

WELFARE REFORM COMMITTEE

THE FUTURE DELIVERY OF SOCIAL SECURITY IN SCOTLAND

WRITTEN SUBMISSION RECEIVED FROM INCLUSION SCOTLAND

1 Introduction

- 1.1 Inclusion Scotland is a network of disabled peoples' organisations (DPOs) and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people's everyday lives and to encourage a wider understanding of those issues throughout Scotland.
- 1.2 Inclusion Scotland consulted widely with disabled people on the devolution of further powers and provided written and oral evidence to the Smith Commission. Disabled people prioritised the devolution of welfare powers over all others with 87% of disabled people¹ setting welfare benefits as their highest priority.
- 1.3 Given the scope of the Committee's inquiry we have restricted our written evidence (below) to those issues we perceive to be key to disabled people.

2 Personal Independence Payments, Disability Living Allowance Attendance Allowance and Carer's Allowance

- 2.1 Devolution of disability and carers benefits should, in theory, give the Scottish Parliament the ability to design a new system of support for disabled people that is focussed on supporting independent living² and meeting the additional costs of daily living faced by disabled people. Potentially, this could result in better co-ordination of disability benefits, social care funding, self-directed support, the new Scottish Independent Living Fund and support for employment, education and training.
- 2.2 The Smith Commission stated at paragraph 51 of its report that the Scottish Parliament would have "*complete autonomy in determining the structure and value of the [devolved] benefits or any new benefits or services that might replace them*".
- 2.3 However, the Scotland Bill is drafted in a way that reflects the existing system of, and entitlement to, disability benefits. This may, albeit unintentionally, restrict the autonomy of the Scottish Parliament in constructing a new disability benefits system based on empowering disabled people to lead active lives and promoting their right to independent living. For example, the Bill would exclude entitlement to disability benefits based simply on the condition that a claimant has.

¹ Over three hundred disabled people (318) responded to our online survey on the devolution of further powers with a further 100+ contributing their views at engagement events in Glasgow and Inverness.

² Disabled people have defined Independent Living as: "Disabled people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life". Our Shared Vision of Independent Living In Scotland" 22 April 2013

<http://www.scotland.gov.uk/Publications/2013/04/8699>

Yet at present there **is** automatic entitlement to Attendance Allowance (AA) and Disability Living Allowance (DLA) for people undergoing regular dialysis or to the Mobility Component of DLA for those with severe visual impairments.

- 2.4 There is also the possibility that the Scottish Government might want to extend eligibility to disability benefits to those who neither have “significant needs (for example a need for supervision to avoid risk)” nor great difficulty with “day to day tasks” but instead suffer significantly, financially or otherwise from the impact of their impairment or condition (e.g. to compensate for social ostracisation such as that experienced by those with HIV in the 1980s).
- 2.5 Inclusion Scotland are also extremely concerned that the definition of disability provided under Section 19 does not seem to include terminal conditions (such as cancer) which can be short term. Assurances (such as given at para 149a of the Explanatory Memoranda of the Scotland Bill) that this is not the Bill’s intent do not change the fact that the use of the words **“for this purpose the adverse effect or need must not be short-term”** could be interpreted by the courts in the future as a binding restriction on the Scottish Parliament’s powers and individual disabled people’s entitlement to support.
- 2.6 There is also the issue of the budget which will finally be devolved. Based on DWP projections Scottish Government has estimated that by 2017/18 (i.e. around the time that the powers over DLA and PIP will be handed over from the DWP to Scottish Government) 105,000 Scots disabled people will have lost all or part of their entitlement to disability benefits due to the transfer from DLA to PIP and the higher entitlement criteria for PIP.
- 2.7 As of Nov. 2014 around 189,000 Scots disabled people of working age were receiving DLA. By 2017/18 a total of 56,000 will have lost their entitlement completely and a further 49,000 will have partially lost their entitlement. Of those affected approx. 47,000 will have lost their entitlement to the Higher Rate Mobility component of DLA. By 2017/18 that will have resulted in a total loss in the combined DLA/PIP budget of **£310 million** per annum. Almost all of this will have been lost to disabled people of working age.
- 2.8 This will considerably reduce the scope for innovation in the use of the new benefit powers to support disabled people of working age. This is because the disability benefits budget which will remain available to assist working age disabled people will have fallen by around 39% - from **£793 million** to **£483 million**.
- 2.9 There will also be little hope for finding this shortfall from elsewhere within the DLA/PIP budget as to do so would mean taking it from families with disabled children and/or from disabled pensioners – neither of which would seem an attractive option.
- 2.10 By far the largest proportion of those losing out when they transfer from DLA to PIP will be those currently entitled to the Higher Rate Mobility component of DLA. In total up to 47,000 may lose their entitlement. Yet Scotland is far more rural than England. This combined with a continuing lack of accessible transport suggests that to support these disabled people’s continued participation in community life consideration

should be given to re-instating/extending entitlement (once Scotland has control of the disability benefits budget). However the costs attached to re-instating entitlement to all those affected could be considerable – perhaps as much as a third of the expected £310 million in benefit “savings”.

