



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Social Justice and Social Security Committee

Thursday 14 March 2024

Session 6



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**SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE**

**8<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Collette Stevenson (East Kilbride) (SNP)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**COMMITTEE MEMBERS**

\*Jeremy Balfour (Lothian) (Con)

\*Katy Clark (West Scotland) (Lab)

\*John Mason (Glasgow Shettleston) (SNP)

\*Roz McCall (Mid Scotland and Fife) (Con)

\*Marie McNair (Clydebank and Milngavie) (SNP)

\*Paul O’Kane (West Scotland) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Claire Andrews (Royal National Institute of Blind People)

Allan Faulds (Health and Social Care Alliance Scotland)

Kirstie Henderson (Royal National Institute of Blind People Scotland)

Craig Smith (Scottish Action for Mental Health)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



**Scottish Parliament**  
**Social Justice and Social  
Security Committee**

*Thursday 14 March 2024*

*[The Deputy Convener opened the meeting at  
09:00]*

**Decision on Taking Business in  
Private**

**The Deputy Convener (Bob Doris):** Good morning, everyone, and welcome to the eighth meeting in 2024 of the Social Justice and Social Security Committee.

Although there are no apologies this morning, I note that the convener, Collette Stevenson, is unable to attend in person but is hoping to follow the meeting online. In those circumstances, she has asked me to step in and convene the meeting this morning, which I am happy to do.

Agenda item 1 is a decision on taking business in private. We need to decide whether to take agenda items 3, 4 and 5 in private. We also need to decide whether the committee's consideration of the evidence that we hear on the Social Security (Amendment) (Scotland) Bill should be taken in private at future meetings. Do we agree to take that business in private?

**Members** *indicated agreement.*

**Social Security (Amendment)  
(Scotland) Bill: Stage 1**

09:00

**The Deputy Convener:** The next agenda item is our second evidence session on the Social Security (Amendment) (Scotland) Bill, which is currently at stage 1.

The bill will amend the Social Security (Scotland) Act 2018 to make changes to the Scottish social security system. Last week's evidence session provided a general overview of the bill. Today, we will focus on the concerns of specific groups of potentially vulnerable clients who would need support to navigate the system.

In the room, I welcome Craig Smith, who is the senior policy and research officer at the Scottish Association for Mental Health, and Kirstie Henderson, who is a policy officer at the Royal National Institute of Blind People. Welcome, and thank you for coming.

Online, I welcome Claire Andrews, who is a legal rights officer in the RNIB's legal rights service, and Allan Faulds, who is a policy information officer at Health and Social Care Alliance Scotland, which is known as the ALLIANCE. I thank our online witnesses for joining us.

I will address a few housekeeping matters, as we always do at this point in the meeting. It would be helpful if witnesses could wait until I or another member of the committee asks a question before coming in. However, if you wish to come in, feel free to draw that to the clerks' attention online or, if you are in the room, catch my eye. We are not trying to dissuade anyone from speaking, but, if you want to make the same point as we have heard from someone else, do not feel the need to do that, because we have time constraints. There is no need for every witness to answer every question. Will those asking questions and those answering them please try to do so as concisely as possible? That is something that I am particularly bad at.

We move straight to questions, and I will start. The first theme that we will consider is the ability to challenge decisions, which is in part 3 of the bill. What sorts of things should be considered as "exceptional circumstances" to justify a request for redetermination or appeal being more than a year late? That is about the time bar of one year for requests, unless there are exceptional circumstances. What should the time bar be? What examples do the witnesses have for what you would like to be deemed as exceptional

circumstances? Kirstie Henderson, would you like to go first on that?

**Kirstie Henderson (Royal National Institute of Blind People Scotland):** Yes, I do not mind going first.

The Royal National Institute of Blind People Scotland represents and supports blind and partially sighted people. Research that was conducted by Loughborough University looked at the barriers that blind and partially sighted people face in claiming benefits. A key barrier is a lack of accessible information. If information letters and correspondence are not in a suitable format for the claimant, they might not know what kind of information is being requested.

Another key factor is the availability of support services to help a person to navigate the welfare system.

Another factor that was noted in the research is the stigma that is associated with claiming welfare.

Some of our clients might have only recently been diagnosed with a sight-loss condition, and there might be a lot of emotional factors for them. They might need time to deal with their diagnosis, come to terms with it and get support in place, which could delay the process of claiming benefits.

Those are some of the key factors for clients, but there might be others.

**The Deputy Convener:** That is very helpful. Would Allan Faulds like to come in?

**Allan Faulds (Health and Social Care Alliance Scotland):** Good morning. May I make a small correction? My job title now is senior policy officer. That has changed since the last time that I came to the committee. Also, I must make a small apology. I have a lingering cough, and I hope that you will bear with me if that interrupts my evidence.

It is impossible to be exhaustive in listing possible exceptional circumstances, so the bill needs to be flexible to allow for individual circumstances, which can vary greatly. However, in general, we suggest that exceptional circumstances should be things that disrupt a person's life—for example, a health emergency requiring a significant time in hospital, moving at short notice from home to residential care, bereavement or a change in the provision of unpaid care either by or for them. Those are the kinds of things that might create a significant and unexpected disruption in someone's life and prevent them from making an appeal within the designated period.

**Craig Smith (Scottish Action for Mental Health):** I agree with everything that has been said so far. I, too, have a small correction to make.

