who, on a bad day, might just tick the box and leave it. One wonders about the relevance of such questions anyway. There are others that I could pick out.

A lot of what we saw involved the assessor trying to dig below the questions. As I said, he was probably one of the better ones—I do not know whether they all do that. A lot of the original tick-box questions are pretty irrelevant anyway, and we do not know how the current questions compare with the questions before the first and second Harrington reviews. There is an on-going review, but we do not know whether there will be any massive changes, or a move away from the tick-box exercise towards much more of a script-based exercise so that the decision maker has a real idea about what is going on.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** I thank the convener, Kevin Stewart and Alex Johnstone for the useful and worthwhile feedback that they have given us from the visit. An obvious issue relates to GPs. I heard what the members said and I think that it would be worth our while to have Salus appear before us after it has done some of the work. Annabelle Ewing may be right to say that it would also be useful for Salus to come to the committee before then so that we can hear about its preparations.

I was also at the briefing that the members attended. If we take at face value what Salus has told us, it seems that its work will be quite

innovative, so it would be as well to get that on the record. Perhaps we can invite Salus back after it has begun the work, and invite the BMA and a panel of representatives from that sector to the committee so that we can ask them about the issues that have been identified.

That brings us back to the fact that Atos has a contract with the DWP, which sets the terms. We must keep in contact with the DWP and pursue it to appear before the committee. I think that a letter has gone to the Secretary of State for Work and Pensions. He will, I hope, be a bit more positive in his latest response.

**Iain Gray (East Lothian) (Lab):** We should definitely follow up the GP issue. It seems to be pretty important and it is an area for which the Scottish Government—if only at arm's length—is responsible.

Kevin Stewart said that a decision maker who had not seen the assessment that he saw but had seen only the output would think that the person was fit for work, whereas if the decision maker had watched the assessment and seen the person—or rather, the character who was being played—their view would have been that the person was not fit for work. What were you alluding to in that regard? Was there a problem with the assessment, or were the wrong questions being asked? That seems to me to be pretty fundamental to the question of whether or not the system is delivering the proper outcomes.

**Kevin Stewart:** I will clarify what I said about the tick-box situation. If you watched—as we did—the assessor ticking the boxes, you would probably have come to the conclusion that the person was fit for work. However, the doctor's written responses in the limited and small spaces that were available began to sway the decision the other way; that would have changed your mind and made you think, "Maybe not." It was difficult, because there were three of us around one screen because of technological problems.

**The Convener:** I asked, at the visit, specifically whether Atos has a target. Atos made it absolutely clear that it has no target because it makes no decisions—it just carries out assessments. However, the DWP did not clarify whether or not it has a target. The decision maker might ultimately be saying "I have to get a certain number of people back to work." Whether that is the case was never clarified, so it comes back to the point that Jamie Hepburn made: we will keep asking the ministers at the DWP to come before us because we have questions that we need to ask them.

The offer has been made for us to speak to officials from the DWP, which we should not rule out. We need to get answers from the DWP because the system involves the NHS in Scotland,

which is working with a lot of service providers in relation to getting people back to work. Unless we can see where everything joins up, we will always be guessing about how the system is working. We must keep pursuing the DWP to get them before this committee, because we need to know how the system is working and how it can be better used to do the job that it is supposed to do.

**Annabelle Ewing:** I attended last week the cross-party group on armed forces veterans, which one official from the DWP attended. He had answers to some of the technical questions that were asked by veterans organisations, but the minute the questions strayed into policy, he said "I'll have to take that higher up." He was not trying to be obstructive; that was his position. We can get only so far by speaking to officials. The convener is quite right that in order to get to the bottom of some of the key elements, we need to hear from the secretary of state—or, failing that, the minister—here at committee, on the record, showing respect to this committee, as I believe they should be doing.

**Alex Johnstone:** I will re-emphasise the importance of GPs in the process. It seems that GPs' input is vital, whether in relation to the initial application or elsewhere. Failure of GPs to provide input is often a reason for people being assessed. As we have heard, the appeals process is often successful because of GP input at that stage. The lack of GP input is currently putting the system under unnecessary pressure at the sharp end.

**The Convener:** We have overrun by a wee bit, but it is useful to give everyone the opportunity to make comments. We have a number of questions that we will pursue, but I will let Kevin Stewart pull it all together for us.

**Kevin Stewart:** It is useful that we have overrun. One of the things that we need to find out is how much notice GPs are getting. It is all fair and well for others to say that half of GPs are not responding, but what kind of timescales are they being allowed in which to respond? We know that they are all very busy, so if they must respond within a week, for example, the system is bound to fall down. It is important to find out exactly what the timescales are.

Regarding the DWP and the fact that ministers continue to refuse to come to the committee, one of the most interesting things about the meeting that we attended relates to the folk who were in the room with us when the assessment took place. One of the ladies in the room said that she manages the contract. I asked her whether she manages the contract for Scotland and she replied that she manages it for the whole United Kingdom. Obviously the DWP is concerned that we are undertaking such visits before they have sent their top bods to keep an eye on us, if you like.



**Alex Johnstone:** I thought that that was just the DWP showing respect.

**Kevin Stewart:** I do not think that it was; if the DWP wished to show us any respect, Iain Duncan Smith or Lord Freud would have attended the committee by now.

**Annabelle Ewing:** Hear, hear.

10:00

**Kevin Stewart:** If the DWP is willing to send a top bod up to attend that meeting, it should be sending those folks to this committee so that we can get the answers that we need from the decision makers. It is extremely important that we examine the whole process.

We have seen a bit of the process in terms of the assessment, but we need to get to grips with how the decision is taken and on what criteria folk are deemed to be fit or unfit for work. Until we get that information, we are still shooting in the dark. We are dealing with an aspect that has been taken out of context in terms of what the general public thinks because of the lack of information—or because of misinformation. Atos has taken a lot of flak, and the reality is that the folks who should be facing the flak have failed to show face at this committee.

**The Convener:** I fully endorse your final comment.

We will invite Salus and the British Medical Association to come and talk to us at some point and we will write a letter on the GP issue to see whether we can get clarification of the points that Kevin Stewart has raised about timescales and so on.

**Linda Fabiani:** I know, anecdotally, that there is an issue about GPs charging patients. Could you mention that in the letter on the GPs?

**The Convener:** We could look back at the evidence that we have taken. There was representation from the BMA—

**Linda Fabiani:** Was that before I joined the committee?

**The Convener:** Yes.

To a small extent, we addressed the issue of whether there was a cost implication. We could revisit that.

**Kevin Stewart:** Could we try to get some decision makers to visit the committee?

**The Convener:** Why not?

**Annabelle Ewing:** Who will we write to in that regard?

**The Convener:** We will write to Salus, the BMA and the national health service, and we will try to get clarification of the situation with regard to the Department for Work and Pensions's decision makers. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** We will suspend for a couple of minutes.

10:02

*Meeting suspended.*

10:03

*On resuming—*

## Subordinate Legislation

### Scotland Act 1998 (Modification of Schedule 5) (No 2) Order 2012 [Draft]

**The Convener:** Item 2 is consideration of an affirmative order in relation to the social fund. We are joined for this item by the Minister for Housing and Welfare and her officials. I welcome Margaret Burgess back to the committee—she is the first former member of the committee to come back in a ministerial capacity.

Consideration of the order will be split between two agenda items. The first will be an evidence-taking session, during which we will hear from the minister and her officials, and they will answer any questions that we might have. The second part is the formal consideration of the motion, during which the standing orders provide that only the minister and members of the committee may contribute to the debate.

Members will recall that, at our last meeting, we asked the Scottish Government to clarify the drafting of the order, specifically in relation to how confident we could be that the Parliament would know what it was being asked to agree to in article 2. The Government's response to that question is set out in paper 1, which we have before us this morning.

I invite the minister to make an opening statement.

**The Minister for Housing and Welfare (Margaret Burgess):** Thanks for the invitation to present the draft order.

We are here to consider the Scotland Act 1998 (Modification of Schedule 5) (No 2) Order 2012, which will amend schedule 5 to the Scotland Act 1998 to provide a new exception to the social security reservation. The order is required because the United Kingdom Government's Welfare Reform Act 2012 abolishes the discretionary social fund from 1 April 2013. As social security issues are currently reserved to the UK Government, a section 30 order is required to create an exception to the social security reservation in the 1998 act.

The order will enable Scottish local authorities, from 1 April 2013, to provide assistance to people who could have previously claimed a community care grant or a crisis loan for living expenses from the Department for Work and Pensions. Some time ago, we indicated in our response to the Calman commission that we support the devolution of the social fund, and we welcome the opportunity to take on the new responsibilities. We

see that as an opportunity to help to mitigate some of the adverse impacts of the UK Government's welfare reforms and to protect some of Scotland's most vulnerable people, which is why we have decided to top up the funding for the Scottish welfare fund by £9.2 million for its first year. That is an indication of our commitment to provide vital support for some of our most vulnerable citizens who face difficult times ahead as a result of the UK welfare reforms. We can also announce—I think that the committee has received a letter about this—that there is an additional £1.8 million for set-up costs in the first year. That takes the amount for the set-up costs to more than £2 million, which is to be welcomed.

The increased funding that we are putting into the Scottish welfare fund will have the capacity to award an additional 5,600 community care grants and more than 100,000 crisis grants. We are working with colleagues in the Convention of Scottish Local Authorities and local authorities on the development and implementation of the Scottish welfare fund. Great progress is being made, and we are well on the way to producing national guidance, an application form, and training and monitoring arrangements for the scheme. In our working partnership with COSLA and local authorities, we are seeing how innovative and creative their plans are to embed the new scheme within existing local authority services.

The section 30 order is a vital step in the process of ensuring that we have the necessary powers in Scotland to implement the Scottish welfare fund.

I am ready to take questions.

**The Convener:** Thank you very much, minister. Committee members may ask the minister questions.

**Linda Fabiani:** I have a quick question. I am interested in the national guidance. When will it be available?

**Margaret Burgess:** Work on the guidance is well under way. I think that we are currently on the second draft, and it is still out for consultation. I think that I am right in saying that the guidance will not be issued until March, when the order will be through, but the work on it is well under way and there is still the opportunity to give feedback in the consultation.

