

## **CPAG in Scotland evidence for the Welfare Reform Committee Call for Evidence on the Welfare Funds (Scotland) Bill**

### **1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government's aim of providing assistance for short term need and community care?**

1. CPAG is in favour of the Welfare Funds (Scotland) Bill and the legislative underpinning it will give the Scottish welfare fund. The fund provides an important means of protecting vulnerable households from reaching crisis point and/or being deprived of their ability to live independently. As well as promoting the wellbeing and sustainability of low income and/or vulnerable households the fund is an important means of reducing pressure on costly public services such as residential care, homelessness services and the NHS.

2. In some respects, however, the current Bill falls short of ensuring that assistance is provided to those in need. Particular areas of concern include:

#### **Families under exceptional pressure**

3. Under the UK discretionary social fund families experiencing exceptional pressure were listed amongst the categories of applicant eligible for community care grants. The term 'exceptional pressure' was not defined but included pressure resulting from a range of factors including disability, low income and relationship breakdown<sup>i</sup>.

4. This category of applicant is not referred to in the Welfare Funds (Scotland) Bill as currently drafted. CPAG is concerned that this will lead to a situation in which families experiencing exceptional pressure will only be eligible for a community care grant if they are also able to show that their ability to live independently is at risk in that they are facing prison, hospital, residential care, homelessness or an unsettled way of life. This will exclude many families who are at risk because they are struggling to pay for basic household essentials and provide a safe, warm environment for their children.

5. This is particularly concerning given that families are likely to face increasing financial pressure over the coming years. Research conducted by CPAG shows that the minimum necessary cost of raising a child has risen by 7.7 per cent since 2012, while the minimum wage rose by only 1.9 per cent during this period and the real value of child and family benefits fell by 2 per cent<sup>ii</sup>. It is therefore likely that some families will find it increasingly difficult just to feed and clothe their children and heat their home.

7. CPAG therefore believe there is a need for a third category of qualifying person, '*families experiencing exceptional pressure*', be added under article 2(2) of the Bill.

8. The need for such a provision is particularly pressing given that families do not currently appear to be receiving an adequate proportion of the Scottish welfare fund. SWF figures for 13/14 show that 20% of those applying for a community care grant are categorised as being a family under exceptional pressure<sup>iii</sup>. This compares with UK social fund figures for 12/13 which show that 53.6% of CCG budget was spent on families experiencing exceptional pressure<sup>iv</sup>. While these figures are not directly comparable, they highlight a serious concern that families are finding it increasingly difficult to access support.

10. We believe one of the reasons for '*families under exceptional pressure*' being under-represented amongst those granted CCG is because their eligibility is not given as much

emphasis in the current guidance as other categories of qualifying person. We have brought this concern to the attention of the Scottish Government which has made several very welcome amendments to the guidance in order to address this issue. We are therefore concerned that failure to mention families under exceptional pressure in the Bill could undermine efforts to date.

11. CPAG are concerned that the Scottish Government's main reason for not including families under exceptional pressure in the current Bill is to ensure that the legislation is in-keeping with the Scotland Act 1998, as amended by a section 30 order giving the Scottish Parliament the power to legislate for a Scottish welfare fund<sup>v</sup>. The section 30 order does not mention 'families under exceptional pressure', despite this group previously being covered by the discretionary social fund and both Governments' apparent intention that they should now have access to the Scottish welfare fund<sup>vi</sup>. If the insufficiency of the section 30 order is the reason that families under exceptional pressure have not been included in the current Bill then we would call upon the Scottish and UK Government's to work together to pass a second section 30 order.

### **Grants v Loans**

12. It is clear from current guidance and paragraph 5 of the Bill's explanatory notes that the Scottish Government intends for SWF assistance to be provided by way of grants instead of loans. CPAG in Scotland therefore believes that the Welfare Funds (Scotland) Bill should state clearly that where an award is made under the scheme no repayment of awards can be required.