Our organisation is now called Scottish Action for Mental Health and not the Scottish Association for Mental Health. I will be told off if I do not correct that.

We support people with mental health problems across Scotland. We warmly welcome the introduction of the exceptional circumstances aspect, which will allow people to ask for redetermination or appeal after a year. As a principle, we would like "exceptional circumstances" to be interpreted as generously as possible, recognising a wide array of reasons why someone might not feel able, due to psychological or mental health issues, to ask for redetermination within a year.

Some examples of exceptional circumstances should include, as Allan Faulds said, long stays in hospital and, in the context of mental health, people being subject to compulsory treatment in hospital or in the community, which could be a big barrier to asking for redetermination within a year.

We would like an approach that is as generous as possible, although that might not chime very well with "exceptional". There should be an empathetic and compassionate approach to understanding the wide variety of social and health considerations that could be barriers to engaging with the social security system.

I have one quick additional point to make. The general challenge of engaging with the system and accessing support has been mentioned, but I include the challenge of accessing independent advice and advocacy. People with mental health problems can find engaging with the social security system stressful, even with safeguards in place. It might take someone a long time to build up the confidence and emotional strength to engage with the system and challenge a benefit decision that they feel might not be right and, therefore, want redetermined.

**The Deputy Convener:** Thank you. That is all very clear. I apologise for demoting one of our witnesses and misnaming the organisation of another witness. We are off to a champion start. Your answers to questions have been far superior to my introductions. I will move on with my questioning.

We have heard concerns about clients feeling a bit pressured into withdrawing a request for redetermination or appeal. Does the policy memorandum offer sufficient reassurance on that point? Again, I default to looking first for an answer from the people who are in the room.

**Kirstie Henderson:** In our response to the call for views, we suggested a cooling-off period, possibly of 14 days, although it might be acceptable to extend that to 30 days. That is because, for a variety of reasons, a claimant might

be persuaded to withdraw. They might find the process itself too stressful and become overwhelmed, so they might withdraw even when they have a good chance of success. A claimant might not have received independent advice or support, although we encourage our clients to speak to an adviser to get information about entitlement.

Unfortunately, we have heard of cases of the Department for Work and Pensions phoning claimants to try to persuade them to withdraw a redetermination—it is called a mandatory reconsideration in the DWP system—in the erroneous belief that they do not have a chance of success, which is often found not to be true. We have a number of case studies of that practice occurring in the DWP system, which we can submit in a supplementary paper.

**The Deputy Convener:** Your ask about a cooling-off period is very clear. Irrespective of whether such behaviour is on the part of the DWP or any other organisation, that seems highly inappropriate and unprofessional. Are those reports anecdotal, or is such practice widespread? It is wrong either way.

**Kirstie Henderson:** I would suggest that it is anecdotal, but I defer to my colleague, Claire Andrews, who might want to expand on that.

**The Deputy Convener:** Do you want to come in and reflect on that, Claire? That would be welcome.

**Claire Andrews (Royal National Institute of Blind People):** Thank you. I appreciate that.

In theory, allowing people to withdraw a redetermination request if they choose to do so sounds like a positive move. However, I would be interested to know whether any statistics have been collated on why people might want to withdraw. I am not sure that the policy intent is being correctly implemented.

As to the concern that Kirstie Henderson raises, there is a practice in some parts of the DWP system whereby somebody requesting a mandatory reconsideration prompts a telephone call from the original decision maker to explain their decision. That is not the same as carrying out a mandatory reconsideration, which best practice guidance suggests should be done by a different person. The explanation call can be extremely confusing for our customers, and it often ends up with the request for the mandatory reconsideration not being acted on and being withdrawn and with the customer not being aware that that is what has taken place. I think that that is the concern that Kirstie Henderson has alluded to. I am fairly reassured that Social Security Scotland would not put in place such a practice. Is that helpful?

**The Deputy Convener:** That is very helpful. I am concerned that that DWP practice might still be going on. Do any other witnesses want to come in on that before we move on?

**Craig Smith:** We have heard anecdotal accounts of similar practices, but I do not have any particular evidence on that to share at the moment.

We welcome the right for someone to withdraw a redetermination request. In a rights-based system, it is correct that individuals have the power to choose to withdraw, but there must be no undue pressure put on them to do so. We would like there to be a clear framework for contact between agency and claimant.

We are sympathetic to the idea of a cooling-off period. In a case in which a person is considering withdrawing a request for redetermination or appeal, we would like them to be signposted to independent advice and advocacy and given an opportunity to access advice services before a final decision is made.

**The Deputy Convener:** That is all very helpful. We move to our next line of questioning, and I bring in Katy Clark.

**Katy Clark (West Scotland) (Lab):** Should lapsed appeals be allowed, even if what is offered to an individual is not the best possible award that could be achieved at tribunal? I ask SAMH to come in first.

**Craig Smith:** A lapsed appeal is where the agency determines that there has been an error and makes a new determination while an appeal is on-going. We agree with the broad principle that the ability to make that determination is a good thing.

In the consultation before the bill was introduced, we expressed concern that an individual in that situation might not get the full amount that they could get at tribunal. Although that is still a concern, we welcome the measures in the bill that require explicit consent from the individual to the new determination and that the new determination must be more advantageous financially than the initial determination.

