

Client experience of Social Security Scotland's redetermination and appeals process

Submission by VoiceAbility – 18 March 2024

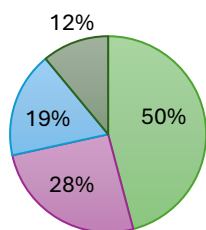
We welcome the opportunity to provide a written submission regarding the client experience of Social Security Scotland's re-determination and appeals process. This submission outlines the background to our service and the process for redetermination and appeals. It also highlights four key concerns that our clients, or as we call them our 'advocacy partners', have reported and makes recommendations for practical changes which could be introduced based on these reports.

Our submission is predominantly qualitative, based on feedback from our advocates. Due to confidentiality, we do not collect or assign names to those who have provided evidence to us as part of this submission.

Background: the independent advocacy benefits service

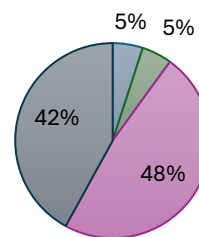
1. VoiceAbility is a voice and rights charity and one of the UK's largest providers of independent advocacy and involvement services. VoiceAbility has been supporting people to be heard in decisions about their health, care and wellbeing for over 40 years.
2. VoiceAbility has been working in Scotland since January 2022 as the national provider of the Social Security Independent Advocacy Service. VoiceAbility delivers free and independent advocacy support for disabled people across Scotland when they are applying for and accessing Social Security Scotland assistance.
3. Over 4,000 people – our advocacy partners – have so far been supported by independent advocates working in every health board in Scotland. Advocacy partners have multiple support needs. The four highest needs reported by our advocates are contained in figure 1, while the average ages of the people we support are contained in figure 2.

Support needs



■ Mental health ■ Long-term health conditions
■ Physical disability ■ Autistic spectrum diagnosis

Ages of advocacy partners



■ Undisclosed ■ aged 0 to 17
■ aged 18 to 49 ■ aged 50 or over

Figure 1: Support needs identified by advocacy partners

Figure 2: Ages of advocacy partners

4. Responding to a demand-led service, VoiceAbility has grown over the past two years from 16 to 41 advocates delivering across Scotland. We have nine volunteers, some of whom are about to finalise their volunteer training, who support advocacy partners with light-touch advocacy and community engagement work. We have contacted over 5,000 organisations and established referral routes with more than 150 organisations across Scotland.
5. VoiceAbility supports advocacy partners throughout the benefit application process, including for re-determinations and appeals. While we do not have figures available, advocacy partners are increasingly coming to us once they enter the re-determination and appeals process, having initially filled out the application forms without our support. We are grateful for the Committee’s inquiry into client experience of this process, for the issues set out below.

Process: Re-determinations, First-tier Tribunals and Upper Tribunals

6. When seeking to challenge a Social Security Scotland decision about a benefit application, an individual can ask Social Security Scotland to look at it again through a re-determination. Social Security Scotland will then look at the application as if it is a new application and will make a new decision. If an individual disagrees with the re-determination, they can appeal to the First-tier Tribunal (Social Security Chamber).
7. If an individual does not agree with a decision that the Tribunal has made, this can only be challenged if it can be shown that the Tribunal made an ‘error of law’ such as interpreting the law incorrectly or not following the correct procedure. A decision can be challenged by asking for a review of the First-tier Tribunal’s decision or applying for permission to appeal to the Upper Tribunal.
8. As of 12 March 2024:
 - a. **16.49%** of all VoiceAbility cases are requests for support with re-determinations - 794 cases - timescales average around four weeks.

- b. **2.7%** of all VoiceAbility cases are requests for support with First-tier Tribunal - 133 cases - timescales average around eight to 12 weeks.
- c. **<1%** of all VoiceAbility cases are requests for support with Upper Tribunal - four cases - timescales average around six weeks.