13. We are concerned by section 5(2)(f) of the draft Bill which will give Scottish Ministers the power to pass regulations "*about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided.*" We presume this provision is intended to allow local authorities to recover awards which have been fraudulently obtained. However, paragraph 27 the Explanatory Notes (which relate to section 5) provide absolutely no explanation of the provision or clarification on when such as power might be used. We therefore believe section 5(2)(f) should either be further clarified or removed from the Bill.

### **Cash v in kind**

14. Section 1 states that 'a local authority may use its welfare fund only in order to provide occasional financial *or other* assistance'. The Bill places no limitations on the circumstances in which it is appropriate for the award to be provided by means of goods or services rather than by way of financial assistance.

15. CPAG is concerned that there is an increasing tendency on the part of local authorities to make awards in kind. In 2013/14 under the interim scheme just under 20 per cent of CCG awards were made by way of cash, cheque or direct bank transfer<sup>vii</sup>. The rest were provided by way of goods, store vouchers or travel warrants.

16. We are concerned that this may be having a negative impact on applicants in terms of their sense of dignity, ability to exercise choice and the quality of goods/service supplied. CPAG's welfare rights workers have come across instances where applicants have been supplied with white goods which do not fit into their kitchens and which are of sub-standard quality. In one case a washing machine was supplied without a user manual. A contact of the applicant researched the machine online, and discovered it was only available for sale in Eastern Europe.

**Case Study:** The applicant was offered a cooker which she knew wouldn't fit into her kitchen. She was told that this was the standard cooker that was offered and that she would have to take delivery of it and subsequently refuse it if it weren't suitable. The

cooker was then delivered and it was obvious to the delivery men that it could not be installed. It had to be removed and another delivered and installed instead.

17. CPAG believe 'other assistance' should only be provided where there is good reason not to provide the award as a cash payment (or bank transfer). Section 1 should therefore be amended to state,

*'a local authority may use its welfare fund only in order to provide occasional financial or, **where it better meets the need of the applicant, other assistance**'.*

18. The assumption would then be in favour of cash payment or bank transfer. Instances in which non-financial assistance might be preferable could then be outlined in guidance. This might include, for instance, cases in which there is a high risk that a member of the applicant's household may misuse the funds and the applicant is concerned that a cash payment is not appropriate.

19. It should also be made clear in regulations that applicants have the right to state their preference for financial assistance and local authorities have a duty to take this preference into account. These safeguards would help to protect the dignity and choice of applicants while avoiding the waste and expense created by poor quality, inappropriate goods.

## **2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?**

20. Several concerns about the operation of the SWF that have been identified over the past 12 months are not addressed through the Bill or draft regulations. These include:

### **Concerns about gate keeping**

21. The Bill does not address concerns that some individuals who might be eligible for an award from the Scottish welfare fund are being discouraged from putting in a formal application. While we do not believe that local authorities are intentionally rejecting applications from eligible clients in need, there is a concern that some applicants are being dissuaded from making applications because local authority staff make a premature judgement about the individual's likely eligibility and put her/him off making a claim. This prevents a full consideration of the applicants circumstances and denies them a right of review of any subsequent decision.

22. We have come across numerous cases suggesting that many people are being turned away before they make a grant application. Examples of this include the following:

**Case Study:** The relevant client had been in and out of hospital with mental health issues. He and his wife are both in receipt of ESA and he has to attend a clinic every day. The couple were in debt and struggling to cope financially. Medication was causing the husband to gain a lot of weight and he was at the point where his clothes were digging into his skin causing him great discomfort. The local authority informed him over the phone in a matter of minutes that he was not eligible for an award.

**Case Study:** An extremely vulnerable client (who had multiple disabilities and was illiterate) did not realise that his contribution based ESA would end after 12 months. The DWP notified him of this but did not send him the form which would allow him to make a claim for income related ESA. The client applied for a short term benefits advance (STBA) from the DWP but was refused on the basis that he did not count as a new claimant. The local authority repeatedly refused to take application to the welfare fund as it was the DWPs fault for not sending right form (ESA3). The client had to access food bank in the interim.

