



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# WELFARE REFORM COMMITTEE

Tuesday 4 November 2014

Session 4

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**Tuesday 4 November 2014**

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**WELFARE REFORM COMMITTEE**

**16<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Michael McMahon (Uddingston and Bellshill) (Lab)

**DEPUTY CONVENER**

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

**COMMITTEE MEMBERS**

\*Annabelle Ewing (Mid Scotland and Fife) (SNP)

Linda Fabiani (East Kilbride) (SNP)

\*Alex Johnstone (North East Scotland) (Con)

\*Ken Macintosh (Eastwood) (Lab)

\*Kevin Stewart (Aberdeen Central) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Margaret Burgess (The Minister for Housing and Welfare)

Stuart Foubister (Scottish Government)

Kenneth Gibson (Cunninghame North) (SNP) (Committee Substitute)

Niki Maclean (Scottish Public Services Ombudsman)

Jim Martin (Scottish Public Services Ombudsman)

Paul McFadden (Scottish Public Services Ombudsman)

Karamjit Singh (Social Fund Commissioner for Northern Ireland)

Callum Webster (Scottish Government)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Welfare Reform Committee

*Tuesday 4 November 2014*

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Michael McMahon):** Good morning everyone, and welcome to the 16th meeting in 2014 of the Welfare Reform Committee. I ask everyone to make sure that mobile phones and other electronic devices are switched off or at least set to airplane mode.

Linda Fabiani has sent her apologies for today and the next few weeks. I do not know how many meetings she will have to miss, but she has been replaced this morning and during the period when she will not be available by her colleague Kenneth Gibson MSP. I welcome him to the committee.

**Kenneth Gibson (Cunninghame North) (SNP):** Thank you, convener. It is good to be back at the Welfare Reform Committee.

**The Convener:** Our first item of business is a decision on whether to take item 3, which is consideration of the evidence received on the Welfare Funds (Scotland) Bill, in private. Do members agree to do that?

**Members** *indicated agreement.*

## Welfare Funds (Scotland) Bill: Stage 1

10:01

**The Convener:** Our second item of business is our final evidence-taking session on the Welfare Funds (Scotland) Bill. This week we will take evidence from the Scottish Public Services Ombudsman, the Office of the Social Fund Commissioner in Northern Ireland and the Minister for Housing and Welfare, Margaret Burgess.

I welcome our first panel. Karamjit Singh is the Social Fund Commissioner for Northern Ireland, Jim Martin is the Scottish Public Services Ombudsman, Niki Maclean is director at the SPSO and Paul McFadden is head of complaints standards at the SPSO.

I do not think that any of you have indicated that you want to make an opening statement. If you do not mind, Mr Martin, I will open up the discussion by going to your paper. In the second paragraph, you point out:

“the Bill ... is proposing to give the SPSO not simply a new area of jurisdiction but a new function, that of reviewing decisions.”

Will you give us an idea of the type of change that that will involve, from your perspective?

**Jim Martin (Scottish Public Services Ombudsman):** The cases that will come through from the social welfare fund will differ from the standard complaints that we currently see. We will be looking at cases that require a decision to be made very quickly, particularly for vulnerable people.

The standard work that we do involves bodies under our jurisdiction going through a complaints process, the work coming to us and there being an investigation process thereafter. The bill will require us to work in a different way. We will need to look at whether local authorities have handled cases properly, whether the decision was correct and whether we should put another decision in place, in which case that decision will be binding. Different skills will be required by my team. The turnaround times will be different, as will the relationship with local authorities. We will need to get them to give us information more quickly.

As you will have seen from our submission, one issue is that it is difficult to plan for the new work because we do not have a clear idea of the numbers that will come through. Some of our current people will have to take on the work, but if the numbers reach the volume that the Scottish Government thinks, we will create a special unit within our office that will operate separately from the other work of the ombudsman's office, dealing

specifically and only with these cases, so that we can get a fast turnaround and build up expertise and learning. A different kind of work will come.

**The Convener:** Another issue that you have raised, which has also come up in the evidence that we have taken before today, is the potential within the ambit of the bill for a local authority for whatever reason—it could be to reduce costs—to outsource the processing of the Scottish welfare fund. You highlight that that would have implications if you take responsibility for appeals.

How would you manage that? Everyone understands your role in adjudicating on decisions that are made by local authorities, but if a local authority passed responsibility for the administration to another agency, how problematic would it be for you to fulfil the role that you will be given?

**Jim Martin:** We would engage at the point at which a decision had been taken, and we would set out clearly the rules by which we would undertake the reviews that we would intend to do. In my view, people should not be disadvantaged in any way by any decision to outsource or not to outsource any function. We would therefore expect local authorities to ensure that we received material in the timescales that we would set for them and that the review process would apply as if the decisions were being taken by the local authorities. Our aim at the review stage would be to ensure that the people who required a decision to be taken quickly got that decision taken as quickly as possible. Therefore, we would require whoever had been involved in the first stage of decision making—regardless of who they were—to ensure that we had the information that we needed as quickly as possible so that we could arrive at a decision.

**The Convener:** You currently undertake investigations into decisions that are made on behalf of local authorities by agencies.

**Jim Martin:** Yes.

**The Convener:** That does not create any particular difficulties.

**Jim Martin:** No, it does not. We have to be aware, and bodies under our jurisdiction—it is not just local authorities that use arm's-length organisations—have to be aware, that the fact that a function has been outsourced does not mean that the citizens who use their services should be disadvantaged in any way. We expect bodies under our jurisdiction to ensure that the complaints processes that those arm's-length organisations use are the same as or better than the ones that the local authorities or other bodies use.

**The Convener:** Okay. That is pretty clear.

Another area that you highlight in your submission is article 6 of the European Convention on Human Rights. Rather than ask a specific question on that, I invite you to explain why you included it. Why is that a consideration in respect of the review process?

**Jim Martin:** It is an issue that has been raised in relation to that process. We have taken legal advice, and we are advised that it is likely that article 6 requirements are covered by the processes and procedures that the ombudsman's office currently has and would be covered by the processes that we plan to put in place. Article 6 includes a provision to enable hearings to be held if that were appropriate. We want to ensure that, when we put in place the processes and procedures for the review system, they are compliant with article 6 and we will not have to waste time at some point in the future with anyone testing, through judicial review or in any other way, whether they are compliant. We have had discussions with the Government, the third sector and lots of lawyers in order to ensure that whatever review process we put in place will be, as far as we can make it, article 6 compliant.

**The Convener:** Okay. I open up the meeting to members' questions.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** My first question is for the Social Fund Commissioner for Northern Ireland. Thank you for your submission. You say:

"Our independent status is important in giving confidence to customers who have already received two Agency decisions on their application which they are dissatisfied with."

You perceive that the people you work with feel that it is important that you are independent of the decision makers. Can you set out why that is your perspective?

**Karamjit Singh (Social Fund Commissioner for Northern Ireland):** That is based on my experience. In 2012, the Westminster Parliament passed the Welfare Reform Act 2012, which, as you know, abolished the social fund across Great Britain. Up to then, for three years I was the social fund commissioner for both Great Britain and Northern Ireland. My experience since then, as the Social Fund Commissioner for Northern Ireland, has been the same as it was during that three-year period. When I engage with community groups and representatives of applicants, and when I look at the survey of the people who have applied to my office, which we carry out every six months and in which we ask them what it is about our office that they like, they often talk about our impartiality and perceived independence.

At the root of all this is the question of what we are looking for in any review process. I suggest

that the citizen is looking for timely decisions, high-quality decisions and decisions that promote confidence, and it is important that we have a process that is seen to be separate. It is interesting that, in the last complete year of the Great Britain social fund, which was the financial year 2011-12, 6,258 review cases came to my office from Scotland.

The following year, we moved into an abolition situation. In Northern Ireland, for 2013-14, my office received approximately 1,650 cases, give or take four or five. I accept that your interim welfare fund is different and does not cover loans, and that we had loans in the social fund, but nevertheless that is quite a significant difference in the numbers. I appreciate that, as the ombudsman said, you have challenges in thinking about the number of cases that you are likely to get in any process.

I am sorry for that long-winded answer.

**Jamie Hepburn:** Not at all—I appreciate it. I have two follow-up questions. First, it is for the Parliament to legislate for these matters in Scotland, but would your recommendation be that any second-tier review process should involve an independent organisation?

**Karamjit Singh:** I ought to declare an interest, in that, as well as being the Social Fund Commissioner for Northern Ireland, I am a part-time ombudsman in Northern Ireland. My view is that any review process should be user focused. Certainly, that is what we find when service users are actually asked what they want. Obviously, they want to use a review process because they are dissatisfied with the initial decision. The question that arises from that is: what will give them the most confidence? I suggest that an independent process is more likely to give confidence than one that rests within the same organisation, even though it is a different part of it. A large part of the issue is about perceptions.

**Jamie Hepburn:** You talked about the number of complaints that you receive in your current capacity and the complaints that you received in your former capacity when you had the role for Great Britain. You made the point that there was a bit of a difference because loans were involved. How many of the complaints pertained to a request for a loan? Do you have that information?

**Karamjit Singh:** Do you mean in terms of the Scottish cases?

**Jamie Hepburn:** Yes, and the Northern Ireland case load.

**Karamjit Singh:** To give some blanket figures from Northern Ireland, in the past year, just under 350,000 applications were made for grants and loans to the Social Security Agency—that was the

first line. Around 78,000 were refused and 16,000 then went for internal review, of which 1,650 came to my office. The breakdown was that 1,406 of them related to community care grants, so only the remaining 220 or so related to loans. The cases were skewed very much towards grants. I am aware that your interim welfare fund and the proposed process will focus on grants rather than loans.

**Jamie Hepburn:** I have some questions for the ombudsman. Mr Martin, you state in your submission that your experience of the system in which council processes had multiple complaint stages was that it did not improve outcomes for the people who went through that process. Can you tell us a little more about that?

**Jim Martin:** The Parliament asked us to set up a simple and standardised complaints process for local authorities and all other public service bodies in Scotland. Paul McFadden has led on that. We found that, in the old system, some local authorities had four, five or even six levels of appeal against decisions on initial complaints and a lot of people dropped out or could not find their way through the system. Very little change was happening in the complaints system.

We have introduced a new two-stage system in local authorities, which simplifies and standardises the process and applies to all 32 local authorities in the same way. We are finding that more people are prepared to see their complaints through that process. The feedback that we have from local authorities is that it improves their contact with their customer base—the people who pay their council tax and to whom they provide services—so, all round, it appears to be improving the service.

Taking out as many layers as we possibly can and debureaucratising the systems seem to enable people to get through them more quickly and to improve the relationship between the body and the citizen.

