



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 18 April 2024

Session 6



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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
11th Meeting 2024, Session 6

CONVENER

*Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Katy Clark (West Scotland) (Lab)
*John Mason (Glasgow Shettleston) (SNP)
*Roz McCall (Mid Scotland and Fife) (Con)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Paul O’Kane (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Iain Hunter (Scottish Government)
Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
**Social Justice and Social
 Security Committee**

Thursday 18 April 2024

[The Convener opened the meeting at 09:45]

**Decision on Taking Business in
 Private**

The Convener (Collette Stevenson): Welcome to the 11th meeting in 2024 of the Social Justice and Social Security Committee. We have no apologies today.

Our first item of business is a decision to take agenda items 5 and 6 in private. Are we agreed?

Members indicated agreement.

**Poverty and Inequality
 Commission Appointments**

09:46

The Convener: Our next agenda item is consideration of those nominated for appointment as the chair and eight commissioners to the Poverty and Inequality Commission. The Scottish Government has undertaken a competitive exercise and has identified the most suitable candidates. All have agreed to be nominated for appointment.

Under the Child Poverty (Scotland) Act 2017, the Parliament has a role in approving the Scottish Government's nominees. The committee has met the selection panel chair to hear about the appointment process and has had the chance to meet the recommended appointees. I now invite members to share their views, if anybody would like to do so.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Thank you for the opportunity, convener.

It was good to hear from those seeking to be commissioners and the new chair informally before this meeting. I have just a brief observation to make. I was struck by the diverse mix of candidates, who range from people in academia and policy research to people involved at the coalface of planning, service delivery, working daily on the ground with young people and families to tackle poverty and people with direct lived experience. We want our commissioners to have that diverse range of skills and experiences, to be a critical friend of Government and to be fiercely independent. From what I heard this morning, I am enthused by the candidates who will, I hope, take up those roles.

John Mason (Glasgow Shettleston) (SNP): I echo what Bob Doris has said. I was somewhat taken aback by how many people had applied to be the chair and commissioners; there seems to have been a very high level of applicants. I am also convinced that the process of sifting applicants down first to a short list and then to the final nominees—who, as Bob Doris has said, seem to cover a wide range of ground—has been thorough. Therefore, I am happy to go ahead with the appointments.

The Convener: Would anyone else like to come in?

Roz McCall (Mid Scotland and Fife) (Con): I echo the sentiments that have been expressed. We have heard today from people with a mix of backgrounds and skills, which is excellent. Professor Stephen Sinclair, the proposed chair,

commented that there will be some serious work to do, given that the child poverty delivery plan needs to be reassessed in the very near future—and certainly within the next two years—for delivery by 2030. We have a good mix of people who will work hard to deliver that, but it came across strongly that they will have to work to a specific timeframe.

The Convener: Thank you—that is lovely. As no one else wants to come in, I will just say that I whole-heartedly agree with all of you. It was heartening to hear about the number of people who had applied.

We have also heard from speaking to the selection chair how robust the process was. It is good to see a diverse range of nominees in the room and online with us today. Thank you all for your feedback.

Are members content for the committee to recommend to the Parliament that it approves the appointment of Professor Stephen Sinclair as chair of the commission?

Members indicated agreement.

The Convener: Are members content for the committee to recommend to the Parliament that it approve the appointment of Peter Cawston, Kim Dams, Taliah Drayak, Professor Suzanne Fitzpatrick, Paul Fletcher, Louise Hunter, Ross McQueenie and Rami Okasha as commissioners?

Members indicated agreement.

The Convener: Do members also agree to consider our draft report in private next week?

Members indicated agreement.

The Convener: I briefly suspend the meeting to allow for the next item of business to be set up.

09:50

Meeting suspended.

09:59

On resuming—

Social Security (Amendment) (Scotland) Bill: Stage 1

The Convener: Agenda item 3 is our last evidence-taking session on the Social Security (Amendment) (Scotland) Bill at stage 1. Today we will hear from the Scottish Government, and I welcome to the meeting Shirley-Anne Somerville, the Cabinet Secretary for Social Justice, and accompanying Scottish Government officials: Iain Hunter, the bill team leader, and Kayleigh Blair, from the legal directorate. Thank you all for joining us today.

I believe that, before we move to questions, the cabinet secretary would like to make an opening statement.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): Thank you very much and good morning, convener.

I begin by thanking everyone who has contributed to the development of the bill that we are here to talk about today. I am grateful for the productive contributions to the Parliament's scrutiny that have been provided by the evidence given so far by our engaged stakeholders on what can be technical and complex issues. It has added to the engagement that we have had through consultation, co-facilitated events and work with people on our experience and client panels.

We have listened to the points that have been raised by stakeholders and by the Delegated Powers and Law Reform Committee, and I am pleased to say that we intend to build on those points with a number of stage 2 amendments to improve the bill, including the introduction of new flexibilities for late applications in exceptional circumstances, further extension of the range of regulations scrutinised by the Scottish Commission on Social Security and a requirement for Scottish ministers to consult on categories that will be exempt from information requests as part of audits.