23. One way of overcoming this problem would be by requiring local authorities to keep a record of all inquiries relating to the Scottish welfare fund which do not progress to the point of application, along with any vulnerabilities of the inquirer and the reason for non-continuation of the application. This need not be a time consuming or resource intensive process but it would allow for accurate information to be gathered showing which groups are not making applications despite initiating inquiries. It would also encourage local authority officers to be more conscious of the procedure they follow and manner in which they deal with initial inquiries.

**Concern about requirement that applicant be in receipt of means tested benefits**

24. Another aspect of the scheme which has been problematic has been the requirement (which some local authorities appear to still be imposing) that all applicants must be in receipt of a means tested benefit before they can access the Scottish welfare fund. East Dunbartonshire's website, for example, still states that, "*For both grants you must be aged 16 or over and in receipt of Income based Jobseekers Allowance, Income related Employment and Support Allowance, Income Support, Universal Credit or Pension Credit.*"

25. This is problematic because, in many cases, the reason applicants are experiencing a crisis is because there has been some kind of disruption to their means tested benefits. Common examples include being subject to a benefit sanction, experiencing a delay in relation to their claim for benefit (this is increasingly common in relation to ESA) or being in the process of requesting a mandatory reconsideration in relation to an ESA decision.

26. People falling into these categories often experience extreme hardship and financial pressure. In some cases they may be entitled to alternative support from the DWP by way of a short term benefits advance or hardship payment. However (as has recently been confirmed by the Oakley Review<sup>viii</sup>) in reality these payments can be difficult to access and are not available to everybody.

27. Households subject to delays and sanctions of this kind should not be precluded from accessing the Scottish welfare fund (either in respect of a crisis grant or community care grant). Cases CPAG has come across in which this has occurred have included the following:

**Case Study:** The individual concerned had made an application for employment support allowance which had been rejected. He then went on to request a mandatory reconsideration and was told to make an application for JSA in the interim. He felt he was unable to claim JSA because his health problems made it impossible for him to take steps to look for work. The mandatory reconsideration process took more than 8 weeks. The man's application to the Scottish welfare fund was refused on the basis that the client was not in receipt of a qualifying benefit

28. The draft regulations currently state that,

"a person is **not ineligible** for assistance by virtue of paragraph (1)(a) if that person is receiving—

- an income-based jobseeker's allowance (payable under the Jobseekers Act 1995;
- income support under the Social Security Contributions and Benefits Act 1992;
- income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007;
- universal credit under Part 1 of the Welfare Reform Act 2012; or
- state pension credit payable under the State Pension Credit Act 2002."

29. We are concerned that this provision could easily be interpreted to exclude any person not claiming one of the means tested benefits listed. We believe that this reference to means

tested benefits should be removed from the regulations altogether. Reference could then be made in subsequent guidance to the need to take the receipt of means tested benefits into account when considering available resources. As well as allowing for further clarification this would allow for any changes to social security benefits to be quickly reflected in guidance.

30. In the event that regulation 5 is retained it should be changed to state that a person is to be treated as on a low income if they are 'entitled to' any of the listed benefit rather than 'in receipt' of them. This would ensure that people who were experiencing a sanction or delay in relation to their benefits were not excluded from making an application to the fund.

31. We are also concerned that the benefits listed in the draft regulations do not include contributory ESA. Contributory ESA is often claimed by individuals whose income and available resources are similar to those claiming the listed means tested benefits. It is therefore essential that applicants whose sole source of income is contributory ESA are not excluded from accessing the fund.

32. The regulations also fail to provide scope for essential outgoings of the applicant (such as disability related expenditure) to be taken into account when considering the applicant's resources. The regulations should state that applicants can ask that their outgoings be taken into account where they feel they have additional, essential costs.

33. The regulations also fail to make clear that any capital taken into account for the purpose of calculating the applicant's resources should be available to her/him immediately. Having savings or a pension fund that s/he cannot access should not preclude applicants from accessing a crisis grant.

