

WELFARE REFORM COMMITTEE

WELFARE FUNDS (SCOTLAND) BILL

SUBMISSION FROM INCLUSION SCOTLAND

**Background: Inclusion Scotland (IS)** is a Scottish-wide network of disabled people's organisations which exists to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people's everyday lives. Inclusion Scotland is funded by the Scottish Government to encourage and enable disabled people to engage in the policy process. We have engaged extensively with our members on their experience of the Scottish Welfare Fund and have used their evidence to inform our written evidence.

**1. Are you in favour of the Bill and its provisions?**

1.1 Inclusion Scotland has consulted widely with our membership and, in broad terms, they are supportive of the Bill's intent and purposes.

**1.2 Do you think the Bill fully achieves the Scottish Government's aim of providing assistance for short term need and community care?**

1.3 No. All the emerging evidence suggests that the need created by welfare reforms (e.g. such as mandatory reconsideration of ESA and JSA decisions; lengthy delays for assessment for Personal Independence Payment; the increasingly punitive use of sanctions, etc.) far outstrips the current capacity of Scottish Government or Local Authorities to respond. Unless the Scottish Government acquired new revenue sources and/or powers over benefit conditions it is difficult to envisage how this increasing call on resources to meet short term need can ever be "fully" addressed.

**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?**

2.1 We are pleased that Scottish Government have listened to the concerns that disabled people expressed and have addressed several of them in the Bill.

**3 Is there anything else that you feel should be included in the Bill?**

3.1 Inclusion Scotland believes that at 2 (2) "Qualifying individuals" should include a category (c) *disabled people who would otherwise be unable to maintain their ability to live independently in their local community* and also (d) *families or individuals under exceptional pressure*.

3.2 Inclusion Scotland also believe that human rights, especially the right to be treated with dignity and respect, are even more important within a discretionary Welfare Fund than they are when benefits are claimed as an entitlement. Disabled

people are discriminated against already within wider society and stigma has increased due to extensive, negative media reporting on people who claim benefits because of disability. As institutional discrimination already exists the Scottish Government should be doing its utmost to ensure that the operation and rules of the new Scottish Welfare Fund do not add to it.

3.3 Treating people equally is not about treating them all the same but about taking into account their individual needs. Although current Guidance states that the applicant's need should be met that is not disabled people's experience of what is happening in practice. For example the bulk purchase of goods may save money but it also assumes that everyone's needs are the same - which they most definitely are not. Inclusion Scotland therefore believe that taking into account the needs of the individual applicant should be a statutory duty placed on local Authorities.

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

4.1 Potentially the Bill could have far reaching impacts, both positive and negative, on equalities groups. Inclusion Scotland believes that as well as the needs of disabled people being recognised on the face of the Bill the needs of Scotland's travelling Community also need to be specifically addressed.

4.2 Current regulations specify that a person must normally reside, or about to become a resident within a local authority area, (or is homeless) in order to be entitled to a payment from the SWF. This regulation seems to exclude the possibility of a Scottish Gypsy Traveller who maintains a traditional lifestyle being eligible for a payment. We believe that the Committee should seek an amendment to bring Scottish Gypsy Travellers within the eligibility scope for payments from the Fund.

#### **5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party?**

5.1 No. Inclusion Scotland members, having experienced the provision of state welfare services by third parties at first hand (via Work Capability and Personal Independence Payment (PIP) Assessments provided by Atos and Capita) are both appalled by, and opposed to, this provision being made in the Bill. Whilst the current provision may be imperfect it is at least both democratically accountable and reasonably efficient.

5.2 PIP Assessments have been marked by gross inefficiency and long delays. According to a National Audit Office Report<sup>i</sup> even if original targets were met PIP would cost almost three and a half times more to administer and take double the amount of time to process as Disability Living Allowance (DLA), the benefit it replaces. Each new PIP claim costs an average of £182 to administer compared to £49 under DLA.

There seems to be little objective evidence that the private sector can deliver services more cheaply and efficiently than the public sector.