The bill will enhance the Scottish system of social security in line with our social security principles, which are set out in the Social Security (Scotland) Act 2018 and were supported by the entire Scottish Parliament. Those that are particularly relevant to the bill are that

“opportunities are to be sought to continuously improve the Scottish social security system in ways which ... put the needs of those who require assistance first”,

and that

“the Scottish social security system is to be efficient and deliver value for money”.

The bill represents an essential collective investment in a system from which we might all need help from time to time. It is expected to generate savings of around £2.8 million in its first year of implementation, followed by £3.5 million in recurring annual savings. The projected implementation costs are estimated to be between £10.1 million and £27.8 million, and that large range is a reflection of prudent overestimates, calculated in line with best practice for estimating project costs.

The bill is drafted in eight substantive parts related to the two principles that I mentioned, with parts 1, 2, 5 and 8 seeking to improve client experience, parts 6 and 7 focusing on delivering value for money and parts 3 and 4 speaking to both principles. Some parts of the bill seek to amend or repeal sections of the 2018 act, while others seek to create new provisions in it.

The bill aims, in particular, to introduce new rights for people; to save money by increasing efficiency and reducing unnecessary processes; to improve the scrutiny of social security; to take powers to improve existing benefits; and to introduce a power to create a new benefit for people with care experience. I am happy to work with committee members and, of course, our stakeholders to take forward the bill's important set of improvements.

I am happy to answer the committee's questions.

The Convener: Thank you very much for that opening statement, cabinet secretary. We will kick off with some questions.

I will start with theme 1, on new forms of benefit, which covers part 1 of the bill. Do you think that it would be beneficial for care experience assistance to be subject to the general statutory framework for social security, including the statutory principles, appeals, the take-up strategy, annual uprating and scrutiny by the SCOSS and the charter? If so, why not provide that in the bill, in keeping with most other forms of Scottish social security?

Shirley-Anne Somerville: I think that dignity, fairness and respect should be embedded not just in social security but in how we provide public services in general. Where that fits in the statutory setting should and very much does depend on the consultation that is moving forward on the care leaver payment. In the first instance, we intend to use the powers in the 2018 act to deliver that payment, but the details of the delivery vehicle for that proposed payment have yet to be determined and will be set out in further regulations.

Because of that, it is very important that we then have the space to work with stakeholders on how best to apply our principles. For example, the

Scottish welfare fund sits outside Social Security Scotland. When that was reviewed recently, stakeholders did not wish it to be delivered by Social Security Scotland and did not press for the types of statutory footing that are being talked about, which are already set out in the principles of the 2018 act.

At this point in our deliberations on the care leaver payment, it is important that we have the statutory footing to allow us to take the payment forward, but it is also important to leave the Government space to work with stakeholders on the regulations in detail, to see exactly what they would provide for. That is the right way to take forward the level of detail that you asked for in your question, convener.

The Convener: Thank you very much for that. I invite Roz McCall to ask a quick supplementary question.

Roz McCall: My question is not really on care experience assistance.

We took evidence from Michael Clancy of the Law Society of Scotland that, legally, to conform with the United Nations Convention on the Rights of the Child, the age of a child should increase to 18 and that the age limit for the Scottish child payment should be increased to that age, too. What is the Scottish Government's position on that, cabinet secretary? What response would you give Michael Clancy of the Law Society?

Shirley-Anne Somerville: This is an important point. The Scottish child payment is not available to young people over 16, but our education maintenance allowance is still available. It is not that payment and support are not available; it is just a different type of support. Nonetheless, support is available for young people between the ages of 16 and 18.

Roz McCall: I am sorry, but I just want to confirm this. Given that evidence, it sounds as though that might be a legal position. Has the Government looked at that, and is it minded to make that increase?

Shirley-Anne Somerville: At present, we have no plans to extend eligibility for the Scottish child payment to older children. Its purpose is to alleviate child poverty—that is an absolutely important principle of the Government—but, as I have said, there are other benefits, including the education maintenance allowance, that are available for young people who are over 16.

Jeremy Balfour (Lothian) (Con): Good morning, cabinet secretary, and good morning to your team. It is always good to have you here.

The committee has heard that, for benefits that must be claimed within a certain timeframe, it would be beneficial for claimants to be able to

make late applications in exceptional circumstances. The committee has also taken evidence on calls to extend provisions for backdating. What are your views on those two areas?

Shirley-Anne Somerville: We absolutely agree that social security should be as accessible and accommodating as possible. When facing exceptionally challenging personal circumstances, such as upheaval in the home, vulnerability, ill health and so on, clients might struggle to apply for assistance in a timely manner. That is an important point that the Government and the agency need to be cognisant of in implementation.