10:15

**Jamie Hepburn:** You also speak of the need for an independent arbiter.

**Jim Martin:** Once we have the two-stage system, people can come to us. We are independent of local authorities, health boards and other public bodies. The fact that the numbers coming to us are increasing year on year—I think that, this year, we are looking at a 14 per cent increase on last year's figures, which were up on the year before—means that people are increasingly aware of that independent route and making use of it.

Karamjit Singh is correct. The people who come to us tend to say that they are looking for impartiality. Paul McFadden and I were involved in creating the Police Complaints Commissioner for Scotland and, in that body's first period, the question most consistently asked by people who came to us was, "Are you, or have you ever been, a police officer?" People were really looking for independence in the decision making.

**Jamie Hepburn:** In your submission, you say that the bill

"will be the first time we will be able to specifically review a decision and to make a direct and binding change to that decision. While this is unusual for us, the Ombudsman role has proved a very flexible one and powers vary around the world. Such powers do exist elsewhere."

Will you tell us a bit about the international comparison?

**Jim Martin:** The standard for ombudsmen generally throughout the world is that they make recommendations. In some countries, within certain jurisdictions, the ombudsman will take on, for example, a local government or health complaint that is about administration but will not take on a health complaint that concerns clinical judgment. In some cases, the powers and their impact differ. When some of my international colleagues make a decision, it tends to be a recommendation, but some—I am thinking particularly of ombudsmen in Australia—can make binding decisions in certain circumstances.

On the other side of the work that we do, I have always shied away from making binding decisions because I believe that the recommendation process that we have works. However, the kind of case that would come to us under the bill would be quite different. It would be about specific requests for specific sums under specific legislation. At that point, it is important that the decision that is made is final and binding.

**Jamie Hepburn:** So it would be fair to say that what the bill proposes is not without precedent and is manageable.

**Jim Martin:** It is certainly manageable. I would not want it to be read across to the rest of our work because we have been clear to say that, under the bill, we have been asked to consider and take on a separate area. In that area, binding powers are appropriate.

**Ken Macintosh (Eastwood) (Lab):** Will you expand on whether hearings are required to make the new service article 6 compliant? You say that you will provide complainants with the ability to have hearings but that you do not expect there to be many. Will complainants have a right to a hearing or will it be your decision to grant them one? How would that compare to other similar systems?

**Jim Martin:** If the Parliament decides that the matter should come to the ombudsman, we will, after consultation, publish rules in which we set out our obligations, timescales and processes. Within those rules, there will be an element that will allow people to request a hearing.

The decision as to whether a hearing would take place would be for me. I can foresee circumstances in which it might be appropriate to have one to test evidence, but my understanding of the experience of the independent review service for the social fund and the way that things operate currently in Belfast is that hearings are few and far between. We are trying to make provision to enable us to have the powers to investigate, as appropriate, when things come through. We are putting a new system in place so we need to allow for all eventualities.

**Ken Macintosh:** Mr Singh, is a hearing a right under the system as practised in Northern Ireland?

**Karamjit Singh:** No, it is not. We have worked on the basis that, ideally, we might want to have face-to-face contact between the applicant and a member of staff on every occasion but, obviously, that is not practical. One has to think about value for money and so on.

The question for us is how we ensure that we have a high-quality process for getting the right information and taking the right decision. We do that by getting the file from the agency so that we see everything that has gone before; we then have one case worker to deal with the entire case. They will pick up the telephone and have a telephone interview with the individual. We send a record of that telephone interview out to the individual.

We have a target for completing cases of 12 working days. In 2013-14, we took an average of 6.7 days to complete our cases so, clearly, we have managed to reduce that figure quite a lot. What is important here is that if we want to give confidence to people who are applying—certainly to the social fund and, I suggest, to your welfare fund—we have to think about the background characteristics of the people who apply. Many of them have multiple disadvantages. Poverty is certainly a key issue as well as vulnerability. Therefore, we have to think about having a system that is user focused. It seems to me that certainly what people want is a quick decision.

What is interesting for us is that, in 2013-14, we have had 1,650 cases in which people have sought a review—in other words, they have asked us to look at the decision again—whereas, just to put that figure in context, we have received only five complaints about our service and 81 other requests to look at cases again. Again, I stress that we have not found a lack of hearings to be a



problem. There is in theory the possibility of going to judicial review after our stage.

**Ken Macintosh:** You have 1,600 cases in a year. Roughly how many hearings have there been?

**Karamjit Singh:** We have had no hearings.

**Ken Macintosh:** No hearings at all?

**Karamjit Singh:** No, we have used telephone interviews. That is my point. We have not used hearings.

**Ken Macintosh:** Do you have the ability to use hearings if you want to?

**Karamjit Singh:** We do not have anything in statute, but in theory we could arrange to go to see the individual applicant. The provision that we have, interestingly, is that we could make home visits if we felt that that was appropriate. However, we would do that only if we felt that there were some serious inaccuracies in what was being said and we needed to make that visit. That tends not to be how we undertake what we do. However, we think very seriously about how we can promote confidence on the part of the people who are applying and their representatives.

**Ken Macintosh:** Just to clarify, is it your understanding, Mr Martin, that access to a hearing has to be written into the legislation to make it compliant with article 6 of the ECHR? How will it work? Do you intend to use telephone interviews?

**Jim Martin:** We intend to follow a lot of what has been happening in Belfast. We have been to see what they do in Belfast and Birmingham. On the point about article 6, the issue has been raised with us and we want to try to future proof the processes that we put in. Putting enabling powers in the legislation to have a hearing would certainly future proof it, but I can also see circumstances in which it might be useful to have two people in a room who have two different versions of what happened and to test that out between them.

**Ken Macintosh:** Just a quick point—you said in your submission that you want the ability of the SPSO to make rules to be in the legislation. You can draw up rules anyway, but you want that to be in the bill. Why does it have to be in the bill?

**Jim Martin:** Third sector bodies are strongly of the view that the bill should state clearly that there is a duty to do something. It would help to build confidence in the system if that is there. It should not simply be left to me to determine whether there are rules and whether the rules are published. It is important that the system is transparent and open and that everyone can see what the rules are, and whoever comes after me must be as committed to that as I am.

**Ken Macintosh:** I have a couple of other questions on a different issue—about complaints, appeals, timelines and so on—but maybe other members should come in first.

**The Convener:** We will go to the other members first. If they ask those questions, that will save us from having to come back to Ken Macintosh.

**Kevin Stewart (Aberdeen Central) (SNP):** My question is for Mr Martin. Mr Martin and I have come across each other on a number of occasions, because he has appeared before the Local Government and Regeneration Committee at least on an annual basis.

It would be fair to say that there are a number of critics of the ombudsman service, and I can imagine that some of them will be wondering why you feel that your service can take on additional workload. How do you foresee the service handling that additional workload? You mentioned some numbers earlier, and you talked about flexibility and about the possibility of setting up a stand-alone team. How do you foresee that happening?

**Jim Martin:** We can either have our annual spat now or have it in front of the Local Government and Regeneration Committee in January.

**The Convener:** I suggest that you wait until you are before the Local Government and Regeneration Committee.

**Jim Martin:** I was going to suggest that we do that. Like any other public body, we have our critics. I am sure that this committee will have its critics once it comes to a decision, because the evidence that you have heard so far has been quite polarised. An ombudsman tends to deal with cases that are purely polarised, so there are critics on either side. However, we can deal with that in January, and I look forward to it.

On the additional workload, I should make it clear that it is not a case of the ombudsman's office going looking for something. We were asked to set out how we would handle that workload if it were to come to us. It is different from the work that we do, it is additional and it will require some resourcing. I agree with the view of the Finance Committee, but my worry is that until we see the numbers that are coming through, it will be very difficult to plan for the resource base that will be needed to handle that workload.

If, for example, the number of reviews requested falls below 400, which is a reasonable low benchmark figure, setting up a separate unit within my office is not viable, is not a good use of public money and is not something that we would do. We would try to look at using some of the resource that we had to retrain people and get them aligned

with the demands of the workload. We will need some funding and support to do that, but we will have to wait and see how much.

At the top end, a figure of 2,000 has been suggested and, given that Karamjit Singh has mentioned the figure of 1,650 for Northern Ireland, that does not seem to be such a wild estimate. If the figures were at that end, we would look at what we need in terms of fixed costs—Niki Maclean can answer any questions about how we arrive at those costs—and what we need in terms of people to deal with that workload.

I hope that the Welfare Reform Committee will support the Finance Committee's position that the issue should be reviewed. To do so six months in might be too soon, but certainly after a year we should review whether the funding is adequate, too much or too little. I agree with the Finance Committee recommendation that, in our 2016-17 submission to the Scottish Parliamentary Corporate Body, we should show not only how many cases we have dealt with but project forward what we are likely to deal with.

We are just going to have to start it, to find out what the impact will be. We could talk for ever about what might happen, but once we see what happens on the ground we can go ahead. I assure the committee that it is not my intention to put in place anything that cannot be collapsible should the numbers not come, and that, if I find that I have insufficient resource, I will talk to the corporate body and ask it to raise the matter with the Government.

10:30

**Kevin Stewart:** That is extremely useful. The Finance Committee report, which is also useful, shows that, according to the evidence that it has taken from Argyll and Bute Council and the civil servants, there were only 144 second-tier reviews in the first year, although we all know that these things can change. Are you privy to any information about those second-tier reviews and how long the processes took? What costs of those reviews were borne by local authorities?

**Jim Martin:** You will see from the evidence that you have got from the local authorities that the 32 councils are operating by and large in different ways to suit their own circumstances. The minister is on the next panel, and she will undoubtedly have better information than I do. The information that I have heard is that, in the first quarter this year, there were probably around 75 second-tier reviews. If that is correct, it will take us to a bottom end of around 300 or 400 during the course of the year.

You would have to ask the local authorities about the costing element of that. I see in some of

the evidence that the committee has had that some councils are quite clear about how much it is costing them, but I do not see any numbers for others. The committee is probably in a far better position to get that number from local authorities than I am.

**Kevin Stewart:** Thank you.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** I have a few questions that pick up on what has gone before. Mr Martin, from the discussions that have taken place thus far what do you expect the grounds to be for the second-tier review?

**Jim Martin:** Paul McFadden has been working on that.

**Paul McFadden (Scottish Public Services Ombudsman):** Jim Martin outlined our existing role in relation to Scottish welfare fund complaints. Our current role is to look at issues to do with maladministration—for example, whether Scottish Government guidance policy has been applied correctly, whether criteria have been applied in the way in which the Government had set out, whether factual errors have been made, and whether decisions have been made clearly. The key difference with the new role is that we will have a legal power to remake the decision about what to award based on the merits of that decision and guidance. We will continue to look at all the things that we look at now—whether the guidance and criteria were applied correctly and whether the decision was explained clearly—as well as at whether the discretionary decision that the local authority made was correct.