Client experience when seeking to challenge a Social Security Scotland decision

- 9. VoiceAbility advocates report that the client experience when faced with a re-determination and/or appeal has had issues. VoiceAbility requested a meeting with the Scottish Courts and Tribunals Service on March 6 2024 to discuss these matters, which can be highlighted as:
 - a. Automatic escalation of an award decision to an appeal if 56 days have passed
 - b. Lack of clarity about how Tribunal hearings are conducted and how an individual can participate
 - c. Difficulties experienced by people whose first language is not English.

a) Automatic escalation to appeal

- 10. It is a legal requirement of Social Security Scotland to inform individuals that the deadline for getting back to advocacy partners has reached its maximum limit. Consequently, if 56 days pass and Social Security Scotland has not delivered the decision on whether to award, a letter is sent out to inform the individual that they can move straight to appeal.
- 11. An individual does not need to go to appeal, and may wait for a decision, but it is not made clear to them in the communication provided. As a result, some of VoiceAbility's First-tier Tribunal cases are for advocacy partners who have been waiting for longer than the timescale on re-determination and whose cases have automatically transferred into a First-tier Tribunal.
- 12. As a result, we have seen the unusual case of an advocacy partner going to appeal, where the Panel awarded the benefit, later corrected by the subsequent Social Security Scotland decision which said not to award. We would welcome the Committee's inquiry into this practice.

b) Participation in Tribunals

- 13. It is possible to participate by video conference or by telephone; by paper; or rarely in person, for example where someone cannot use video conferencing or telephone. Advocates were not aware of the video conferencing option until the 6 March meeting with the Tribunal. We would support much greater communication of this to all advocacy partners who use the service.

c) Difficulties experienced by people whose first language is not English

- 14. Translation services are provided for individuals whose first language is not English, but it is not clear whether interpretation services are also available.

There is some feedback to suggest that those whose first language is not English are less successful in their applications than those who speak English. We would welcome improved information available to people whose first language is not English on their options for participation.

Recommended changes to Social Security Scotland's practice

15. Through our two years of providing advocacy support, we have seen instances of individual flaws or barriers within the application process, which raise the likelihood of a request for a re-determination/appeal.
16. **Improve access to telephone advice.** Applicants and advocates may wait for as long as two hours for a phone call to Social Security Scotland be answered.
17. **Clarify what self-identifying as disabled means.** While we believe that this has been developed in a well-intentioned way to ensure our service is accessible, as 'self-identification' is not a familiar term it can cause confusion. Some people have felt that self-identification means that there is no need to provide evidence of functional impairment in support of their claim, even if people do not need to provide evidence to VoiceAbility to access our support.
18. **Provide re-determination applications as a digital version.** Currently applicants are required to complete a hard copy version of the application. There is no digital version available to applicants, yet over half (55%) of our support is delivered remotely. Providing a digital version would enable people to complete the forms remotely, as opposed to printing and sharing documentation in person.
19. **Provide information on automatic escalation to an appeal.** Social Security Scotland must explain that an individual does not need to agree to the automatic escalation of an award decision to an appeal if 56 days have passed. An individual can wait for a decision to be made on the award. The escalation potentially reduces people's sense of agency in their claim and leads to the unusual situation described in paragraph 12.
20. **Communicate to individuals how long an appeal may take.** An appeal has to be lodged, validated and acknowledged and then goes on hold for 31 days. Current timetables suggest appeals made in March 2024 may be heard in June or July 2024. Advocacy partners need further clarity over the length of time for the appeal process.
21. **Clarity of the role of advocates at Appeal Hearings.** We have recently started to play a role in Appeal Hearings. Within current guidelines, advocates are classed as third-party representatives, who are able to support advocacy partners with a re-determination or appeal.¹ They assist with ensuring the advocacy partner understands the proceedings and can express their views.

¹ [Client-Representative-Guidelines-Part-7-Third-party-representatives.pdf \(socialsecurity.gov.scot\)](#) paras [3]-[4]

This necessitates being able to speak in hearings as an advocacy partner would be able to do.

22. There appears to be confusion over the legitimacy of advocates speaking at Tribunal panels. In some cases, advocates have been informed they do not have the right to speak, in others instances they have been able to speak. We would welcome clarity over the role of our advocates in panel hearings, especially where there is no legal advocate or representative present, to inform our further training for advocates in this situation.