### **Timeframes**

34. The limit placed on the number of awards an individual can receive in a given period has proven problematic for many applicants in need of (and otherwise eligible for) support from the fund. Paragraph 6.15 of the current guidance states that, "*If a person has applied for a Community Care Grant or a Crisis Grant for the same items or services within the last 28 days, a decision has already been made and there has not been a relevant change of circumstances, then the Local Authority is not required to make a decision on the application.*"

35. This is problematic because increasing numbers of benefit claimants are facing extended benefit delays, particularly in relation to ESA. This means that many people experiencing mental or physical health problems and/or disabilities are going for extended periods of time with much reduced support or, in some cases, no support at all. There is evidence that, despite having no access to any other support, individuals are being turned away from the welfare fund because of part of the guidance which states that,

**Case Study:** Due to an extended delay awaiting the outcome of a mandatory reconsideration in relation to an ESA decision, the client had insufficient funds to pay for electricity. He was refused a crisis grant on the basis that he has already been awarded one within the last 28 days (due to the same mandatory reconsideration delay). Only after several attempts and intervention from a welfare rights advisor did the council permit him to submit a second application.

36. We are strongly against a limit on the number of applications within stated time frames contained in the draft regulations. We believe there is a degree of discretion required in relation to repeat applications which the regulations as drafted do not allow for. The draft regulation 7 currently state that,

(1)(a) A local authority need not consider a fund application made by or on behalf of a person who has made another fund application within the previous 28 days.

(2) Paragraph (1) does not apply where—

(a) the second application is different in its nature from the first application;

(b) no decision was taken on the first application; or

(c) it appears to the authority that the circumstances of the person by or on whose behalf the applications were made have changed in a relevant respect.

37. This provision fails to differentiate between applications for a crisis grants and applications for community care grants. Furthermore, the draft Bill states that local authorities “need not consider” a repeat application made within the stated time frame unless it fits within a list of specific exceptions. Surely identifying such exceptions within an application is likely to be difficult – if not impossible - without consideration?

#### **4. Will the Bill and its provisions have a particular impact on equalities groups?**

38. There is a serious concern that local authorities are not recording (and therefore unlikely to be adequately considering) the vulnerabilities of applicants. The vulnerabilities which local authorities should be recording are those characteristics or circumstances which should be considered by decision makers in prioritising awards. Many of these vulnerabilities are more likely to be experienced by individuals or households with protected characteristics. They include, for example, frailty or old age, learning difficulties, mental health impairments, physical impairment or disability, including sensory impairments, chronic illnesses and terminal illnesses.

39. Failure to consider these vulnerabilities creates a risk that applications from vulnerable households and/or those with protected characteristics will not be given sufficient priority in relation to the welfare fund.

40. There is also a concern that the software used by many local authorities to process applications is preventing them from recording multiple vulnerabilities. The Scottish Government’s own Equality Impact Assessment in relation to the current Bill states. *“It would appear that some systems are recording default responses rather than real responses or that they offer limited options for recording, due to the design or configuration of the software.”*

41. In particular there is a concern that some software only allows local authorities to consider one vulnerability per application. As well as potentially discriminating against applicants with protected characteristics, a failure to capture multiple vulnerabilities could also be discriminating against applications from families under exceptional pressure. Again, families under exceptional pressure are likely to have more than one of the listed vulnerabilities and failure to capture this information could mean their applications are not being given sufficient priority. Relevant vulnerabilities include being a lone parent, children living with young parents aged under 25, children living with a disabled adult, children living in a large family with three or more children, experiencing family breakdown, being pregnant, recent childbirth or adopting a child.

42. CPAG therefore believe that local authorities should have a duty to include a list of the vulnerabilities they considered when making a decision on an application in each decision letter. This will ensure that applicants – and those monitoring the administration of the fund - will know when local authorities are failing to take relevant vulnerabilities into account.

43. Another concern relating to the software used by some local authorities is that it won’t allow an application to proceed unless all fields are completed, including the field requiring the applicant to supply his/her National Insurance number. This impacts particularly on migrant groups, including those with indefinite leave to remain, refugee status or discretionary/humanitarian leave who may not yet have been allocated an NI number.

44. Cases have also highlighted numerous failures to make reasonable adjustments on the part of local authorities when dealing with disabled applicants. For example,

**Case Study:** A crisis grant was awarded to a vulnerable adult with learning and physical disabilities on Friday afternoon. He was told that he needed to come and collect it but given directions to the wrong office. He was then told he would need to get across town to the right office within the next 20 minutes if he wanted the grant. He did not have money for parking and was not able to get there. For this reason an advisor with mandate went to the correct office on his behalf. The staff at the 'correct' office knew nothing about the award but gave advisor £10 out of petty cash in the meantime.