**Annabelle Ewing:** That is helpful. The discretionary nature of the fund begs the question of how you can look at an appeal without considering the key test of whether any reasonable council could have reached that decision. That test tends to be used quite often in areas of discretion in administration in public life.

I am just trying to get at where the need for a hearing comes in. You talked about whether discretion has been properly exercised, and on page 4 of your submission you talk about how hearings may be necessary

“in circumstances where there are critical facts in dispute”.

I am looking further down the line and taking into account the fact that there would have been a first-tier review in the council, so I wonder to what extent critical facts would still be in dispute at the second-tier level, which begs the question of why there should be a hearing.

**Jim Martin:** I will take a practical example of where discretion would be used. Each local authority may determine for itself the criteria that it applies when looking at a case to decide whether

it is high, medium or low priority. That may vary from council to council.

You might also have councils that are taking decisions on relatively similar cases but which are in different financial positions. In some cases there might be funds available, but in others the fund might be exhausted. We will have to consider each case that arises against the legislation. Where there is discretion for local authorities and others to apply their own judgment, we will have to consider whether that judgment is reasonable and fair. If we get a case where the fund is exhausted, the fact that the local authority does not have the money will probably be an issue for discussion between local government and central Government, rather than between local government and the ombudsman. There might be a situation in which a case is declined in a period when funds are available but by the time the review takes place the funds are exhausted. At that point, we would get into pretty interesting territory.

**Annabelle Ewing:** I appreciate that it is difficult at this stage to anticipate all circumstances, but I felt it important to make the point about discretionary decision making and appeals.

**Jim Martin:** One of the things that I am committed to doing—if it is agreed that the SPSO should be the body that deals with this—is engaging with the third sector and local authorities about the practicalities of how it should be administered.

**Annabelle Ewing:** I will come to Mr Singh in a moment, because I know that he is keen to get in. A moment ago, I understood him to say that there is no formal provision for hearings in the system that he is in charge of in Northern Ireland but that that would not preclude telephone conversations, home visits and so on where necessary. Would that be a possible approach for the SPSO?

**Jim Martin:** Yes, where appropriate.

**Annabelle Ewing:** So there would not necessarily need to be a procedure for formal hearings to comply with article 6. It seems that in Northern Ireland they manage quite well without that.

**Jim Martin:** I think that the article 6 point is assuming greater significance than it possibly deserves. Based on the legal advice that we have had, we are trying to put something in that would future proof the process against challenge under article 6. In our view, making provision for hearings would do that. It could be a useful tool to have in our toolkit.

**Annabelle Ewing:** I invite Mr Singh to comment. I have another question to ask after he has done so.

**Karamjit Singh:** The thing to remember about the social fund legislation in Northern Ireland is that it is derived from legislation that the Westminster Parliament first passed in 1988, which was before article 6 issues were being thought about. The legal advice that I received as the commissioner some years ago was that the fact that someone who was dissatisfied with the external review process and the work that my office had done could make an application for judicial review made us article 6 compliant. That was the advice that we had, although it was never tested in court.

The word “discretionary” really refers to the fact that you have a finite sum of money and, therefore, you have to take decisions looking at the individual circumstances of each case. It is quite interesting that in 2013-14, in the cases that we received, we found fault in 25 per cent of the decisions that the agency took. There is also an internal review process within the agency. The first thing that my inspectors do when they receive an application is ask themselves whether the law has been interpreted correctly in the decision-making process and whether the decision that has been arrived at follows the principles of natural justice. If we are satisfied that that is not the case, we go on to the next stage. At that stage, we review the merits of the case. If we think that it has complied with the process and meets the guidance, we will not uphold the decision. Last year, we overturned 36 per cent of the cases that came to us.

At the second stage, we look at the merits of the case. The first question that we ask ourselves is whether there is any new evidence or change in the circumstances. We might well come to a view that the guidance has been misinterpreted and, therefore, we will overturn the decision.

Finally, we ensure that the decisions that we communicate are always a maximum of two sides in length. They always have the actual decision at the top, so that the applicant understands the decision that is being made, whether it is positive or negative from their point of view. We send the same letter to the agency and, at the bottom of the letter, we will also say if we have found an error with its reasoning. For example, it might not have asked the right questions, in which case we might say that there has been an inquisitorial error. We might say that there has been a qualification error: it might not have interpreted the guidance appropriately. Those are the things that we do.

I turn to the question of the budget, which Jim Martin has just touched on. The Department for Work and Pensions was responsible for the social fund across Great Britain from 1988 until 2013. It used to divide up the annual budget for the social fund among the 12 regions of Great Britain. Here in Scotland, there were offices in Springburn and

Inverness—there were two budgets here. I recall giving evidence to the Westminster Parliament's Public Accounts Committee in 2011 when it was considering the operation of community care grants. One of the points that I made was that, depending on where in Great Britain people lived, they could end up with a different resolution despite having the same case, in theory. The question was raised whether that was appropriate. Secondly, different levels of complaints came from different parts of Great Britain.

There are issues about awareness of the review process and about how the operation of first-line decision making is undertaken. The really interesting thing is that the DWP tried to ensure that each of the 12 regions was aware that its budget had to carry it through the whole 12 months, so that there was never any question of the budget running out. That meant that the various high, medium and low priorities would alter during the year. Third sector representatives and applicants found that particularly difficult to understand and appreciate.

A lot of issues arise in that regard, and I would imagine that you might have similar emerging issues with your 32 local authorities.

**Annabelle Ewing:** Thank you for that background information.

I will ask about the opportunities around your judicial review processes. What is the incidence of judicial review? Has there been none? You say that it is a rare occurrence—it does not happen in practice—but has it happened at all?

**Karamjit Singh:** Judicial review is about process and not the decision that has been taken. It is about whether the process has been undertaken. The experience from 1988 until 2013 was that my office dealt with more than 600,000 social fund cases. I was the fourth social fund commissioner in that period.

I will put that in context. In GB, there were more than 6 million social fund applications at the front line. Against that background, there were 25 judicial review applications over the 25 years. Interestingly, 19 of those were in the first five years. Essentially, they were what I would call testing the system. They tested, for example, whether the social fund inspectors were interpreting the law correctly. Were the social fund inspectors demonstrating their independence appropriately? Those cases were ground setting. Interestingly, we then moved to having about six judicial reviews over about 20 years. That may or may not be your experience in the future.

10:45

**Kenneth Gibson:** Mr Martin, I will follow on from Kevin Stewart's questions. You spoke about the viability of the process with regard to the SPSO's ability to deal with second-tier reviews and mentioned that there were approximately 75 such reviews in the first quarter of this year.

North Ayrshire Council stated in its submission that, if there were 400 reviews a year, the costs involved would

"not demonstrate value for money when compared to the cost of this service being provided by Scottish Councils."

What happens if the number goes above 400? Perhaps you can tell us what the number might be.

According to the financial memorandum, the SPSO

"may have to physically expand their estate to accommodate the expected number of staff required to undertake reviews".

It seems that, at fewer than 400 reviews, there is an issue with the viability of the process and the cost per review. Once the number goes up to a certain level, however, there is almost a diseconomy of scale, because we may have to consider providing additional premises and staffing resources. At which point does the process cease to remain a workable prospect?

**Niki Maclean (Scottish Public Services Ombudsman):** I am happy to take that question. The information that local authorities provided to the Scottish Government when it undertook its original comparison of tribunals, local authorities and the SPSO suggests that a local government panel would cost approximately £520 per case, a tribunal would cost £420 and SPSO involvement would cost £200. That relates to the figure of 2,000 reviews. Obviously, it is for the committee to consider the matter but, even at the lower end of the spectrum, with 400 cases, the costs would probably be relatively similar to the estimated costs that local authorities gave.

As for the viability of the SPSO's involvement, if the numbers fell below 400, we would need to consider whether it would be possible to absorb those cases in some way in our current operation. We would look at whether, rather than establishing a separate unit in the organisation, we could absorb the work in our current structures and management systems to keep costs to a minimum. It is difficult to say where the tipping point would be, but I believe that we are in any event talking about comparative costs at the level of 400 cases, given the predictions by local authorities.

**Jim Martin:** We are not free agents on accommodation, as we operate under the direction

of the Scottish Parliamentary Corporate Body. We lease part of our office to the Scottish Human Rights Commission as part of a shared services initiative to save cash, and that is working quite well. However, the building has physical constraints. If we tried to put another six or seven people in there, they would not fit. That throws up the issue of what happens then. Do we take some of the new work into our building and put some current SPSO work elsewhere? Do we move to new premises with other people? We have to think about that stuff.

The corporate body will need to grapple with those issues, because they are bigger than the simple question of how the SPSO can find a place for four people. There are better and smarter ways of addressing the issue, and there are economies of scale to be had in that calculation.

**Kenneth Gibson:** That is why I was talking about diseconomies of scale.

**Jim Martin:** It is worth flagging it up to the committee that discussions are going on with different parts of Government about other future increases in our jurisdiction, which might come along on roughly the same timescale. That might bring the matter to a head even before the issue that we are discussing arises.

**Kenneth Gibson:** How realistic is the possibility that you might get 2,000 cases? You have mentioned that there were 75 in the first quarter. It seems unlikely that there will be a huge surge to anything like 2,000 cases. Where is the analysis that suggests 2,000 as a potential figure?

**Jim Martin:** That has been baffling most of us—we have been trying to get our heads round it for a few months. I know that the minister is coming before the committee next, and I am sure that, with all the back-up that she has, she will give you a better answer than I can.

When the change was first mooted, we decided to go to the Birmingham office, before it was abolished. At that point, as Karamjit Singh said, there were about 6,200 Scottish complaints a year, so we thought that we would get about 6,000 cases a year. However, we then went to Belfast in Northern Ireland, which is roughly similar to but smaller than Scotland, and we found that the figure there was about 1,600. That kind of makes the figure of 2,000 viable.

The mistake that has been made—no, that is wrong; it was not a mistake. One thing that has not been given sufficient weight is that, under the welfare fund in Scotland, local authorities have taken a different approach to the solution to people's problems. There has been effective signposting of people and pick-up by other parts of local authorities and other bodies, which has alleviated some of the problems that people have.

Because the scheme is so young, we do not yet know whether that will reduce the number of people who want to go through the process and come to us for a review, or whether the issue is that there is not enough signposting of the processes and the number will grow in time.

Our experience has been that, when we have taken new areas into our jurisdiction, the number of cases has almost doubled. The two best examples of that are prisoner complaints and water complaints, on which the numbers coming to us doubled. That was also the case in 2005, when further and higher education complaints were brought into the SPSO, although that was before my time.

