



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 25 April 2024

Session 6



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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
12th 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:

Tim Barraclough (Scottish Courts and Tribunals Service)

Lesley Black (Scottish Courts and Tribunals Service)

Gayle Devlin (Social Security Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 25 April 2024

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Collette Stevenson): A very good morning, and welcome to the 12th meeting of the Social Justice and Social Security Committee in 2024. We have received no apologies.

Our first item of business is a decision on whether to take agenda items 3 and 5 in private. Are we agreed?

Members indicated agreement.

Social Security Scotland

09:00

The Convener: Our next agenda item is an evidence session on the client experience of Social Security Scotland's redetermination and appeals process. The committee held its first evidence session on the issue on 28 March, with organisations that support clients. Today, we will hear from Social Security Scotland and the Scottish Courts and Tribunals Service.

I welcome Gayle Devlin, deputy director for health and social care at Social Security Scotland; Tim Barraclough, executive director for tribunals and the Office of the Public Guardian with the Scottish Courts and Tribunals Service; and Lesley Black, director for tribunals with the Scottish Courts and Tribunals Service. Thank you all for accepting our invitation.

I have a few points about the format of the meeting. Please wait until I, or the member asking the question, say your name before speaking. I ask everyone to keep questions and answers as concise as possible.

I will move straight to questions. The first one is on the theme of getting decisions right first time. I will ask Gayle Devlin about the impact that the local delivery service is having on ensuring that clients provide full information in their initial application form. Is the agency monitoring whether contact with local delivery is reducing the likelihood of redeterminations?

Gayle Devlin (Social Security Scotland): Good morning, convener and committee. Thank you for your question. Local delivery has a valuable role in providing support to local communities, our partners and stakeholders and our clients. That has been recognised in our client surveys and there has been positive feedback from our stakeholders and clients.

The local delivery team supports clients directly in the best possible way with the application process and providing the right information at the right time. When an appointment is booked with local delivery, our client advisers will speak with the client and make them aware of the best possible supporting information that they can bring to the discussion when meeting face to face or over the phone with a local delivery member of staff.

During face-to-face appointments, we support clients by going through their application question by question, capturing the responses that are given by the clients in turn. We explain the questions and accurately capture the response. It is important to note that local delivery client

support advisers are not decision makers in the process; they are there to support rather than to guide or drive the answers to the questions.

At the same time as capturing the response, we submit the application and all the supporting information that the client provides. We also give them an update afterwards—a summary of the meeting—and capture any additional supporting information that the client support adviser thinks will be useful for the next steps of the process. Whether that is done by the client or by us, we have a role in gathering that information.

On the second part of your question, it is important that we capture the right information about our service. I repeat my point about the local delivery team not being part of the decision-making process. We do not capture the direct correlation between outcome and local delivery input in helping the client with the application. We hope that all our clients have support, in one way or another, to write the best application that they can. Local delivery being involved does not guarantee a positive decision, but it gives the client excellent support at that stage.

The Convener: That is helpful. Based on what we have heard, it seems that there are many more requests for redeterminations and appeals for adult disability payment than for other benefits. Why do you think that that is?

Gayle Devlin: ADP represents 10.2 per cent of the total decisions on new applications, so the numbers are actually very low and are well below the forecasts for redeterminations as a whole for all the other benefits. Although ADP redeterminations and appeals are below forecasts, ADP is the most complex and biggest benefit that we have had to deal with to date. For each client, we assess 12 activities in a way that looks at every client as an individual, taking into account the impact of their condition on their daily life and mobility. By contrast, low-income benefits have clearly defined eligibility and might be a single payment, which probably represents payments that are less complex by their nature.

The fact that we have those requests for redetermination demonstrates that the system is working well and is accessible and approachable. As an organisation, we are building trust with our clients so that they feel able to challenge a decision. It is of the utmost importance that our clients feel that they can challenge a decision when they feel that they have more to offer by way of information or when they feel that an error has been made. It is important that we are able to provide that service to our clients.

The Convener: Katy Clark will ask the next questions.

Katy Clark (West Scotland) (Lab): How many redeterminations and appeal decisions are based on new information rather than simply a different view being taken of the same facts? Given the complexity of, for example, the adult disability payment, we are interested in whether it is reasonable for different decision makers to come to different conclusions on the same facts. Can you comment on the extent to which new information changes outcomes?

