



## 15. Complaints, reviews and appeals

### **Summary**

- We want to provide high quality services and information to all who interact with Scotland’s social security system. We recognise, however, that there will be occasions when people’s experience falls short of this vision. It’s important, therefore, that an effective complaints handling procedure is put in place.
- In this section, we will seek your views about the best way to handle individuals’ comments, concerns and complaints.
- We highlight where best practice already exists, through the work of the Scottish Public Services Ombudsman and the Complaints Standards Authority.
- We ask for your views on whether the principles and model for handling comments, concerns and complaints developed by the Complaints Standards Authority should be adopted for use by our agency as part of our Scottish social security system.

### Introduction

We want as many individuals claiming devolved benefits in Scotland to receive the service they expect, to the standards they expect at the first time of asking. However, we recognise that - as with any system providing services to over a million people – there will be disagreement over some decisions and we will need a further opportunity to ensure that we get things right. The Scottish Government entirely supports the user’s right to comment on, or complain about our conduct, processes and to appeal decisions. That is why one of our underlying principles is that, **“we will strive for continuous improvement in all our policies, processes and systems, putting the user experience first”**.

We recognise the value of users comments and complaints, and we want to ensure that the lessons learned in handling complaints are used to improve overall delivery of our services. By handling comments and complaints in the right way, we hope to be able to show improvement, from the point at which the issue is first identified, to be the point at which it is resolved. This is why we will develop a Complaints Handling Procedure (CHP) for our new agency. The CHP will help to address

dissatisfaction by providing clear, fair and reasoned responses in a timely manner. The CHP will be owned by our new social security agency, which will be responsible for keeping it up to date and fit for purpose.

### **Current arrangements**

There is already a great deal of valuable practice in complaints handling, available across the Scottish public sector including a dedicated public body, the Complaints Standards Authority, which has been set up to act as a centre for excellence<sup>51</sup>. This organisation publishes model complaints handling procedures, guidance, best practice and training resources.

In line with this, we believe that there will always be at least two opportunities to resolve complaints promptly through internal action by our officers: '**frontline resolution**' (aiming to resolve complaints at first contact through apology, explanation or action) and '**investigation**' (for complex or serious issues requiring further investigation). This is already the practice in other areas of the Scottish public sector – for example, local authorities have a two-stage process for complaint handling.

In developing our CHP, we propose following the Scottish Public Services Ombudsman's 'Statement of Complaints Handling Principles'. This states an effective procedure should be:

- **User-Focused:** it puts the person who is complaining at the heart of the process
- **Accessible:** it is appropriately and clearly communicated, easily understood and available to all
- **Simple and timely:** it has as few steps as necessary within an agreed and transparent timeframe
- **Thorough, proportionate and consistent:** it should provide quality outcomes in all complaints through robust and proportionate investigation and the use of clear quality standards
- **Objective, impartial and fair:** it should be objective, evidence-based and driven by the facts and established circumstances, not assumptions and this should be clearly demonstrated

We believe that an effective CHP should also:

**Seek early resolution:** it aims to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate.

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<sup>51</sup> For more information about the work of the CSA, you can go to - [Complaints Standards Authority – Valuing Complaints](#)

**Deliver improvement:** it is driven by the search for improvement, using analysis of outcomes and support service delivery and drive service quality improvements.

Where complaints cannot be resolved internally, we would encourage complainants to take the matter to the Scottish Public Services Ombudsman. This is the final stage for complaints about public bodies in Scotland, is independent and provides its services free of charge.

### Questions

**Do you agree that we should base our CHP on the Scottish Public Services Ombudsman’s ‘Statement of Complaints Handling Principles’?**

Yes

No

Please explain why

### Internal Reviews

Internal reviews of decisions are normal practice across government and the wider public sector. Local authorities, NHS Scotland, the Scottish Government, the Scottish Parliament, HMRC and the Student Awards Agency for Scotland are all examples of bodies that carry out an internal review before allowing an onward appeal. When the right processes, and the necessary checks and balances are in place to ensure that they are carried out appropriately, internal reviews can provide an efficient, affordable way for an organisation to correct mistakes.

DWP carries out internal reviews of decisions. When an individual disagrees with a decision made by DWP, and before that person can appeal the decision at a tribunal, they must ask DWP to carry out an internal review. This process is known as a ‘mandatory reconsideration’<sup>52</sup>. We recognise that there are differences of opinion on how well these existing arrangements work. That is why we are consulting on ways in which we can make an internal review process work for Scotland, rather than on adopting the existing arrangements.

We believe that internal reviews would present an opportunity to improve decision making, by allowing the agency to scrutinise the initial decision. We recognise that there are other ways to allow decisions to be reconsidered - for example, under the arrangements that are still in place for Housing Benefit decisions, the decision maker has the power to reverse a decision at the point at which the applicant requests an appeal. However, we believe that making it absolutely clear that individuals can request an internal review without making an appeal, would be an accessible, efficient and cost-effective route to the resolution of disagreements, and would enable the agency to identify and address issues at an early stage.