We might face a doubling of the numbers or more than that, but we just do not know, as it is not an exact science. That is why I urge the committee to build in as many reviews as possible in the first couple of years, to ensure that we do not build a big edifice when there are insufficient people for it and that we put in enough resources to give people the fast turnaround that they need.

**Karamjit Singh:** Jim Martin makes an important point—clearly, your local authorities might well be signposting people to other activities. We should not lose sight of the fact that, with any review process and particularly an independent one, we want not only to deal with individual cases for the customers and applicants as quickly as possible but to evaluate what is going on and learn the lessons. We want the organisations that take the original decisions to get it right first time and to learn the lessons on the processes.

At the end of the day, what matters is not how many cases come through, although that is of course relevant to the viability of any review process. The ultimate aim surely has to be to learn lessons and to consider how the original service providers—in this case, your local authorities—can learn lessons.

In my annual report, I publish data on the decisions by the various offices of the Social Security Agency that we have overturned, and I have meetings with the regional directors to discuss the issues that arise. It is in everyone's interest that they learn the lessons and that their decision making becomes better.

**Kenneth Gibson:** You said that having appeals going to someone who is independent of the local authority is more palatable for applicants. Will that alone cause a significant increase in the number of people who put their case forward for review?

If I heard you correctly, you said that about 36 per cent of cases are upheld. Will that cause a surge in cases? You might not be able to say exactly, but how does that figure compare with the

figure for appeals being granted in local authorities?

**Karamjit Singh:** My difficulty is that I do not know too much about what is happening in Scotland. All that I can talk to you about is my experience from the Great Britain perspective. You might be interested to know that my Birmingham office overturned decisions in 42 per cent of cases. In Belfast, in the office for which I will have responsibility until the social fund is abolished in the welfare reforms in Northern Ireland, the figure is 36 per cent, although the figures differ for the various offices. In some offices the proportion is lower and in other offices the proportion is higher, so that raises questions about consistency or a lack of it in decision making, and it must raise questions about how people are learning lessons and applying the legislation.

It is also important that I go out and have discussions with third sector bodies. I talk to them about their experiences, because their representatives are assisting people who are making applications, so it is in everyone's interests to get focused applications coming forward.

**Kenneth Gibson:** Could a high level of successful appeals encourage even more people to come forward with appeals, leading to a significant increase over a period?

**Karamjit Singh:** I bring you back to a figure that I quoted at the beginning. In Northern Ireland in 2013-14, we had just under 350,000 applications that went to the Social Security Agency, of which 41,000 were for community care grants, 131,000 were for crisis loans and 161,000 were for budgeting loans. The figures are in my evidence to the committee. Of those applications, just over 78,000 were refused, so the remainder were upheld.

It has not been my experience that the people who make such applications do so frivolously. People might have an incorrect sense of what they are entitled to under directions, but the overwhelming majority of applications are made because people are in difficult economic circumstances. That has certainly been my experience, and I have been the social fund commissioner for Great Britain and Northern Ireland and then for Northern Ireland since December 2009, so I have seen that picture for nearly five years.

It is inevitable that, in any complaints or review process, a number of applications might well have to be turned down because of conflicting evidence, but I do not think that we should work from the premise that people are making applications simply because, to put it bluntly, they are trying it on.

**Kenneth Gibson:** I was not suggesting that. Perhaps people feel that they are more likely to succeed if they know that other people have succeeded. It is not that they are trying it on but that they feel that they are due a fair hearing.

**Karamjit Singh:** I see where you are coming from. Whether high levels of cases in which decisions are overturned encourage more people to come forward is an interesting question. What I think encourages people to make an application, and something about which we get positive feedback from people, is the feeling that they are treated well during the review process. What encourages me most is that, when we have turned people down and said that we are sorry that the legislation does not allow us to make the grant, people nevertheless respond to our surveys by saying, "Although I didn't receive a grant, I still felt that the way I was treated was fair and I appreciated the fact that you listened to me."

That is important. The issue is not about acceding to every request but about how applications are dealt with. Ensuring that front-line decision makers, such as people working in your local authorities, respond positively is important, as is signposting. We all understand that we are operating in a process where public sector finances are under pressure, and we must ensure that we get high-quality decisions using finite resources. We all have to think about that, whether we are on the first line or part of an independent review process.

I do not know whether that answer was helpful to you.

**Kenneth Gibson:** Yes, thank you.

**The Convener:** Ken Macintosh indicated earlier that he has some further questions.

**Ken Macintosh:** There are two issues that I would like to raise. The first is a question for Mr Martin about review timelines. Mr Singh has indicated that the deadline within which his staff work is 12 days and that they have got it down to seven. What sort of timescale is the ombudsman working to and is that something that he will consult on or that he would expect the Government to regulate?

11:00

**Jim Martin:** I think that that is something that we would consult on. With great respect to my good friend Mr Singh, I point out that the actual time is calculated once all the papers in the case have been received.

**Karamjit Singh:** Absolutely.

**Jim Martin:** You have to add another four or five days at the front end. At the moment, we

calculate the time from the day the case arrives in our office.

Our aim is to set targets that take us at least to the level of the best practice that I have seen in Belfast—and, I hope, better than that—but whether we can achieve that will depend on volume, resource and all the other things that we have talked about. However, there will be an initial period in which we have to get people up to speed. You must remember that the people who operate the fund have been doing so for 25 years, have been using tried and tested processes and have not been dealing with 32 local authorities. Over the initial period, we will need to feel our way. We have a record of setting pretty challenging targets, and we would consult not just local authorities but the third sector and others about what the timescales should be.

**Ken Macintosh:** Are you trying to do this quickly because, as Mr Singh has made clear, speedy decisions ensure robust confidence in the process, or because you want to deal with the crisis that an applicant is in?

**Jim Martin:** We are trying to do both, but we want to ensure that the quality of the decision making is right.

**Ken Macintosh:** So the process will be driven more by quality and is not going to be crisis driven.

**Jim Martin:** No—although we will put in place a process that is designed to get the right answer as quickly as possible because we recognise that the people who are bringing cases to us are in need. The process might also require local authorities to work slightly differently with us, and I hope to do as much as I can with local authorities electronically to reduce that four or five day period at the front end.

**Ken Macintosh:** You already have a process and system for dealing with complaints about local authorities' handling of applications, and now you are bringing in a new system. As you have flagged up, you will have a system for dealing with complaints and another for dealing with reviews of decisions, with different powers for your staff and different powers of adjudication. Who makes the decision? It strikes me that the decision whether to treat an application to the ombudsman as a review or as a complaint seems to be entirely yours. Is that your understanding?

**Jim Martin:** Yes.

**Ken Macintosh:** Is it also your understanding that any separate unit that you set up will deal only with reviews, or will it deal with reviews and complaints? Do you want to ensure that every case is treated both as a complaint and as a review?

**Jim Martin:** I know that you are against the clock, convener, so I will not go through the whole process. Our process enables us to get back to people very quickly about whether their complaint falls within our jurisdiction, whether it is competent for us to look at it and whether we can achieve the outcome that they want. At the front end of our organisation, we have people who are trained to look at whatever arrives either by telephone or on paper and to determine immediately whether it should go through the complaints process, the review process or, in some cases, both. Given that we do that all the time just now, that particular element does not give me any sleepless nights. The bit that worries me is getting the right amount of resource to deliver the service.

**Ken Macintosh:** You do not have the power to review decisions at the moment.

**Jim Martin:** No, but we have different jurisdictions coming in. If, for example, you were to write to me today on a social care issue, we would have to look at the social care element, the health element and what have you, so we train our people to do that.

**Ken Macintosh:** If you set up a special unit, will it deal with complaints and reviews?

**Jim Martin:** No. It will do the reviews.

**Ken Macintosh:** The unit will not look at complaints. As I understand it, if a case turns out to be a complaint, your decision has to be referred to the local authority for its view, which will, again, add time. Someone who applies for a review of a decision might do so because they do not agree with it, but they just want a quick decision and their money. However, the local authority wants—

**Jim Martin:** The review and the complaint that come to me can be either two separate things or interrelated. Under sections 7, 9 and 10, I think, of the Scottish Public Services Ombudsman Act 2002 someone who brings a complaint to me has to have gone through either a complaints process or a review process, and we are pretty confident that that enables us to move speedily on such matters.

**Annabelle Ewing:** I return to an important point that Mr Martin mentioned a moment ago, about hoping to work electronically. I hope that that is more than a hope, to be frank. The documents for an appeal of a first-tier decision should be sent using email and communicated immediately. Four or five days are not needed, I respectfully suggest. You could propose a deadline of 24 hours—subject to exceptional circumstances with computers crashing or whatever. We need to focus on speeding things up nowadays because administrative processes take far too long. We do the public a disservice if we do not actively examine how to speed things up.

**Jim Martin:** I agree whole-heartedly with that, and I hope that a lot of people read the *Official Report* of this meeting and see that written down.

**Karamjit Singh:** I will take up a point that Jim Martin made. We had an agreement with the DWP. Because we were dealing with paper files, largely, we would receive those files within four days, and our experience was that more than 90 per cent of the files came within four days. If a file took longer than 10 days, the practice in my office was to write to the applicant and tell them that the file was still at the DWP. We usually found that the matter was expedited.

I will follow up on a point that Mr Macintosh made. I note that you have crisis grants and community care grants here in Scotland, and I assume that the crisis grants deal with very urgent cases. For us, under the social fund, we have crisis loans, whereby people seek expenses for food and fuel. The target that we set in our office is 24 hours for those cases. I am happy to say that, in the 177 cases that we have had during the year, we met the target for all of them. My office has a clear receiving process that distinguishes on the ground of urgency, so that we can prioritise cases.

**The Convener:** We are up against the clock, but I must ask this question, as I am getting more and more confused by the information that I am getting on estimated numbers. Reference has been made to the numbers in Birmingham under the old system—I think that there was a figure of 6,000 appeals. The figure for Northern Ireland, which is in the documents, is about 1,650. The indications that we have had from local authorities so far are that there would be about 400 or 500, if we work from one quarter and the figures remain reasonably stable. You have both said that a figure of 2,000 in Scotland would not appear to be too far away from the mark. The population of Northern Ireland is about a third that of Scotland, but its figure is 1,650. The whole of the United Kingdom had 6,000 appeals. How do we arrive at a figure of 2,000 being a reasonable estimate of the number of appeals that we will have here?

**Jim Martin:** Others who will give evidence after me will be able to explain how we arrived at the number, but 6,000 is the number of appeals from Scotland that went to the independent review service.