**Iain Gray:** We have had a look at the guidance. I know that it is still work in progress, and we will have a session later on in which we will look at it. The social fund, which the arrangements will replace, also depended significantly on guidance and regulations, but applicants to it always had the opportunity to appeal to the social fund commissioners to get a decision on whether the

legislation underpinning the social fund had been properly applied. I suppose that what we have here is a replacement for that. Although the guidance will provide the detail, the fundamental principle is briefly enshrined in the order. However, there is no recourse to a social fund commissioner or anything like that. What recourse would you expect applicants to have to ensure that local authorities provide the assistance that they are required to provide?

**Margaret Burgess:** There are two things. We certainly hope that the scheme will be consistent throughout Scotland and it will be monitored and evaluated. We recognise that there is demand for second-tier review and that people are looking for it, and we are considering how we can take that through. There is quite a considerable cost factor in the operation of the current system—perhaps somebody would like to comment on that—but we are certainly looking at the matter, as we recognise that there must be some review of decisions.

**Iain Gray:** The cabinet secretary said that in a previous session, and the draft guidance reflects that as well. Second-tier reviews are being looked at, but it might be helpful if some of the thinking could be shared with the committee.

**Margaret Burgess:** We are certainly actively looking at the matter, but perhaps Ann McVie might want to say where we are with it.

**Ann McVie (Scottish Government):** We are working as fast as we can on looking at the options. It is quite complicated and, as the minister said, we are trying to get something that is fit for purpose and affordable. We are also trying to take account of other areas in which similar administrative decisions are made by local authorities, and we are looking at how the second-tier review process might fit within that.

The matter is under active consideration. We are discussing it internally with colleagues who deal with social work services in local authorities, and we will have discussions with the Scottish Public Services Ombudsman later this week. We will share some of that thinking as soon as we can.

**Iain Gray:** If you are looking at options, you must know what those options are. Can you share them with us?

**Ann McVie:** They are not particularly detailed options at the moment. There were three suggestions that we looked at initially, including peer review by other councils and some form of board or committee within a local authority that is separate from the original decision making. Those are the types of things that we have been looking at.

**Alex Johnstone:** My question follows on slightly from that. The decision was taken at Westminster to devolve the social fund and pass it down to local authorities in England and to the national Governments in Scotland and Wales. What is your position on the proportionality of the inclusion of local authorities? Is it best to have central administration from Edinburgh, or should local authorities take a substantial part of the decisions?

**Margaret Burgess:** In terms of the decisions on the—

**Alex Johnstone:** I am simply trying to compare the English model with the Scottish model. How much do you feel that you can involve local authorities in Scotland, given that local authorities in England had the full power devolved to them?

**Margaret Burgess:** In Scotland, the scheme will be national and we want it to be uniform and consistent across Scotland, but it will be delivered by local authorities, so they will have the decision-making powers. There will be national guidance, which we hope local authorities will follow, and the local authority decision makers will make the decisions in their area. They will manage the budget and the amount of community care grants and crisis loans or grants in their area. They will have a considerable amount of autonomy in doing that, although we anticipate that the guidance on the scheme will ensure that someone who puts in an application in one area of Scotland will be treated in the same way as someone who puts in an application in another area.

**Alex Johnstone:** The other thing that I wanted to ask for is a total figure for the scheme. I believe that you said that the Scottish Government will top up the scheme by £9.2 million in year 1. What does that make the total budget for the scheme in year 1?

**Margaret Burgess:** I think that it will be 32 point something million pounds.

**Ann McVie:** Yes. It will be about £33 million. As yet, we have only had indicative allocations from the DWP, and the latest figure was £23.8 million. If we add the £9.2 million, the total is £33 million.

**Kevin Stewart:** I return to Iain Gray's question on the appeals process. Many councils already have housing and/or social work review panels. Has any consideration been given to making those bodies the appeal panels for decisions that are challenged?

**Ann McVie:** That is one of the options that we are looking at.

**Kevin Stewart:** How much input has COSLA had on this aspect of the proposals?

**Ann McVie:** COSLA is closely involved in developing the scheme as a whole. We have a development officer who is based in COSLA and the local authority practitioners group that meets once a month is convened by COSLA. We are discussing the issues with them in partnership.

**Annabelle Ewing:** I want to change the subject a wee bit, because I understood that we were supposed to be looking at the long title of the order, which I will not repeat because the minister read it so well at the outset.

Reading the papers last night, I understood the technical point that has been raised, which you came to speak to us about today but, by the same token, it seems to me that the Scottish Parliament does not have any competence with respect to the provision in section 69 of the act that is referred to in the order—the Child Support, Pensions and Social Security Act 2000. On that basis, and taking into account that the UK Government has indicated that it has no plans to amend the provision in the intervening period, before the order takes effect, it seemed to me that, although the question posed was a nice one if you were an administrative or legal expert, from a practical point of view the issue really was arcane. There would certainly be no reason not to recommend that the order be approved by the committee and the Scottish Parliament. Would you agree? I assume that you would.

10:15

**Margaret Burgess:** I think that we would agree. The UK Government has indicated to us that it has no intention of changing section 69. We think that what we are proposing should be accepted.

**Annabelle Ewing:** It is an arcane issue but, in any event, irrespective of whether the UK Government was going to amend section 69—and it has confirmed that it will not—we do not have any power over the issue anyway as it is a reserved matter. As a matter of practical effect, it makes no difference to the legal effect of the order here in the Scottish Parliament.

**Margaret Burgess:** I will let the legal person answer that one.

**Colin Brown (Scottish Government):** I quite like arcane legal points. It has to be clear what the provision is referring to. The legislation that Westminster has created is changing over a period so it has to be fixed at some point in that time. The order does that to a logical point. The Subordinate Legislation Committee has quite properly pointed out that there is potential for that to change, given that it is a future test. The DWP has confirmed what we all know, which is that it has no intention at present of changing it anyway. Frankly, that deals with the issue.

**Iain Gray:** I have a supplementary to Kevin Stewart's question on second-tier appeals. I am delighted to know that COSLA has been consulted to ensure that the second-tier appeal procedure suits it. I am rather more concerned to know that work is being done to ensure that the second-tier appeal procedure is fair to those who are appealing and protects their legal and human rights. I would be interested to know who is being consulted to ensure that that is delivered correctly.

**Margaret Burgess:** All of that will be taken into account. I, too, am anxious to ensure that the individual who applies to the fund for a community care grant or a crisis grant gets a decision that they understand, and that, if they are not happy, there is somewhere that they can take that decision to get it looked at again. I think that we are all anxious to do that.

However, we have to look at that in terms of the existing arrangements. From the point of view of cost, I do not think that we would be able to do it under the current independent social fund review body and commissioners. We would want the money from the social fund to go to people in communities and not be spent on administration. We have to look at that.

There should be a fair process for having a decision looked at again. We are considering that not just through COSLA but through the ombudsman, and other suggestions might come up in relation to the process as a whole. All of us are anxious that, if anybody is not happy with a decision or feels they have been treated unfairly, there should be another tier to consider the decision.

**Iain Gray:** Nobody could disagree with that, but my question was about who is being consulted. We know that COSLA and the ombudsman are being consulted. Is there anyone else?

**Margaret Burgess:** I think that the stakeholders have been consulted.

**Ann McVie:** Yes. We have regular discussions about all the issues relating to the new Scottish welfare fund, through the welfare reform scrutiny group, which includes the Poverty Alliance, Citizens Advice Scotland, the Child Poverty Action Group in Scotland and the Scottish Council for Voluntary Organisations. We are engaging with the third sector on those issues.

**The Convener:** Minister, can you clarify something that you said earlier? Has the additional £1.8 million that has come from Westminster to the Scottish Government come from within the Scottish Government's budget?

**Margaret Burgess:** It has come from the DWP for set-up costs in the first year.

**The Convener:** Okay. Is that money intended to be spent by the Scottish Government or will some of it be disbursed to local authorities for their set-up costs?

**Ann McVie:** Yes. The intention is to pass it on to local authorities. Convener, you have been copied into the reply about set-up costs, so it is probably on its way to your inbox.

**The Convener:** I have a final question on the additional £9 million for the social fund, which I have been trying to clarify in my own mind. It has been stated that the money will assist about 100,000 claimants, but is that right or are we actually talking about 100,000 claims? After all, claimants can claim more than once a year. Is the 100,000 the total number of claimants or claims?

**Margaret Burgess:** What we have said is that it will allow another 100,000 crisis grants to be paid. There could be 100,000 claimants or we could have people claiming for more than one crisis in a year.

**The Convener:** Thank you for clarifying the matter.

As we have exhausted our questions and as no member has indicated a wish to debate the motion, I ask the minister whether she has any comments to make before she moves it.

**Margaret Burgess:** I simply invite the committee to approve the order.

I move,

That the Welfare Reform Committee recommends that the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2012 [draft] be approved.

*Motion agreed to.*

**The Convener:** Thank you very much, minister.

10:21

*Meeting suspended.*

10:23

*On resuming—*

## Social Security Advisory Committee

**The Convener:** Agenda item 4 is an evidence-taking session with Paul Gray and Professor Janet Walker, chair and deputy chair respectively of the Social Security Advisory Committee. I welcome both witnesses to the meeting.

I think that it would be useful to explore two issues in this session: first of all, the SSAC's work on passported benefits; and, secondly, the report published yesterday on the UK Government's welfare reform regulations. To start us off, I invite Mr Gray and Professor Walker to take 10 or 15 minutes to talk us through the SSAC's work on passported benefits and its key findings.

**Paul Gray (Social Security Advisory Committee):** Thank you very much for the invitation to give evidence this morning, convener.

I do not think that I need add any more to your introduction, so I will just say a few words about the committee's general role. The committee was established back in 1980 in a piece of Westminster primary legislation as an independent, arm's-length statutory body that is linked to the Department for Work and Pensions and which receives grant funding from the department to carry out its role. In summary, we are the main UK advisory body—I emphasise that we cover the UK—on social security and related matters, such as links with the labour market and employment. We seek to position ourselves as being independent of Government, the DWP and other sectional interests, and to independently review relevant issues and evidence.