In principle, we would still like an individual to be able to continue their original appeal if they want to, so it is good that they would need to give consent to any new determination. We also welcome the right to challenge a new determination. That means that, when Social Security Scotland makes a determination and the appeal has lapsed, the individual could still request a redetermination on the new determination and on subsequent appeal. That adds quite a few steps to an already stressful process, but those safeguards provide some

reassurance. Ultimately, if someone believes that they should be entitled to the full benefit amount and they wish to go to tribunal, they should be able to do that.

**The Deputy Convener:** Does anybody else want to come in on that?

**Kirstie Henderson:** I echo what has been said. We would argue that the person accepts what their full statutory entitlement is. Even if the redetermination is a better offer than what they were offered previously, I agree with Craig Smith's comments that a person needs to be given the opportunity to seek independent advice as to whether the offer is a good one and that they must give their consent to that offer.

09:15

**Claire Andrews:** We agree in principle, because we know that our customers can find the thought of making an appeal quite stressful. There are also issues relating to the protection of the public purse. The provision of robust guidance has been mentioned, and I want to flag that that will be crucial, because there has been a lot of confusion in the DWP system as to how that is done.

You may be going to come on to this in a minute—if so, stop me—but we have an issue with the requirement to have a redetermination on a new determination before going forward to an appeal, because that could create a redetermination loop. I just wanted to put that out there at this point.

**Allan Faulds:** I will be brief, as a lot of what I wanted to say has been covered. It might seem a bit counterintuitive to some people that someone might not want to go through a process to push for the maximum award, but, in a rights-based system, they might be happy with what they get offered in a redetermination. If that is the case and, having had independent advice and advocacy, they can give informed consent, that should be respected. That is an important part of respecting individual choice and decision making in the system.

**The Deputy Convener:** Jeremy Balfour has a supplementary question. I ask that he hold on to that while I bring Katy Clark back in to finish her line of questioning. Jeremy can then ask his question, after which he can continue with our next theme.

**Katy Clark:** Last week, Erica Young from Citizens Advice Scotland argued that clients ought to be able to go straight to appeal without having to go to a redetermination first. On the other hand, another witness, Diane Connock from Stirling Council, thought that that might be too daunting for

some people. What are your views on that? I ask Claire Andrews to respond first.

**Claire Andrews:** I am not sure whether your question is specifically about what we have been talking about—lapsed appeals—or whether you are asking whether, in general terms, the redetermination route should be removed from the system in its entirety.

**Katy Clark:** I meant more generally, but you can focus on that specific issue if you have a view on it.

**Claire Andrews:** Specifically, I think that the requirement for redetermination on a new determination that would lapse an appeal should be removed and individuals should be able to go straight to an appeal.

We have mixed views about the redetermination process. I think that it is fair to say that one particular system will not always be the best system for everybody. We acknowledge that making an appeal could be off-putting to some and that a redetermination might feel more agreeable to them.

As to how Social Security Scotland works, provided that the system of redetermination is robust—from looking at the percentage of awards that are changed at redetermination, it seems to be—and given the time constraint on carrying out a redetermination, our overarching view is that the redetermination process is working and should remain.

**Katy Clark:** I do not know whether any of the other witnesses want to speak.

**The Deputy Convener:** Kirstie Henderson has indicated that she wants to come in.

**Kirstie Henderson:** The mandatory reconsideration process that the DWP introduced in around 2013 served only to delay decisions for a number of claimants. The good thing about Social Security Scotland's process is that there is a limit to how long the agency can take to make a decision. That gives claimants some protection. If a decision has not been made within the time limit, claimants can go to an independent tribunal if they wish to do so. That is a good protective factor.

**Craig Smith:** The overarching principle for SAMH is that decisions should be made correctly as early as possible. That principle must be followed, particularly in relation to how adult disability payment operates in Scotland. We would want to minimise the number of redeterminations and appeals. In a system that is operating properly, decisions should be correct at the initial assessment following an application. However, there will always be mistakes and the system is subjective, given that assessors have to make decisions based on complex criteria and evidence.



We have some sympathy for the line of thinking that people should have the right to go directly to appeal, because challenging decisions is inherently stressful for everyone but particularly stressful for those with pre-existing or on-going mental health concerns.

However, for us, it is a bit of a waiting game, as we need to see how the Scottish system is operating. If most redeterminations were being overturned at appeal, that would be a strong argument for saying that redeterminations were not working, as the correct decision was not being made, and that the process should be to go straight to appeal. However, I do not think that the evidence shows that we are quite there yet. I had a quick look at the statistics yesterday. I think that about 54 per cent of ADP appeals are successful, but the total number of appeals is fairly low because ADP is new, so there have not been many yet. That is something to look at in the future.

In a functioning system, our preference would be to retain redetermination and appeal. If we got to a position like the DWP's position of a few years ago, when many mandatory reconsiderations were being overturned, there would be a strong argument for looking at why people are being made to go through an additional stage that is not working very well in practice.

**Jeremy Balfour (Lothian) (Con):** On representation, my understanding is that, if one of your clients ticks the box to confirm that they want representation, that lasts only for three months before consent is re-sought. Is that right? Does that mean that you cannot represent your clients fully? Should they have representation all the way through to whenever the social security chamber of the First-tier Tribunal for Scotland makes a decision? Would that be easier for you, as agencies, in carrying out your work, or am I misunderstanding the arrangement? Does Kirstie Henderson or anybody else want to respond to that?

