

Scottish Campaign on Welfare Reform (SCoWR) response to the Welfare Reform Committee call for evidence on the Welfare Funds (Scotland) Act 2014

The Scottish Campaign on Welfare Reform (SCoWR) is a coalition of leading civil society organisations. Members work with people experiencing exclusion and poverty across Scotland. This response draws on the consensus of opinion which exists among SCoWR members over the devolution of community care grants and crisis loans. Many of our members are also providing their own, detailed responses. This response is intended to complement those provided by individual members.

The SCoWR manifesto¹ sets out the five reforms that our members believe are necessary for an adequate social security system:

- Increase benefit rates to a level where no one is left in poverty and all have sufficient income to lead a dignified life
- Make respect for human rights and dignity the cornerstone of a new approach to welfare
- Radically simplify the welfare system
- Invest in the support needed to enable everyone to participate fully in society
- Make welfare benefits work for Scotland

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. SCoWR are in favour of this Bill and the fact that it will give the Scottish welfare fund legislative underpinning. By legislating for a national framework the Scottish Government has the opportunity to establish a welfare fund which is transparent, accountable and accessible.

2. By increasing investment and ensuring that the fund is accessible and sufficient, the Scottish Parliament and Scottish Government have the opportunity to prevent many vulnerable households from reaching crisis point. This will not only preserve the stability and wellbeing of households, it could also prevent them from being forced to rely on costly public services such as residential care, homelessness services and the NHS.

3. We are, however, concerned that certain groups who are likely to be at increased risk of experiencing crisis or instability (largely as a result of ongoing tax and welfare reforms) may have difficulty accessing the fund as a result of certain provisions of this Bill. These includes:

- **Families experiencing exceptional pressure.** 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 and included pressure resulting from a range of factors including disability, low income and relationship breakdownⁱ. The Bill does not currently make provision for families under exceptional pressure. This is a particularly concerning given that families with children are one of the groups most likely to be affected by tax and welfare changes and the increased cost of livingⁱⁱ.

We therefore believe that a third category should be added under article 2(2) to include amongst qualifying persons (currently limited to those facing or leaving prison, hospital, residential care or homelessness) families under exceptional pressure.

- **Disabled People**
Disabled people in Scotland are also being disproportionately affected by ongoing welfare reformsⁱⁱⁱ, with increase financial hardship and lack of support often undermining their ability to live independently. SCoWR therefore believe that the Bill should also make reference to disabled people who would otherwise be unable to maintain their ability to live independently in their local community, amongst the categories of individual eligible for a community care grant.
- **Vulnerable young people**
The Bill and/or regulations should also ensure that the fund is accessible to young people who may be particularly vulnerable, including care leavers, young carers and those in kinship care. When considering applications from families and young people local authorities should consider the Scottish Government's indicators of child wellbeing (Safe, Health, Active, Nurtured, Achieving, Respected, Responsible, Included).

4. Excluding or deprioritising groups likely to have an increased need for the fund could result in increased poverty, exclusion, hardship and/or ill-health. In many cases, the only alternatives to the SWF are high interest lenders, 'loan sharks' or making the difficult decision to sell items from the home – all of which are likely to exacerbate rather than resolve financial problems and increase the likelihood of eventual reliance on public services.

5. The Bill should also make it clear that where an award is made under the scheme that it is a grant rather than a loan and that no repayment of awards can be required. We believe this is an essential characteristic of the permanent scheme which should be protected through primary legislation.

6. Finally, in order to ensure that the Scottish welfare fund is sufficient to meet demand it is essential that funds are ring-fenced. While section 1 of the Welfare

Funds (Scotland) Bill will *allow* the funding for the SWF to be ring-fenced, it does not oblige the Scottish Government to do so. Given the increasing pressure on the SWF and wider local authority resources over in the coming years (largely as a result of tax and social security reforms at UK level) SCoWR does not believe this provision is strong enough.

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?