Our role, as laid down in statute, is essentially twofold. First, it is to advise and assist the UK Secretary of State for Work and Pensions, either at their invitation or on the committee's own initiative. Secondly, it is—and this is the role most precisely embedded in legislation—to scrutinise secondary legislation on social security that is brought before the Westminster Parliament.

It is a requirement of the Social Security Administration Act 1992 that social security legislation introduced by the UK Government is referred to the SSAC for scrutiny. The committee has the right to take that on on what we would term an informal basis, by taking the material and reviewing it with the department, and we may then decide not to make any further formal inquiry about it. Alternatively, we may take on legislation as—as we term it—a statutory referral, in which case, typically, we would go out to consultation with an appropriate range of stakeholders, gather

their input and views on the proposed secondary legislation, and then formally prepare a report that sets out the committee's considered views in light of the evidence that we have reviewed and collected. That is then formally presented to the secretary of state, who in turn considers our report before publishing it along with the Government's response to our observations when the regulations are formally tabled in the Westminster Parliament.

On our recent activity, clearly we are—as the committee knows—going through a period of great welfare change in the UK. We have observed that the primary legislation on working-age benefits has tended to set out broad, high-level principles but not the detailed regulation. The Welfare Reform Act 2012 probably took that move towards setting out high-level principles a stage further. Most of the detail about how the policy will operate is included in the secondary legislation for which we have a formal scrutiny role. There is, in a sense, a further step in that process—this was certainly true of the main universal credit regulations that we reviewed in the summer, which I will mention in a minute—in that even the regulations are not specifying all the implementation requirements in precise detail. There is an increasing reliance on the guidance that the department prepares for its staff but which is also made publicly available. It is becoming increasingly important in understanding precisely how welfare is being administered. As a committee, increasingly we are wanting to scrutinise that guidance, as well as the formal regulations.

That is a general scene-setting explanation of the committee and its role.

10:30

I will say a few words about passported benefits, as you invited me to, convener. Back in spring 2011, the DWP invited us to undertake a study of passported benefits, in particular in the context of the upcoming introduction of universal credit. That was probably a rather unusual remit for us. It falls within the first of our formal roles that I mentioned earlier when I talked about ministers inviting us to study a particular area, but it is a much broader and bigger remit than the committee has typically received from Government until now. Members will have seen our terms of reference; we published them in the report. They were to broadly identify ways in which benefits might be developed in future on the introduction of universal credit, including taking into account differences in accountability in different parts of the United Kingdom, specifically in relation to the devolved accountability for passported benefits in Scotland that rests with the Scottish Parliament.

I know that, in all the evidence that it has taken from others, the committee has been made aware of the background to our study. The background to passported benefits is long-standing. More than a century ago, the initial forms of some benefits in kind had an automatic or quasi-automatic link to core bits of the benefits system. Over that period, the overall structure of passported benefits has changed, and undoubtedly they have grown considerably in number and complexity. Our review identified something like 25 interdependent passported benefits in England and around 20 in Scotland and Wales, and there were quite significant differences in eligibility criteria. There was also a lot of variety in how the benefits were administered by UK departments, devolved Administrations and, increasingly, a number of non-governmental organisations in, for example, the energy and utility areas. In the context of that lack of an overarching and coherent strategy for passported benefits, the UK ministers were keen for us to undertake a review.

I will quickly summarise some of our key findings. The major consultation that we undertook with a range of stakeholders gave clear evidence that passported benefits are seen as important in fulfilling needs and are highly valued by those who receive them. The great burden of the evidence that we received also suggested that benefits in kind for services were viewed as particularly beneficial and we sensed no great appetite among stakeholder groups for the cashing up of those benefits.

A big area that we considered was whether passported benefits might constitute a disincentive to work, in the context of the potential of passported benefits as well as cash welfare benefits to generate high withdrawal rates as we go up through the income scale and people take on more and more work. We found no strong evidence to suggest that passported benefits were a disincentive to work. As much as anything, our sense was that people who move into work or take on more work are often unaware of exactly what the consequence of that will be, which, again, seems to be a feature of the fact that there is no single overarching structure or strategy. Often, people were not absolutely clear of what the overall impact would be when they took a work decision.

Although we saw no strong evidence of passported benefits constituting a direct disincentive to work, it is very clear that under the current patchwork—if I can use that word—there often are very significant cliff edges in the system. Once passported benefits are put on top of direct welfare payments, there are very sharp cliff edges and certainly major reductions to the gains from taking on work, or from taking on more work.

Among our other conclusions, we thought that as the UK Government and devolved Governments reviewed the medium and longer-term arrangements, there would be huge benefits in looking for more simplicity and better co-ordination. For example, there could be an attempt to reduce the multiple administrative costs that are involved in the current patchwork and to improve targeting. When the patchwork is put together in order to see what is happening, it is not clear that the net result is a reflection of conscious targeting decisions.

We did not come up with any easy answers; it is a very complex area. In line with our terms of reference, rather than coming up with any specific recommendations about what the UK Government should do or what you should do in Scotland, we sought to highlight what seemed to be some key principles that the various Administrations should take into account. Those are particularly around the areas of simplification, on which we came up with a number of thoughts, and trying to improve the extent to which work pays as the overall system is put together. I will not go on about that in these introductory remarks; we can say a bit more in response to questions.

Shall we leave it there or do you want me to say anything about universal credit at this stage?

**The Convener:** If we give committee members the opportunity to ask questions, we might get into that area. Would Professor Walker like to add anything at this point?

**Professor Janet Walker (Social Security Advisory Committee):** Members will excuse my failing voice.

Perhaps it is important to know that we talked extensively to officials from Scotland. My sense from doing that was that in some areas it is less complicated for Scotland, particularly because of prescriptions being free across the board and because some schools offer free school meals to younger children anyway. It seemed that you had already made quite a few steps to simplify some of the complex benefits and that there are opportunities to look for further simplification in that.

**The Convener:** Thank you. I will kick off by asking what I hope is a small question. You mentioned monitoring and evaluation. What sort of level are those at and how far do they need to progress for you to be confident that they will be robust enough, as changes start to come in, in terms of universal credit?

**Paul Gray:** Do you mean in terms of universal credit or passported benefits?

**The Convener:** I mean either universal credit or passported benefits.

**Paul Gray:** The picture in relation to passported benefits is very variable. The responsibilities and accountabilities for the individual passported benefits rest in a whole lot of different places. I will not say that we looked at monitoring and evaluation in detail for each of those, but it would not be unduly unfair or unkind to say that, in many areas, the system has been a bit like Topsy—it has just grown. The big value of the necessity for all the relevant Administrations to look at these issues is that it provides the opportunity to have a much clearer focus on what we are actually seeking to achieve with each particular passported benefit. How—if at all—do we want to target it?

Professor Walker has already made the point that there are differences between Scotland and England in the extent to which some of the key benefits are targeted. It is clear—this is an observation rather than a criticism of anyone in particular—that an overarching strategy for the network of passported benefits has been lacking. Frankly, I do not think that anyone has seen it as their job or their role to take an overview of the system. That is one of the key points that we are making as a committee. It is important that, rather than have all these things happen rather randomly, the opportunity is taken for the relevant authorities to take more of an overview.

**Jamie Hepburn:** I thank Mr Gray and Professor Walker for their time. It is useful for the committee to take evidence from you and to have the benefit of your experience.

I have before me some of your recommendations on the overall changes to the system and the introduction of universal credit. My first question relates to a recommendation in which you urged caution with regard to information technology development. Will you say a bit more about that? You did not explicitly state that there was cause for concern, but that seems to underlie the recommendation. What is the cause for concern?

**Paul Gray:** I take it that you are now talking about universal credit specifically, rather than passported benefits.

**Jamie Hepburn:** Indeed.

**Paul Gray:** I did not say anything about that in my introduction. Before I deal specifically with your question, I will mention the fact that we undertook a major consultation report in the summer, when we received from the DWP the then draft universal credit regulations and various related regulations on the benefits cap and so on. As the convener said, that report was published yesterday by the DWP, alongside the Government's response.

As far as the IT issue is concerned, our committee is conscious that we are talking about the introduction of a major set of changes. We are

mindful that other major transformation projects in Government that have involved IT development and implementation have had their moments, shall we say. In our recommendation, we were encouraging the DWP to be cautious, not to try to do too much too soon and to take a phased approach to new IT development, and I think that that is the approach that the department is seeking to take.

Earlier in the year, I and one of our other members visited the main IT development centre up in Warrington—I should say down in Warrington; it was up in relation to where I set out from. It would be fair to say that, in general, we were encouraged by what we saw—a careful and incremental approach was being taken to IT implementation. Frankly, it is not the role of our committee to set ourselves up as IT experts; there are others who are better placed to make such observations. Basically, we urged caution and care. The phased approach to the introduction of universal credit, which will take place over a four to five-year period, is broadly consistent with that aim.

**Jamie Hepburn:** So where did the recommendation come from? You say that it is not your role to be IT experts, but did IT experts provide you with evidence that led you to make your recommendation?

10:45

**Paul Gray:** We did not get very much input from that quarter in our consultation. One or two of our members have significant knowledge of and expertise in the development of IT systems from previous business experience, and their judgments were brought to bear in our work.

However, I do not want you to put too much weight on the particular experience that we brought to IT development. The real point that we are trying to get over is the importance of being cautious and deliberate, given our observation, which I think all of us would make, that putting too much weight on too rapid IT development in major transformation projects is sometimes a risk too far.

**Professor Walker:** In our consultation, we heard endless concerns about a digital-by-default approach and the pressure that is being put on people to use an IT system to make claims. As a result, we looked specifically at how user-friendly the IT system would be, whether people would be able to manage it and what the barriers might be. I sense from some of your discussions—and we certainly heard it in our consultation—that a lot of people are very concerned indeed about the ability of a number of the most vulnerable claimants to manage an IT system. In the report, we reflected

those concerns about the early expectations that people would be able to manage the system.