**Kirstie Henderson:** I am happy to come in on that. As I am not a welfare rights adviser, I am not particularly involved in that. It would make sense that, if a claimant has named an advice agency or any other person on their form and given consent to their providing representation, that should last for the duration of the claim, including up to when the decision is made. Three months is a bit of an arbitrary timeframe.

It has been noted that welfare rights agencies would generally also appreciate escalation routes to get to speak to advisers within Social Security Scotland. That would be a big advantage. That is not directly related to your question, but it would ease communications between advice agencies,

welfare rights officers, Social Security Scotland and the claimant were that support in place.

**Jeremy Balfour:** Thank you. I will move on. One of the principles in the policy memorandum says that

"the person who benefited from the overpaid sums will, ultimately, be liable to repay them."

Does that justify making individuals liable for overpayments caused by their representatives? I am happy for anyone to jump in on that one.

**Craig Smith:** That was one of the most contentious areas of the bill for us when we were coming to our view. Ultimately, we agree with the proposals. In principle, a person who benefits should be liable. That might be the individual, an appointee or a representative who has handled the claim. However, there is a danger of disincentivising people from taking up appointeeships. Appointees play a vital role and provide a safeguard for people, including for people without capacity or for people in the Scottish system with capacity who decide that they would like to have an appointee because they find engaging with the social security system challenging.

We agree with the position in the bill, but the measure must be treated with some caution, because, ultimately, it holds an individual responsible for something that they may not have done but have benefited from.

It is a challenging issue, but we think that the balance is just about right. The measure does not cover, for example, situations in which an appointee has financially exploited an individual or something like that; rather, it is about dealing with someone who has made good-faith errors in the system.

We welcome the position that, if Social Security Scotland makes an overpayment error, there will be no liability on anyone and that, when a good-faith error is made, liability should ultimately lie with the person who has benefited. However, we recognise that that can be really difficult to determine, particularly where you have a family member as appointee and some of the money is going to a shared budget. There needs to be clear guidance and a framework for how liability in those cases is determined. We believe in the principle that people with lived experience of disability must be involved in developing any guidance or framework around such questions.

**Allan Faulds:** Similarly, we recognise that there is a difficult balance to be struck here. We agree with the rationale. We would not want to penalise people who have made errors in good faith, as that may discourage people from taking on a supportive role. We need to recognise throughout

the process that everybody is only human and that we make mistakes. As a tangent to that, that also applies to those administering the system, which is why we have redeterminations and appeals. It is important to address mistakes in a fair and dignified manner.

It makes sense in this context to recover the overpaid sum from the person who receives the payment, as it was an overpayment to them, rather than to recover it from the person responsible for the error, because, if it was a good-faith error, they will not have had any benefit from the payment.

Caution is needed to ensure that recovering the money does not cause financial hardship. The overpayment must be reclaimed appropriately, perhaps in small sums over many months. However, fraud or abuse by a third party is a different matter, and that third party should be liable. I agree with Craig Smith that the bill strikes the right balance in that area, although it is a difficult balance to strike.

**Jeremy Balfour:** I will go back briefly to Craig Smith. Maybe you have answered this question already, but how do you think that would work in practice? Can it work in practice? Do we need more guidance on how it would work in practice?

**Craig Smith:** I do not have a straightforward answer to that question. I think that it will be very difficult for that to work in practice. The guidance, taking time to get that right, how those things are investigated and how liability is determined will be key. The issue is not straightforward, particularly in situations in which an appointee is a family member or a close friend, there is joint budgeting for travel and food bills, and the benefit may have gone towards the contributing. We agree with the principle, but a lot of time needs to be taken to think about how that will work in practice and how things will be decided on a case-by-case basis.

I absolutely agree with Allan Faulds's point about the repayment of overpayments. That needs to be considered on an individual basis to ensure that no one is forced into financial destitution and that no one's health is negatively impacted by repaying.

**Jeremy Balfour:** You have drawn a distinction between something that was done innocently and financial abuse. Do you think that the provisions in the bill will tackle instances of financial abuse?

**Craig Smith:** I think that the bill gets it right in respect of liability for financial abuse. An appointee who has financially abused an individual who is claiming benefit will be held liable. That is an entirely separate situation. We absolutely agree that the appointee needs to be held liable in those cases.

Determining whether there has been financial abuse or an honest mistake can be quite challenging, so there needs to be a really clear framework for gathering evidence on that in a sensitive way for all parties involved. However, we absolutely agree that there needs to be liability for an individual who has financially abused someone and that they need to be removed as an appointee. There are provisions in the system to allow that to happen.

**Roz McCall (Mid Scotland and Fife) (Con):** Craig Smith has already alluded to this issue, so I am going to put my question to others. Will making representatives liable for overpayments and the misuse of money in that way affect people's willingness to become a representative? Craig Smith has already highlighted that concern.

I will get the women to come in and see whether we get a different view. What does Claire Andrews think about that? Do you think that that will prevent people from putting themselves forward to represent?

**Claire Andrews:** I appreciate the clarification of what is meant by "representative" in that situation. We are not looking at advice agencies.

I pretty much agree with what everybody else has said about there being a really hard balancing act. I think that the bill has tried to accommodate a variety of circumstances and situations and that it will be hard to implement in practice. The approach could potentially be off-putting for a small number of people, but, in the round, that is probably a risk worth taking.