**The Convener:** That is within the UK figure, right?

**Jim Martin:** The figure was 6,000; we are currently seeing about 400. We know that the number for Northern Ireland is 1,650. For planning purposes, we have had to arrive at numbers in order to think through what the implications would be if we reach a certain level of appeals. What the actual numbers will turn out to be is anyone's

guess at the moment. That is why, as I have said three or four times, building in a review will be very important.

**Karamjit Singh:** For the last complete year at the Birmingham office, which covered all of Great Britain, we had just over 48,000 cases, of which 6,250 were from Scotland.

**The Convener:** That is helpful for clarifying where the 6,000 figure comes from. However, if the figure was about 6,000 under the old system, if it is around 1,600 for Northern Ireland, and if Northern Ireland has about a third of the population of Scotland, it is very difficult to see how you can extrapolate that to a figure of 2,000.

**Jim Martin:** We have to be careful not to compare apples with pears. The local authority system in Scotland may well be directing people to routes where they were not previously being directed by the DWP. There might be a better qualitative response in Scotland, which is lowering the numbers that come through. I do not know that that is the case, but I suspect that it is. I do not know what impact that has on volume.

Considering the position of a manager having to think the matter through—as Niki Maclean will have to do pretty soon—it is very difficult to plan if we do not know what the actual numbers are going to be.

**The Convener:** That is a helpful answer.

**Karamjit Singh:** You should not forget that this is the 26th year that the social fund has been in operation in Northern Ireland. Here, you are dealing with an interim welfare fund that has been in place for less than two years, as I understand it. It is a case of ensuring that we do not compare apples with oranges.

**Jim Martin:** Or pears.

**The Convener:** That is always worth remembering as a good rule of thumb.

Thank you all very much for your contributions this morning, which have helped to clarify a few points. They have also raised further questions, which we will have to pursue elsewhere.

11:10

*Meeting suspended.*

11:21

*On resuming—*

**The Convener:** I welcome our second panel of witnesses, who are Margaret Burgess, the Minister for Housing and Welfare, Stuart Foubister from the Scottish Government legal directorate and Callum



Webster, the bill team leader. Good morning to you all, and thanks very much for coming.

I will start the ball rolling by asking a question that relates to the Delegated Powers and Law Reform Committee's report on the bill. That committee queried why it has been considered appropriate to frame section 4(1) as being permissive, in that it allows the Scottish ministers to regulate to require local authority reviews, rather than requiring regulation that will put the review process in place. Why was that decision made?

**The Minister for Housing and Welfare (Margaret Burgess):** We have had a letter from the Delegated Powers and Law Reform Committee asking us to respond by the 25th of this month, and we are preparing our response to that. Stuart Foubister will deal with the technical issues.

**Stuart Foubister (Scottish Government):** As we indicated in a letter to the Delegated Powers and Law Reform Committee, there are various ways to draft the bill that would produce, in effect, the same result. The Delegated Powers and Law Reform Committee has expressed a wish for us to take a slightly different approach. From our preliminary analysis, we do not see difficulties with that, so I suspect that we will come more into line with what that committee is looking for.

**The Convener:** The Delegated Powers and Law Reform Committee said that there is

"no good reason why there should not be a requirement to provide for the matters ... rather than this being discretionary."

Do you think that it was on the right track when it raised those issues?

**Stuart Foubister:** The approach in the bill is to say that regulations can create a right of review and can say that not absolutely every decision is reviewable. That is still the policy, but there are different ways of achieving that. The bill could say that there shall be a right to review every decision except such decisions as are set out in regulations, which is the direction that the Delegated Powers and Law Reform Committee is pushing us in.

**The Convener:** We have been in this territory before in considering other aspects of legislation in relation to new powers that have been given under the welfare changes. The Delegated Powers and Law Reform Committee went into the same issues, and it has said:

"the regulations should be subject to the affirmative procedure, unless there is good reason why that procedure would not be suitable."

Will the subordinate legislation be subject to affirmative procedure, or can you tell us the "good reason" why it will not be?

**Stuart Foubister:** As the minister said, we have not finalised our response to the Delegated Powers and Law Reform Committee, but I would be surprised if we were to see difficulties in moving to the affirmative procedure.

**The Convener:** In the evidence that we have taken, in particular in the evidence that we heard earlier this morning, questions have been raised about the costs of the Scottish Public Services Ombudsman becoming the appeal body for the SWF. The SPSO submission states that "other options" were considered for dealing with appeals. What were those other options and why was the SPSO considered to be the most cost effective?

**Margaret Burgess:** We looked at a number of options. One was to set up a completely new tribunal system, which would have been extremely costly for the fund. We also considered whether local authorities should provide the second-tier review service. The other option was the Scottish Public Services Ombudsman. It was clear early on from the committee and from what the Government said that we would look for independent review—review has to be independent of the Government. There was little support, outwith local authorities themselves, for local authorities providing the service. That option also came out as being more costly than using the ombudsman. The cost of setting up a full tribunal system simply to look at the Scottish welfare fund was prohibitive.

The Scottish Public Services Ombudsman is used to dealing with local authorities, albeit that it deals with complaints at present. In our discussions with the SPSO, it said that it felt that it has the skills and is willing to train its staff to review Scottish welfare fund decisions. That will certainly be cheaper than a tribunal and, in our view, it is a cheaper and better option than using local authorities, which would not be perceived as being an independent review system. We have said from the outset that independent review is the one thing that the interim fund lacks.

**The Convener:** In some of the evidence that we have received—in particular from local authorities, although we have heard it from other sources—concerns have been raised about the administration cost of the Scottish welfare fund. Some of the complaints are in opposition to one another. When the Finance Committee scrutinised the financial memorandum, concerns were raised about a cost of £5 million for administering a total fund of £33 million. Some people think that that is disproportionate, whereas local authorities and others said that the current funding for administration is insufficient. Local authorities feel

that they have not been provided with adequate resources to administer the fund, which indicates that they believe that £5 million will be too little to administer it. Do you have a view on either of those positions?

**Margaret Burgess:** At the outset, we made it clear that £5 million is sufficient. It is about 15 per cent of the total fund, which is more than would normally be allocated in a procurement exercise. The figure for administration costs is normally about 10 per cent, unless there are real complexities. The Convention of Scottish Local Authorities has said that 15 per cent is insufficient to administer the fund and it is conducting a benchmarking exercise. The Deputy First Minister has said that once the benchmarking is complete, if there is compelling evidence that demonstrates that the fund cannot be administered for the costs for which we believe it can be administered, she will look at the issue again. However, she will not do so until that evidence is placed in front of us.

**The Convener:** Such discussions always take place between local authorities and the Scottish Government—we understand that and we do our best to try to get to the bottom of the issues. At least there is agreement that the figures are not agreed to. We will have to wait to see how the discussions play out.

In the evidence earlier this morning, we heard that some of the additional costs of the new system that is proposed in the bill come from the fact that the Scottish Public Services Ombudsman will take on responsibility for an aspect of it. There are questions about how much that will cost—the accuracy of estimates is being queried. Ultimately, the SPSO is funded not by local authorities but by the Scottish Parliamentary Corporate Body. What discussions have taken place between the Scottish Government and the SPCB about additional costs to the SPSO?

**Margaret Burgess:** A number of discussions have taken place between the Scottish Government and the Scottish Parliamentary Corporate Body, which are the basis of our planning assumptions on how much we will transfer for administration costs and how much will be given to the SPCB to allow the SPSO to operate the system. Obviously, there is a cost to run the system over and above the cost of the reviews. That discussion with the corporate body has taken place.

11:30

**The Convener:** Are the figures that have been discussed and agreed in the public domain? Has the information been made available to the committee so that we can assess it?

**Margaret Burgess:** I am not aware of that. Perhaps the information has gone to the Finance Committee.

**Callum Webster (Scottish Government):** The figures, which came mostly from discussions with the SPSO in advance of the bill's being introduced, are in the financial memorandum, so they have been made public.

**The Convener:** It is a question of knowing where to look for them. I am a member of the Finance Committee, as are other members around this table, and that issue never came up in the discussions that we had. However, it has come up now, so I wanted to know where we could look for the figures.

**Jamie Hepburn:** Notwithstanding Mr Foubister's point that the Scottish Government will look sympathetically at the request from the Delegated Powers and Law Reform Committee to use affirmative rather than negative procedure, I wonder how widespread that concern is. I am looking at the Delegated Powers and Law Reform Committee's report and I do not see it referring to much evidence that it has gathered, and nor can I recall any of the witnesses that have come to the Welfare Reform Committee suggesting that it is a burning issue. Has it been raised as a burning issue with the Government by anyone other than the Delegated Powers and Law Reform Committee?

**Margaret Burgess:** No. The issue has been raised only by that committee, and we have been asked to respond. We gave an initial response and we will complete our response, as requested, by 25 November. As Stuart Foubister said, we do not see any problems with what has been requested or how we can take it forward.

**Jamie Hepburn:** Okay, but the context is that only the Delegated Powers and Law Reform Committee has made the request, and not the Welfare Reform Committee—although to be fair, I say that we have not yet made our report.

**Margaret Burgess:** That is right. Only the Delegated Powers and Law Reform Committee has made that request.

**Jamie Hepburn:** The convener said that some members of this committee also sit on the Finance Committee. I am one of them, so I know that when Mr Webster came to give the Finance Committee evidence on the financial memorandum he was helpful in pointing out the specific cost differentials between the ombudsman taking on second-tier review and the tribunal service or some other body doing so. Could we have that set out again for the record? I know that you have said that there are considerable differences, but it might be helpful to quantify them.

**Margaret Burgess:** Do you want us to put that in writing or would you like us to go through what we have in our papers? We could certainly send that information to the committee. We looked at the costs per case, if that is what you are talking about.

**Jamie Hepburn:** Yes. I should make it clear that that was the context in which the information was provided to us before, so a per-case cost would be fine, from my perspective.

**Margaret Burgess:** Right. We reckon that the cost per case for the Scottish Public Services Ombudsman will be about £202, based on a planning assumption of 2,000 cases. We needed to make a planning assumption in order to calculate the cost. The tribunal cost would be £413, with much higher set-up costs, and the cost were local authorities to review would be anything from £420 to £500 per case. It will certainly be cheaper to use the ombudsman service.

However, I point out that we were looking not only at costs but at the integrity of the whole scheme, in order to ensure independent review that the public, users of the service, the third sector and local authorities would have confidence in. Once the system beds in, everyone must have confidence that we have a truly independent review process.

**Jamie Hepburn:** That point has been well made by a number of people who have given us evidence. However, we deal with financial realities and it seems to be clear that there is a substantial difference between what is being proposed in the bill and what the alternatives were, so that is helpful.