Gayle Devlin: On the first part of your question, we do not collect data specifically on the variance between the data that we collected in the first application and the data that we collected in relation to the redetermination. However, we have a public duty to look again at an application if asked to do so by our clients. It is important to stress that we are listening all the way through the client journey; there are no artificial cut-offs or hard deadlines beyond which we are not willing to consider that new information.

At redetermination, we take a fresh look at the whole application on the basis of feedback from the client, who will have given us a reason why they want us to reconsider our first decision. For example, they may feel that they have more to add to what they have said about their daily activity and have not provided sufficient detail. Although we make our best attempt to collect that detail at the outset, the fact is that, as Citizens Advice suggested in its recent evidence to you, some clients minimise the impact of their condition on their daily life, because they live with it day to day and are used to it. Our specially trained advisers try to draw out that detail at the outset, but it may well be at the redetermination stage that they offer that evidence.

Katy Clark: I appreciate that you might not have hard data, but do you have an impression of how often a different decision is taken when, essentially, the facts are the same?

Gayle Devlin: That was the second part of your question. Our focus is on getting the right decision first. It is crucial that decision makers properly explain that decision to the client, and the client will see our first determination very clearly. That helps clients to challenge determinations that they are unhappy with.

In a lot of redeterminations, we are presented with more evidence and slightly different facts. It is always possible that different decision makers will come to a different conclusion, but it is crucial that we capture the decision and let our clients know the basis of that decision.

Ultimately, clients have straightforward access to an independent and impartial tribunal if they remain unhappy.

Katy Clark: Thank you. Does anyone else want to come in on that question?

Tim Barraclough (Scottish Courts and Tribunals Service): It is not for the administration of the Scottish Courts and Tribunals Service to take a view on the basis on which decisions are taken, because that is done by tribunals and the judiciary, but I have two points that I might offer. The first, which relates to some issues that might come up later, is that there are cases where a hearing may be adjourned because more information is requested. Obviously, that information is new information that will need to be taken into account.

The second point is that all judicial decisions will take into account a number of factors: not only the facts established, but the law to be applied, how that law is to be interpreted and the weight that is given to the facts that have been established—there may be different views between the parties on the weight to be given to the factors. That is how you might get differences between the initial decision and the later decision on the basis of the same facts.

Katy Clark: Lesley Black, you might want to respond to that question, but I have another question that I would also like to put to you.

Based on what we have heard, it seems that, often, redeterminations and appeals are based on further information that has been provided. How easy would it be to try to obtain that information during the initial decision making? Do you have any suggestions on how we could address that, so that the information is captured at the earliest possible stage?

Lesley Black (Scottish Courts and Tribunals Service): It is not possible for us to say how easily that information can be obtained at first. The information will come over from Social Security Scotland and there is not a pre-hearing process, so the first time that members of the tribunal panel will consider the evidence in front of them will be at the hearing. At that stage, they might ask to see further evidence in support of the claim.

Katy Clark: Gayle Devlin, do you want to come in to conclude this part of the questioning?

Gayle Devlin: I am happy to. We have spoken to the committee before about the amount of work on the application forms that we have done with our stakeholders. We are working closely with them to raise awareness of the good support that is available and how we obtain and collect information on behalf of individuals. We have changed our application form to include very clearly what people need in order to apply for an adult disability payment. As I alluded, local delivery is in place to help support our clients to

navigate that guidance and complete their forms. A lot of work is going on in that space.

The Convener: Jeremy Balfour has a supplementary question.

Jeremy Balfour (Lothian) (Con): Good morning. I should probably put on record the fact that I am a former First-tier Tribunal member.

Ms Devlin, you said that you do not record information with regard to redeterminations. Why not?

Gayle Devlin: As you know, we are keen to develop our management information and our data and produce official statistics that will be incredibly useful to us over time. We are working with colleagues in the Scottish Government to develop that suite of data. We do not do that at this time, but it is something that we are very keen to do in the interests of transparency and being able to demonstrate the value that we bring.

Jeremy Balfour: It seems a bit confusing that we started with a whole new system and we are not recording information from day 1. Have you got a timescale for when that information will be recorded?

Gayle Devlin: We record information right through the client journey and we are asked to officially publish statistics, so we gather and produce a vast number of statistical publications. I do not have the timeline that you ask for, but there are plans to deploy that approach into the system to enable us to gather that information.

Jeremy Balfour: That is helpful.

With regard to getting the information right the first time, one of the changes was that Social Security Scotland would get the information rather than the client having to get it. My understanding from a letter that I received from Social Security Scotland is that, when you are looking for that information, the letters that you send to doctors and so on go into a generic box. People who have been in touch with me have said that there seem to be long delays in getting that information. How quickly are you getting the information from either social work or doctors? What is the average time between requesting information and getting it?