2.11 **Benefits for Carers:** The Smith Commission also recommended the full devolution of Carer’s Allowance. However the Scotland Bill sets out entitlement criteria which would restrict the payment of any future carers benefit to those who are “16 or over, not in full time education, and not gainfully employed”. We believe that this unnecessarily restricts the Scottish Government’s ability to develop future policy which might, for example, seek to support carers undertaking training, work experience or further education in order to return to employment.

3 Universal Credit (housing element and administrative arrangements) and Discretionary Housing Payments

3.1 Discretionary Housing Payments (DHPs) are extra payments that can be made to people in receipt of housing benefit who need further assistance to meet the full cost of their rent. We are concerned that the Scotland Bill limits the eligibility of DHPs only to those in receipt of Housing Benefit or Universal Credit.

3.2 Unfortunately a, presumably unintended, side-effect of the Under-Occupation Penalty is that there are some people with an underlying entitlement to Housing Benefit who then lose it because of the penalty imposed. These tenants would then be denied a DHP. Similar issues would arise because of the way the Benefit Cap operates.

3.3 Inclusion Scotland are also concerned that Clause 22 of the Scotland Bill would prevent claimants whose need “**arises from reduction, non-payability or suspension of a reserved benefit**” from accessing a DHP.

3.4 Disabled people suffer disproportionately, and in our view unfairly from the imposition of benefit sanctions. For example between Dec. 2012 and Aug. 2014 over 60% of those receiving an Employment & Support Allowance (ESA) sanction had mental health conditions and/or behavioural issues³ and over 20% of JSA sanctions were imposed on disabled people.

3.5 This provision in the Bill may therefore compound the injustice of the current sanctions regime and result in many disabled people, particularly those with mental health issues and/or learning difficulties not only losing their ESA or JSA but also their homes. Similarly the restriction placed on any discretionary payments being made to those who have been sanctioned or failed to meet the conditions attached to a reserved benefit seem unwarranted and not in line with the Smith Commission’s recommendations.

³ DWP response to FOI request on the impact of sanctions on disabled people with particular conditions
<https://www.gov.uk/government/publications/number-of-employment-and-support-allowance-sanctions-oct-2008-to-aug-2014>

3.6 In fact these are new restrictions being placed on already devolved powers as the Scottish Welfare Fund currently allows discretionary payments to those who have been sanctioned. Thus far from a further devolution of powers this restriction seeks to reduce existing devolved powers. In effect the restriction imposed requires that someone who has been sanctioned must also prove that they face an additional disaster or emergency in order to qualify for assistance.

4 *Practical suggestions to ensure that the principles of dignity, respect, support, equality and common sense are embedded in the new system.*

4.1 Disabled people are being subjected to an increasing number of assessments in order to obtain access to disability benefits and other support. At present disabled people are required to undergo the following assessments:

- **Employment & Support Allowance:** Frequency - Regular even for those with lifetime/progressive conditions in the Support group and potentially frequent for those in the Work Related Activity Group.
- **Personal Independence Payment:** Frequency - Regular even for those with lifetime conditions on the enhanced rates for daily living and mobility.
- **Blue Badge:** Frequency – Potentially regular for those not on Higher Rate DLA Mobility or PIP Enhanced Mobility rate.
- **Social Care Assessments:** Frequency – unlikely to be regular but needed each time a disabled person moves from one local authority to another or if they wish to be re-assessed due to progression of their condition.

4.2 If the number of disabled people undergoing assessments and the frequency of assessments could be reduced then there is considerable scope to reduce administrative costs and the stress that disabled people awaiting and under-going assessments are subjected to.

4.3 Entitlement to DLA was normally determined via a paper based assessment. This saved considerable sums in both overall administration costs and reduced the number of face-to-face assessments to a minimum. Previously 70% of DLA awards were indefinite because the condition was expected to have an ongoing impact on the disabled person's mobility or care needs.