We heard some compelling evidence from individuals who have gone through the welfare fund process. I hope that it is not too patronising to describe them as young people. They came to the committee last week and I was struck by their evidence. A number of them had been in contact with various parts of their local authorities. The witnesses' evidence referred to two authorities: Glasgow City Council and North Lanarkshire Council. I was disappointed to hear that during contact with the housing department and social services they were never referred to or made aware of the Scottish welfare fund internally—that is, within the local authority.

We were able to explore the matter with witnesses from the Convention of Scottish Local Authorities who attended a subsequent evidence session, and they gave a commitment that things would improve. Is the Scottish Government aware of that issue? Only two local authorities were mentioned, but is that an issue, and are things being examined and improved upon in that regard?

**Margaret Burgess:** That is certainly not an issue that has been raised with me. I spent a lot of time during the recess going round local authorities and speaking to Scottish welfare fund teams, including those who are in the front line delivering the service and making the decisions. One thing that arose from that is that those teams have built up better relationships with other local authority departments.

We do not want to ignore the point that the young people made last week. We should address it, and we should ensure that the matter is addressed not just between the Scottish welfare fund teams and other council departments. We have to ask whether things are working between housing and other parts of the council, for example. Things should not just be going in one direction. I would be keen to examine that point.

As COSLA does, we wish to ensure that things that are not happening as they should do so in the future. We will certainly take up the matter in the guidance and among the practitioners group, which meets regularly. The Scottish Government funds a Scottish welfare fund officer to co-ordinate things between local authorities. We could certainly consider that matter. When relationships are getting built up in a certain way, we want to be absolutely sure that things are happening in both directions.

**Kevin Stewart:** The Finance Committee received evidence that there were only 144 second-tier reviews last year. That information came from Argyll and Bute Council and, I think, from one of your civil servants. However, there is an assumption that up to 2,000 cases could go to the SPSO. Are those assumptions based on the fact that not many folk, once they have gone through a first-tier review at local authority level under the current system, and with the second-tier review also going to local authorities, currently go to the ombudsman, even though they may do so, because they have already gone through the council and they do not think that they will get any further the second time around?

**Margaret Burgess:** That is perhaps one of the reasons. People feel that they have already asked for a first-tier review through the local authority, so going back down the same avenue for another review would perhaps not provide the result that they seek.

I anticipate that once we have an independent review service more reviews will take place. Third sector organisations will also assist people with reviews, which would be for the good of the scheme—it would be useful.

When we still had the social fund system under the DWP, the number of reviews in Scotland was more than 6,000. There is a huge difference

between 144 and 6,000—I absolutely accept that point—but we had to consider a planning assumption on which it was reasonable to base the costs in order to proceed. That is why we came to the figure of 2,000. It was not just plucked out of the air by the Scottish Government; it went through the reference committee, which includes local authorities, COSLA, the third sector and stakeholders. They felt that it was a reasonable assumption to plan on. That is how we arrived at that figure.

**Kevin Stewart:** We heard about 6,258 Scottish cases being handled at Birmingham previously, and about the 1,652 cases in Northern Ireland. As the earlier witnesses said, that can be like comparing apples with oranges. Furthermore, because the system is administered by local authorities here, it is possible to signpost people to other services if things are done right. That assumption takes into account the different way in which we are currently doing things here. The review group has obviously taken that into account as well.

**Margaret Burgess:** Absolutely. An assumption was made, and the figure will be reviewed again before the fund goes on to its permanent footing. The SPSO is aware that it is not a tablets-of-stone figure of 2,000. If it seems that the total will be less than that, the figure will be reviewed down the way.

**Kevin Stewart:** The ombudsman talked about having a constant review after the fund has been established. Is that in the Government's plans? Beyond that, will you allow for flexibility, in case the numbers go up or down? Will there be that constant review?

**Margaret Burgess:** That is the point that I was trying to make a moment ago—but not very well, obviously. It is an assumption, and the figure can go up or down, according to what we see happening within the scheme, how the decision making takes place, and the number of people involved. The figure is based on the number of people who will be turned down for the scheme—that is where the reviews will come from. I repeat: that figure will be reviewed constantly by the Scottish Government.

**Kevin Stewart:** Will resources follow?

**Margaret Burgess:** Absolutely.

**Kevin Stewart:** I turn to the additional evidence that we have received from COSLA. Members received it this morning, which is not particularly helpful, but I understand that the minister has also had sight of it.

You said earlier that you want to ensure that administration costs are fair and set at a reasonable level. If we have a fund that is

established to help those with the greatest need, it would be a great shame to see a large portion of that fund swallowed up by administration costs if that was not necessary. You have said that you think that 15 per cent is a reasonable figure. That is above what it would be under a normal procurement.

We have written evidence from COSLA saying that, under the old DWP system, the percentage going on administration was much higher. Is that partly down to the fact that, under the former DWP systems, a number of the payments were loans rather than grants, loans often being much more costly to administer? Would it be fair to say that?

**Margaret Burgess:** That would be part of it. To administer a central system, like the old DWP system, it is more costly to set up a loan system under which repayments have to be collected. That is very much part of the reason why the DWP system had such costs—at 20 per cent. We are not comparing like with like.

The Scottish Government topped up by £400,000 what we got from the DWP for local authorities to administer the system. We did that for the first year. Local authorities made representations that the top-up should continue for the next year, and we provided for that—we listened to what they said. We topped up what we got from the DWP for administration costs for local authorities.

If the benchmarking that is being carried out shows compelling evidence that it is costing more to administer the scheme, the Deputy First Minister will, as she has said clearly, examine the matter again. However, there is no additional funding this year—the Deputy First Minister has made that clear to COSLA.

**Kevin Stewart:** Some of the bits and pieces within the COSLA submission contradict what we have heard in evidence. Part of the submission says that it is much more costly for authorities to provide cash payments to customers. It says that the DWP was previously able to use Post Office accounts, and COSLA seems to think that that is not now possible. At the same time, we heard from some of our young witnesses last week that they sometimes had difficulty getting to the post office to deal with the cheque or voucher that they were getting.

Have you had involvement with and input into the benchmarking that COSLA is currently undertaking? Will you carefully consider what COSLA is saying? The experiences of individuals who have come before the committee seem to be different from what COSLA has come up with thus far.

11:45

**Margaret Burgess:** We are waiting on COSLA's complete report, which I think it is going to send in the first instance to the Deputy First Minister. We will look at the report very carefully, but we want to drill down behind some of the issues that you mentioned in terms of the costs of paying out loans in cash as opposed to the DWP paying it out in different ways. If there is compelling evidence that there are costs attached to that, that is something that we would consider. However, we need to see the evidence and so far we have not got it.

**Kevin Stewart:** Okay. That is useful to know.

My final point is on best practice. Obviously, the COSLA benchmarking will find areas of good practice and areas of less good practice or even bad practice. How does the Government ensure that, to maximise the amount of money that is going to those folk in need and to put money to best use in helping poor folk, best practice is exported throughout the country?

**Margaret Burgess:** We constantly look at best practice in terms of practitioners' meetings and where good practice is coming out. We fund the Scottish officer in COSLA to look at best practice across the board for the Scottish welfare fund to try to get the consistency and the sharing of best practice that we are looking for. We also have the reference group, which is constantly looking at sharing out good practice where it finds it.

When I did my tour of the welfare fund teams, I found out that those in the front line have benefited a lot from that work. Participation in the practitioners' meetings is really important to them because it is a great way of people sharing experiences, learning about good practice and taking it back to their own teams; and we then have the officer looking at the practice overall.

I am not saying that we are where we should be yet, but all that work will continue. When the benchmarking report comes into the Scottish Government, we will look at how best practice is being shared across the board, what variance there is and generally how the fund is administered and what it costs.

**Kenneth Gibson:** I want to pursue the issues of drilling down and consistency. In drilling down, as well as looking at best practice you will look at comparative costs between local authorities. COSLA is talking about costs of 20 per cent across the board, but I would imagine that some would be considerably less than that and that some might even be more. In the benchmarking exercise, are you going to be looking at variabilities and variances to see why there might be such differences between local authorities?

**Margaret Burgess:** We certainly will be looking at that in terms of the benchmarking report, which we are waiting on COSLA to provide. We are also looking at whether costs for some local authorities might be more than for others, perhaps because some might have a higher demand on their fund and others might have a lower demand.

The current agreement on administration costs and the funding for awards to each local authority area was based at the outset on historical DWP applications. As we move into the permanent fund, we will discuss with COSLA having a more needs-based approach, which might spread costs in a different way.

Certainly, we will look across the board, and if there were huge discrepancies with or without demands on the scheme, we would look at the reasons for them. We might look at them and say "Well, wait a minute." Presumably, when COSLA is doing its benchmarking, it will take that approach as well before it submits its final report to the Government.

**Kenneth Gibson:** That is very helpful, and it leads on to my next point.

Let us take administration out of the picture and look at the actual award of funds. The Finance Committee took evidence that suggested that, although some local authorities are under very severe pressure for the fund, others are not. There are differentials in terms of the promotion within each local authority, but I do not know what the Scottish Government is doing to encourage consistency of approach. Some local authorities are being much more prescriptive about who they make awards to. There is a postcode lottery: someone might get a grant in authority A but not authority B.

Are you looking for more consistency in how awards are made? If a local authority has a surplus towards the end of the year, will you look at reallocating the budget to an authority that is under pressure? How do you make those judgments, given that one local authority might reach its maximum simply because it is being more generous about which groups get priority, whereas another authority might have narrower criteria? How do you square the circle?

**Margaret Burgess:** We expect local authorities to manage their budgets for the scheme, which have historically been agreed by the COSLA distribution group. Some authorities will pay out only to high-priority applicants, because there is more strain on their budget. In another area, an authority might be able to make awards to medium or even low-priority applicants.

As I said, as we move into the permanent scheme, we must consider, in discussion with local authorities and COSLA, a more needs-based

approach to the funding. A finite amount of money is available in Scotland, and we want to ensure that it goes to the people who are most in need. We have to work towards that.

**Kenneth Gibson:** Mr Karamjit Singh, the Social Fund Commissioner for Northern Ireland, told us that there are potentially inconsistencies within the calendar year, because of the way in which budgets have to be allocated. Towards the beginning of the year an authority might be more cautious; towards the end of the year it might be less cautious about using up the budget.

What can be done to allow a bit more flexibility? It seems to me that some people are getting awards because of where they live and because of the time of year when they apply. If we cannot iron out the inconsistencies, surely there will be more appeals and second-tier reviews—and we have talked about the costs of that.