7. There are several aspects of the scheme which have proved problematic in the first year of the interim scheme which could be better addressed through the current Bill. These include:

- **7.1 Concerns relating to the provision of awards in kind**

We are concerned by the broad scope which the Bill gives local authorities to make awards in kind rather than by way of a cash payment.

The Scottish Government's statistics show that in the first year of the interim scheme, more than 80% of CCG spend was in kind (rather than by way of cash, cheque or bank transfer)^{iv}. SCoWR believe there is a risk that by systematically allocating goods rather than cash payments local authorities will remove choice and undermine the dignity of the individual. Handing out vouchers, for instance, can not only limit the choice available to applicants but can also create stigma, undermine dignity and lead people to feel they are receiving hand-outs rather than exercising a legitimate right to assistance during a crisis.

It is also essential that, where assistance is given in kind, the goods allocated meet the applicant's needs. A disabled individual, for instance, may need a specific type of mattress that cannot be provided by the local authority (or a third party delivering aspects of the scheme on their behalf). In such circumstances it is essential that an appropriate supplier is identified or that a cash payment is made.

Furthermore, making an award in kind should never result in additional cost to the applicant. The costs involved in travelling to another location to pick up white goods, for instance, should always be considered and covered as part of the award.

It is also essential that awards in kind never result in additional delay in obtaining essential goods, particularly for homeless people applying for a Community Care Grant to move into a home of their own. Any undue delay can lead to increased risk of hardship for claimants and rent arrears where claimants cannot move into a property due to lack of basic furnishings.

7.2 Concerns relating to gate-keeping

SCoWR members are aware of cases in which vulnerable people have been

told that they should not make an application to the fund as they are not eligible to do so. Indeed, in some cases local authorities appear to have developed internal practices or policies which exclude applications from certain groups.

This leads to a concern that some local authorities may be fettering their own discretion by refusing to accept, process or record certain applications. The refusal to accept an application also undermines the transparency of the scheme by depriving the applicant of their ability to request a review (because there is no official decision to challenge).

SCoWR believe that the Bill should place a duty on local authorities to accept all applications made to the fund. This would not only prevent local authorities from fettering their discretion (contrary to the legal principles governing public decision making) it would also allow the Scottish Government to collect accurate and comparable data about levels of demand for assistance across Scotland.

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

8. There is a concern that some local authorities are not properly recording (and therefore unlikely to be adequately considering) the vulnerabilities of certain applicants (as they are requested to do under current Scottish Government guidance).

9. According to the current guidance, 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.

10. Failure to consider these vulnerabilities therefore creates a risk that applications from individuals with protected characteristics will not be given sufficient priority in relation to the welfare fund. Local authorities should therefore have a duty to consider and record relevant vulnerabilities.

11. There is also a concern that the software currently 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."*

12. In particular there is a concern that software only allows local authorities to consider one vulnerability per application. As well as potentially discriminating against applicants with protected characteristics this fails to recognise the many intersecting issues which affect a large number of claimants (for example disabled refugees).

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?

13. SCoWR are 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 there is a need for clarification within the Bill that such arrangements 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.

14. 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.

15. Where a third party is administering any part of the fund it is essential that all applicants are provided with clear information about how to challenge relevant decisions and/or make complaints.

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

16. 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^v but we are deeply concerned that low rates of review will become a feature of a devolved system.

17. 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:

- Delays notifying applicants of the outcome of decisions. 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.

18. Hopefully, some of these concerns will be resolved through oversight from an independent body, 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.

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

19. SCoWR are pleased that an external, independent body will take on the role of hearing second tier reviews. We are, however, keen to ensure that the procedure for both requesting a review and making a complaint to the SPSO are clear and straightforward to applicants. It is essential that the SPSO and local authorities work together to produce clear, accessible guidance to ensure this is the case. This is particularly vital given the Scottish Parliament's inability to pass regulations in relation to the role of the SPSO.

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?