4.4 In contrast indefinite awards of PIP will only be made in "exceptional" circumstances meaning that disabled people with permanent impairments or progressive conditions will be subjected to assessments despite there being no prospect of their condition improving. All disabled people with awards of PIP of 2 years or more will be subject to periodic re-assessments.

- 4.5 According to the National Audit Office (NAO) PIP⁴ costs almost three and a half times more to administer and takes double the amount of time to process compared to DLA. Each new PIP claim costs an average **£182** to administer, compared to **£49** under the Disability Living Allowance.
- 4.6 At a UK level the DWP expects to spend **£200 million** each year to administer PIP, of which **£127 million** is set aside to pay for providers' assessments. Equivalent figures for Scotland would be **£22 million** being spent on administration of which nearly **£14 million** would be passed on to private providers to carry out assessments. However these figures may prove to be a considerable under-estimate of the eventual costs.
- 4.7 For example the NAO found the actual average time taken to undertake a PIP assessment to be 120 minutes against an expected duration of 75 minutes. In addition whilst the DWP had estimated that 25% of disabled people might only require a paper assessment in practice the two private providers were, at least in the early days of the benefit's introduction, undertaking face-to-face assessments in **97%** (Atos) and **98%** (Capita) of cases.
- 4.8 Not only do more face-to-face assessments push up administrative costs but they result in considerable delays for disabled claimants. The proportion of claimants experiencing delays in their assessments is five times higher in parts of the country managed by Atos Healthcare than those areas where the assessment service is provided by Capita. Nearly a third (22,000) of new PIP claimants in Atos areas – including Scotland – waited longer than 20 weeks for a decision compared to 6% (500) in areas served by Capita⁵.
- 4.9 Any sum saved by reducing administration and assessment costs could be re-invested in supporting more disabled people. One way to do this would be to obtain relevant medical and/or social work evidence on the impact of an impairment on the every-day life of the disabled claimant at the earliest possible opportunity and share it with Social Security – this would save administration and assessment time & costs, reduce the likely number of appeals and reviews and also the stress faced by claimants.
- 4.10 To reduce complexity for claimants it might also be worthwhile to move to having one benefit name though perhaps with different entitlement criteria for children. Inclusion Scotland would favour calling the new disability benefit, combining elements of PIP with DLA, the Social Participation Benefit.
- 4.11 Virtually all of the disabled people we have consulted are absolutely firm on desiring nationally administered disability benefits scheme to reduce local variation in entitlement i.e. they would be totally opposed to disability benefits being assessed and administered by local authorities. Such a post-code lottery, or worse a means

⁴ Personal Independence Payment: Early Progress, National Audit Office, Feb. 2014

⁵ Article published by the Disability News Service, 3/8/15, based on FOI response from DWP. See here - <http://www.disabledgo.com/blog/2015/08/pip-claimants-five-times-more-likely-to-face-delays-if-tested-by-atos-dwp-admits/>

tested disability benefits system, is completely unacceptable as it would be viewed by disabled people as a return to the days of the parish poor law.

- 4.12 **Recommendation:** Inclusion Scotland believes that staff administering the new disability benefits system in Scotland should be required to undertake Disability Equality Training. This differs from Disability Awareness Training in that it seeks to challenge stereotypes and discriminatory attitudes which make up many of the barriers disabled people face.
- 4.13 **Recommendation:** We would also recommend that customer focussed training for Scottish Social Security staff is co-produced with disabled people (i.e. service-users). This was recently done in co-producing training for Scottish Welfare Fund practitioners via a partnership between Scottish Government, Inclusion Scotland, People First, the British Deaf Association and Local Authority staff.
- 4.14 We believe that this would assist in staff developing a supportive and empathetic approach to dealing with disabled people which in turn would do much to ensure that disabled people are treated with the dignity and respect that they are due.
- 4.15 **Systems of intergovernmental working in relation to benefit delivery:** One of the key issues affecting disabled claimants are delays and errors in payments due to maladministration. According to the NAO the DWP and HMRC collectively under-paid £1.6 billion to claimants in 2013/14 due to administrative error⁶.
- 4.16 Obviously this leaves the claimants affected desperately short of money or without any support whatsoever. The Trussell Trust cites delays in benefit payments as the single greatest reason for increased use of Foodbanks⁷ with 30% of Foodbank users referred to them due to delays in benefit payments.
- 4.17 It is also well-known that where claimants are relying on forms being passed between different DWP offices or between different organisations (such as between DWP and HMRC or between Local Authority Housing Benefit sections and DWP) then the scope for delay and maladministration increases exponentially.
- 4.18 The devolution of disability and other benefits to Scotland will introduce a third agency into this equation which is likely to further expand the scope and potential for errors and delays in payments. This administrative problem needs to be addressed urgently to minimise the hardship that some of the most vulnerable members of society might otherwise experience.