09:15

Gayle Devlin: It would not be possible to give an average time in a blanket way. There are so many sources of information. We do not burden our clients with collecting the information solely; we still collect a vast amount of supporting information on behalf of our clients. We ask them to bring the supporting information that they have easily to hand. We do not have data on what the average time would be.

Jeremy Balfour: So you do not know how long it takes. When you request information from, say, a general practitioner, you do not have an average time for how long it takes to get that.

Gayle Devlin: No, I do not. Every GP practice, health board and local authority makes best endeavours to provide the information, but I cannot supply a specific figure on how long it takes. Some are very quick. As we have spoken about, others in the national health service and GP practices are under pressure when it comes to returning the information.

Jeremy Balfour: Okay. Thank you.

John Mason (Glasgow Shettleston) (SNP): I take the point, Ms Devlin, that you are trying to make the system friendly, helpful and simple, but we have had evidence that some clients find the process to be quite complex and stressful. My understanding is that the legislation has certain requirements, such as that redetermination requests are to be made in a form that the Scottish ministers require. Can you give us an idea of how much flexibility you have in relation to how the system works? How much are you bound by what is in the legislation?

Gayle Devlin: We are the delivery body that is delivering the policy, which was agreed way back during consideration of the Social Security (Scotland) Bill and before that. Many years ago, in 2016, we listened to feedback from a public consultation that said all those things—that people wanted a challenge process that was simple, clear and accessible in terms of information and processes, with clear published procedures and timescales. We have done all of that and a simple process is in place.

I absolutely hear what you say about the stress that some clients experience in navigating the system, but we are absolutely committed to continually improving our service and making it accessible at all times. Our current process is as clear as possible, but we are always listening and open to feedback from clients, stakeholders and the Scottish Government.

John Mason: Obviously, it is difficult to change legislation, so we are not proposing that. Do you feel that you could make the system simpler if it was not for such and such legislation, or does it work okay?

Gayle Devlin: It works from our perspective, but if the clients and stakeholders have issues, we are open to listening to that feedback. The forms are relatively easy to navigate and we offer local delivery support. The forms are clear and simple, and we offer one-to-one and in-person support to complete them. We complete forms over the telephone, too. People can access a redetermination and an appeal in many ways.

John Mason: Some people will keep copies of their original application forms and so on, but many will not. We have heard of an example in which somebody who wanted to make a redetermination request asked for a copy of their completed application form but had difficulty getting it. Would that be just a one-off? Would people normally be able to get the original application form?

Gayle Devlin: I heard that evidence and it caused me great concern. That example should absolutely be an exception. I wholly accept that that was the experience of that client, which was not ideal. However, I have been advised that a client can call and request a copy of the application, and we will send it through the post.

At the appeal stage, the client gets copies of all the information that we send to the tribunal; the tribunal then sends it to the client. That includes their application, information on the redetermination and the first decision, and all the supporting information. I hope that that case was an exception.

John Mason: It is good to get that on the record.

I realise that I have put all my questions to Ms Devlin. Do the other witnesses want to come in on whether what is in the legislation is too specific or there is a bit of flexibility?

Lesley Black: We would say that the process works. The process of direct lodgement, which was brought in through the Social Security (Scotland) Act 2018, is helpful for the client in managing the process. We then send back out to the client all the information that the agency has submitted in the initial evidence giving. That has been a good step forward.

John Mason: Okay.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Good morning, everyone.

Technology is a wonderful thing—it got us through Covid-19, because it allowed us to continue to operate. There is a role for online platforms in dealing with clients, applicants, people who are appealing and so on. My question is for both organisations. To what extent do you use online platforms for various activities? A lot of people do not feel comfortable online. How do you support such people to be more comfortable and relaxed? What alternatives do you offer if it becomes evident that the online approach is not appropriate?

We will not start with Gayle Devlin on this occasion. Lesley or Tim—do you want to come in?

Tim Barraclough: You asked about the online approach but, as well as the ways in which people

engage with the process online to exchange information, there is the hearing process. For clarification, are you referring to hearings as well?

Bob Doris: I suppose that I meant both. I am particularly interested in the hearings process, but I understand that there is more general activity online that does not involve a video platform, but involves going back and forth by email and the like. Perhaps it is about both, Mr Barraclough—

The Convener: I believe that questions on hearings have been allocated to Marie McNair, so perhaps you could focus more on the applications and the forms, Mr Barraclough.