**Margaret Burgess:** There will always be differences between local authority areas. The scheme is a flexible one that allows local authorities to use discretion. I very much accept that in the first year local authorities exercised an element of caution as they looked at their budgets, particularly in the first six months of the scheme, because they anticipated that demand would increase. That meant that they had more money to distribute at the end of the year.

As the scheme goes on, authorities will learn about the peak points in their areas, when they are likely to get more applications—those points might come in the holidays and at Christmas, when family budgets are under strain. Authorities will be able to plan their spend over the year accordingly.

Under the previous DWP social fund, there were always local authorities who used up their budgets and could no longer pay out, while other authorities operated differently. I am not going to say that we can absolutely resolve the issue; I can say that we will look at a more needs-based approach as we go forward with the permanent scheme, to reduce the inconsistency that you are talking about.

It is important that we allow local authorities flexibility in how they operate the scheme. They know the issues in their areas and they will start to know when demand for awards might be high, for example if there is a problem to do with sanctions or if a factory shuts down at a certain time of year—as still happens in some parts of Scotland—and temporary staff are paid off. The ability to manage budgets to address demand at such periods is all part of the flexibility of the scheme.

**Kenneth Gibson:** In its report, the Finance Committee said:

“it is vital that administration of the fund is supported by the appropriate resource levels and that growth in demand for assistance be recognised.”

The budget has been stable over three years, but more and more people are getting to know about the fund and more and more people will apply for it, so pressure will increase. As pressure increases, all else being equal, only more serious cases will be awarded grants, which could lead to more appeals. What examination is the Scottish Government undertaking of how the fund is resourced over the long term, given the rising demands?

**Margaret Burgess:** As you will be aware, the Scottish Government can plan how much is going into the fund only in the current spending review period. There will always be a finite amount of money to spend on the Scottish welfare fund, but some of the other preventive things that the Government is doing will, we hope, reduce some of the demand on it. However, it follows that, if the demand for the fund grows and grows, we will have to consider how it is resourced.

Any Government considers its priorities and, if the fund reduces inequality and assists those who are in poverty, we will have to examine the amount of money that is in it. The Cabinet Secretary for Finance, Employment and Sustainable Growth has been clear about what has been set aside for the fund until the end of the spending review period, but it does not just stop there. As the fund goes on to a permanent footing, we have to consider whether there will be more demand on it and whether there will be more reviews, which will mean more money being paid out. The Government will monitor that continually.

**Kenneth Gibson:** Okay. Thank you, minister.

**Ken Macintosh:** Thank you for coming along, minister. The Government has made various statements at various stages about its approach to welfare, not only about treating people with dignity and respect but about rebuilding trust in the welfare system. Is that an aim of the bill, or is it simply a technical bill? I think that the policy objectives stated that it is simply a bill to put the interim SWF arrangements on a statutory footing.

**Margaret Burgess:** That is the high-level aim of the bill. The operation of the system will come out in the statutory guidance and regulations.

As you say, the high-level aim of the bill was not about principles; it was to mirror what the section 30 order under the Scotland Act 1998 said. The regulations and the guidance will set out how the system operates. That links to the principles that you talked about: dignity, treating people in local communities with respect and ensuring, as best we can, that people are not destitute. That is what the teams on the ground do every day.

**Ken Macintosh:** Does it mark a different approach to welfare from that pursued by the UK Government? The UK Government's Welfare Reform Act 2012 is intended to treat people with dignity and respect. Is there something different in the bill to which we should look and which marks a different approach to welfare?

**Margaret Burgess:** It is specifically about the Scottish welfare fund, which replaced the social fund, which the UK Government abolished. It is different from what is happening south of the border, where there is no national scheme like the welfare fund and some areas have no scheme at all.

The bill is about protecting vulnerable citizens, which is very much part of what the Scottish Government is about. The bill—initially, the section 30 order—was introduced to protect vulnerable people who were not being protected elsewhere in the UK.

**Ken Macintosh:** The Government's expert group on welfare made a number of welcome suggestions, including to empower people to take control of their own lives and offer them choice in the way that they receive benefits. Has that influenced your approach to whether to offer people cash or awards in kind under the bill?

**Margaret Burgess:** We are clear in the bill that how local authorities administer the fund that they get is up to them. Although, in some instances, cash is the solution, the committee heard a lot of evidence to show how much those who make an application to the fund appreciate goods.

I will be honest and say that I had reservations at the outset about providing goods and other methods of payment but, after speaking to users of the fund and social fund teams, I concluded that, in many instances, they are the solution for people.

However, I would say that the vast majority of crisis grants are paid out in cash, to address the crisis at the time. We are very clear in the guidance, and we will be looking at it again to ensure that there is absolutely no stigmatisation of people if local authorities decide to pay out by voucher and that there is a good reason for doing so.

12:00

**Ken Macintosh:** But ultimately it is the local authority's choice whether to pay out in cash. The Government is not saying that grants should be paid in cash or in kind; it is leaving the decision entirely to the local authority. You are not providing any guidance on that.

**Margaret Burgess:** We have guidance in terms of the expectation that crisis grants will be cash

payments, unless local authorities have the option to pay out in vouchers. We are consulting on the guidance. The formal consultation on the guidance and the regulations will be taking place very shortly, and that is one of the areas that we will be consulting on. We will be looking at the number of grants that are paid out currently in vouchers and the reasons why they are paid out in vouchers, and we will consult again those who use the service and get financial help from it.

**Ken Macintosh:** Can you clarify that? Can we expect the regulations to suggest that crisis payments should be made in cash?

**Margaret Burgess:** Sorry—I did not say that. I said that at the moment local authorities have the discretion to pay in cash or vouchers. That is in the draft regulations—I think I am correct in saying that.

**Ken Macintosh:** So you are not going to recommend cash.

**Margaret Burgess:** We will be consulting on the draft regulations and the guidance on when payments should be made in cash and the reasons why in most instances payments should be made in cash—they are at the moment.

**Ken Macintosh:** That is fine. They are at the moment because it is the local authority's choice. What I am asking is: does the Government have a view on whether the crisis payments should be made in cash?

**Margaret Burgess:** The Government has a view that the crisis payments should be made in the way that suits the individual when the local authority is administering the fund, as long as the individual is getting the best service and getting the help from the fund that they require. That is the view; that is why that flexibility is there.

**Ken Macintosh:** So payments should be made in the best way possible, but it is entirely up to local authorities whether that is in cash or vouchers.

**Margaret Burgess:** It is up to local authorities to pay out in kind or vouchers if they wish to do so. However, we have made it very clear that stigmatisation is an issue that has to be considered.

**Ken Macintosh:** Okay. I will move on to another issue. The old DWP system used to have a one-day deadline for turning around decisions. The interim arrangements for the new welfare fund appear to have a two-day deadline, but we have heard quite worrying evidence from recipients and the voluntary sector that that deadline is quite damaging. If people are in crisis, they need the money right there and then—they do not need a two-day turnaround.

**Margaret Burgess:** I think that the majority of local authorities and teams work to a one-day deadline if all the information is there. The evidence suggests that 67 or 68 per cent of all grants are paid out on the same day. You are absolutely right that if people are in crisis they should expect money as soon as possible. There is no presumption of a two-day deadline; the presumption is to get things done as quickly as possible, if all the information that local authorities require to make the decision is there. I am certainly willing to look at that again.

I would be reluctant to change things, as that might force local authorities to make rushed decisions. For example, if we say that things must be done in 24 hours, a rushed decision might be taken, and the case might end up in a review. We need to get the balance right, but we have to be clear that decisions should be made as soon as possible. If all the information is there, the decision should be made on the same day, and I have found that that is what has been happening when I have talked to the teams. I have found that decisions have taken longer when another piece of information is required but perhaps the applicant has not come forward with it so it is not there. However, in a crisis, the presumption is that it should be a same-day decision.

**Ken Macintosh:** I quote Connor C, who gave evidence last week:

“I totally agree with Lana”—

Lana having said that the limit should be one day—

“There is no way that it takes 48 hours for them to make the decision. I applied for a crisis grant, which meant I was in crisis. How could anyone expect me to wait 48 hours, knowing that I was in crisis?”—[*Official Report, Welfare Reform Committee, 28 October 2014 c 19.*]

Are you suggesting that it takes longer because the applicants are not providing information?

**Margaret Burgess:** No. The teams I have spoken to around the country have given me examples of where they have been knocking their socks off. The people who deliver the Scottish welfare fund are much closer to the community that they represent. They see the real issues that people face on a daily basis, whereas perhaps before there was not that kind of contact with people in the area. They make every effort to pay out as soon as possible.

I am willing to look at any evidence from the committee and at what its report says on whether the deadline should be reduced to 24 hours. I am not saying that it must stay at 48 hours. If evidence suggests that the system would operate better with a shorter deadline, without that causing rushed decisions, I am more than willing to look at that evidence.

**Ken Macintosh:** Let me clarify that. You say that local authorities are closer to the community. The DWP had a 24-hour deadline. It is the Scottish Government that introduced a 48-hour deadline. Why have you increased the amount of time taken, if local authorities are closer to the communities involved?

**Margaret Burgess:** We consulted widely on the guidance for the current interim scheme with this committee, all our stakeholders and previous users of the DWP’s scheme. The figure of 48 hours arose from that.

We are not asking local authorities to work to 48 hours; we are asking them to process claims in a crisis as soon as possible. In most instances, that is done on the same day. When we consult on the guidance, we will look at the deadline. If there is evidence that anyone is dragging their heels and stretching processing time to 48 hours when the decision can be taken in 24 hours, I am willing to look at it.

**Ken Macintosh:** Let me put it to you the other way. Is there anything to suggest that, when the DWP managed to do this within 24 hours, it was rushing its decisions?

**Margaret Burgess:** No. What I would say, based on my experience—the years that I worked to help people apply for crisis and budgeting loans from the DWP—is that on many occasions the decision was not made within 24 hours. The DWP often did not have all the information—not because someone deliberately did not provide it, but because something was missing off the form.

At least when Scottish welfare fund teams handle claims, they are proactive in trying to get any missing piece of information. In many cases, they phone and get the information, and then the decision is made. The DWP’s 24-hour deadline for decisions applied only once all the information was there. Sometimes such a decision could take three weeks because the DWP said that it did not have all the information. I am simply saying that that is not happening now. We are trying to get those decisions taken as quickly as possible. We and local authorities are working to a same-day deadline. Going forward, 48 hours is the maximum that we are looking at.

**Ken Macintosh:** You are suggesting that the Scottish Government, with a 48-hour deadline, is doing better than DWP, with a 24-hour deadline.

**Margaret Burgess:** I think that we are doing better in getting the awards out to people. I say that from personal experience of 20-odd years working in the advice sector and working with the DWP. We are doing it better.