09:30

**Roz McCall:** I appreciate that. I think that a lot of people will take a position of authority over a loved one in a legal sense without really understanding the full ramifications of what that means. For example, power of attorney can very easily be taken by a person who is helping somebody and wants to care for them without their knowing what the ramifications of that are. That is a very important point.

What is Kirstie Henderson's opinion on whether that will prevent people in that position from putting themselves forward? Will they understand that they might not know what they are putting themselves forward for?

**Kirstie Henderson:** They might not know. A blind or partially sighted person might have a family member who helps them with banking and money matters. It might be helpful to have information on representative roles and responsibilities clearly set out and made available in accessible formats for representatives and claimants, so that they understand what the

responsibilities and roles entail. I appreciate that they could be slightly different, but an overview might be helpful.

**Roz McCall:** That is helpful. Thank you.

Will the provisions help to tackle instances of financial abuse? That has been touched on, but I would like a bit more information about that, if that is possible. I will go back to Claire Andrews.

**Claire Andrews:** I will be very honest and say that we do not have a huge amount of experience of that area. Blind and partially sighted people typically do not need appointees as long as documents are provided in accessible formats. Therefore, that is not necessarily a requirement.

I do not give this response from professional experience, but I think that, potentially, it all comes back to what has just been said about people really understanding their role as an appointee, what that entails and how liable they could be in certain circumstances, and how that is followed up, policed, monitored and implemented. The answer is that the provisions could potentially help with that, but I really do not know. We would have to see how that plays out. I am sorry.

**Roz McCall:** Thank you very much for a very open and honest answer. I appreciate that. Maybe Allan Faulds could come in on that question.

**Allan Faulds:** I do not think that it is possible for social security legislation by itself to disincentivise financial abuse. I hope that such abuse is very rare, but it strikes me that that is such extreme behaviour that, if someone is going to do that, they will probably do it regardless. It is about ensuring that the consequences of the abuse fall on the person who is responsible for it in the first place.

I will make a brief point about people being put off. I think that few people would misuse the money or act in a bad way, and I do not think that people will be put off by knowing that they will be held liable if they commit wrongdoing. I think that most people would expect to be held liable if they did wrong, so I do not see that being too discouraging in this scenario.

**Roz McCall:** That is very helpful. Thank you.

I will move on to authorising appointees, which is a slightly different issue. This question is very much for Craig Smith. SAMH was instrumental in shaping the Social Security Scotland provisions for authorising appointees. Can you explain the problems with the DWP process and how the Scottish process differs from it?

**Craig Smith:** We were quite instrumental in respect of changes to appointees in Scotland in the Social Security Administration and Tribunal Membership (Scotland) Bill—I always get the name of that bill wrong—in a couple of areas. The

issue is not so much the problems with the DWP system; there are some problems with challenging appointees and having appointees changed, in particular. There are additional safeguards in Scotland, which we feel are key, particularly in relation to people who have capacity but would like an appointee. In Scotland, there is now third party certification in circumstances in which someone would like an appointee but they have capacity so they do not get an appointeeship, as those fall to adults with incapacity. People now have the right to have an appointee, who goes through a process in which there is third party certification. That involves ensuring that they and the individual understand the role of an appointee, that the individual can withdraw their consent for having an appointee at any time, that the individual has not been placed under undue influence in agreeing to an appointeeship, and that the person who is designated is suitable. There are those additional safeguards.

I believe that the Scottish system is a bit more rigorous in challenging appointeeships. It is written into the legislation that the Scottish ministers and the agency basically need to take the views of the individuals themselves where that is appropriate and proportionate and of any other individuals who have a financial or welfare concern relating to the individual. If another family member or someone who knows the individual is concerned that an appointee may not be acting in the individual's interests, they can raise that concern and trigger a review of the appointeeship. Some additional safeguards, which we welcome, are therefore built into the Scottish system.

**Roz McCall:** Does anybody else want to come in on that question? I do not think so. People are shaking their heads.

**Paul O'Kane (West Scotland) (Lab):** Good morning to the panel. Following on from that point, I am interested in how the current process is working in transferring people from personal independence payment to adult disability payment or child disability payment. How quickly is the authorisation process working for the people who are being transferred? Does anyone have views on, or insights into, the current process?

**Kirstie Henderson:** We will be hosting a number of focus groups with blind and partially sighted people at the end of the month. It is a shame that that has not taken place before this meeting, but I hope that we get some good evidence.

The original principle of transferring from disability living allowance and PIP to ADP was that the process would be as light touch as possible. Particularly when a person may have been registered as sight impaired or severely sight

impaired for some time, we would not expect them to have to go through too arduous a process.

In some instances, Social Security Scotland might ask for supporting information. We were informed that the responsibility for collecting supporting information should lie with the agency. Obviously, for blind and partially sighted people, there could be additional barriers to sending in supporting information if the request is not in an accessible format. We are more than happy to send in feedback once we hear more from people who have gone through the process.

**Paul O’Kane:** If there is further information, that would be helpful to the committee.

Does anyone else have a view, based on the work that you are doing with other groups?

**Craig Smith:** Similarly to Kirstie Henderson, we are happy to send in any additional information that we have. We are trying to do some work ahead of the independent review of ADP that is coming up, but we recognise that many of the people we support through the services of SAMH are still in receipt of PIP and have not yet transferred or are in the process of transferring. We are still at the stage of gathering information on people’s experience of transferring or making a new claim to ADP, but we are happy to share any additional information when we have it.