**Jamie Hepburn:** I suppose that the flipside of all this is indeed how service users, rather than those processing claims, utilise IT. Nevertheless, I thank you for that somewhat reassuring response. When I saw that recommendation, I was immediately concerned that some disaster was about to unfold, but it does not seem that that will be the case.

On the housing element of universal credit, you have made a recommendation that, given our breadth of experience, we would certainly endorse. The recommendation calls on the UK Government to reflect further on the potential consequences of the underoccupancy proposals on a variety of categories of people. How did you reach that view and what response, if any, have you received to it?

**Paul Gray:** We have indeed received a response.

We looked very carefully at the issue. In the initial draft proposals that were tabled, it was proposed that there be a special arrangement or exemption from the underoccupancy rules for people who need live-in care and support. However, after reviewing the evidence that we collected, we urged the Government to further consider whether there might be other circumstances in which the underoccupancy arrangements might be modified. In our report, we identified essentially three groups in that respect, the first of which was the recently bereaved. The second group comprised disabled children and adults; indeed, with regard to disabled children, we asked whether, in considering the number of bedrooms a household might have, the Government might give further thought to households with several children in which one of the children has significant disabilities. The third category comprised temporarily absent members of households such as students.

The recommendation that further thought be given to those groups was one of the very few that the UK Government has declined to accept. As yesterday's report shows, it has pointed out that the original and current proposals contain special arrangements for live-in carers. However, despite our observations, it does not intend, having given the matter further consideration, to shift the position any further.

**Jamie Hepburn:** Did it set out why?

**Paul Gray:** Yes. You will be able to see from the document that it was not persuaded that those shifts should be made. It drew renewed attention to the range of other options that are available to claimants to mitigate the position in relation to underoccupancy.



**Jamie Hepburn:** One group of people from whom we have taken evidence is single parents with shared childcare arrangements. In your thinking, do you include such families in the category comprising temporarily absent family members?

**Professor Walker:** No. I think that they are in another category, which we had a lot of consultation responses about. In the consultation, the Minister for Welfare Reform asked us to look at where policies around universal credit might conflict with policies elsewhere. We pointed out that all the policy within family law is very much about shared parenting, of course. There are likely to be changes in England very soon that will make shared parenting the presumption. The expectation of children being able to spend time in two households is very strong in family law in Scotland, as it will be in England. We put that group forward as one that we felt needed special consideration, but, as our chair said, our doing so did not find much favour in response.

**Jamie Hepburn:** So the kids can sleep in the cupboard—I am not asking you to comment on that, incidentally.

**Professor Walker:** It will be a very interesting issue. There are a number of family issues.

**Annabelle Ewing:** I have a question on exactly that point. Jamie Hepburn raised the issue that I was going to raise, but I would like to tease it out a wee bit further. It is not simply about the best or hoped-for outcome of shared parenting. There are certainly circumstances in Scotland, particularly where young teenage girls are involved, in which the sheriff would agree to overnight access, or what is now called contact, on the basis that the accommodation was suitable. If the Government is now saying that we have to exclude all such scenarios from the definition of temporary absence, that is likely to cause significant problems in family law on both sides of the border. In my example, what is the sheriff to do in the best interests of the child and the family when there is no suitable place for a teenage girl to stay overnight?

**Professor Walker:** I absolutely agree with you. I hope that the area will be looked at again in due course, because there are conflicting priorities in how we should deal with families, particularly ones that have separated.

**Linda Fabiani:** I want to ask about a different issue. If I lose my voice completely, Professor Walker and I can just wander off together.

I have looked at the recommendations in relation to the self-employed, and it struck me that they have never been well served by our benefits system. You have many recommendations in relation to the self-employed. Can you talk a wee

bit about what you see as the issues that are coming up? I refer in particular to recommendations (x) and (xii) in the report. It seems to me that there is again a contradiction in public policy. The policy seems to be militating against people starting up businesses, whereas other fields of policy encourage business start-ups.

**Paul Gray:** The self-employed emerged as one of the biggest issues—I will not say the biggest issue—as we considered matters in the summer. The universal credit does a big thing in bringing together a whole range of legacy benefits into one place. Certainly on a UK basis, the majority of claimants will be in-work claimants. That characteristic has been familiar to Her Majesty's Revenue and Customs in its operation of the tax credits system, but the majority of claimants to the DWP have obviously been out of work or seeking to move into work.

There is quite a big cultural issue for the DWP in thinking about the consequences of an integrated universal credit because it now needs to give much more thought to the issues of those who are in work. That certainly raises many issues in relation to the traditionally employed population. However, we must layer on top of that the fact that there is a clear socioeconomic trend—I think that that is true in Scotland as well as in England—of an increasing amount of work being done not only by those who are formally self-employed in traditional ways that we have understood for some years but, increasingly, those who work on a more flexible, quasi self-employed basis, if I can use that term. That was why that set of issues emerged as a big set of priorities.

I think that you have had a quick chance to see the areas on which we focused in our report. Monthly reporting is proposed as a key bit of the infrastructure of universal credit claims. We think that that will give rise to quite a lot of difficult issues and we recommended that further thought needed to be given to whether a single, blanket system could work for everybody. The Government has responded positively to that.

Another area on which you touched in your question was that the original draft proposals that came to us proposed that there should be an allowance for only one start-up in a self-employed business. Drawing on the material that we gathered from our consultation, we took the view that that was too rigorous and strict. Another of our recommendations is that that should be changed. I am pleased to say that the Government has indicated that it will accept that recommendation and now proposes that the self-employed should be allowed one start-up period every five years.

Our recommendations also contain quite a lot of issues about the alignment of the reporting

systems for the universal credit and those in the tax system. We spotted that there seemed to be quite a lot of detailed differences between those, so we pressed the Government strongly to ensure that those rules were fully aligned so that people who move into self-employment or who are at a relatively immature stage in the development of their business do not have to navigate subtle and detailed differences of treatment between HMRC and universal credit, as well as dealing with all the other handicaps that they have to face. I am pleased to say that the Government has also accepted that recommendation.

I return to my general point that there could well be quite significant teething problems. There will be a need to keep under review whether the universal credit works as effectively as it could for the self-employed.

**Alex Johnstone:** I was going to raise some issues about self-employment, but the issue that concerns me the most is that of irregular or highly seasonal income flows, which you relate in recommendation (vii).

Coming from a rural area, I am aware that there are business models in Scotland that create low-income self-employed people whose incomes are extremely seasonal. In fact, I know of some who get their entire income perhaps on a single day of the year. Do you believe that the flexibility that is needed is there? I see that you recommend that the Government looks at the matter further, but is there enough evidence available in the area, or is there a need to expand the research significantly?

11:00

**Paul Gray:** As a committee, we still have concerns about the issue. The proof of the pudding will be in the eating. We are encouraged that the Government, in its response yesterday, acknowledged the underlying point that we tried to make—that regular, monthly income flows are not the norm for all kinds of businesses and that flexibility is needed. I think that there is going to be quite a big administrative issue for front-line staff in determining exactly how to respond to such businesses.

It was literally only yesterday that the Government produced the first draft of the detailed guidance material, which I mentioned in my introductory remarks, so to be frank we have not had a chance to look at it yet. I have it with me and it is a very thick document. I hope that, when we have a chance to scrutinise it, we will see that it provides further interpretative material that adds to what is in the regulations. That will reassure us that the issues are being addressed. However, as we speak, I honestly do not know whether the department has responded satisfactorily yet.

Janet Walker might want to add to that.

**Professor Walker:** A few years ago, the committee produced some of its own research on how seasonal workers are dealt with in terms of job search activity when they are not working and how their income is taken into account. In that research, we found that the picture around the country is patchy, with some people in seasonal work doing really poorly when it comes to having their affairs looked after in a way that makes sense for them over the year.

In answer to the question, I do not know whether there is a need for further research, but when we have had a look at the guidance, our view may well be that further work to understand the size of the problem would be quite helpful, because I suspect that it is quite a big one.

**Alex Johnstone:** Would it be fair to say that the level of Government awareness of the issue is rising? Would it also perhaps be fair to say that the current level of concern is only a recent introduction to the mix?

**Paul Gray:** I would say, “I hope so,” but if we reach the judgment that awareness has not risen as much as we believe to be appropriate, we will look to make appropriate noises to further encourage the process.

**Iain Gray:** Mr Gray, you said in your introductory remarks that this tranche of welfare reform legislation goes further than any other that you can remember in pushing discretion down to the guidance rather than that being in either primary or secondary legislation. Does your committee believe that that potentially compromises the rights of those who try to access the system, given that they would have fewer rights in law, with matters being dealt with through the discretion of guidance? Secondly, do you believe that it compromises your scrutiny of the system, given that, as you said, you have a formal scrutiny role when it comes to secondary legislation?

**Paul Gray:** On your first point, it could potentially compromise those rights. As a committee, we well understand why the process is happening. I do not interpret it as an indication of malign intent on the part of the UK Government. It is an almost inevitable consequence of a development of policy that seeks to link the benefits system to much more proactive intervention in the labour market.

If we look back many decades, we see that bits of the benefits system operated mechanically, without any attempt to have a dynamic impact on getting people into work. Through a succession of Westminster Governments from all the parties that have been in government during the past few decades, we have seen a consistent wish to push

the process of generating a more proactive impact on the labour market. The intent is benign, not malign, but the approach could compromise rights, which is why we have been pushing very hard and saying that we need to follow the case. If there is more in guidance, it is important for us to have a significant impact on that.

On the second part of your question, I am encouraged by the approach that DWP ministers have taken. This year, they have already agreed to expand the committee's role significantly beyond what the statute entitles. There is an arcane bit of history called the six-month rule, which says that there is no requirement to refer to the SSAC any regulations that are brought forward within six months of the enactment of the initial primary legislation. The thought was, 30-odd years ago, when the committee was set up, that it should scrutinise regulations that proposed to revise and amend initial or previous sets of regulations.

Following dialogue that I had with ministers at the beginning of this year, they readily agreed to bring the main initial universal credit regulations to the committee on an equivalent basis—that is, as if they were statutorily required to refer them to us. Ministers were not legally required to bring the regulations to us but I agreed with them that we would operate the process on exactly the same basis as we would deal with a statutory referral. I therefore take encouragement from the Government's recognition of that process, and the initial indications are that there is a similar willingness to engage with us on a non-statutory basis in scrutinising the guidance. We will have to see how that goes, but so far, so good.