We are considering extending the flexibility that is available through the provision. We think that that is worth while, even if it helps only a handful of cases. After all, that handful of cases will involve people who are, potentially, exceptionally vulnerable and are in the most difficult of circumstances. I am therefore very content to take forward investigations at stage 2 on how we can move forward with that. As I said in my introductory remarks, it is important that we look at exceptional circumstances and see what can be done.

Jeremy Balfour: That is helpful. Are you willing to look at backdating, too?

Shirley-Anne Somerville: As with everything, and as I said in my opening remarks, I am keen for, and open to looking at, continuous improvement in social security. We set up this system from scratch; indeed, Jeremy Balfour was one of the people who, with the points that he made, assisted the Government at that time. We must always be open to looking at what needs to be done on certain issues.

We need to look at the system benefit by benefit to see what needs to be done. For example, there is already a level of backdating with some benefits, and there are other benefits for which eligibility is due because they are top-up benefits. I am very happy to take the issue away and consider whether further work can be done on that, but I would caution against any blanket approach that assumes that what works for one benefit will necessarily work for another, given the very different circumstances involved and the different types of benefits. I have asked officials to work with stakeholders to see whether anything can be done and taken forward on that.

The Convener: We will move on to theme 3, on challenging decisions.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, cabinet secretary and officials. Over the previous five weeks of evidence sessions, we have heard how confusing it is for people to access social security, and it has been

suggested that the same deadline for requesting a redetermination could apply across all benefits. What is your view on that, cabinet secretary?

Shirley-Anne Somerville: That follows on from the points that I made to Jeremy Balfour. There are very different types of benefits. When we move from a single-payment benefit, such as the young carer grant, or move forward with aspects of the Scottish child payment or disability payments, we see that they are all very different, and the same dates will not necessarily work for everything. However, as I have said, I am more than happy to see whether there is anything that can be done to assist, if there is any confusion.

It is clear that we developed social security in an iterative fashion—and quite rightly so. We dealt with things benefit by benefit. It is helpful at this point to have an opportunity to take a little bit of a step back and hear from clients with experience of going through the system and from representatives, such as citizens advice and welfare rights officers, about whether they are finding areas that are overly complex.

There might be very good reasons why the different dates are in place for clients to apply or for Social Security Scotland to undertake work. I give as an example the fact that the length of time that it will take the agency to carry out a redetermination for a single-payment benefit is very different from the time that it will take for, say, adult disability payments, for which a great deal of evidence and supporting information might have to be worked through. It is very important that there is no one-size-fits-all policy. There should be an openness from the Government and the agency to hear from clients with experience and people who have assisted them to see whether anything can be done to make the system easier.

As we have said from the start, one of the key things that we want to do with social security is to make it as simple as possible for people to apply for it and ensure that there are no barriers. That is very important. What we do about dates might be one small aspect of that, but it is an important aspect that we are happy to look at.

Marie McNair: It has been suggested to the committee that, instead of a process of redetermination then appeal, it would be simpler just to go straight to appeal. Any unnecessary appeals could be avoided by lapsing them where necessary. What are your views on that?

Shirley-Anne Somerville: I followed that line of evidence with great interest. Mr Balfour might remember that we had discussions about ensuring that people had a redetermination, because they found tribunals to be intimidating, and about the process being time consuming and more expensive for the public purse. As I have said, if,

on reflection at stage 2, we think that anything can be done, I am happy to look at that. However, as we have laid out, I think that there is enough opportunity for people to have redeterminations in a simple and timely manner and to allow that to be an important part of the process. We discussed the issue in great detail when the Social Security (Scotland) Bill was going through Parliament, and that is the reason why the process has been set out in the way that it has. I recognise that people have made certain points on the issue

I do not know whether my officials have any more details on the work in that respect.

10:15

Iain Hunter (Scottish Government): There are things that the committee might wish to consider in respect of doing away with the redetermination step and going straight to appeal, for example. We have to bear in mind what the cabinet secretary said about people's preferences, and there are also the resource demands on the Scottish Courts and Tribunals Service, which I know the committee will be speaking to next week. If we were to take out the redetermination step, as well as the issue of the individual's perspective—some people might prefer a redetermination to the more formal setting of a tribunal—there is also the question whether the Scottish Courts and Tribunals Service could handle that increase in tribunal numbers.

Marie McNair: Moving on to my final question, it has been suggested that the current legislation is too inflexible, because it requires appeals to be made on a specific form. That point was raised by Rights Advice Scotland, I think. What are your views on that?

Shirley-Anne Somerville: An easy-to-navigate form is automatically included with a redetermination notice. It can, of course, be completed online and so on. This is one of the aspects where we tried to make the process as easy as possible for a client and ensure that it is not opaque. We not only say that people can have a redetermination but set out how that can be done. It is an attempt to deal with the issue in a very open manner.

The form is also designed to collate all the information that the tribunal will require. Of course, clients can contact Social Security Scotland to talk about the completion of any forms, and people can be assisted in completing them.