**The Deputy Convener:** This might be an appropriate point to say something that I normally say at the end of the meeting. If there is other evidence that you want to draw to our attention, please do so. The process is on-going, so this is not your one opportunity to put on the record what you believe is important. I thank Kirstie Henderson and Craig Smith for that offer. To all the witnesses, I say that this is an iterative process and that, if you want to draw any other information to our attention, please do that.

**John Mason (Glasgow Shettleston) (SNP):** I will ask about audit. The idea is that people can be required to give information and that there could be penalties if they do not provide the right information. The Government says that it has to get information so that it can establish estimates of error and fraud. Do the witnesses agree with the power to suspend a person’s benefit payments if they repeatedly fail to provide information to Social Security Scotland? I think that RNIB Scotland has views on that.

**Kirstie Henderson:** Yes, we have major concerns about the suspension of a person’s benefit. The consequences of any suspension of a benefit could be very harmful to a claimant, particularly if they become aware of that only because of a lack of funds in a bank account, for example. A suspension could have other repercussions for claimants, some of which could

be quite dire, as we have already seen with sanctions. I appreciate that that is a different process, but it is, in effect, stopping payment because of a lack of information from the claimant.

Suspension of payments should be a last resort, and the inherent vulnerability of a client should be considered beforehand. That should include the fact that they might have had a change in circumstances since the last time the agency was in touch with them. For example, if someone’s sight has deteriorated, they may not be able to read the letters or correspondence sent to them. If people are experiencing a deterioration in mental health, having to respond to correspondence could be another factor that puts them under additional stress or pressure. Where possible, a range of communication methods should be used. There should be various ways of trying to establish contact with the claimant—it should not just be a letter or two followed by a suspension.

**John Mason:** On that theme, if somebody’s eyesight has deteriorated, they might need more support than they did previously. Should support be provided in that situation in some way?

**Kirstie Henderson:** Yes. It might be difficult to ascertain whether the person already has support in place. It should be proactively offered to people if they do not have support in place. The independent advocacy service is available through the agency, and there is also the local delivery service. One suggestion is that, if someone does not respond or fails to provide information, the local delivery service could have a role in following up with that person locally.

**John Mason:** That is helpful. Mr Smith, do you have a view?

**Craig Smith:** On the original question, my answer is a clear no. We do not think that anyone’s benefits should be ended or suspended because they do not provide information for audit. We absolutely recognise that the system needs to be audited, that there needs to be clear information through audits and that they play an important role. However, we are talking about individuals who are not suspected of fraud or making an error and who will be at risk of having their claim entirely ended or suspended. With adult disability payment, we are talking about people who may have a wide range of vulnerabilities, including mental health problems such as suicidal ideation, and real challenges in general in engaging with the system. Being asked to take part in an audit process could be inherently very challenging for them.

We welcome that there are safeguards built into the bill. The right to independent advocacy is key, and people will have the right to have a supporter present when they are involved in any interviews

for audit purposes and gathering of information for audit. We welcome those safeguards but, ultimately, we feel that it is not proportionate, even as a last resort, for someone's benefit to be ended because they do not want to take part or do not comply with audit requests. It conflates fraud and error with audit, and the consequences do not seem proportionate. There was no consultation on this aspect before the bill was published, although there was in the committee's call for views. We would like much more consultation on the issue.

09:45

If the provisions have to go ahead and, ultimately, the power to suspend benefits remains, we need clear guidance that is co-produced with people with mental ill health problems and other disabilities. A wide array of stakeholders need to be involved in producing the framework and guidance on how the process will work in practice and in considering what additional safeguards could be built into the system. Ultimately, it is not proportionate that anyone's benefit should be ended because they do not wish to, or do not, comply with requests for audit.

**John Mason:** Previous witnesses have made the point that audit is one thing but chasing up fraud and error is slightly different. Do you—

**The Deputy Convener:** I apologise for cutting across you, John, but this is a significant question and our two witnesses online also want to put some thoughts on the record.

**John Mason:** Yes, I will come to them. I will follow up with Mr Smith first and then come back to the people who are online.

**The Deputy Convener:** As long as you do that, that is fine.

**John Mason:** Okay.

Some people will be fine with providing information and others will not. Should certain people be totally exempt?

**Craig Smith:** We need a really generous interpretation of what is a "good reason" for people being exempt. Anyone who is subject to compulsory mental health treatment under a mental health order should be exempt, but, more generally, when engaging in the process could be deemed to be potentially harmful to someone's health, they should be exempt. There needs to be a co-produced approach to developing the guidance about which groups of people are exempt and on what grounds, but, generally, as a principle, when engaging with the process would have a detrimental impact on someone's health, they should be excluded from it.

**John Mason:** Mr Faulds, do you have thoughts on this?

**Allan Faulds:** To add to one of Craig Smith's points, the measure was not consulted on in the original pre-legislative phase, and that has resulted in a bit of confusion. We had not appreciated, in our response to the call for views, that the audit process would be at random. We would be concerned about suspending payments for failure to comply with information requests. It should not be treated in the same way as identified fraud or error. There is a significant risk to the financial and mental health and wellbeing of some individuals. We need to bear in mind that, with social security more generally, many people already have a lot of distrust and trauma because of what is often a punitive system at the United Kingdom level. For all Social Security Scotland's good intentions, that can carry over to the devolved benefits, so we need to be careful about how we communicate and approach people with such things.