5 The Work Programme and Work Choice

- 5.1 Inclusion Scotland supports the principle of supporting disabled people who can work into well-paid employment that would lift them out of poverty. Devolution of the Work Programme and Work Choice will provide Scottish Government with more tools to

⁶ Fraud & Error Stocktake, NAO, July 2015, <https://www.nao.org.uk/press-releases/fraud-and-error-stocktake-3/>

⁷ See here - <http://www.trusselltrust.org/mid-year-stats-2014-2015>

achieve this end. However the evidence is that the Work Programme as currently implemented fails disabled people.

- 5.2 The previous Government's stated intention was to move disabled people out of worklessness via the Work Programme. Yet, up to 31 March 2014, whilst there were **14,110** Employment Support Allowance (ESA) Work Programme job outcomes there were also **41,721** ESA Work Related Activity sanctions during the same period.
- 5.3 That is, a disabled person on the Work Programme was three times as likely to be sanctioned as to be found a job. The job outcome rate for long-term sick and disabled people on the Work Programme was only **5%**⁸, approximately one-fifth of the success rate for all referrals (24.7%).
- 5.4 Instead of Scots disabled people being moved into work the opposite is in fact the case. Since the beginning of the recession in 2008 the proportion of Scots working age disabled people in employment has **fallen** from **48.9%** to **43.9%**⁹. In comparison the employment rate of Scots non-disabled people has recovered to **80.9%**¹⁰ a rate similar to its pre-recession level - although there are now many more people in part-time and self-employed work.
- 5.5 In comparison Work Choice, an employability scheme specifically designed to help disabled people, is much more successful. Since its inception, 36% of those on Work Choice have achieved a job outcome with 14% of participants achieving sustained unsupported employment for more than six months¹¹. Yet very few eligible disabled people are being referred to Work Choice by Job Centre staff – possibly because the scheme is more expensive on a per capita basis.
- 5.6 One of the problems with the current wording of the Scotland Bill is that those most in need of assistance in terms of their Employability might be denied it. The Scotland Bill states that what is being devolved are –

“Exception 1

The making by a person of arrangements for, or arrangements for the purposes of or in connection with a scheme for, any of the following purposes —

(a) assisting disabled persons to select, obtain and retain employment;

(b) assisting persons claiming reserved benefits who are at risk of long-term unemployment to select, obtain and retain employment, where the assistance is for at least a year;.....”

- 5.7 Inclusion Scotland believes that this wording places unnecessary restrictions on who can be assisted and for how long. For example it is known that one of the key groups

⁸ DWP Work Programme: How is it performing?, the Centre for Economic and Social Inclusion, March 2015

⁹ Labour Force Survey, ONS Feb, April 2015 (not seasonally adjusted)

¹⁰ Labour Force Survey, ONS Jan – March, April 2015

¹¹ Department of Work and Pensions, [Work Choice Official Statistics](#), August 2014

to suffer consistent poverty are those who circulate in and out of low paid work. Such people need tailored interventions to increase their skills/qualifications and increase their chances of securing well-paid work. Yet the current wording would deny them support as only the long-term unemployed entering a programme for a minimum of one year could be assisted.

- 5.8 We believe that this does not amount to full devolution but instead is an attempt to restrict how devolved Employability budgets and powers could be used. Similarly we have concerns on which disabled people might be eligible for specialist assistance i.e. will it only be those placed in the Work Related Activity Group of ESA or will it also include those previously on ESA (or Incapacity benefit) but now assessed as “fully fit for work” and told to claim JSA?
- 5.9 Inclusion Scotland favours an approach whereby disabled people are provided with individually assessed and tailored Employability support. This is currently better provided through Work Choice than through the Work Programme. However there is no reason why a reconfigured system of support could not provide better support than what has gone before, indeed it’s difficult to envisage how it could do any worse.

6 Conclusion

- 6.1 The devolution of disability and carers’ benefits together with employability powers presents a unique opportunity to reconfigure the system of support available to disabled people. Inclusion Scotland stands ready to work with Scottish Government and other stakeholders to involve disabled people in co-producing a system that results in it working with disabled people to achieve outcomes - rather than in things being done to them.

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