Bob Doris: I think that I would like you to focus on the applications and the forms, Mr Barraclough. *[Laughter.]*

The Convener: Thank you, deputy convener.

Tim Barraclough: There are two elements. First, when an appellant lets us know that they have difficulty in dealing with things online or if they do not like using email or online engagement, we can provide things on paper, if that is more convenient for them.

Secondly, we train our staff and judiciary to respond to requests that we receive to help people through the process. As an independent tribunal—obviously, we are completely separate from Social Security Scotland—we must treat both parties even-handedly, but we do everything that we can to help people to understand the process.

If I may, I will add one point that I have not had the opportunity to make. Although the tribunal was established in 2018, the volumes of cases have been low for the first few years, so we really have not started to test the systems until now. We are now learning an enormous amount about how the system is operating or not operating. We are keen on meetings such as this and the engagement that we have with our users, which help us to improve. We have a real sense that there is a lot more that we could be doing better, so this meeting is actually a helpful way to identify what that is. We need to know more—perhaps from our users, now that we have a larger volume of them—about what we can do to help.

Bob Doris: If you have online communication with service users but they do not get back to you—if they are part way through giving information but just drop off the radar a little—what do you do?

Lesley Black: We would follow up if we were waiting for something. I do not think that we have experienced that thus far because, as you have heard, the volumes that have been coming through to date have been lower than anticipated. We are now starting to test our systems and processes in earnest. It is necessary to manage

that information so that cases can be scheduled in front of a tribunal panel.

Bob Doris: There is clearly not an issue currently, so I am sorry for pushing on something that might not be an issue, but what does “follow up” mean? If such circumstances arose, what would that look like?

Lesley Black: That would involve the case worker engaging with the agency to understand whether there is something missing, or speaking directly with the user. We have not had many such instances to date, but we would look to follow through on that in the improvement space.

Bob Doris: So it would be a matter of picking up the phone and speaking to the service user or contacting Social Security Scotland to find out whether there is something else going on.

Tim Barraclough: Yes.

Bob Doris: That was perhaps stating the obvious, but I wanted to get it on the record.

Do you have any comments on this line of questioning, Gayle?

Gayle Devlin: I would reiterate the points that I made earlier. A redetermination form is available on paper, as is an appeal form, and local delivery support is offered right across Scotland at 180 venues. People can request a face-to-face home visit or can meet in a library, community centre, prison or hospital. As well as being accessible in that way, we have advocacy support for people who have particular difficulty working online. As you know, that is an independent advice and advocacy resource.

Bob Doris: I sometimes think that organisations cannot win. Erica Young from Citizens Advice Scotland was an excellent witness and made some really good points. She said that

“people get an overwhelming amount of paperwork”.—*[Official Report, Social Justice and Social Security Committee, 28 March 2024; c 16.]*

She also said, in her written submission, that communications from the tribunals service can be “vague and sparse”. So people can be overwhelmed with information and paperwork, but the information might be sparse at some level. It must be really difficult to get the balance right, for both the tribunals service and Social Security Scotland, so that they do not overwhelm people with information but ensure that they are suitably informed. How do those organisations get that balance right?

Lesley Black: We are starting to engage with our users. The president of the social security chamber of the First-tier Tribunal will be having user group sessions to understand that and get a bit more feedback. We use feedback forms, which

also help us. We have had few back so far, but they will help us to understand.

We are working on guidance on the points at which a user might expect to get some communication from us, so that they are aware of when they will hear from us. We have also developed an online user portal. We have not widely publicised it yet, however, and we feel that we could do more to publicise it. That involves self-service, so a user can go online and find out what stage their application is at as their appeal is being processed. There is some improvement work to be done there. We can listen to what the users want and we will be able to build that into our process.

Bob Doris: Can a user go to that portal and ask, “Can someone give me a call? I’m a bit confused.”

Lesley Black: I do not think that people would do that via the portal. Our contact details are online and on communications that people get, so they can phone the casework team for a bit of help or support.

Tim Barraclough: The portal is a mine of really useful information and it will generate notifications to the user that there has been a change. The user can track their case and, if a new document is lodged or if the hearing has been scheduled, they get a notification that there is something for them to look at. The portal has been developed but, as Lesley Black said, we could do a lot more to make people aware of that facility.

On the question about what the right balance is, there is, indeed, a balance to be struck between sending people information and overloading them with it and letting them know that the information is there for them to find if they want to. We need to get feedback from our users in order to find out what that balance is.