I do not know whether you want to add anything to that, Iain.

Iain Hunter: The clearest way that I can explain it to the committee is that the provision in the legislation is not about requiring a specific form—a

paper form—as such; it is about the information that must be included for something to be treated as an application, rather than some blanket insistence on a certain form, such as a form B2. It is about the information that the agency requires to make a determination of entitlement, rather than a requirement to use form X or form Y.

Marie McNair: I think, however, that in the evidence session the other week Rights Advice Scotland told us that Social Security Scotland is not accepting the forms that advisers are putting in—it has to be a specific form. It would be great if you could take that issue back, so that we could get some resolution.

Shirley-Anne Somerville: I am happy to consider that further.

Marie McNair: Cheers.

The Convener: Moving on to theme 4, which is overpayments, I invite Jeremy Balfour to come in.

Jeremy Balfour: The committee has heard objections to individuals being liable for the good-faith errors of their representative. Can the cabinet secretary explain why someone should be liable for an error that was neither their fault nor something that a person might be expected to notice?

Shirley-Anne Somerville: That goes back to one of the principles that I discussed in my opening remarks, which is about ensuring that we run an effective system but always with the principles of dignity, fairness and respect underpinning it. We have a duty to steward those public funds responsibly, and a key part of that is about recovering assistance that has been paid out incorrectly, where it is reasonable to do so. That is the very important caveat, which I hope reassures Mr Balfour.

The decision about where to place liability hinges on two questions. Did the individual or their representative cause or contribute to the error, and was it the sort of error that a reasonable person would be expected to notice? If the answer to both those questions is no, neither the representative nor the individual will be considered liable. It is important that people are reassured that the system that we have in place is thorough and that it will look seriously at overpayments, but that it will not do so in a punitive manner when people have made genuine errors.

If the representative made an error in good faith but it was the sort of error that a person could reasonably have been expected to notice, that would mean that the benefit was paid out incorrectly. Therefore, it is important that the benefit is recovered, where possible. In our view, it is fairer to place the liability for the overpayment on whichever party benefited from it—there is an

important distinction between the person the benefit is for and their representative. In those circumstances, as in all cases in which there have been errors, we would look at the issues case by case.

It is important that the process has a statutory underpinning and that the guidance that the agency uses for that process is worked on together with stakeholders, so that those who represent vulnerable clients are reassured that the agency has in place safeguarding measures that ensure that the system is not punitive and does not seek to recoup overpayments in a way that is detrimental to the individual if they are in difficult financial circumstances. The agency will work with stakeholders on the operational guidance, which will include the safeguarding measures. It is important to have a strong and robust system and that we are respectful and cognisant of an individual's case or of the circumstances of the representative of the individual.

Jeremy Balfour: That is helpful. Clearly, we do not want to overcomplicate the system, but there are different types of representation. Sometimes, representation is made formally through a third sector charity and, sometimes, it is done by a family member or family friend. Would we draw a distinction between, for example, a citizens advice bureau making a representation and a neighbour helping someone? Could that be clearer in the guidance?

Shirley-Anne Somerville: We recognise from the evidence that stakeholders have concerns about that. Again, I want to provide them with the reassurance that we absolutely do not intend—in the bill or anywhere else—for professional advisers who act on clients' instructions, such as welfare rights officers or those who work in citizens advice bureaux, to be made liable for overpayments.

It is very important that we reassure stakeholders, which I am happy to do today, as well as see whether there is anything else that needs to be done to tighten up the provisions in the bill. At the moment, I am content with how we intend to go about that. A full list of the people who fall within the definition of a "representative" will be set out in the regulations. It is absolutely not the intention to pull those who give advice, such as welfare rights officers, into that definition. I am happy to work with stakeholders to make sure that the reassurance is in the regulations.

Jeremy Balfour: Several witnesses are concerned that, in many situations, such as shared household finances, it would be difficult in practice to identify whether funds had been misused. How will such decisions be made?

Shirley-Anne Somerville: I will bring in my colleague to answer that.

Iain Hunter: It is important to acknowledge that, in the vast majority of cases, we expect that appointees who help people with their benefit applications act appropriately, which goes back to what the cabinet secretary has said. Therefore, Social Security Scotland will proceed from the assumption that the representative has acted properly and that any overpayment should be recovered from the client, because they will have benefited from the overpayment. The alternative here is that clients who require someone to act on their behalf in connection with their application for benefits are strictly liable for everything that that appointee might do. Although I accept that, in the vast majority of cases, the representative will behave appropriately, they might not always do that. Therefore, I do not think that it is right that a person who requires an appointee should necessarily be liable for money that they did not benefit from.

I refer to comments in the evidence from the ALLIANCE, which noted that social security legislation is not, on its own, enough to tackle financial abuse. In its view, the bill allows us to ensure that the

"consequences of the abuse fall on the person who is responsible for it in the first place."—[*Official Report, Social Justice and Social Security Committee*, 14 March; c 13.]