**Kevin Stewart:** I want to follow on from the convener's points about the committee's remit and role. One of the things that is exercising folk out there to a huge extent is assessment and decision making. What role has your committee had in advising the Government about assessment and decision making in benefit entitlement?

**Paul Gray:** We have been involved in that regularly; Janet Walker might want to add to what I say in a minute. Most aspects of assessment and decision making require a regulatory basis on which to proceed. Whenever regulations are required or the Government proposes to amend regulations that bear on that process, that comes to us for formal scrutiny or—as I have just described to my namesake, Mr Gray—an informal process.

To illustrate that point, I had the benefit of sitting in the back row and listening to the committee's earlier evidence session on work capability assessments. All the regulations that underpin that process came to the SSAC. Our committee has operated in parallel with, and kept in close touch with, Professor Malcolm Harrington in his

independent reviewer role, which the committee touched upon earlier. The issues that were flagged up during that evidence session were exactly the sort of thing in which the SSAC takes a close interest as and when regulations are brought to us.

If we felt at any point that there were aspects of those arrangements in the benefits system that would benefit from further consideration or a consultation process that we might initiate, that is exactly the sort of thing that we might consider for the independent part of our work programme, in which we generate an exercise rather than formally respond to an invitation from Government.

**Professor Walker:** At the beginning, when the ESA was being introduced, a member of our committee worked with a group of officials in the DWP, looking at how the WCA would be put together. She came back to the committee and shared that with us and we were able to feed into the process.

When Professor Harrington took over, we worked alongside him although clearly he was the person who was charged with doing the reviews. One of the pieces of work that we did, which I think had some influence, was thinking about how decisions were communicated to claimants. You probably know about an excellent pilot in Aberdeen in which staff started having direct telephone conversations with claimants to talk about the decision-making process. That proved to be very successful, and Malcolm Harrington suggested that it should be rolled out. We in the SSAC also suggested that that should become a routine part of the process, and it has become so. That is the kind of involvement that we have had over the past few years. However, we are well aware, from the most recent reviews, that there are still things to be sorted out.

**Kevin Stewart:** I am an Aberdeen MSP and many of my constituents would not call that pilot "excellent". However, it is a matter of opinion.

On the committee's work on assessment and decision making, have you made any recommendations to the Government on the fact that the personnel who are involved in the decision-making process are entirely separate from those who are involved in the assessment process?

**Professor Walker:** We have indeed. Something that emerged from one of the earlier reports from Professor Harrington was the fact that decision makers tended to be rubber-stamping the Atos assessment and not necessarily taking a decision that was independent of the assessment. At the time, we made representations to the department about the need to strengthen the role of decision makers and give them more independence. We

have talked about that and we have been told that it is being followed up.

**Kevin Stewart:** We were talking earlier about ticking boxes. From our point of view, the decision that somebody was fit for work may have been based on the box-ticking exercise alone, when additional information could have swayed the decision to one in which somebody was deemed not fit for work. You are talking about rubber-stamping. Are you talking about folk taking a brief overview of the tick boxes and saying, "Ach, we'll go with the flow", because there is no recommendation from the assessor?

**Professor Walker:** What Professor Harrington was concerned about, and the SSAC was concerned about two or three years ago, was that the decision tended to be driven by the points system from the assessment rather than by the meaning of the content of the assessment. We recommended that the decision makers should look not just at the numbers but at the claimant in the round and their capability for work. The decision makers should seek further information at that point, before a decision was made, if there was insufficient information on which to base a thorough decision. Fewer claimants would therefore go off to tribunal. The idea is that the decision maker makes a decision based on all the evidence that they have in front of them.

**Kevin Stewart:** I have one final question. You probably heard us discussing the role of general practitioners in the process. Have you come up with any findings on that issue?

11:15

**Professor Walker:** Again, I think that we have heard the same concerns that you have talked about this morning. The position that is always taken is that the work capability assessment is precisely that, and that it is not a medical assessment. There is always a tension in the WCA between it being about work capability, which is what Atos is charged to assess, and the fact that medical evidence contributes to that assessment. We have no other information beyond what we have heard through the reviews and the information that has reached the SSAC that some GPs have been charging and that GPs do not always provide the detailed evidence that might be helpful.

**Paul Gray:** The position of GPs in relation to the benefits system has frankly been a long-standing and very difficult issue. For decades, GPs have been a key gateway, if you like, to the benefits system through successive legislative frameworks. The difficulty one faces there—as with any devolved or delegated system—is that it is very difficult to get consistency of treatment and

outcome where there are many thousands of individuals who are undertaking the gateway role to the benefits system almost as a by-product of their core day job.

The WCA has brought up particular issues of the sort that you have observed and discussed, but the generic issue has not arisen because of the particular form of the WCA; it is a long-standing issue about the position of GPs as a key gateway to benefit entitlement.

**Kevin Stewart:** Thank you. That was useful.

**Annabelle Ewing:** I would like to raise a slightly different issue that was alluded to earlier, which is online applications and the flip-side of the IT systems. I note that the SSAC recommends that

"The Government should ensure that it has sufficient resources in place to support those claimants who are initially unable to make claims online because of capability or accessibility difficulties, to make claims by telephone or, where appropriate, through a home visit."

What has been the response to that issue and where do you think the issue will go?

You make reference to

"claimants who are initially unable to make claims online"

because of the various problems. Presumably, if claimants have those difficulties at the outset they will continue to have them, so what does "initially" mean in that context?

**Paul Gray:** That is another area in which the jury is out. We made that recommendation to Government and there has been a positive response to it, in general terms. It is certainly an area on which we will keep a strong focus. I await with interest more detail from the Government on exactly how it proposes to provide more targeted help and possibly financial assistance to third sector organisations to help support the process.

On the word "initially", our view is that there are significant numbers of people for whom the use of digital technology is a foreign art. We have no objection to the Government's desired direction of travel, but over a period it will be increasingly important for as many people as possible to be able to use digital access in different aspects of their lives. Our thought around "initially" is to identify particular individuals and groups who need appropriate, targeted, initial support, to get them over an initial barrier, so that perhaps over time they will be able to do things more independently. Online is a perfectly sensible approach.

I will make one other general point that is germane to your question. Following all the work that we did during the summer, one of the next bits of work that our committee will undertake—which is generated partly by our own wish to explore further, although I know that Lord Freud and other

DWP ministers have been quite welcoming of the suggestion—is a study over the next two or three months of vulnerable claimants in relation to universal credit. We will try to go a bit deeper into the key characteristics of vulnerability, and look at what needs to be done in more detail and—more practically—at the need to ensure that those vulnerable individuals and groups are not disadvantaged through the introduction of universal credit.

We aim to present by next spring our thoughts on that issue, which I expect will be relevant to the precise question that you are asking.

**Annabelle Ewing:** Thank you—that was a helpful and interesting response. I would like clarification on whether you anticipate that, through your further work in this area, the UK Government will recognise that a safety net is required for a number of individuals for a number of reasons. Those reasons might relate to physical capability, financial capacity, cultural preference or geographic access to computers or online activities—for example, people may not be able to apply online at the outset, or may never be able to submit an application online. Do you anticipate that the UK Government will accept that there should be some sort of safety net for such people?

**Paul Gray:** I would hope that that is recognised. On your point about whether there are people who are never in a position to apply online, I think that time will tell. I definitely anticipate that the UK Government will be responsive to the proposition—certainly during the introductory period—that individuals may share particular characteristics or groups of characteristics that will point to the need for greater intervention and support to ensure that they can get access to universal credit. That could, for example, include applications being made online, but with greater intervention and more targeted support from departmental officials and possibly third sector agencies to aid people in that process.

There is a difference between whether people can be expected to apply online independently, and the extent to which it will be appropriate and practical to support online application for a larger proportion. I accept that it is unlikely—certainly initially—that absolutely everybody will be able to apply online, but that is exactly the type of issue that we want to pursue further. We will push the UK Government as we think appropriate to take the action that we identify.

**Annabelle Ewing:** Thank you.

**The Convener:** Thank you for your evidence, which has been very interesting. I am sure that we will keep monitoring as you move forward, because there is a lot of work ahead of you. I

thank Paul Gray and Professor Walker for their contribution.

11:23

*Meeting suspended.*

11:31

*On resuming—*

## Scottish Welfare Fund

**The Convener:** Item 5 is an evidence-taking session with our next panel of witnesses on the guidance for the Scottish welfare fund. I would be grateful if the witnesses could introduce themselves and briefly outline their views and any concerns that they have about the guidance. It would give us a useful start before we move to members' questions.

**Richard Gass (Rights Advice Scotland):** Good morning. I am the manager of Glasgow City Council's welfare rights and money advice service, but this morning I am giving evidence in my capacity as the chair of Rights Advice Scotland, which is the umbrella organisation for all local authority welfare rights workers in Scotland.

The guidance that we have seen so far seems to be a slimmed-down version of current DWP guidance, which extends over far more pages. On the one hand, it gives more discretion at a local level; on the other, the ability to exercise it will in many ways be restricted by the availability of funds.

Indeed, there are concerns about the amount of money that is being made available. We are aware that the Scottish Government has put in additional resources for year 1 to make up for the fact that the funds coming forward are less than current spend, but, given the welfare reform changes and the fact that you cannot take large sums of money out of welfare without folk having less money in their pockets, I expect there to be an increase in demand for this benefit, particularly given that part of it is made up of crisis grants. With the previous loans system, people effectively borrowed their own money; as crisis grants do not have to be repaid, they will be a more attractive proposition and we expect an increase in applications in that respect.

Moreover, I note that universal credit, which is on the horizon, will be paid monthly. At the moment, folk claim crisis payments because they have lost their money or whatever and need something to tide them over until their next benefit payment. As a result of the changes, the crisis payments will need to be significantly larger because the period between the loss of their money and the next benefit payment date could be up to a month.