Bob Doris: I am not trying to create an issue that does not exist, and the portal sounds like an excellent idea. By definition, however, there could be lots of information in the portal and it is a matter of navigating through it. Is assistance available for that? Once you publicise the portal a bit more, how would you support clients in navigating their way through it?

Tim Barraclough: We need to get feedback. I have seen the portal and it is designed using the latest standards of user accessibility and ease of navigation. It is extremely simplistic in its presentation and I hope that it is relatively easy to navigate. That is part of the further development of the process through which we can get information. We have not had many people using the portal, so we need to get people to use it so that we can find out where the difficulties are.

Gayle Devlin: That point about striking the balance is a really important one for clients. I take the point about having too much information or there being information overload for particular clients.

As per the legislation in relation to appeals, we send to the tribunal the information that it requires to perform its role. It then sends that information to the client. As I said previously, the supporting information includes their application, their original determination notice and so on. It is important that we give the client that, because not doing so limits their ability to fully participate in the proceedings at the tribunal. The overriding objective for us—and for the tribunal, I am sure—is fairness. It is for us to give the right level of information that is fair and just to the client, to enable them to attend a hearing in the best possible way.

09:30

Bob Doris: That is helpful. My final question might be rhetorical, or you can write back to the committee or update us at a future date. The portal sounds great, but when people are phoning up and asking for advice, details and information, the easy reply for busy staff might in the future be to say, “It’s all in the portal—just go to the portal.” You could lose a bit of human contact. I am not trying to create a problem that is not there, but it is self-evident that “It’s all in the portal” would be a pithy thing for a busy person on the telephone in an office to say in reply. Of course, the portal should be the first port of call, but it should not be the default over human contact.

Lesley Black: That is a fair point. We would promote the portal and showcase its benefits, but we would also always be receptive to how the user wants to access information. If that is by speaking to somebody on a call, that is how we will do it.

The Convener: We move to theme 3, which is on quicker processes.

Roz McCall (Mid Scotland and Fife) (Con): Good morning, panel. Thank you very much for coming along this morning.

We have heard a reasonable amount of evidence that raises concerns about timings, especially when it comes to the redetermination of ADP and ADP appeals. I highlight that Social Security Scotland has been working to bring down processing times for initial decisions—well done; that is fantastic—but what impact has that had on times that are taken to complete redeterminations? Ms Devlin, would you mind giving me that detailed information?

Gayle Devlin: I point out that 76 per cent of our adult disability payment redeterminations by 31 January 2024 were completed within the 56 days.

I recognise that it is essential that we maintain that performance, but robust capacity planning and resource measures are in place within the team to ensure that we manage performance and meet the statutory deadlines.

I point out that the impact of processing times and the work that has been done to reduce them has not affected the time that is taken to complete redeterminations. First-decision teams and our client experience teams that handle redeterminations are separate, and each has robust capacity and resource planning. As I stated earlier, demand is below forecast, but we are mindful of performance and of ensuring that we meet the deadlines.

Roz McCall: Thank you for that. There is sometimes an issue in that, when everything is performing well, the things that are not performing quite as well—even though they are still within deadlines—stand out like a sore thumb. That might be the situation. However, you are saying that there is a separate process, that everything is being done to ensure that the standards are being met and that you are comfortable that that will be the case.

Gayle Devlin: Absolutely. We are tracking performance daily within those teams.

Roz McCall: What additional resources are the tribunals service and Social Security Scotland putting in place to manage the expected numbers of ADP appeals? I will start with Ms Black and then go to Mr Barraclough and finally to Ms Devlin—if you would not mind commenting from the social security side.

Lesley Black: We have had an increase in the number of staff to resource the social security chamber of the First-tier Tribunal, primarily through a transfer from HM Courts and Tribunals Service. The benefits have been devolved to Scotland, so we had a transfer of some 24 people from the reserve system who are now working in SCTS to deliver them. Similarly, we base our capacity planning and modelling on the modelling figures on anticipated volumes that we get from the Scottish Government. We have provided resource to match demand.

Tim Barraclough: An increased volume will mean an increased requirement for hearings, so, as well as the staff that we brought across, there is a process to increase the number of tribunal members. That is a judicial appointments process that is run by the Judicial Appointments Board for Scotland, and it is being done following a request by the Scottish Government. We are not directly involved in that, but we have made it clear that we need more members to sit on hearings. A recruitment process is going on now and there will

be another later this year, so we should get many more members.

Roz McCall: I have a timing question, which you might not be able to answer. When do you hope to have additional members in situ?