**5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?**

45. We are very concerned about section 3(1) which states that "*A local authority may make arrangements for another person to administer its welfare fund on its behalf.*" We believe administration of the welfare fund generally should be a function of government.

46. Allowing third parties to administer the fund is likely to affect the quality of decision making, undermine public confidence in the scheme and put the accountability, and transparency of the fund at risk. Applicants to the Scottish welfare fund should be aware that they are entitled to make an application to the fund, that the decision-maker is subject to the principles of administrative law and that any decision made can be subjected to review. There is a risk that outsourcing to a third party may give the applicant the false sense that they are asking for charity, rather than exercising a legitimate right.

47. There is also a need for clarification within the Bill that any arrangements to outsource specific aspects of the fund such as sourcing and delivery of goods should only be made where that other 'person' is suitable. Regulations should set out criteria the third party must satisfy in order to be considered suitable. Relevant third parties should, for instance, have an awareness of the purpose of the scheme and an ability to deliver the scheme fairly and effectively as well as an awareness of the specific needs and requirements of vulnerable groups.

48. Cases received through CPAG's Early Warning System highlight the problems that can arise when third parties involved in delivery of the scheme are not adequately trained.

**Case Study:** A vulnerable man had been awarded goods as part of a community care grant. The goods were delivered earlier in the day than the applicant had arranged and he wasn't in when they came. He contacted the company (which had been contracted by Glasgow City Council) to schedule a redelivery and was told that he would need to make another application to the Scottish welfare fund as he had "missed his chance". The issue was resolved after intervention from a welfare rights advisor.

49. There is also a need for regulations to ensure scheme users have a way of holding third party providers to account and that local authorities are made aware of complaints relating to the service provided by a third party.

50. The committee should also consider that allowing third parties to administer the scheme could complicate the relationship between the right holder (applicant) on one hand and the duty holder (local authority) on the other. This complication could result in confusion amongst applications about how to challenge decisions and make complaints.

51. The Bill also creates confusion as to how decisions made by third party decision makers could be challenged. Section 4(1) states that Scottish Ministers may, by regulation, require local authorities to review decisions made by **them** in pursuance of section 2. There is a need for further clarification to ensure that decisions made by third parties are also challengeable.

## **6. What are your views on the proposed internal local authority review process?**

52. We are happy for first tier review to be conducted internally by local authorities. This allows for reviews to be conducted quickly. There is, however, a need for the Committee to consider why rates of review are currently so low. Review rates have increased very slightly over the first year of the interim scheme<sup>ix</sup> but we are deeply concerned that low rates of review will become a feature of a devolved system.

53. This might be addressed by the increased independence of the review system that will be supplied by the SPSO's potential role. Consideration should also be given to whether low rates of review are symptomatic of:

- A delay between the decision being made and notification of that decision to the applicant. A failure to provide time limits for notification may mean that by the time the applicant hears about the decision and receives a written explanation of it, the relevant crisis has passed.
- A lack of clarity about the fact that the nature of the award (amount, type of good etc.) can be challenged, as well as refusals.
- Difficulties resulting from the complexity of the relationship between the individual and the local authority. Where, for instance, the applicant relies on the local authority to provide essential care or support at home, s/he may be unwilling to challenge that local authority due to a misplaced perception that there will be negative consequences. Similarly, where a family has had previous interventions from social work or child protection, they may be fearful of drawing attention to themselves by challenging the local authority. Applicants with council tax arrears may feel that they are in a similar position.

54. Hopefully, some of these concerns will be resolved through oversight from SPSO, but local authorities should take reasonable steps to ensure that applicants are encouraged to challenge decisions and that they can access any support, information or assistance they need in order to do so.

55. Regulations should place a time limit on the period between a decision being made and notification of that decision being provided to the applicant. This might be achieved by amending regulation 10(1) to state that "Every decision on a fund application is to be communicated to the applicant in writing on the day on which it is made or as soon as is reasonably practicable thereafter, unless the applicant requests otherwise."