5.3 The introduction of PIP has also led to enormous delays in disabled people being assessed. The National Audit Office report<sup>ii</sup> estimated that claimants were waiting an average of 107 working days to have their cases decided and terminally ill people an average of 28 working days. Although waits for assessments and processing times have now somewhat improved this has only been achieved via a massive injection of additional staff and monetary resources.

5.4 Similarly an internal DWP review of standards of ATOS assessments found that 41% were of such poor quality<sup>iii</sup> that the assessment report could not be supported by the evidence within it. By June 2013 this poor quality of assessments had resulted in 567,634 decisions<sup>iv</sup> being overturned on appeal or review. Needless to say the monetary and resources costs to the DWP and Tribunal system have been enormous but even worse has been the ongoing misery, stress and poverty inflicted on hundreds of thousands of sick and disabled people deprived of their rightful entitlement by the inept assessment reports provided by ATOS.

5.5 The existing evidence suggests that the private sector are lacking in the necessary expertise to deliver welfare services efficiently and in good time. This may be because they lack an underlying ethos and commitment to the needs of those who use services.

**5.6 Do you agree with the proposal that local authorities have the option to jointly administer the fund across local authority boundaries?** This seems a reasonable proposal on the grounds of efficiency and the harbouring of scarce staff resources.

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

6.1 Inclusion Scotland are largely satisfied with the arrangements for the internal review process. However we continue to believe that all initial, and review, decisions should be communicated **in writing** to applicants to the Fund along with information on the applicant's right to seek an internal or external review of the decision (see below under Question 8).

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

7.1 In the absence of a Scottish Review Service the SPSO does seem the most appropriate body to deal with secondary reviews. Inclusion Scotland are pleased to see that the SPSO will be given the power to direct Local Authorities to alter their initial decision. We believe that over time this will lead to fewer "bad" initial decisions and greater consistency of decision making across Scotland.

**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?**

8.1 Inclusion Scotland believe that a legislative duty should be placed on Local Authorities to accept and record all applications to the Welfare Fund. Some local authorities are employing “gatekeepers” to weed out applicants before they reach the Welfare Fund decision makers. This is undoubtedly resulting in the Fund being under-utilised; unmet need going unrecorded and legitimate applications being rejected before proper consideration and discretion has been applied. It is also preventing the Scottish Government from collecting accurate and comparable data about levels of demand and variations in implementation of national guidelines.

8.2 Inclusion Scotland also believes that all decisions on Welfare Fund applications should be communicated to applicants in a written, accessible format. The UN Convention on the Rights of Disabled People suggests that all information emanating from the state should be provided in formats accessible to disabled people and the Equality Act requires service providers to make “reasonable adjustments” which take into account the needs of disabled people. Therefore communication of decisions should be in formats which are intelligible to applicants.

8.3 Those with sensory impairments or learning difficulties may not be able to take down telephone relayed decisions. Nor does any record then exist of what was communicated to the applicant that they can refer to or show to an advocacy or advice worker. This in turn means that understanding what has been decided or challenging a decision becomes much more difficult.

8.4 As such current practice in some authorities may well be in breach of Local Authorities’ equalities duties both as public bodies and as service providers. Therefore the Welfare Funds (Scotland) Bill should place a duty on Local Authorities to communicate all decisions on applications in writing unless the applicant requests it in an alternative accessible format (e.g. BSL). Such decisions should specify –

- The decision
- Reasons for the decision
- Where the application is successful the nature and amount of support awarded
- The date on which the decision was made and
- How the decision can be challenged

**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?**

Inclusion Scotland believes that, based on current experience and policy intent, the estimated costs are both realistic and proportionate.

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

No

Bill Scott  
Director of Policy  
Inclusion Scotland  
7 August 2014

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<sup>i</sup> Personal Independence Payment: early progress, National Audit Office, Feb, 2014

<sup>ii</sup> *Ibid*

<sup>iii</sup> <https://www.gov.uk/government/news/hoban-taking-action-to-improve-the-work-capability-assessment>

<sup>iv</sup> DWP response to FOI request. See here for full response -

<https://www.whatdotheyknow.com/request/176861/response/529149/attach/3/Internal%20review%20WDTK%20response%20IR798%20Final.pdf>