Tim Barraclough: I think that some additional members are being assigned at present.

Lesley Black: Some members—I think just over 100—will take up their posts in May or June.

Tim Barraclough: There will be a further process later this year.

Roz McCall: There is adequate scaling up.

Tim Barraclough: Yes.

Roz McCall: Ms Devlin, do you want to comment?

Gayle Devlin: We have actively recruited additional resources into the team at Social Security Scotland. We currently have sufficient presenting officers to cover the number of hearings per day. We are in the middle of a recruitment exercise to recruit new presenting officers, who we expect will join us by the end of July.

Roz McCall: I was going to ask about timing, but you have just answered that question.

The Convener: I will quickly bring in Jeremy Balfour.

Jeremy Balfour: Mr Mason would probably ask about cost. At the moment, very few hearings take place in venues. The United Kingdom tribunals service previously rented rooms in certain locations. Are you using the same venues, and how much are we paying for those venues if they are not being used very often?

Tim Barraclough: The short answer is that we are not. The SCTS has three tribunal centres—one in Glasgow, one in Edinburgh and one in Hamilton, with social security hearings primarily taking place in Glasgow. We also have access to a number of venues that we hire hearing by hearing.

Jeremy Balfour: How far would you expect people to travel for tribunals as the number increases?

Tim Barraclough: We hope to use venues across Scotland. We have access to HMCTS venues in a number of cities across Scotland. In addition, if there are particular travel difficulties, we have the facility to hire local venues on a case-by-case basis.

The Convener: I invite Paul O'Kane to put his questions.

Paul O’Kane (West Scotland) (Lab): My questions build on the theme of delay to appeals. We have had a discussion about resourcing and about support for the process. Are there other barriers that cause delays, and what action is being taken to deal with those? Previous answers have touched on some of that, but perhaps Ms Devlin could talk about other barriers in the appeals process.

Gayle Devlin: We have a very small part in the appeals process. The tribunal undertakes the appeal. Our part is to lodge the appeal and provide the tribunal service with all the relevant information to a statutory deadline.

Paul O’Kane: Are there challenges with the collation of the information? I know that there have been issues with the timescale for information collation in some other parts of the application process. Do you feel that that is not an issue?

Gayle Devlin: The legislation prescribes a very tight deadline, but, in the majority of cases, we absolutely meet that.

Paul O’Kane: Ms Black, do you want to comment on any other barriers that exist within the appeals process?

Lesley Black: Currently, our average time from receipt of an appeal to a hearing is around 20 weeks. We would like that to be shortened a little. However, 10 weeks of that involves some of those statutory deadlines that are baked into the process, so we can schedule a hearing only after the first two months.

The principal issue is scheduling the hearings. That might be about the availability of the parties and members of the panel—judicial members—who will make those decisions, whether we have slots in the timescales, or where it has been requested that the hearing take place. All of those factors come into play when scheduling a hearing.

We may be able to increase hearing loadings—the number of cases that a panel can hear per day—if there is a change to members’ terms and conditions, but that is a matter for the Scottish Government.

Paul O’Kane: To go back to that resourcing piece and how personnel are supported, I suppose that your view is that there could be a shift in workload and the terms and conditions that are associated with that.

Lesley Black: Yes. Currently, a panel will hear two cases per day. If the change to terms and conditions were to be made, we believe that that could go up to four cases per day—so, when hearing volumes start to increase, we would be able to bring those hearing times down.

Tim Barraclough: To emphasise what Lesley said, probably the biggest issue is simply getting all the parties together in the same place—or online—at the same time. That is proving quite challenging sometimes, particularly when appellants are represented by agencies. The agency representatives have incredibly busy schedules and it is hard to find times at which everybody can get together. Increasing the number of hearing slots might help with that.

Paul O’Kane: So you think that perhaps more flexibility in the system would allow those agencies to consider how they participate. I imagine that, often, they will be supporting a volume of cases.

Tim Barraclough: Yes, indeed.

Paul O’Kane: Tied to this is the stress that an appellant feels about the process. Going through the process can be a stressful time, particularly when it comes to waiting and to the collection of information. What more could we do to make the experience less stressful?

Lesley Black: The work that we are doing is about giving people a choice about the method of hearing: online or in person. From feedback, we find that our users enjoy an online hearing and that that can be less stressful than attending in person. There is also the option of the user having supporters and advocacy workers to support them during the process. We ask them what needs they have, and we hope to be able to take those into account. Those are the types of measures that we hope might reduce that stress.