We also have a question about what further information will be necessary for audit purposes separately from that which already has to be provided to demonstrate eligibility for a payment in the first place. We are talking about a random sample, but many people might provide exactly the same information again. It feels like a very harsh step to suspend someone's payment for not providing information that they may already have provided. We have a lot of concern about how the process will work in practice. People's payments should not be suspended for a failure to provide information once they have already established a valid claim.

**John Mason:** Ms Andrews, do you have any further thoughts on that point?

**Claire Andrews:** It has largely been covered. I will just mention the barriers to blind and partially sighted people, which include a lack of clear information, difficulties in accessing support to comply, the amount of input that is required of them and welfare stigma. The audit process will absolutely feed into that, particularly the sense of welfare stigma and a constant feeling of having to demonstrate and prove entitlement. We therefore absolutely do not support the suspension of benefits in this scenario. We have to remember that people might already be having deductions from other means-tested benefits as part of debt recovery, so a suspension could leave people in great financial hardship.

A much better approach to the audit process would be a test and learn system that did not initially have suspension as part of it—ideally, that would never be part of the system, but it certainly should not be initially.

**John Mason:** I did not quite catch that. What would be better than doing it in the proposed way?

**Claire Andrews:** I honestly think that the audit process needs to embark on a test and learn approach during which there is no suspension. We should look at compliance in this space and the problems that people have with engaging and put in place measures to support them. There should be no suspension of benefits during that period—ideally, that would never happen, but we should do that if suspension were to go ahead.

**John Mason:** You are starting on the issue that I was going to ask about next.

**Claire Andrews:** Apologies.

**John Mason:** No, I am delighted.

The Government's argument is that, if it makes the process voluntary and does not go back to the recipients of the payments, the information will be too vague and we will not be able to find out whether there has been error or whatever. Can it be done in another way? Could a test and learn system do that?

**Claire Andrews:** We are talking about two different things. The audit model should allow for the fact that some people will not respond, although we are not talking about having an opt-out; we are talking about a generous interpretation of what is a "good reason" not to respond.

I have completely forgotten the second part of what I was going to say. Apologies—I will come back to that.

**John Mason:** I will come back to you if you want.

Mr Faulds, do you want to come back in on what else we could do? I see that Mr Faulds is shaking his head. Does either of the ones in the room want to say what else the Government could do?

**The Deputy Convener:** They are called "witnesses".

**John Mason:** What did I say?

**The Deputy Convener:** You said "the ones".

**John Mason:** Witnesses—right.

Does either Mr Smith or Ms Henderson have any thoughts on what the Government or Social Security Scotland could do other than the proposed approach? Is there a better way of auditing?

**Craig Smith:** I reiterate what Allan Faulds said. We need to think about what additional information we are looking for. I do not have a model for auditing in my head, but can we not make some determinations on rates of error from the claims data and redetermination and appeals data? I am

certainly not an auditor, and I am sure that there are lots of good reasons why you would want an independent auditing process, but I reiterate that it would not be proportionate if people risked losing their benefits by not taking part in that.

**John Mason:** I kind of agree with you. As I understand it, for auditing, on the whole, we do not always have to go to the customers. If we are auditing a shop, we do not speak to the customers; we audit what is in the shop.

Unless Ms Henderson wants to add anything, I will go back to Ms Andrews, who had another point.

**Claire Andrews:** I was trying to make a second point, which is that there are two separate things. One is the audit model itself. Specifically on a test and learn approach, I was referring to the need to consider the best way of trying to engage people and what support people need to engage. There are two things: the audit model and the test and learn approach through engagement. There should be no suspension during that period.

**John Mason:** That is me done, convener. Thank you.

**The Deputy Convener:** That is very brief for you, Mr Mason, on audit purposes, but there we are. We will move on.

**Marie McNair (Clydebank and Milngavie) (SNP):** Good morning to everyone in the room and online. We appreciate your time this morning. Does anyone have any comments on specific measures in the bill that we have not already discussed? I invite those in the room to answer first.

**Craig Smith:** Yes, just briefly—I keep saying that and then not being very brief at all. We broadly welcome the opportunity in part 1 to move the framework for the Scottish child payment away from top-up benefits. We think that that provides the opportunity to decouple from the reserved benefits system, so that, if there was any tightening of restrictions for universal credit or other qualifying benefits, eligibility for the Scottish child payment could be protected. It provides the opportunity to look at how we may want to redesign the Scottish child payment to extend eligibility, with the caveat that one of the key positives of the Scottish child payment is the simplicity of the application and assessment process. If we decouple and have to create a whole new process of assessing somebody's eligibility, there will be some concerns about that and it will need a lot of thought. In principle, we would like the Scottish child payment to be protected from any potential retrenchment of United Kingdom-wide benefits. The provision in part 1 is welcome.

**Allan Faulds:** I would make a similar point about putting the Scottish child payment on its own footing. That is welcome and it prevents anyone from being excluded from the payment whom the Scottish Government or the Scottish Parliament does not wish to exclude, which is good.

The other thing that I want to highlight on this specific front is the proposal for a care leaver payment. That is a positive suggestion, and we certainly responded to the consultation on that proposal very positively. It is a good opportunity to provide further support to people who face quite unique challenges compared with others in society, and it shows the positive change that is possible with the devolution of social security powers. We think that both of those things are positive steps.