20. SCoWR are concerned that some of the details contained within the regulations risk wrongly excluding certain applicants from the fund, including individuals not in receipt of qualifying benefits. Although we note that applicants are not disqualified by virtue of their non-receipt of certain benefits, we are concerned that the current wording of the draft regulations may suggest such an exclusion. The wording of the current regulation (in particular the use of the phrase ("not ineligible") risks misinterpretation and may serve to exclude, for instance, people who are often wrongly refused benefit (EU citizens, students, those recently granted refugee status) or those who are not on a means-tested benefit but are receiving the same amount as people on means-tested benefits do (e.g. single people on contributory ESA).

21. Addressing the issue of qualifying benefits through guidance rather than regulations would allow local authorities more flexibility to respond to changing benefit rules and particular hard cases.

22. Providing specific guidance on the ability of refugees and other migrants to access the Scottish welfare fund would also be welcome as it would lead to more consistent decision-making in a traditionally complex area.

10. Do you have any comments on any other provisions contained in the Bill that you wish to raise with the Committee?

23. In developing the scheme and designing its delivery the Scottish Government must continue to be aware of the changing context in which it will be operating. In particular, the Scottish Government must be aware of the impact the introduction of universal credit will have on households in Scotland. Universal credit will replace a range of benefits such as housing benefit, income support and child tax credit. This means that a mistake or delay on the part of the DWP could result in people being deprived of *all* their benefit - not just one part of it. The Scottish Government must clarify with the DWP how the fund's decision making apparatus will be able to assist claimants in this situation. The introduction of universal credit should be seen as an opportunity to work with the DWP in a better way to protect potential applicants to the fund.

The views expressed in this submission are based on the general principles of the SCOWR manifesto, as agreed by our members. Individual organisations may have their own positions in relation to specific aspects of the Bill

FOR MORE INFORMATION PLEASE CONTACT:

Satwat Rehman
One Parent Families Scotland
13 Gayfield Square
Edinburgh, EH1 3NX
Tel: 0131 556 3899
Email: satwat.rehman@opfs.org.uk

Peter Kelly
The Poverty Alliance
162 Buchanan Street
Glasgow, G1 2LL
Tel: 0141 353 0440
Email: peter.kelly@povertyalliance.org

John Dickie
CPAG in Scotland
Unit 9, Ladywell, 94 Duke Street
Glasgow, G4 0UW
Tel: 0141 552 3303
Email: jdickie@cpagscotland.org.uk

SCoWR Members include;

Bipolar Scotland

Blackwood Housing Association

Capability Scotland

Child Poverty Action Group in Scotland

Children 1st

Children in Scotland

Church Action on Poverty

Energy Action Scotland

Engender

Glasgow Council for the Voluntary Sector

Glasgow Disability Alliance

Glasgow Homelessness Network

Hillcrest Housing Association

HIV Scotland

Homeless Action Scotland

Inclusion Scotland

National Autistic Society Scotland

One Parent Families Scotland

Oxfam

National Society for the Prevention of Cruelty to Children

Public and Commercial Services Union Scotland

Quarriers

Scotland's Commissioner for Children and Young People

Scottish Association for Mental Health

Scottish Drugs Forum
Scottish Federation of Housing Associations
Scottish Homelessness and Employability Network
Scottish Poverty Information Unit
Scottish Trade Union Congress
Scottish Women's Aid
Scottish Women's Convention
Scottish Council for Voluntary Organisations
Sense Scotland
Shelter Scotland
Terence Higgins Trust Scotland
The Action Group
The Stroke Association
The Iona Community
The Poverty Alliance
Turning Point Scotland
and other committed individuals.

ⁱ SF Dir 4

ⁱⁱ <http://www.scotland.gov.uk/Topics/People/welfarereform/analysis>; <http://www.cpag.org.uk/content/cost-of-a-child-2014>

ⁱⁱⁱ <http://www.scotland.gov.uk/Topics/People/welfarereform/disabledpeople>

^{iv} <http://www.scotland.gov.uk/Topics/Statistics/Browse/Social-Welfare/swf>

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