Paul O’Kane: The use of technology to make the system less stressful and quicker is of interest. In another committee, I made a visit to the SCTS to discuss the use of technology across the service. Could we do more on that front, with a bit of investment in testing change through technology? For example, could the recording of notes using artificial intelligence and the use of more virtual hearings—which you mentioned—be helpful?

Lesley Black: Absolutely, We have already started to think about such work more broadly across the SCTS.

The Convener: Before I go on to the final theme, which is face-to-face appeal hearings, I will touch on something that Lesley Black mentioned about the more than 20 staff that you brought in from the reserved area. Have they given you any feedback on the lessons that have been learned from the process that they dealt with in the past?

Lesley Black: The process is different from the reserved system because of direct lodgement. The feedback from staff is that they enjoy the use of technology. The systems that we have built are digitally dependent: the case management system

and the data transfer from the agency make things run more smoothly. The feedback is that staff enjoy working in the Scottish system, they enjoy working with the SCTS and they enjoy the systems and the processes that they use. They are really pleased to be working with us and—I think—some of their colleagues wish that they had been able to join, too. *[Laughter.]*

The Convener: Thanks very much.

09:45

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. As the convener said, I will cover appeal hearings, so I will direct my questions to the Scottish Courts and Tribunals Service. From the figures that you have provided, in-person hearings are either non-existent or minuscule. I note figures of 0 per cent in 2022-23 and 1 per cent in 2023-24. Why is that the case?

Lesley Black: The social security chamber began during Covid, so the default was that we had to have hearings largely by telephone. As I said, our users say that they enjoy that method and that modality of hearing. We have had very small numbers, so that could also be part of it. We anticipate that the number of requests for in-person hearings will grow over time.

Marie McNair: Your figures suggest that more people were seen in person during Covid than are being seen in person now, but I will take that answer.

The committee has heard concerns that it is more difficult for the tribunal to assess appellants' needs over the telephone compared with seeing them in person, given the nature of what they are dealing with. What are your views on that?

Tim Barraclough: One clarification on that would be helpful. When you talk about the tribunal assessing a client's needs, are you talking about assessing their needs and their ability to participate in the hearing or about assessing their needs in relation to the decision on whether the benefit should be awarded? There are two different issues there.

Marie McNair: I am talking about participating in the meeting.

Tim Barraclough: Okay. It is for the tribunal to assess whether it is getting all the information that it needs and whether the appellant is being given sufficient opportunity to provide the information in the form that they need to. Appellants are asked in advance what their needs are and whether they need anything that will help them to participate in the meeting. We do everything that we can to meet those needs, including kitting out hearing centres and providing support and interpretation services.

The tribunal cannot force an appellant to come to an in-person hearing. It can advise that it would be a good idea to do so, and there have been cases in which it has done so. However, as Lesley Black said, it appears that appellants tend to prefer not to come to in-person hearings; they quite like the telephone approach. As I say, the tribunal cannot enforce it on someone, so it is a difficult balance to strike.

As the hearing is occurring, the tribunal will take steps if it becomes aware that there are difficulties in getting all the information that it needs or that the person is not able to participate properly. It might adjourn the hearing and ask whether the hearing can be done in a different way. There is the opportunity to take that into account.

Marie McNair: You said that, in the light of the feedback, you will accommodate an appellant's preference whenever possible. What do you mean by that?

Tim Barraclough: At the moment, the appellant will be asked what mode of hearing they want—whether a teleconference, a videoconference or an in-person hearing. We will go with their choice unless there are compelling reasons not to. In essence, we will accommodate that choice.

Marie McNair: You sent on the revised template letter that will allow appellants to request their choice of hearing. If the appellant does not use the template letter and requests a type of hearing via email or telephone, will that be accepted?

Tim Barraclough: I am sorry—can you say that again? I did not quite catch that.

Marie McNair: If the appellant does not use the template letter but requests a type of hearing by sending in a request via their own letter, an email or a telephone call, will that be accepted?

Lesley Black: Yes. We are not compelling them to use the form; we are just making them aware of the different options that are available to them.

Marie McNair: If a representative is mandated to act on behalf of an appellant and sends in their request on their own template letter—as was mentioned in an evidence session—or by email or phone, will that be accepted as a notification of the type of hearing that the client wants?

Lesley Black: Yes.

Marie McNair: That is good to hear, too.

Does the tribunal service expect that the change in approach will lead to an increase in face-to-face hearings? If so, what preparations are being made to accommodate that? You covered that earlier, but could you expand on that?