The guidance is still silent on the second-tier review and we would be keen for the right to an independent review rather than something done in-house. There are also concerns over DWP alignment payments, which appear to be available

where there is an entitlement to benefit. We foresee problems emerging in situations in which someone might make a claim for benefit but entitlement has not yet been established; they might be directed to the Scottish welfare fund when, in fact, a payment is due from DWP.

The guidance is also silent on the eligibility criteria once we have universal credit. The entitlement is clear in relation to existing means-tested benefits, but for those who move on to universal credit towards the end of the year, will entitlement to universal credit be sufficient to allow an application to the welfare fund?

My other comments are less to do with the guidance, so I will draw breath at that point.

**Nicole Bethune (Midlothian Council):** Hi, I am a senior welfare rights officer at Midlothian Council. I have been dealing with welfare rights for getting on for 20 years.

I have had a look at the guidance, and I agree with what Richard Gass has said. There is an issue with part 4 of the guidance, which is about the funding. It is clear from the options that are given that there could come a point at which there is no money left in a given month. The exclusions that apply for community care grants and crisis loans mean that someone cannot reapply for the same item within a 28-day period. If someone wished to ask for a first-tier review, the guidance suggests that the review would not proceed if the budget had been exhausted, so a problem could arise that someone who applies for a community care grant or a crisis loan and has their application refused because the budget has been exhausted could then be refused again if they apply for the same item before the 28 days are up. There will be confusion about that, so the issue needs to be clarified in the guidance.

Another issue that I have noted relates to the second-tier review. Under the present scheme, we have the social fund inspectors. That will not be the case, but it is important that the second-tier review involves independent scrutiny and is seen to be transparent. The options that have been put forward include a cross-local authority approach. I think that that is a good way forward, because it would involve looking at things independently. It would show that there is a grievance procedure and would provide an overview of how the scheme is working.

Those are the main points that I noted.

**Tommy Gorman (Macmillan Cancer Support):** Hello, I am the senior project manager for Macmillan Cancer Support.

I have responsibility for Macmillan benefit services throughout Scotland, which provide advice and support for people who are affected by

cancer. Those services cover the five main cancer treatment centres in Scotland, which are in Aberdeen, Dundee, Edinburgh, Glasgow and Inverness. In partnership with the Scottish Government, we offer significant advice resources. The services have been designed to meet the needs of people who are affected by cancer and who experience financial hardship as a direct result of a cancer diagnosis of themselves or someone in their family, through loss of income or increased expenditure.

It is quite appropriate that Macmillan invests considerably in meeting the crisis needs of people who are affected by cancer and in attempting to prevent such crisis situations from arising. We also work with other organisations such as the local authorities, citizens advice bureaux and other advice-giving organisations to maximise the value of the investment that Macmillan makes.

All our work is done in partnership, so my contribution to the meeting might be a bit different from that of the other two witnesses, who provide front-line services.

The discussion is about how we tackle crises among people who are affected by cancer—and, very often, the economic impact of long-term conditions such as serious heart conditions and Alzheimer's is the same as the impact of a cancer diagnosis.

We are just starting to see the results of the change from incapacity benefit to employment and support allowance. The contributions-based element of ESA lasts for only 12 months, so we are seeing reductions in weekly household income.

Next year's change from disability living allowance to the personal independence payment is approaching, and it is predicted that 500,000 people who currently receive disability living allowance will not receive the replacement benefit. Also very worrying is that in April the housing underoccupancy rules—what is colloquially called “the bedroom tax”—will be introduced. We anticipate significant problems for low-income families and especially for people with cancer and other disabilities who require an extra bedroom for a carer, whose housing benefit will be reduced by 14 per cent.

That is the context in which the discussion is taking place. Some of Macmillan's partners have approached us to ask what our position is on food banks, which is quite alarming. It does not take much expertise for someone to know that there will be much more pressure on the Scottish welfare fund than there has been on the social fund that it replaces, even though roughly the same amount of money will be available.

In 2011, Macmillan awarded £10.6 million UK-wide, reaching just under 32,000 low-income cancer patients and providing a range of items. In 2011 in Scotland, Macmillan paid out £1.8 million and assisted 4,652 low-income cancer patients. Of relevance to the committee is that in 2011 we helped 2,825 low-income cancer patients in fuel poverty through our grants system, paying out £565,318 in the process, which was 33 per cent of our grant expenditure in Scotland in that year.

Macmillan is investing heavily in trying to meet the crisis that people who are affected by cancer face because of low income, and we are very concerned that the new arrangements will not meet the need that we will encounter in 2013, 2014 and beyond. The charity has discussed what we know is an interim welfare fund, and we think that contributions can be made to policy in relation to the fixed scheme that will be introduced in legislation.

11:45

We are concerned to make it clear that what charities and other organisations provide should not be regarded as a substitute for a state scheme. I am talking about not only Macmillan; Chest, Heart and Stroke Scotland, CLIC Sargent, Society of St Vincent de Paul and other organisations have progressive grant schemes, and there needs to be a discussion with all of them to find out how we maximise the benefits that we give to individuals and families in crisis. Macmillan has made—and will continue to make—a contribution in that respect, but one of the deficits in this situation is the pressure on advice organisations such as those that Richard Gass and Nicole Bethune represent and our Macmillan offices throughout the country.

Another issue with the Scottish welfare fund is that we are having to deal with so much bureaucracy to cope with the previous issue I mentioned that it will be very difficult to get to the same number of people that we previously managed to reach.

Those are my initial thoughts, but I will say something later about the items that we fund and how we might work with the Government and other charities to realise the economies of scale that, to some extent, can mitigate the limitations on the budget as a result of moving from the social fund to the Scottish welfare fund.

**The Convener:** Thank you for opening this evidence session with a lot of thought-provoking information.

Iain Gray will open committee members' questioning.

**Iain Gray:** I appreciate that, convener.

In our earlier discussions on the welfare fund, I, for one, was quite concerned to take evidence from those who work with the social fund, which the Scottish welfare fund will replace. Richard Gass has said that the guidance for the welfare fund largely tries to replicate the existing guidance for discretionary elements of the social fund, but all the panellists have made it very clear that, because of what is happening elsewhere in the benefits system, the pressure on the welfare fund will be even greater than the pressure on the current social fund. I guess, therefore, that my question is for Richard Gass and Nicole Bethune, who have experience of working with the social fund. How often are low and medium-priority applications successful?

**Nicole Bethune:** The realistic response is not very often. The social fund inspector's journal gives quite a lot of examples and makes it clear that, because of the circumstances, in the second-tier review they will look at lifting the priority if it has been set at a lower level locally. Generally, you do not often get medium-priority items; they are usually high priority.

**Iain Gray:** So although the guidance sets out low, medium and high-priority categories of applicant and item, the truth is that low and medium-priority items will almost never be available to anyone.

**Nicole Bethune:** My experience suggests that that is the case.

**Richard Gass:** Of course, that is where the skills of welfare rights workers might come in. If an item is perceived as being of a lower priority, the welfare rights worker might be able to bring forward evidence about the individual's need for the item that increases its importance. However, that happens not at the initial application stage but at review or second-tier review stage.

**Iain Gray:** Nevertheless, even if, as a result of a welfare rights officer's skills, a person's application comes to be seen as high priority, the local authority will still be able to refuse it if the budget for that period—which, according to the guidance, would be a month—has run out.

Nicole Bethune mentioned the capacity—or lack thereof—to appeal against such a decision. I think that you were being generous, because the guidance states that review cannot be sought for the level of priority set for awards in that period. In effect, that means that a review cannot be requested when an application has been rejected solely on the basis that the budget has been exhausted. As it stands, the guidance says not just that a review will not be successful, but that it cannot even be requested. Is that a reduction of people's rights under the social fund? Is that a

reasonable response to those you represent, who are trying to apply to the fund?

**Nicole Bethune:** I agree that the guidance saying that an application is not reviewable is a change. At present, an application would be looked at by social fund inspectors. Even if there is a priority at the second tier, the inspectors can overturn a decision and say that they are going to pay, even if the budget—

**Iain Gray:** It is a reduction in people's rights.

**Nicole Bethune:** Yes it is.

**Iain Gray:** Okay. That plays into the other issue around second-tier review. The guidance is quite honest in saying that the second-tier review has not been decided on yet. Earlier today, we heard evidence from the minister and her officials about the work to develop second-tier reviews. They said that they were looking at options such as using existing local authority review procedures such as housing or social work panels within the same local authority but separate from welfare fund decision making, or possibly some kind of peer review involving other councils. I think it was Nicole Bethune who said that there should be an independent second-tier review. Would the option that the minister talked about constitute an independent review? If not, what do you have in mind?

**Nicole Bethune:** It is important for such a review to be independent. If we use an existing local authority procedure, as was mentioned, that would not be sufficient. The guidance needs to be looked at objectively. The Tribunals Service is being considered for the future. It will come down to someone who is able to look at the guidance legally and see that it is transparent and fair. If the review is done within the local authority, that might be seen as not being transparent.

**Iain Gray:** Does the review need to be done by someone who operates outside the system altogether?

**Nicole Bethune:** Yes. It could be done by the Tribunals Service or the social fund commissioners, because they are used to looking at regulations and guidance. The social fund inspectors have said that there must be that sort of scrutiny and it must be separate.

**Iain Gray:** With your forbearance, convener, I will ask a final question. I have loads of questions, but I will restrict myself to one further area. In the discussions about the setting up of the welfare fund and the need for emergency or crisis support because of the other changes that will be happening in the welfare system, it has sometimes been implied that the proposed new system might be a way of supporting people who have been sanctioned by the DWP and therefore have no



other source of income. However, paragraph 6.9 in the draft guidance says that crisis grants and community care grants should not undermine DWP sanctions and disallowances. If someone has been sanctioned by the DWP and is left with no means of feeding their family, for example, but they have not suffered any other crisis or disaster, do you interpret the guidance as saying that they would be turned away from the social welfare fund?

**Richard Gass:** The reading of paragraph 6.9 takes us in that direction. We must remember that the person who has been sanctioned is one member of a family and that, if there are children in the household, they will in effect take the penalty of the sanction. To deal with that, perhaps paragraph 6.9 needs to have some leniency.