## **7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?**

56. Yes. We believe the SPSO's independence and experience of dealing with complaints puts it in a strong position to take on this role. We are also of the opinion that the SPSO should be added to the list of organisations under section 6(3) of the Bill, who must be consulted on any proposed changes to guidance or regulations.

57. There is also a need to consider whether SPSO should be enabled to issue recommendations and guidance to local authorities, thereby fulfilling a role similar to that performed by the Independent Review Service. The IRS's publications were very highly regarded amongst welfare rights professionals.

**8. What are your views on the level of detail that will be contained within the regulations? Is there any aspect which you feel would benefit from being on the face of the Bill?**

58. There are several changes which we believe should be made to the regulations as currently drafted to ensure the Scottish welfare fund operates fairly and effectively in practice. These include:

- Regulation 5(2) should detail that a person is to be treated as on a low income if they are 'entitled to' any of the listed benefit rather than 'in receipt' of them. This would ensure that people who were experiencing a sanction or delay in relation to their benefits were not excluded from making an application to the fund.
- Regulation 5 should expressly state that if an applicant appears to have a level of income similar to that of a person entitled to the listed benefits they should be treated as having a low income.
- Regulation 11 should clarify that *review* decisions (as well as initial decision) must be notified in writing to the applicant as soon as is reasonably practicable.
- There is a need for further consideration of Regulation 10(3) and (4). As drafted, the time limit on decisions only runs from the point at which 'the authority has received all information allowing a decision to be made.' There may be a need for guidance relating to what can be considered sufficient information in order to prevent this provision causing unnecessary delays.

**9. Do you think that the costs attributed to the running of the fund and the set-up of the SPSO to administer secondary reviews are realistic and proportionate?**

59. Our main concern is that the financial memorandum does not appear to include a budget for monitoring and evaluation of the permanent scheme. We would welcome further clarification as to whether this is a role that will be performed by the SPSO and, if so, how this aspect of its role will be financed.

**For more information please contact**

Hanna McCulloch  
Policy and Parliamentary Officer  
Child Poverty Action Group in Scotland  
Unit 9, Ladywell,  
94 Duke Street,  
Glasgow G4 0UW

Tel: 0141 611 7090

[hmcculloch@cpagscotland.org.uk](mailto:hmcculloch@cpagscotland.org.uk)

---

<sup>i</sup> SF Dir 4

<sup>ii</sup> Child Poverty Action Group: The Cost of A Child in 2014; Donald Hirsch;  
[http://www.cpag.org.uk/sites/default/files/Cost\\_of\\_a\\_child\\_2014.pdf](http://www.cpag.org.uk/sites/default/files/Cost_of_a_child_2014.pdf)

<sup>iii</sup> <http://www.scotland.gov.uk/Resource/0045/00456028.pdf>

<sup>iv</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209379/DWP\\_Annual\\_Report\\_on\\_the\\_Social\\_fund.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209379/DWP_Annual_Report_on_the_Social_fund.pdf)

<sup>v</sup> [www.legislation.gov.uk/ukxi/2013/192/article/2/made](http://www.legislation.gov.uk/ukxi/2013/192/article/2/made)

<sup>vi</sup> Paragraph 5 of the Explanatory memorandum for the current Bill states that the SWF should be accessible to families experiencing exceptional pressure.

---

[http://www.scottish.parliament.uk/S4\\_Bills/Welfare%20Funds%20\(Scotland\)%20Bill/b51s4-introd-en-bookmarked.pdf](http://www.scottish.parliament.uk/S4_Bills/Welfare%20Funds%20(Scotland)%20Bill/b51s4-introd-en-bookmarked.pdf)

<sup>vii</sup> <http://www.scotland.gov.uk/Resource/0045/00456028.pdf>

<sup>viii</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256044/jsa-sanctions-independent-review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256044/jsa-sanctions-independent-review.pdf)

<sup>ix</sup> <http://www.scotland.gov.uk/Resource/0045/00456028.pdf>