<sup>52</sup> You can find out more about the way DWP currently operate mandatory reconsideration here - [Appeal to the Social Security and Child Support Tribunal - GOV.UK](https://www.gov.uk/appeal-to-social-security-tribunal)

However, internal reviews could also place an additional administrative requirement on service users, by placing the burden of obtaining the reconsideration within strict time limits (for example within one month of the date of the decision) onto the individual who is making the claim. Internal reviews could also contribute to delays in getting a decision right, if there is a lack of monitoring or oversight of the amount of time it takes the agency to review their decision. There is currently no official time limit for the mandatory reconsideration of DWP decisions, although a UK Government Minister has stated that, “if no further information is needed and the case is straightforward, the mandatory reconsideration process... could be completed relatively quickly. We would usually expect this to take around 14 days”<sup>53</sup>.

## Questions

**How should a Scottish internal review process work?**

**What would be a reasonable timescale for the review to be carried out?**

## Appeals

If an individual still disagrees with a decision, after it has been reviewed internally by the organisation that made the decision, then the individual should have the right to appeal. At the moment, if an individual still disagrees with DWP’s position following mandatory reconsideration, they can then appeal to a tribunal. We recognise that there are other examples in the Scottish public sector, of ways in which decisions can be challenged – for example, if an individual disagrees with a decision made by a local authority in relation to the existing Scottish Welfare Fund, then they have the right to an independent review by the Scottish Public Sector Ombudsman – and we think that this is the right approach for a discretionary scheme like the Scottish Welfare Fund.

The Scottish Government proposes to proceed on the basis that it would be appropriate for appeals against decisions made in relation to the devolved benefits to be decided by a tribunal. This is because we believe this will support a safe and secure transition, and will be a fair and proportionate approach because the decision could be about the individual’s long-term entitlement to a benefit, rather than their need for a one-off payment

In Scotland, appeals against decisions by DWP are heard by the Social Security and Child Support Tribunal which is currently part of Her Majesty’s UK Courts and Tribunals Services, which means it is operated by the UK Government. However,

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<sup>53</sup> This is a quote from November 2013, from Esther McVey MP, then Minister for Employment. It can be found, in full, in Hansard here - [House of Commons Hansard Written Answers for 25 Nov 2013 \(pt 0005\)](#)

control over the administration and management of the tribunal is being transferred to the Scottish Government – although the underlying legislation on which appeals to the tribunal are based will mostly remain reserved. This is happening under the same legislation (The Scotland Act 2016) which allows for the devolution of some social security benefits and the establishment of a Scottish social security system.

In thinking about the design of an appeals process for social security in Scotland, therefore, we also have to bear in mind that responsibility for the administration of tribunals is being devolved at the same time. This raises particular issues and challenges for our work to ensure that individuals claiming devolved benefits have a transparent and accessible appeals process with adequate access to independent representation, to support them in the event that they want to challenge a decision.

### **Current arrangements for appeals**

The default position following devolution is that existing appeal mechanisms will be retained, unless alternative processes are put in place. This means that there would be an internal review and then, potentially, an appeal to the Social Security and Child Support Tribunal. However, establishing a Scottish social security agency presents an opportunity to consider and evaluate the design of the appeals process.

The existing Social Security and Child Support Tribunal currently hears appeals in Scotland from a multitude of benefits, all of which are currently reserved. Some are due to be devolved, but others will remain reserved. Once the tribunal has transferred into the Scottish Courts and Tribunals Service, it will continue to hear appeals on reserved benefits. There is a decision to make about whether the tribunal should also hear appeals from the devolved benefits, and how this should be done.

### **Questions**

**Should a tribunal be used as the forum for dispute resolution for the Scottish social security system?**

Yes

No

Please explain why

**If no, are there any alternative methods of dispute resolution that you think would be preferable to a tribunal?**

### **An appeal process based on values**

In earlier sections of this consultation paper, we have talked about the key principles which will guide the decisions we will make about social security in Scotland. We believe that these key principles mean that we should ensure that our appeals process embodies the following values:

- **Right first time** – a strong focus is placed on initial decision making to minimise erroneous decisions
- **Access to independent scrutiny** – when a service user has concerns which are not resolved after an internal review, then they should be able to appeal
- **Learning from experience** – lessons are learned from experience to ensure continuous improvement
- **Transparency** – service users fully understand and are kept informed at each stage of the process
- **Certainty of timescale** – service users can predict with a degree of certainty the likely timescale for resolution
- **Accessibility** – the needs of the service user are central and the administrative burden placed on them is minimised
- **Minimising the burden on the user** - the process of challenging and appealing decisions does not place an excessive administrative burden on applicants

### Questions

**How can we ensure that our values underpin the appeals process for a Scottish Social Security agency?**

**Are there any other values that you feel should be reflected in the design of the appeals process?**

### Timescales

We believe that there should be clear and understandable timescales for appeals to be resolved. A key part of avoiding undue delay in resolving appeals is ensuring that the tribunal (or other body) hearing appeals has sufficient capacity to deal with the volume of appeals. The number of appeals (for all benefits) in Scotland fell significantly between 2012-13 and 2015-16, though this is expected to rise again in 2016-17.

There is an inherent tension between improving access to the appeals process for service users and resolving appeals without delay. The latter requires sufficient capacity to hear appeals, which means accurately predicting the volume of appeals in advance. We are seeking views on the best way to balance these requirements.

### Questions

**What do you consider would be reasonable timescales to hear an appeal in relation a decision on a devolved benefit?**

**In order to ensure a transparent appeals process, what steps could be taken to ensure that those appealing fully understand and are kept informed at each**

**stage of the appeals process?**

**How could the existing appeals process be improved?**