**Annabelle Ewing:** Thank you all for coming along. I have a number of queries about the evidence that has been given. It seems from paragraph 6.9 that a crisis grant can be given to meet expenses in circumstances that are the consequence of a disaster, so it would be up to the relevant official to make the decision, which would not be foreclosed per se. Is that the case or am I missing something in the language?

**Richard Gass:** Perhaps we require expansion of the guidance so that it is clear that local authorities are to consider all a family's circumstances. The paragraph at present would benefit from elaboration.

**Annabelle Ewing:** I imagine that the general overarching principles would apply to such decision making as they do to all other decision making, subject to the guidance, but your point has been made.

Paragraph 6.6 links to DWP benefits. I will take that a wee bit more broadly. What arrangements are being made with your DWP counterparts to drive forward not just changes in the social fund but the changes that are coming down the line to the whole welfare system, which is currently reserved to the UK Government in London? Is a proactive planning process under way? I do not imagine that that would solve all the problems, but having in place good planning and engagement would certainly help to mitigate some problems.

**Richard Gass:** More can be done. The DWP is keen to ensure that, locally, it knows where to direct people on day 1 of the new Scottish welfare fund, because it expects folk to come through its doors and it will want to move them on to the appropriate places.

However, as far as I can see, the DWP's position on most of the other changes is a case of saying, "These changes are happening—it's over to you, local authorities, to get the information out." The DWP will not take a proactive role, so local

authorities will need to pick that up. Having said that, I know that there are meetings—one is happening this afternoon in Glasgow—to look at joint work. I do not want to be completely unfair to the DWP, but it could certainly do more.

**Annabelle Ewing:** I understand that steering groups are being set up in some areas of Scotland, which involve many stakeholders, such as advice services outwith councils, council welfare rights services and the DWP. Perhaps I have got that wrong—you are looking at me blankly.

**Richard Gass:** There is activity across all local authority areas to engage with other sectors but, to my knowledge, the DWP's participation in that is minimal. What is happening today is perhaps the start of such participation in the Glasgow area.

**Annabelle Ewing:** I presume that, the greater the DWP's involvement is in the arrangements that you will have to deal with, the better that will be for people such as you.

**Richard Gass:** Yes—the DWP's involvement needs to be greater.

**Kevin Stewart:** I commend the submission from Macmillan Cancer Support. It is extremely impressive that Macmillan is supporting folk at this moment, before the welfare changes bite. The amount of money that it pays out to support people is amazing; many of us would have thought that the state should pick up those bills.

Unfortunately, we have the massive changes from the Westminster Government, many of which we are aghast at. Today, we are looking at the Scottish welfare fund. A hit has been taken in relation to that, too, but the Scottish Government has put in more money to mitigate the disastrous consequences of the Westminster cuts.

12:00

As for the social fund itself, I want to concentrate on the second-tier appeals system. Although we obviously want a system that works, I suggest that we also want a system that does not cost a lot of money, to ensure that we put money into delivering the grants that will become necessary as the other welfare cuts bite.

I was interested in Ms Bethune's comments about existing housing and social work panels, which, as they deal with extremely serious cases, I would like to think are independent, objective and—as I think you described it—legalistic. Why could those existing panels not take on the final arbiter role?

**Nicole Bethune:** My concern relates to the fact that the size of local authorities differs across Scotland. Glasgow, for example, is a large local

authority that processes large discretionary housing payments, section 12 and section 24 payments and so on. The same happens in smaller authorities but I think that, sometimes, the way in which the guidance is interpreted has a certain influence. Someone who is independent might well look at the guidance differently. We should take as a guide the social fund commissioners, who were—and are—independent and still regularly overturn decisions. Of course, they do not overturn them all the time and are clear about their decisions with regard to increasing priorities or agreeing with the initial decision. Perhaps local authorities should set out their decisions on the same basis, although the question then is how such an approach might be scrutinised.

**Kevin Stewart:** Many local authority appeals processes are entirely dealt with by local authorities. Are you saying that, in those cases, they are not independent?

**Nicole Bethune:** No, I am not saying that at all, but they might be influenced by—

**Kevin Stewart:** If you are saying that they are influenced, they are not independent.

**Nicole Bethune:** I think what I am—

**Kevin Stewart:** You cannot be independent and be influenced. Either you are independent or you are not.

**Nicole Bethune:** I would probably say, then, that they are not totally independent.

**Kevin Stewart:** Okay. I will move on. How much does the current commissioner set-up cost?

**Nicole Bethune:** I am sorry, I cannot give you that information.

**Kevin Stewart:** Okay. Do you want to come in on these questions, Mr Gass?

**Richard Gass:** I simply draw the committee's attention to what was the housing benefit review board, which was an appeals mechanism that was dealt with by the local authority. A number of years ago, the function was transferred to the Tribunals Service. I cannot give you the reasoning behind that, but there must have been some reason for making the change. It might give the committee some information about the appropriate place for such appeals.

**Kevin Stewart:** We might well look at that. Do you have any idea what the commissioners cost?

**Richard Gass:** I cannot give you that figure, but I am sure that the DWP can.

**Kevin Stewart:** I am sure that as practitioners you will want the maximum amount of money to go to people who are actually in need instead of

being spent on the establishment of a big bureaucratic system.

**Richard Gass:** Absolutely.

**Kevin Stewart:** And you would agree, Ms Bethune.

**Nicole Bethune:** Absolutely.

**Kevin Stewart:** In that case, if, for example, COSLA and other stakeholders were to set up a cross-cutting appeals system across local authorities that perhaps involved members from a number of local authorities plus laypeople, how would you feel about that? Obviously, there has been no decision to do that.

**Richard Gass:** That would probably achieve the required level of independence.

**Kevin Stewart:** Ms Bethune?

**Nicole Bethune:** I agree.

**Kevin Stewart:** Mr Gorman, I missed you out there, but I am interested in your take on what would be a realistic spend on the appeals system. Obviously, the current approach is costly. I want to maximise the amount of money that we give to those who are in most need.

**Tommy Gorman:** One point that I was going to make was that, obviously, any system with lay representation would be less costly than one with legal professionals and it would perhaps be more informed about people's actual needs.

In my current role with Macmillan and in my previous role with West Dunbartonshire Council, I had significant experience of the Independent Review Service for the Social Fund and I have been in its offices in Birmingham on several occasions. The problem that faces any system of adjudication on the new Scottish welfare scheme is the reputation of the Independent Review Service. Even when an award or claim was refused, people knew that it was refused on a proper basis. The big issue for any new scheme and any decision-making process is to try, at as low a cost as possible, to emulate the transparency of the Independent Review Service, with its independent commissioner and social fund inspectors. That does not have to be an overly expensive scheme. We can look again at economies of scale and organisations working together.

**Kevin Stewart:** Perhaps the scheme can be joined up with an existing scheme that is proven to be open and transparent. Do you agree that one difficulty with any new organisation is that it takes a while to build up that level of trust?

**Tommy Gorman:** I agree, but it will also take a period to build up case law and experience. From day 1, we should aim at a decision-making

process that people can understand—so that we do not need banks of lawyers in the process—and to which laypeople can make a significant contribution. We had that experience in the social security system, when trade unions and employers organisations had representatives on the panels, but they were removed for reasons best known to the DWP and the people who made those decisions at the time. There is a model of a system that is as transparent as possible and that laypeople can understand.

**Linda Fabiani:** My first question is for all three witnesses. We are looking at draft guidance. I presume that your comments this morning have been fed in through the various professional organisations, COSLA and individual local authorities to the minister and her department.

**Richard Gass:** Today is not the first time that I have made these points.

**Linda Fabiani:** The second issue that I want to discuss, which is important, is about paragraph 1.4 in the draft guidance, which points out that the scheme is discretionary and is

“a framework for decision makers”

in local authorities, who should

“use discretion to ensure that the underlying objectives of the fund are met.”

Further on in the guidance, quite a lot of discretion is given to local authorities. For example, on financial management, there are facilities for virement and carry-forwards, whether of deficits or surpluses—wouldn't that be wonderful?—and the ability to augment, in the same way as the Scottish Government has augmented the money that has been transferred from Westminster. Given the responses that we have had, are the practitioners saying that, actually, they would like some of that discretion to be removed and much tighter guidance put in place, or do they want local authorities to have the ability to work out the needs for their area and manage accordingly?

**Richard Gass:** The big difficulty, I guess, is that the amount of money that will be available will restrict discretion. If you have local discretion but insufficient funds, there is a concern that locally you will be seen to be excluding people because of discretion, whereas you will not have been able to exercise discretion because of the level of funding.

**Linda Fabiani:** Would you rather be able to say, “I am terribly sorry but we do not have discretion, so you are not getting the money—go away”, or would you rather be able to say, “With this scheme bedding in, we now have a fixed sum that has been augmented by the Scottish Government, so

let us work out what is best for our area and how we move forward with this”?

I am also a bit confused about the issue that people cannot make another application if they have been refused on the ground of the budget being exhausted. Surely discretion would allow you not to take the application forward, so that the person is not disadvantaged from coming back in April if you happen to refuse them in March.

**Nicole Bethune:** In the guidance, that is not clear.

**Linda Fabiani:** Perhaps that is a matter of interpretation. Discretion can override an awful lot.

**Nicole Bethune:** Under “Exclusions for Both Crisis Grants and Community Care Grants”, paragraph 6.15 states:

“If a person has applied for a Community Care Grant or a Crisis Grant for the same items or services within the last 28 days for which an award has been made or refused and there has not been a relevant change of circumstances ... This means that one of the determining factors in making the previous decision has changed, for example a change in the circumstances of the applicant.”

However, in the “Review” section, paragraph 11.2 states:

“Review cannot be sought for the level of priority set for awards in that period—see financial management at section 4. In effect, this means that a review cannot be requested where the applicant has been rejected solely on the basis that the budget has been exhausted.”

My point is that an applicant who has been assessed as a high priority could be refused on the basis that the budget has been exhausted. In section 4, it is suggested that one option would be for local authorities to carry forward applications, but 28 days must pass before someone can reapply for the same item. It is not clear to applicants that if they claim again for the same item within a 28-day period—they might say, “Oh well, I didn't get it this month, so I will put in for it next month”—they will come up against the same problem if they have not waited the full 28 days. Perhaps there needs to be greater clarity in the guidance.