**Ken Macintosh:** Thank you. I think we will follow up by finding statistics on how well the



Government is doing compared to the DWP. I am not sure that what you suggest is backed up by the official figures.

Why have you put in a provision suggesting that you want to outsource or privatise the service?

**Margaret Burgess:** The provision was put in because local authorities and COSLA felt that they required the flexibility. At the time, I thought that any outsourced work would be outsourced to the third sector or a social enterprise. That is what we were looking at. I know that the provision has engendered a lot of interest in the committee. I have looked at it again, and I am waiting to see what the stage 1 report says on the matter. The provision was put in because it was felt that the potential for outsourcing would provide flexibility. I assume that any outsourcing would be to the third sector and not to anywhere else. Indeed, I do not assume that work will be outsourced at all.

COSLA and local authorities wanted that provision in the bill, but I am not precious about it, and it does not have to remain in place. I will simply look at the evidence in that regard; I have followed the committee's discussions on the subject throughout the bill process.

**Ken Macintosh:** At present, the bill does not say that local authorities will have the power to outsource that work to the third sector or share it out among the public sector. The provision just mentions outsourcing.

Will you take this opportunity to rule out privatisation? Will you take that provision out of the bill?

**Margaret Burgess:** I certainly do not envisage privatisation taking place. I will look at the stage 1 report. I have never envisaged that the Scottish welfare fund would be privatised; that is not something that I would seek.

**Annabelle Ewing:** To pick up on a point that Ken Macintosh raised, I am looking at the *Official Report* of our meeting on 28 October, at which we heard from a lot of young people who were users of the system. It was a fantastic evidence session.

Mr Macintosh asked one of the young people whether she thought that the new system was more supportive than the old one, and she said that she thought that the new system, operated by local authorities, was indeed more supportive than the one operated by the Department for Work and Pensions.

On the subject of the 24-hour and 48-hour processing times, one issue that came up in last week's evidence session concerned the desire for and possibility of a face-to-face interview. Obviously, getting into that territory could impact on turnaround times and so on, and there are competing priorities. At present, what facility is

there—if any—for folk to have a face-to-face meeting? Some people feel much more comfortable with that.

**Margaret Burgess:** There is nothing at present that prevents a face-to-face interview from taking place. One of my colleagues may correct me on this, but I think that we said at the outset that local authorities had to offer two methods of receiving application forms. Am I correct?

**Callum Webster:** Yes.

**Margaret Burgess:** Some authorities take telephone and online applications, or applications from the third sector. There is nothing to prevent face-to-face contact, but that could slow the process down.

There is some evidence that the most vulnerable people are making their application with the assistance of another agency, so they have a face-to-face interview at that point.

You will never hear me say that I do not think that anybody should get a face-to-face interview. I believe that, if someone feels that one is required, the option should always be there.

**Annabelle Ewing:** That is encouraging to hear.

You made the point that a person may already have dealt with another service in the council, which brings me on to my second question. Some of the witnesses at the meeting last week felt that there were issues in that regard.

First, none of them had found out about the fund through the local authority. Secondly, some of them were already involved with other departments, and information was not being passed on. The witnesses accepted that there was a consent element in that respect; nonetheless, even if they consented, none of the information seemed to be passed on. It seemed that each department was working in isolation, and there was no joined-up working.

There would probably be an effect on administration costs if local authorities engaged in the preventative, joined-up holistic working that we all—including, I am sure, councils themselves—hope to see. That would presumably reduce administration costs.

**Margaret Burgess:** I do not know whether it would reduce administration costs, although it may well do. That point takes me back to my response to a previous question. There is very good communication flowing from social work Scottish welfare fund teams to other council departments, but I will look at—and bring to the practitioners group—the question whether there is communication coming back the other way.

It seems nonsensical that someone who is dealing with one department of the council has to

go elsewhere to find out about the Scottish welfare fund and then go back to the council to make an application. If something that should be happening is not happening, we will take that issue to the practitioners group.

12:15

**Annabelle Ewing:** That would be important, because addressing that issue would presumably assist in speeding up decision making in some cases. The council is already sitting on most of the information that it needs, but that information is not getting from department A to department B.

In the paper that the committee received just before the start of the meeting, one of the points that COSLA makes relates to furniture. It notes that it is receiving reports of

“around 20% more staffing resources deployed in dealing with”

the aspect of the fund that relates to the provision of furniture. As an example, it states that

“resources need to be deployed to manage supplier relationships”.

I would have thought that, in all councils, those relationships would already exist with respect to other council activities.

Again, perhaps a change in culture is required so that the council provides various services across the piece to its citizens as one entity. Departments should be actively working together. If a large council already has a managed supplier relationship, it would be difficult to see why such an increase in resource would be required simply to deal with the provision of some furniture under the welfare fund scheme.

**Margaret Burgess:** I will say two things in response to that. First, it is obviously up to the local authority to decide whether it wants to supply goods in that way. The committee has heard from many people that that is the way in which they want to get their goods under the Scottish welfare fund.

Secondly, I go back to what I said to Kenneth Gibson about drilling down into the figures that COSLA has come up with. Are the figures the same across every local authority, or is one local authority saying that it costs more? We need to look behind the figures and ask why it costs more when the council in question has probably been working with those organisations through its social work department or its housing department for many years.

**Alex Johnstone (North East Scotland) (Con):** Excuse me, minister, if I go over some things that we have discussed already, but I want to make a couple of points. The first concerns the issue of

local authority discretion. I am very supportive of that provision being in the bill, but the more I look at it, the more concerned I am that we need to know where the dividing line is between the virtue of diversity and the vice of inconsistency.

Are you confident that the structure that the bill will put in place is strong enough to allow that diversity to be part of the process without destabilising the scheme and leading to inconsistencies between one local authority and another?

**Margaret Burgess:** I think that we can arrive at that consistency and that the bill as it is structured can get us there. I appreciate that there is still a concern about consistency across local authority areas, and we have to look at that. We are trying to achieve consistency through the guidance and regulations that we are developing.

When the second-tier review process is in place and is effective, it will help to promote consistency. Good practice will be disseminated and decisions that are made will be binding on a local authority, so other local authorities can look at that process. As I understand it, the Scottish Public Services Ombudsman has set out clearly that it will be very transparent about how it will conduct reviews and what will happen.

That will all form part of the training so that we get a consistent approach across local authorities while still allowing them the flexibility that they need to operate the scheme effectively in their area.

**Alex Johnstone:** When Kenneth Gibson asked his questions, he went into the issue of how funds are divided between local authorities and how they may be divided in future. How do you envisage changes taking place over time? How do we avoid a situation in which a local authority that manages its funds less well is able to appeal for additional funds at the expense of authorities that manage their funds more appropriately? Can we be confident that that will not happen?

**Margaret Burgess:** As I said, we are moving into discussion with COSLA on implementing the permanent scheme by taking a needs-based approach. We will also look at how local authorities apply that approach to the scheme. It will not be a free-for-all: councils will not just be able to use up all their money in the first two months of the scheme and then apply for money, which would come from somewhere else. The scheme will have to be implemented on the basis of need, and we will have to discuss issues with COSLA, local authorities, social work teams and other stakeholders to produce a scheme that we are all confident will work and is based on need.

On speaking to local authorities about the scheme, I find that there is a real willingness to

work on it and make it work. The input of people working on the front line is critical, because they are the ones who deal with the issue daily. I think that we can come to an agreement on how it will operate. The Government will monitor the situation and as we approach the needs-based allocation I am sure that the committee will also not be slow in telling us if anything should go wrong.

**Alex Johnstone:** We touched on the subject of outsourcing. Do you see the outsourcing of the responsibility as one of the ways in which local authorities might work together? Smaller local authorities could pool resources across their boundaries and larger authorities that have a geographical or population synergy might also work together. Is outsourcing a means to enable that to happen?

**Margaret Burgess:** There is provision in the bill for local authorities to work together across boundaries without outsourcing. I will pass the question over to Stuart Foubister.

**Stuart Foubister:** There is specific provision in section 3 of the bill, which says:

“Two or more local authorities may make joint arrangements”.

**Alex Johnstone:** But would outsourcing be an option to enable that to happen? For example, there could be a joint contract involving more than one local authority and a single third sector organisation.

**Margaret Burgess:** The provision allows local authorities to work together to deliver the Scottish welfare fund, with one local authority taking the lead. Is that correct?

**Stuart Foubister:** There is a specific provision to allow a joint committee, but the powers to make joint arrangements are quite wide.

**Margaret Burgess:** That provision is there. Does Stuart Foubister want to comment further? The question is whether the provision allows for outsourcing to a third sector organisation.

**Stuart Foubister:** Outsourcing on a joint basis would be possible.

**Alex Johnstone:** I have a final point. Often the thing that seems most superficial or trivial is the one that causes individuals the biggest problem. The size of the application form that people are being asked to fill in is a problem that has been brought to our attention on a number of occasions. Do you envisage the change in the legislation providing an opportunity to remove complexity from the application process?

**Margaret Burgess:** I am more than happy to consider the application process. Most applications are made online; applicants do not have to fill in lots of pages. I appreciate that if

someone was using a paper form, the number of pages could be quite daunting and might prevent them from going through the process. I know that the forms are lengthy, but most people do not have to fill in every part, as only some parts are relevant to their application.

Having heard some of the evidence from people who have to use the form, I am willing to look at the issue. If we can simplify the form or take anything out of it, we will do so; we will consult on that when we consult on the guidance.

**Jamie Hepburn:** I want to return to the exchange you had with Ken Macintosh in relation to the 48-hour target for processing applications as opposed to the 24-hour target that the DWP operates. From what you said, it seems that it is fundamentally false to compare the two targets. I just want to clarify that you are saying that, under the DWP scheme, the 24-hour target kicks in only once the DWP has all the available information that it thinks necessary.

**Margaret Burgess:** That is correct.

**Jamie Hepburn:** Therefore, it is meaningless to compare the two targets if it takes a week for the DWP's 24-hour target to kick in. Would you argue that any comparison is fundamentally false?

**Margaret Burgess:** What I am saying is that in any application to the DWP, timescales are based on the point from which the team has all the information on the form—when the form is filled in and accordingly complete. In many instances, the team is not proactive in going to the applicant to get any missing information. The Scottish welfare fund teams are proactive: if a piece of information is missing, the teams go out to try and get that information from the applicant, a third party or another council department. Applications are being dealt with, and in that respect it is a better service for individual applicants.

**The Convener:** Okay. That concludes the committee's questions. Thank you, minister. We will go away and consider our report, and we look forward to your response to that. You and your officials have been very helpful in trying to clarify some of the points that have been raised. Thank you for your evidence.

12:25

*Meeting continued in private until 12:33.*



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