In the rare cases in which Social Security Scotland becomes aware that funds are being misused, it would be able to apportion liability appropriately for those funds on that basis of that information. That would happen in practice only when that was brought to the attention of the agency, which would also raise other important questions about the appropriateness of that appointee.

The Convener: We move to theme 5, which is about appointees, and I invite Paul O'Kane to speak.

Paul O'Kane (West Scotland) (Lab): Good morning, cabinet secretary and officials.

We have had a number of meetings on appointees, and we have heard some evidence about the interaction between the Department for Work and Pensions system and that of Social Security Scotland and about the reciprocal arrangements for recognising appointees. We know that Social Security Scotland already recognises DWP appointees as part of the transfer process that is under way, but, because witnesses have spoken about that, it would be useful to know how we can better streamline processes, so that that recognition happens more easily and continues to happen in the future and so that

someone who is recognised in one system is also recognised in the Scottish system.

Cabinet secretary, would you like to make a general comment on that? We can then see if there are any follow-up questions.

Shirley-Anne Somerville: It is important that we share information with the DWP when that is in the best interests of the client and when due process is followed. There are back-office systems to facilitate the sharing of information both for the case transfers that you mentioned and for new applications.

The powers in the bill will allow the speedy payment of a benefit if an appointee is already in place with the DWP, but it is important that the agency then goes through its own process, because the system that we have established in Scotland includes more checks than the DWP system. If we simply accepted a DWP appointee and did not have our own processes in place, that would, in effect, go against something that we deliberated long and hard about in 2018, which was the level of assurance that we would need to have about appointees, and we would have a less rigorous system.

In essence, it would be easier not to have two processes. However—noting that we, quite rightly, would not expect the DWP to change its system to match ours because it is perfectly entitled to make its own decisions—that would require our agency to reduce the number of checks that we have in place at the moment, when the level of checks for appointees has previously been discussed and agreed.

On that basis, and because I hope we still agree that we have the correct level of checks in Scotland, we must ensure that we have the powers in the bill to recognise the DWP appointee and then move speedily to the checks that the agency would need to carry out, so that we can move forward on the basis of the Scottish system.

I hope that that explanation of why we have two different levels of checks in the two departments makes sense.

Paul O’Kane: We are not starting from scratch, because information is shared, but it is useful to understand that extra process at Social Security Scotland.

For the record, and for those of us who were not here when the bill was introduced, do you want to say what some of the additional checks are?

Shirley-Anne Somerville: I am happy to provide more detail in writing, but, for example, the bill requires the agency to speak to both the client and the appointee, when that is possible—we appreciate that it might not be possible to speak to both in the case of some disabilities or conditions.

We have local delivery teams that can go out on visits to make those checks, which is different from what happens in England.

We can provide a full comparison by correspondence, if that would assist members.

Paul O’Kane: Thank you.

The Convener: We will move on to theme 6, which is information for audit. I invite John Mason to speak.

10:30

John Mason: Cabinet secretary, you might have picked up the feeling about audit from the evidence that we have taken. The overall feeling is that although, on the whole, we have introduced a social security system in Scotland that is considerably more caring, adaptable and flexible than that which was previously seen at the UK level, when it comes to the audit, some of the expectations seem to be quite harsh. Could you comment on that, to start with?

Shirley-Anne Somerville: We have taken that issue really seriously, as I have looked at the evidence. I will continue to repeat the point that we have to do everything on the basis of dignity, fairness and respect. That includes how we do our audit.

Audit is exceptionally important because of our requirement to ensure—quite rightly—that we are using public funds correctly. For example, I point to Audit Scotland’s evidence, which rightly establishes that the agency has in place the correct audit functions.

We have looked very carefully at the options around audit. We have not gone for a complete replica of what the DWP does, for example, although we did look at that, because there are lessons to learn from systems that are currently in place.

I suppose that I would say, in answer to one of the overarching concerns that people have about the requirement, that we are talking about audit, not about tackling fraud. In an audit, one might see information about a case that could lead to a concern that there might be fraud. I suggest that, if the audit system was entirely voluntary, someone who was committing fraud would not volunteer to be audited under that system. On that basis, there would be a self-selected sample of people, which would not give the agency the ability to carry out a full audit process.

We looked at different ways in which that could be done. We undertook a desk-based review of a random sample of cases with voluntary interviews. I hope that I have shown Mr Mason the slight difficulty with that. We also did a desk-based

review of a random sample of cases and followed that up with mandatory interviews.

I want to reassure members about what happens in the audit process, which is where the important safeguarding measures come into play. We do not just take away a person's benefit if they do not engage; we ensure that we work with the client so that they understand the importance of the audit process, which is done in a supportive fashion.