Tim Barraclough: Interestingly, our president does not like using the term “face to face”,

because he thinks that it sounds confrontational. He much prefers to use the term “in person”, which better conveys the feeling or the vibe that we want to have in our hearings.

As we said, we have a suite of our own venues as well as access to venues that are run by HMCTS. Currently, we do not use the HMCTS venues much—it is about once or twice a month, I think, for a number of them—but there is capacity for us to increase our usage quite substantially. We are already equipped to take on a larger number of cases.

Marie McNair: It is really important that organisations work to get the best experience for the client. Thank you.

The Convener: I will bring in Jeremy Balfour, and I believe that Bob Doris would also like to ask a question.

Jeremy Balfour: I have a couple of questions. The first is a bit nerdy and niche—I apologise for that. The new tribunal service has been set up, but precedent was set by cases that were taken in the previous tribunal system. Will the new tribunal system follow that precedent, or is it starting with a blank piece of paper for First-tier Tribunal decision making?

Tim Barraclough: That is a legal question for the judiciary rather than for the Scottish Courts and Tribunals Service as the administration. I am sorry that I am not able to provide a definitive answer on that.

Jeremy Balfour: That is absolutely fair.

The VoiceAbility submission states:

“It is possible to participate by video conference or by telephone; by paper; or rarely, in person”.

I am concerned that that wording suggests that the presumption is that in-person hearings, as you would call them, are rare, which would push the client down the route of thinking that in-person hearings will prove to be more difficult to get. Are you concerned by that wording? Could it be more explicit that the client can participate in the way that they want to, which is what the legislation says?

Tim Barraclough: That is why the letter has been changed—so that it is more explicit that clients have the choice and that we will accommodate it.

Jeremy Balfour: Has VoiceAbility been told that?

Tim Barraclough: The letter came out only this week. If VoiceAbility has not been told, we can follow that up.

Jeremy Balfour: That would be helpful. If I was a client and was reading that, I would be thinking,

“Oh, it will be really difficult to get an in-person hearing.” VoiceAbility and any other third sector organisations that are giving advice should be able to say that the SCTS wants to provide a hearing in whatever way the client wants, so that their best interests are served.

Tim Barraclough: That is certainly our intention. To go back to what I said earlier, it is clear from the committee’s evidence sessions and the user feedback that we are getting that there is much more that we can be doing to make the choices more evident. There needs to be more guidance and engagement on that, so that people understand that—we are on that journey. We are not getting it completely right at the moment and we can improve. The committee’s session is a helpful way of flagging those issues.

Jeremy Balfour: I welcome that response. Thank you.

Bob Doris: I have a brief question. It was positive that you confirmed that the appellant can request telephone, videoconference or in-person meetings. Do you anticipate that there will be longer waits for an appellant who requests an in-person hearing? By definition, getting folk on the telephone or on the computer will be speedier than getting them all in the same venue. I appreciate that there may be a slightly longer wait for an in-person hearing, but I would like to make sure that it is not a prolonged wait. That could marshal people into making a choice that was not really what they would have wanted, just so that the matter can be disposed of more speedily. Can you give me any reassurance on that?

Tim Barraclough: The point that you raise is correct. As a matter of reality, it is more difficult to get people together in the same place as opposed to their joining from different places through a remote platform. We have spoken about increasing the availability of hearing slots if we can and ensuring that we make full use of the capacity and the venues that we have, which should minimise those difficulties as best we can. We will be very conscious of the situation and will have to monitor it. It will depend on how many in-person hearings are requested in the future. The numbers may increase, but we must wait and see whether that increase is within the scope of our capacity to deal with more in-person hearings or whether we need to do something else. In that respect, it will be a slight step into the unknown.

Bob Doris: I appreciate that and that arranging an in-person sitting will take longer. It will be important to make sure that the appellant can make an informed choice and that you monitor how long it takes to get an in-person sitting. I do not think that we should have targets for targets’ sake, but, if the system is resourced appropriately, the wait should be reasonable and not prolonged.

However, I suppose that, at the moment, it is just too early to work that out.

Tim Barraclough: Given the numbers that we have been dealing with, it is impossible to say. In the coming year, when the numbers start to ramp up significantly, we will be able to see the patterns and where the strains on the system will be, which will be interesting.

Bob Doris: That is reasonable. Thank you.

The Convener: That brings our questions to an end. Thank you for attending our meeting. The committee will reflect on the evidence that has been heard and will consider its next steps.

That concludes our evidence session and our public business for today.

09:56

Meeting continued in private until 10:21.

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