

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

Submission by Citizen's Advice Scotland – 19 March 2024

Introduction

This briefing provides an overview of the experiences of client of the CAS network process of challenging decisions by Social Security Scotland (SSS).

This paper will focus on Adult Disability Payment, which is now the subject of a quarter of all benefit advice provided by the network.

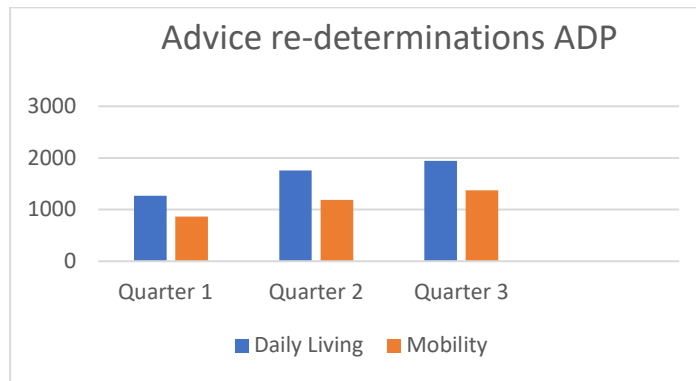
Summary

- Decisions about ADP are challenged by way of a re-determination, in which an alternative decision maker within SSS looks again at the case, and thereafter via an appeal to the Social Security Chamber of the First Tier Tribunal for Scotland if the re-determined decision is disputed.
- If the decision under dispute is to stop or reduce the level of an award following a review (whether scheduled by SSS or triggered by a change of circumstances) benefit will continue to be payable at its pre-review level pending the outcome of the dispute process. This is known as "short-term assistance".
- Re-determinations requests should be submitted within forty-two days of receiving a decision notice. SSS can allow a late re-determination request within one year of the original decision where there is "good reason" for the delay.
- SSS should conclude the re-determination process within fifty-six days of receiving the request. If this does not happen, SSS must inform the claimant that they are now entitled to lodge an appeal in relation to the original decision.
- Appeals must be lodged within thirty-one days of receipt of the re-determination notice. The Tribunal can allow a late appeal within one year of the decision where there is "good reason" for the delay.
- Once an appeal has been lodged, any re-determination process that is ongoing will stop and the Tribunal will require to hear the case, unless the claimant withdraws the appeal.
- A "process" appeal can be lodged when an application for benefit or re-determination request has not been accepted by SSS for a technical reason, or because SSS does not agree that there was a good reason for a late re-

determination request. Decisions about process do not involve a re-determination step.

In numbers

- By the end of Quarter 3 of 2023-24, re-determinations had become the third largest area of ADP advice, with volumes of advice given rising each quarter.



- Data released by Social Security Scotland shows a similar pattern of growth. The number of RD requests has increased from 80 in October 2022 to 1,800 in October 2023. Across the year November 2022 to October 2023 the overall percentage of re-determinations made in favour of the client was 54%.
- Appeals have shown an analogous trajectory in respect of both growth rate and outcomes. Of the appeals heard during the year from November 2022 to October 2023, 52% found in favour of the claimant.

Our recommendations

- Consideration should be given to eliminating the re-determination stage for claimants. Doing so would ensure that the process of challenging decisions best supports the dignity of individuals while improving efficiency.
- Pro-active exploration and recording of client communication needs from the outset of a claim.
- Further efforts to understand and address the causes of delays in concluding re-determination requests.
- Clear guidance to claimants and stakeholders about the status of appeals raised when a re-determination has not been completed within the statutory timescales. Such guidance should clarify that these appeals concern the original decision not yet re-determined and that the Tribunal is empowered to substitute its own decision about entitlement. Such guidance would clarify the status of further evidence submitted with the out of time re-determination request.
- Clear guidance from the Tribunal Service regarding their approach to in person hearings.

Re-determinations

Delays

- Delays are emerging as a significant feature of the re-determination process. In October 2023, 65% of requests were closed within the statutory timescale of 56 days, compared to 79% the month before.
- The context to these delays is lengthy initial application processing times. At the point a claimant is considering a re-determination request, they are likely to have already waited at least four to seven months for the outcome of their application¹.
- Delays cause distress, anxiety and financial instability. ADP acts as passport to other sources of support such as premiums added to means tested benefit, and provides a vital lifeline to those struggling to manage health conditions, live independently and fully and avoid social isolation. Hardship can also be experienced by a claimant's network of family and friends, upon whom the claimant may have become increasingly dependent as they wait and who may be awaiting the outcome to access, for example, Carer's Allowance.