I hope that that gives you a high-level explanation of why we have come to the decisions that we have made and why I went through the process that I had to go through with the detailed suggestions that we have made. If there are particular points that you want to pick up on, I am happy to do so, or I will bring in my colleagues.

John Mason: I accept that it is difficult. We are trying to strike a balance and not go to the extreme either of being too harsh or of being too easy going.

I wonder about the purpose of the audit. Audit was part of my training. If I was auditing Marks and Spencer, I would go in there and look at its systems, and if I found that it had been selling shirts for the wrong price, I would tick it off and that would go in the audit report. However, I would not go to the customer and ask them to give me the extra £10 that they did not pay for that shirt. If the purpose is to audit how Social Security Scotland is doing, that is fine—let us do that. However, it seems just to move on.

I would like some reassurance that what I describe is not going to happen. It seems to be a bit harsh that someone who has been through a bad experience in the first place would have their benefits cut simply because they had not engaged. As we have heard, some people will have been through a process of appealing to get the benefits that they are due. If it is simply the case that they have not responded and have done nothing wrong—or rather, that we do not know that they have done anything wrong—it would seem to be a bit harsh for them to have their benefits cut.

Shirley-Anne Somerville: I hope to reassure you on that point. It is important that we audit. One of the reasons for that is to ensure that correct decisions are made. It is important to ensure that the system is not overly generous—that it gives clients the maximum that they are entitled to, but not more than that. Audit is an exceptionally important part of that process, which is why it is important to have that connection with the individual.

With regard to safeguarding, any individual who takes part in the process will be told at the outset that they have the right to support and will be signposted to it. Importantly, individuals can ask to

have a request withdrawn if they think that they have good reason to do that. I am happy to work with stakeholders on what such reasons might be.

We are keen to work with stakeholders to find out what types of safeguarding measures they think should be in place in the event that a request is not withdrawn and the individual does not respond. I reassure you that it will not be the case that one letter will be sent out and, if the recipient does not respond within a short time period, they will have had it and their benefit will be stopped. Nobody will have their benefit stopped. Payment might be suspended, but that is very different from its being stopped.

We are keen to ensure that the agency continues to make contact with individuals. If the attempts to contact a person have not succeeded and they have still not contacted the agency, they will have the right to challenge a suspension, and will be signposted to that. We are not talking about an absolute hard stopping of a benefit—it is a suspension. In addition, suspended assistance will be backdated if the person subsequently responds to a request.

We will continue to work with the client to obtain from them the information that we require for an audit, but we will do so in a very supportive fashion. We are trying to ensure that we have a full audit process but one that provides enough safety nets, enough safeguarding and enough support to ensure that we do not get into a position in which the payments to someone who has faced, or is going through, very difficult circumstances are affected.

However, if it is not a voluntary scheme—I have explained the severe difficulties with that—we need some sort of process in place that requires an individual to take part.

We are looking at the balance. I am very happy to work with stakeholders, because I recognise that this is an area of concern and that people could fall through the safety net. I would like to work with stakeholders who have raised concerns to see what more we can do—not necessarily in the bill, but in the guidance and through the agency's implementation—to build in the types of safeguarding measures that people would rightly expect us to have.

John Mason: That was a very full and helpful answer.

Am I right in thinking that part 6 of the bill was not consulted on when the bill was being prepared?

Shirley-Anne Somerville: Part 6 did not form part of the full consultation, but we have tried to consult stakeholders who will be most impacted by what is proposed or who have the most obvious

relation with clients who will be impacted. There has been targeted consultation, but it did not form part of the full public consultation on the bill.

John Mason: Did you say in your opening statement that you are open to, or are thinking about, stage 2 amendments in that regard? Did I pick that up correctly?

Shirley-Anne Somerville: I am very happy to consider amendments, but it is important to consider what should be in guidance rather than in the bill. We will look at what more can be done. To provide reassurance, I note that we have undertaken to lodge a stage 2 amendment that will require a public consultation prior to the exercise of the regulation-making powers. That will allow us to look at the groups that should be exempt from the audit requirements. We are making a genuine attempt to build in safeguarding measures. We are taking time to get this right by consulting and working with stakeholders who, for example, will be exempt from the audit process. It is quite right that some people should be exempt from the process, but it cannot be fully voluntary.

John Mason: Thank you.

The Convener: We will move to theme 7, which is compensation recovery.

Bob Doris: In England and Wales, the Department for Work and Pensions already has a system of compensation recovery. For those who are not aware of that system, I note that if a person receives benefits as a direct result of injury, accident or disease but later gets compensation, the compensator must reimburse the DWP for those benefits. I welcome the fact that a similar system will be put in place in Scotland through the bill that we are scrutinising.

The bill will make it a criminal offence for the compensator not to comply with those requirements, but the power to make that a criminal offence will be in regulations—secondary legislation—not in the bill. That was of significant concern to the Delegated Powers and Law Reform Committee, because that is not the normal way in which such matters are conducted. Why did the Scottish Government not take the option of putting that power in the bill?