**Marie McNair:** To what extent does the bill align with the social security principles?

**Allan Faulds:** In general, we consider the bill to align quite well with social security principles. In particular, the improvements around choice in redetermination and appeals processes align quite well with the principles of human rights and dignity. Processes that will allow redetermination so that people can get higher payments align quite well with the principle of investment in the people of Scotland.

Going back to the previous theme of discussion, we would be concerned about some of the provisions for randomly selected audits that could result in individuals losing payments due purely to not submitting information when asked for it rather than any wrongdoing. That seems a bit at odds with the principles of fairness, human rights, dignity and investment. It appears to elevate the value for money principle above the other principles through random error sampling for statistical purposes, and we are concerned about that. However, overall, the bill aligns quite well with social security principles.

**Kirstie Henderson:** For blind and partially sighted people, the key is accessible information and inclusive communication. I appreciate that that is already addressed in the primary legislation, which is an amazing thing for people with visual impairment and for the agency as a whole. It is key to ensure that that is built in through any amendments and that it works in practice.

**Craig Smith:** I agree with what Allan Faulds said. Overall, we believe that the bill aligns fairly well with the social security principles, although we will need to see how it works in practice, particularly with regard to the principles of dignity and human rights and continuous improvement in rights, with late redeterminations being an example of that.

We have great concerns about the audit principles and think that those proposals are not in tune with the principles of human rights and treating people with dignity and respect. Overall, however, we believe that the bill is fairly in line with the social security principles.

**Marie McNair:** Finally, in what way would the bill improve the client experience? Are there any provisions that would make the client experience worse, and is there anything that you think is missing?

**The Deputy Convener:** Witnesses may take a while to gather their thoughts after being asked what else they would have in the bill, which is a question that absolutely should be asked and which, I am sure, they will have something to say about. That was not the only part of the question, of course.

**Claire Andrews:** Building flexibility and claimant choice into the redeterminations and appeals process will improve the client experience as long as those guidelines are robust enough. We are always keeping an eye on the fact that that is an informed decision and an informed choice.

It will come as no surprise to anybody to hear me say this, because we have all said it, but the proposed audit is a provision that would make the client experience worse. I think that that will be the difficult one for people to stomach.

There is a section in the bill about process appeals, which we have not discussed today. There is something in that that needs to be looked at, as there is a process appeal loop in which somebody can be sent back to Social Security Scotland after a process appeal because further information is required, and, if that further information is not provided, there is a possibility of going to a further process appeal, and the person could end up never getting out of a process appeal. If it plays out in that way, it could be quite difficult from a client experience perspective, so the issue needs a bit of scrutiny.

Other than those points, I think that the bill is fairly uncontentious.

**Marie McNair:** Thank you. I see that no one else wants to respond.

10:00

**The Deputy Convener:** I was wrong, Marie: not everyone had something to say in response to your question.

The committee has no further questions, but I invite the members of the panel to put on record anything that the lines of questioning have not touched on, or to make a final comment. I will start with the witnesses joining us online. Allan Faulds,

is there anything that you want to add before we close this evidence session?

**Allan Faulds:** I have covered all the points I wanted to make during the discussion, so I am quite happy to leave it there.

**The Deputy Convener:** That may be a theme. Claire Andrews?

**Claire Andrews:** On part 2 and the repeal of section 52B of the Social Security (Scotland) Act 2018, there is an opportunity for Social Security Scotland to look at the backdating rules and allowing for late applications for benefits beyond, obviously, getting rid of the Covid restriction. It seems that exceptional circumstances are being considered elsewhere but are absent from that area.

**The Deputy Convener:** Thank you. Kirstie Henderson, is there anything that you want to add?

**Kirstie Henderson:** No. I think that the key point is that inclusive communication and accessible information are fundamental for our clients. One other point is that Social Security Scotland has set up and delivered a system that is for the people of Scotland. We are about to see that ramp up considerably this year with the introduction of the pension-age winter heating payment and the eventual replacement of attendance allowance with the pension-age disability payment. That will increase the caseload hugely, so we hope that the social security principles are embedded. I will just make the general point that the focus on claimants must not be lost in the huge operation that needs to happen.

**The Deputy Convener:** Thanks for putting that on the record. Craig Smith?

**Craig Smith:** I have said most of what I wanted to say, but I want to emphasise that, although we welcome the "good reason" or exceptional circumstance provisions, particularly with regard to late applications, late redetermination requests and lapsed appeals, the guidance around them will be absolutely key to success. We will always argue for that guidance being co-designed and co-produced with people with lived experience of mental health problems and disabilities more generally, as well as with a wide array of stakeholders, to ensure that we get those provisions right. As I have said a few times throughout the session, we will also always argue for those good reasons being generously understood by Social Security Scotland and for the provisions being generously applied in order to ensure that we are safeguarding people's financial and mental health when engaging with the system, while recognising that we need to balance having a fair, objective system with accounting for

individual circumstances. It is important to get that balance right, and involving people with lived experience is the key to doing that.

**The Deputy Convener:** I thank all four of our witnesses for a very informative and helpful evidence session. Next week, we will continue to take evidence on the bill, with a panel focusing on the concerns of carers of potentially vulnerable clients and the concerns of clients who have a carer.

That concludes our public business, and we now move into private session.

10:03

*Meeting continued in private until 10:54.*



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

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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