**Linda Fabiani:** I guess that that is an issue of interpretation. If there is confusion about that, I am sure that it will be picked up from this meeting. As with so many of these things, a lot depends on one's reading and interpretation of the guidance.

However, my main question is: do practitioners wish something absolutely rigid that cannot be moved from, or do they wish to have discretion within their own local authorities? That is a very basic question. Yes, I understand Mr Gass's point about the limited amount of money that is available, but the fact is that the fixed budget is being augmented by the Scottish Government to

the best of its ability in hard times. It is incumbent on all of us to try to manage as best as possible.

**Richard Gass:** Unfortunately, I cannot give you a straight answer to a very straight question. The issue for debate is whether we want a strict statutory entitlement, under which rights are enforced, or a discretionary scheme, where the result may sometimes be good and sometimes not be good. Within the welfare rights community, that is an issue that we could discuss for several hours and still not come to an agreement on.

12:15

**Linda Fabiani:** I guess that that is true.

Mr Gorman, when you were talking about the great work that Macmillan and many other charities do throughout the country to augment services that many of us wish were provided better by central and local government, you made an interesting point about the ability to make economies of scale. I have often thought that many charities and voluntary organisations could make economies of scale, as could national and local government. Is there on-going discussion about that?

**Tommy Gorman:** There is certainly on-going discussion in Macmillan, because we constantly speak to other charities, local government and partners. The worrying issue of food banks, which I mentioned, is part of the on-going discussion. In the context of economies of scale, I was talking about organisations that help in communities, including but not exclusively Macmillan and the other charities that we might speak about every day.

People in the community—I am talking mainly from a long-term disability perspective—apply for grants for items such as tumble-driers, cookers, washing machines, fridge freezers, beds, bedding and clothing. Those are the big asks of the Macmillan grants system. That will be pretty typical for Chest, Heart and Stroke Scotland, CLIC Sargent and the Society of St Vincent de Paul, too, so surely we can all get round the table and consider how, rather than provide items and services separately, we might collectively find a way of getting a better outcome for the investment. That is why I mentioned economies of scale. We could put in place practical approaches that would make things better in the current difficult situation.

**Linda Fabiani:** Thank you.

**Annabelle Ewing:** I was interested in what Mr Gorman said about economies of scale, so I am pleased that Linda Fabiani asked about that. Mr Gorman made a helpful, constructive and important point.

We talked about discretion, which is important for many reasons. I can understand that witnesses feel that they have been put on the spot when we ask for a yes or no answer, but I cannot see why there would be a no, from the local authority perspective. Leaving aside other issues, I would have thought that we should be factoring community care into the preventative spend agenda. Over time, we want to ameliorate people's situations, so I would have thought that it was important for a local authority, in focusing its spend, to have the discretion that the guidance seems to provide to take account of its preventative spend agenda.

**Richard Gass:** If I have come across as being opposed to discretion, that is not really where I want to be. I was simply saying that where there is strict entitlement, we can say to someone, "You meet the rules. Here you are; you're entitled," and if there are insufficient funds the blame can be placed at the door of the fundholder, whereas if there is discretion, entitlement must be tempered by the management of a pot, which can compromise things. We might say yes on one occasion and no on another. From a strict welfare rights perspective, that is difficult. However, I agree with what you said about the ability to control spending.

**The Convener:** Just to get a bit of clarity on the point about the money possibly running out at the end of a month, would a local authority normally divide the money that it has equally across 12 months or would it know that in certain periods—during winter, for example—there is more pressure? Does a local authority have the discretion locally to skew the money towards the winter months and ease off during the summer months? Is that how it would normally operate?

**Richard Gass:** I would hope that that approach is taken. In order to predict the amount per month, we need some data from the DWP, because it introduced a social fund that replaced a statutory grants system. The DWP was given a discretionary budget to manage over the different months and it has years of experience of when the peaks and troughs are and which particular items have a seasonal uptake. That information would be useful going forward but we have not seen it. However, the DWP was not operating crisis grants. We will be operating crisis grants as opposed to loans, so there might be a slight difference—things might change to a degree—but there is probably some helpful data lying within DWP records. It would be useful if we could get hold of that.

**The Convener:** There is some educated guesswork involved in it all then.

There is a practical consideration. As soon as someone receives an application, is that

automatically when the application would start or can they suggest to the applicant that it might be worth their while to hold off for two or three days because it is the end of the month and the applicant might not get any money? Can the person who receives the application explain that if the applicant does not get the money, they have denied themselves the opportunity to get it for the next 28 days? Would they have the discretion to say, "You could hold off on that application for a few days"?

**Richard Gass:** Nicole Bethune is looking for a reference to that in the guidance because there may be something about it there.

The danger with that is that two or three applications may be held off at the end of the first month and if they are taken forward into the second month and money is granted, the money would run out earlier in the second month. You could end up with four or five applications to hold off at the end of that month, so where would it end?

**Nicole Bethune:** Among the options that are open to local authorities, section 4 of the draft guidance mentions that if the funds are exhausted, applications can be held over to the following month. That is another issue in terms of the guidance—on a practical matter, if the application is not processed and it is held over, that gets by that 28-day waiting time. That point needs to be firmed up in the guidance.

**The Convener:** Again, I assume that representations have been made by organisations such as yours for clarity around that issue.

**Nicole Bethune:** I hope so. I had not looked at it in great detail before being invited here, but I will raise the point.

**The Convener:** It would be useful, if you are looking at those issues collectively or individually, to write to us about them. We could possibly take them forward and ensure that the Government is aware of any concerns about the practical application of the guidance and where there needs to be some clarity or some enhancement of what is currently in the framework. We would be happy to raise any outstanding questions if you want to use us as a means of getting that information. That offer extends to Mr Gorman, if he thinks that we could ask any questions that would clarify matters for him.

Mr Gorman, do Macmillan and other charities that support people through grants have to factor in issues such as when they expect there will be greater demand? Do they try to judge that for the crisis loans system at the moment? Do they expect to get more pressure at a given time, so they know that they have to hold back and wait for some of those issues?

**Tommy Gorman:** We try to be as expansive as possible. As indicated in our written submission, cancer incidence is increasing, so there is much more pressure on Macmillan's funding. One notable issue in the past four to five years is the amount of the Macmillan grant expenditure that is awarded for energy costs—fuel poverty, to put it simply. That really concerns us. It is an issue that would not be covered by community care grants.

Macmillan makes payments for other items and services that would not be covered by the new Scottish welfare fund. For example, annex C says:

"A person should not get a Crisis Grant or Community Care Grant for a range of excluded needs"

including

"removal or storage charges if the person is being rehoused following a compulsory purchase order".

We would certainly consider giving a grant to a low-income cancer patient in that position.

Also among the excluded needs are debts and debt interest payments. I mentioned the fuel poverty situation. Most of the grants that are made to deal with energy costs are to meet a high fuel bill that people cannot afford.

Another excluded need is the need for medical, surgical or optical items or services. Macmillan would provide funds for people to buy wigs, for example, which are quite expensive.

Work-related expenses are also excluded. If a grant from Macmillan would help someone who had a difficulty with work-related expenses because of their cancer situation, we would consider that.

Macmillan has also helped with people's holidays. If people, particularly older couples, require a break away from home, we look on that favourably.

On travelling expenses, people often meet difficulties because they do not fit into the hospital travel scheme. Macmillan spends a significant amount on travelling expenses for cancer patients who are going to have chemotherapy and radiotherapy.

The final item on the list of excluded needs is expenses to meet the needs of people who have no recourse to public funds. If, for example, someone had no legal status in the country—such as a refugee—and were a cancer sufferer, we would have a look at that situation.

Macmillan would look sympathetically at cases involving people subject to all of those exclusions from the Scottish welfare fund, if they met the appropriate savings and income conditions. We consider the peaks of pressure on our grant expenditure. We have an expert team in London that deals with these issues every day. We are

happy to make information from that expert group available to the committee.

**The Convener:** We are more than happy to receive any information that you think might be useful to us. If that leads to us raising points with the Government in order to get clarity, we can do that. Feel free to contact us.

Thank you for your contribution this morning. It was interesting.

We will suspend the meeting for a couple of minutes to allow the witnesses to leave.

12:28

*Meeting suspended.*

12:29

*On resuming—*

## **Subordinate Legislation**

### **Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303)**

**The Convener:** Our final agenda item this morning—item 6—is subordinate legislation: the Council Tax Reduction (Scotland) Regulations 2012. At our previous meeting, we heard from the Scottish Government, COSLA and Glasgow City Council on the council tax reduction scheme that the regulations provide for and the timing of the regulations to enable local authorities to process their council tax information in early 2013 for the next financial year.

Since our meeting, the Subordinate Legislation Committee has reported on the regulations, and today we have an opportunity to consider the issues noted by that committee. Additionally, the note provided for members invites us to note a matter that was identified by the Scottish committee of the Administrative Justice and Tribunals Council.

Do any members have comments on the regulations?

**Annabelle Ewing:** I am going to be the committee's legal bore on these things, but I take on that role willingly. The Subordinate Legislation Committee has made certain points, and it seems to me that the Scottish Government has said that it will correct those things. The Scottish committee has flagged up something but has not made a formal process note or whatever it would be called that would preclude our going ahead and approving the instrument if we want to do that or our not noting any objection—whatever is the right way of doing it.

Taking that into account, and bearing in mind the comments that COSLA members made at our meeting on 13 November about the importance of the regulations being on the statute book, which are referred to in paragraph 13 of our briefing note, I think that we should take our responsibilities very seriously. It is clear that the regulations require to be on the statute book, and I do not think that the various points that have been raised are of sufficient order to preclude our proceeding according to the overriding interest of meeting the timescale.

**The Convener:** The question is whether we just want to note the regulations. Is the committee agreed?

**Members indicated agreement.**

**The Convener:** That ends today's meeting and the committee's meetings for this year. We will not have another one before Christmas, so I officially wish everyone a merry Christmas and a happy new year.

*Meeting closed at 12:32.*





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