A West of Scotland CAB summarises the brutal impact of delays: -

Citizen's Alert: A West of Scotland CAB reports of "yet another" re-determination notice not completed within the statutory timeframe. The client is considering whether to proceed to appeal or allow another two weeks. The CAB explains that this represents a further delaying to "the already lengthy process of claiming a disability benefit which is supposed to ease the burden on a disabled persons life".

Decision making

- The CAS network is increasingly seeing what is widely characterised by advisers as "inconsistent" decision making with respect to ADP. This can reflect the approach taken to supporting information, which takes on greater significance in the context of a claim journey in which the only direct interaction with the claimant is likely to be via the application form and/or an informal telephone call.
- Clients seeking to challenge such a decision must first request a re-determination. As indicated in the account below, this can place a significant administrative and psychological burden on the claimant.

Citizen's Alert: An East of Scotland CAB describes difficulties gathering information to understand an Adult Disability Payment decision with a view to submitting a re-determination request. The client in this instance had, upon advice from the CAB, sought a copy from SSS of the supporting information drawn on to make the

¹ [Social Security Scotland - Adult Disability Payment: high level statistics to 31 October 2023](#)

decision, and was told to make a Freedom of Information request, causing distress to the client. This client struggles with deteriorating physical and mental health issues and had already experienced a long wait for the decision in question. She has recently been diagnosed with Emotionally Unstable Personality Disorder (EUPD); she had previously undertaken intensive Cognitive Behavioural Therapy and is awaiting more specialist mental health input following the diagnosis. The CAB conducted further enquiries and ascertained that SSS had refused the award based on a prescription list and ADP application form, although the client had requested in the claim form that SSS contact her GP for supporting information. The client advised the CAB that her GP knows her health very well and would have been willing able to provide SSS with relevant supporting information had this been requested.

Communication

- Good communication failures are impacting the claimant experience of the benefit journey as a whole. They can be at the heart of why a decision is disputed in the first place and are affecting the extent to which the re-determination process can be said to reflect the principles of fairness, dignity and respect.

Citizen's Alert: A West of Scotland CAB reports of a client with multiple physical and mental health issues, including mobility issues, seeking help to challenge a decision refusing to award her ADP. The client speaks English as a second language. She attended an appointment with SSS over Zoom to complete an ADP application. The client did not feel confident enough to request an appointment with a female member of staff, and thus the support was provided by a male staff member. The client had experienced sexual trauma but was unable to explain this and its impact, or to discuss her gynaecological conditions. In addition, the client was unsure what distance 200m was and mistakenly said that she could walk 200m when in reality she cannot walk 200m without taking a break. Overall, the client was unable to fully express herself to the staff member and therefore did not provide sufficient information for a successful application.

- Failure to communicate accurately the circumstances in which a decision can be challenged can in effect prevent people from realising their rights.

Citizens Alert: An East of Scotland CAB reports of a client seeking support to progress an appeal. To assess the ADP redetermination, the CAB asked client to obtain copies of her completed Part 2 ADP form & the Notice of Determination from Social Security Scotland. The client contacted SSS, who indicated that they could not provide

either and that the client's only option was to lodge a fresh claim, on the basis that the ADP decision in question was out of time for raising an appeal. The decision was less than six months old. The adviser explained that "a pattern is emerging that when clients ask for documents needed to pursue an out of time redetermination within 12-months, they are falsely told that the 6-week limit is an absolute limit, so documents cannot be produced." The client, who struggles with anxiety and depression, had accepted SSS's assertions. The client felt unable to face progressing a late appeal.

- Meanwhile, the case below is characteristic of communication failures post a re-determination request.

Citizen's Alert: A North of Scotland CAB reports of a client who advised that he has received an unexpected payment of around £800 into his bank account. The CAB which took the view that this was likely to be arrears of the Mobility component of ADP in response to a re-determination request. Neither the client nor the CAB had received any form of communication about the outcome of the re-determination request. The CAB therefore had to follow this up with SSS call handlers, but as this is a request for information about payment the call handler was only prepared to advise that a letter would be forthcoming.

Appeals

Delays

- Prolonged wait times for an appeal to be listed, poor communication and administrative "hold ups" emanating from both SSS and/or the Tribunal service have all been described by the network, with very serious implications for the health and well-being of the clients involved.