Shirley-Anne Somerville: I think that I said this in my opening statement but, if I did not, I record my thanks to the DPLR Committee for its diligence, as always, on the bill, and in particular on the issue that Bob Doris has raised.

I hope that I can alleviate the concerns that have been raised. It is vital that, when offences are created in legislation, the terms of each offence are clear and properly understood by those who might find themselves accused of committing the offences. To that end, it is our

intention to carry out in-depth engagement with all relevant stakeholders, including from the insurance industry, before we clearly lay out the details of such offences in regulations.

One of the reasons for the approach that we have taken is that we want to ensure that there is further on-going consultation with those who will be directly impacted by the offences in the bill. We intend to ensure that the details of the offences that will be created align with the investigatory provisions, which will also be in secondary legislation and will apply appropriately to corporate bodies. We must ensure that the various regulations link up, are compatible with one another and are coherent. Of course, the Parliament will have the opportunity to reject the regulations if it does not appreciate what comes forward.

The approach that we are taking is not unprecedented. A similar power was taken to make provision about offences that are already contained in the 2018 act, so the approach follows on from that which was taken in that legislation in relation to offences.

Bob Doris: That is helpful. I am not suggesting that the approach has not been taken in the past, but the DPLR Committee looks at such matters weekly across all Government legislation and has said that what is being done stands out as an outlier when compared with the approach that the Government normally takes. We echo some of the concerns.

Has work taken place to flesh out what should be in the bill if the Parliament decides that it wants such provisions to be included? I am open minded either way.

10:45

Shirley-Anne Somerville: Importantly, consultation has not taken place to the level that we would want nor, I think, that stakeholders would wish for. Of course they will, rightly, speak for themselves on the issue, but, at this point, I would feel much more comfortable with that consultation being undertaken rather than the provisions being in the bill.

Bob Doris: We will have to reflect on that. Given what you have just said, secondary legislation might be the most appropriate vehicle. Can you confirm the level of parliamentary scrutiny for secondary legislation? Will negative, affirmative or superaffirmative procedure be used, given that the provisions might not be in the bill?

Shirley-Anne Somerville: We are just checking. My belief is that affirmative procedure will be used, but I want to make absolutely certain of that. If it is not, we can make it affirmative.

Bob Doris: My goodness, cabinet secretary. Do you mean that I have got the Government to move within seconds, if it is not affirmative? That is a first.

Shirley-Anne Somerville: We can certainly check that, Mr Doris, in case the assumption that I am working on is incorrect.

Bob Doris: Okay, you can let—

Shirley-Anne Somerville: You can claim it as a win either way. *[Laughter.]*

Bob Doris: I am not really that bothered, cabinet secretary, but if you can write to us just to confirm, that would be helpful.

We heard that there could be a little uncertainty in relation to the appeal routes for recovery of Social Security Scotland and DWP benefits. There was an understanding that there could be a separate Scottish system, as opposed to a partnership agreement or an agency agreement with DWP. It would be helpful if you could clarify what that process will look like and whether you intend to have a partnership or agency agreement or do otherwise.

Shirley-Anne Somerville: It is our intention to create a recovery scheme that is consistent with the approach that has been undertaken in the rest of the UK, which is of long standing and has been agreed with stakeholders. Well, not entirely, actually; I will caveat that. I am not sure that what the DWP went through was agreed by stakeholders, but it is certainly understood by stakeholders. I therefore do not see a reason for change from that and am happy to reassure stakeholders that there will be consistency.

We want consistency because we want to reduce complexity and uncertainty. That is an important aspect. Sometimes, change and difference are necessary and sometimes they are not; I do not see such a necessity in this case.

Bob Doris: To double check, does that mean that the system might mirror the DWP route but that there will not necessarily be an agency agreement?

Shirley-Anne Somerville: Our intention is to work with the DWP on an agency agreement. That does not have to be what happens in the long term, but that is our intention at this point.

Bob Doris: That was the clarity that witnesses wanted, so they will welcome that. Convener, my other questions are not related to this theme, and I do not know whether there is any time for them.

The Convener: We will go through the other themes and, if we have time in hand, I will come back to you.

Shirley-Anne Somerville: Convener, with your indulgence, I will just say that the regulations that we were talking about will be subject to affirmative procedure.

Bob Doris: I will follow up on that very briefly, convener. Again, we will have to reflect on whether that is the right level of parliamentary scrutiny. I put on the record that I was not suggesting that that would be the right level of scrutiny; I just wanted to know what the level of scrutiny would be.

The Convener: We move to theme 8, which is the Scottish Commission on Social Security. I invite Roz McCall to speak.

Roz McCall: I should have said hello to the cabinet secretary on my first question, so I apologise for not welcoming her to the committee with the team.

In its written submission, the Child Poverty Action Group pointed out that the bill includes a large number of new regulation-making powers that are not added to SCOSS's remit. It says:

“All should be subject to statutory scrutiny by SCOSS.”