Citizen's Alert: A West of Scotland CAB reports of regularly having to follow up with the Tribunal service for relevant information on an appeal. The CAB reports that the communication they receive from the Tribunal service is "vague and sparse". The CAB advise that they have a number of clients awaiting the outcome of an appeal having applied for ADP many months ago, in some cases over one year ago. The Bureau report that the clients are showing signs of distress and are "finding these processes very stressful and demeaning".

Citizen's Alert: A West of Scotland CAB reports in February 2024 of a client whose appeal is yet to be listed. This is because SSS has not issued the appeal bundle. The client's appeal was accepted by SCTS in October 2023 and SSS issued a response in November. The CAB explains the impact on the client is increasing anxiety, including concern that it will be extremely difficult for her to answer questions based on how she was at the time of her application in January 2023.

Appeal lapsing: A brief note on the proposals in the Social Security (Scotland) Act 2018 Amendment Bill

- CAS welcomes the proposal in this Bill to enable Social Security Scotland to carry out a re-determination after an appeal has been lodged in certain circumstances, ending the appeal where the client consents to the new determination being made. The case below illustrates the obvious benefits:

Citizen's Alert: A West of Scotland CAB reports on the experience of challenging an ADP decision. While the client had been awarded Enhanced Rate Daily Living and Standard Rate Mobility, the client had proceeded to challenge the decision via the re-determination process because it wasn't fully backdated to when he initiated the claim. A re-determination decision was issued reducing his award to Standard Rate Daily Living only. He then submitted an appeal. In their appeal submission, SSS proposed an award of Enhanced Rate of both components and to backdate his award to the date of the original claim. The Tribunal was nonetheless obliged to proceed to consider the case and substitute their own decision.

CAS submits that these "appeal lapsing" proposals are an opportunity to remove the requirement for claimants to request a re-determination to access the appeal system. Claimants would only have to go through one process to challenge a decision, reducing delays and improving efficiency. Social Security Scotland would continue to be empowered to carry out a re-determination via appeal lapsing to avoid unnecessary hearings. The provisions as currently proposed mean that there are potentially four stages of challenge for claimants: following an initial decision, following a re-determination, and the same two steps again if a new determination is made under the appeal lapsing process.

Simplifying the process could help break down the multiple complex barriers faced by claimants to exercising their appeal rights:

Citizens Alert: A Central Scotland CAB reports of a client with several health conditions including a learning disability and long-standing mental ill health who is heavily reliant on her parents' support. Stress increases her mental ill-health (and associated self-harming behaviour and self-neglect). The client's parents undertake many activities on her behalf. A claim for PIP was refused on application and upon MR request. Despite the client's mother's knowledge of how well the client meets the criteria for an award of PIP, the client's mother thinks that the process of undertaking any further challenge to the PIP decision (even with support from CAB) will cause stress to the client and a deterioration in her health. For this reason, the client will not pursue an appeal.

Choice and control over the format of hearings

- The CAS network is receiving wide ranging reports that in-person hearings are not being accommodated, even in circumstances in which representations have been made as to why such a hearing is being sought.

- In person conversations with an appellant can be a critical part of the holistic, inquisitorial, not intrusive, approach required to tease complete evidence from an appellant who may have normalised the help that they need, to the extent of no longer being aware of it. Cogent oral evidence can be especially persuasive in circumstances in which in person contact with Social Security Scotland in relation to the claim has not happened.
- CAS recognises that the option to access Tribunal proceedings remotely improves accessibility for some, while efficiencies which allow backlogs to reduce are in everybody's interests. However, these benefits must not come at the expense of access to justice, the quality of decision making, and the agency and therefore dignity of those seeking to exercise their right to social security.
- CAS highlights the overarching objective of the First-Tier Tribunal to deal with cases before it fairly and justly, which includes seeking flexibility in the proceedings and ensuring, so far as practicable, that the parties are able to participate fully in the proceedings and are treated with dignity and respect².

CAS highlights the guidance provided to appellants on the public website of the Social Security Chamber and seeks to understand the approach being taken in practice: "You have choices as to how you want your appeal to proceed. There are alternatives... you can attend a hearing. This is called an oral hearing. An oral hearing can be conducted via teleconference, videoconference or in-person. We will ask you to confirm which type of hearing you wish to attend when we correspond with you."³

² [The First-tier Tribunal for Scotland Social Security Chamber \(Procedure\) Regulations 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ [Social Security Chamber Scotland](https://www.socialsecurityscotland.gov.uk)