Why does the Scottish Government consider that SCOSS scrutiny is not necessary specifically for compensation recovery or information for audit?

Shirley-Anne Somerville: As I mentioned in my opening remarks, I am more than happy to lodge amendments at stage 2 to extend the role of SCOSS in relation to some of the regulations that we have talked about today. I absolutely recognise and am greatly appreciative of the role that SCOSS has played from day 1 in considering regulations, so I am keen to ensure that its role is expanded, changed and developed as the system for social security moves on.

The committee will be aware that there was recently an independent review of the SCOSS governance arrangements, which identified some changes to ensure that SCOSS is resilient and fit for purpose. The bill looks at implementing the recommendations of that, but I am happy to consider lodging stage 2 amendments to bring more powers into the bill in relation to the scope of formal SCOSS scrutiny, following the stakeholder contributions at stage 1 and a recent letter that I received from the SCOSS board. I am working with officials on all the details of what has come through from SCOSS—as I say, it came through very recently. I will go through that in detail with my officials.

We intend to move forward at stage 2, and I will bring forward aspects around the care experience assistance and other areas that I mentioned earlier.

Roz McCall: I look forward to seeing those amendments. Thank you.

The Convener: Katy Clark has a question on our final theme, which is on the financial memorandum.

Katy Clark (West Scotland) (Lab): Good morning. One aim of the bill is value for money. Compensation recovery could cost up to £5.1 million per year, and estimated income is up to £5.5 million a year. What is the financial justification for bringing in compensation recovery?

Shirley-Anne Somerville: First, it is an important principle that we should have that in our system. As I suggested in my opening remarks, recovery of compensation is a very specialised function, so, as we have drawn the financial memorandum together, we have looked at what happens in Northern Ireland and other systems and have attempted to compare that, as best we can, with what a Scottish system would look like. That has led to a wide range of estimated implementation and running costs. It is important that, as we are required to do, we consider the overestimations that are built into delivery and that we produce the financial memorandum on that basis.

The detailed analysis of the requirements that will be necessary to carry out the function that includes working with the DWP will allow us to have a much more accurate account of the costs once that work has been undertaken with the DWP. We would be happy to provide the committee with further information on that should the bill become an act and we move forward with the compensation scheme. However, I point out that it is also important to bear in mind that the delivery of that function is an important function of a social security system.

The Convener: Bob Doris and Jeremy Balfour want to ask some supplementary questions, and then we will conclude our business.

Bob Doris: My question follows on from Marie McNair's earlier question and is about whether the redetermination process should remain or whether individuals who are appealing should go straight to the Scottish Courts and Tribunals Service. It is fair to say that we had conflicting evidence from third sector and advice groups on that. Some people thought that it was vital that the redetermination process stayed and others thought that it got in the way. The sector was not speaking with one voice on the issue.

I was wondering, however, whether redeterminations could be run in tandem with the tribunals service. Let me say what I mean by that. If there were no redeterminations and if things went straight to a tribunal, I think that, pretty quickly, Social Security Scotland would do a very

quick review of any application to ensure that it got it right in the first place and a lot of applications to the tribunal would never get there anyway.

Is it possible to have a hybrid system, and might the Government think about that? I am not saying that that idea is well thought out or that there are not lots of potential unintended consequences, but we are progressing this proposed legislation and I was wondering whether a hybrid system is possible. Is that something that the Government could consider?

Shirley-Anne Somerville: I see where the member is coming from on that. However, if you are running two systems at the same time, you are still running and therefore paying for two systems. As for what you are not getting, I would point to the difference between a review and a redetermination. Under one of the important aspects that we brought in with Social Security Scotland, a redetermination is not just about checking for errors in the original decision; it involves taking a fresh look at the entire case. The member is suggesting introducing something that we do not do within the system, involving a review process that is not as thorough as a redetermination. A review is more like what happens with DWP sessions at the moment and, as we discussed when the Social Security (Scotland) Bill was going through, there are downsides to that way of working. That is why we have something very different under the 2018 act, which is a full redetermination involving a look at the entire case with an entirely different team to ensure that the case is examined with a fresh pair of eyes.

I would caution that there are downsides to such proposals, both to the public purse and in terms of what the individual would be getting. That is why my initial response to that idea, working through it as I am speaking, is hesitancy about such an approach.

Bob Doris: I would not expect anything less. The reason for asking that question was to draw attention to the fact that the sector does not speak with one voice about what the best system should look like. The Government can perhaps reflect on that to see whether improvements can be made. Parts of the sector say that redeterminations get in the way, while other parts say that they are really important. We want to ensure that all people are serviced appropriately by whatever system we have in place.

Shirley-Anne Somerville: That is such an important point. I go back to the issue of continuous improvement, which I have mentioned a few times now. We are now working through the processes, although they are still very small in number, given the number of cases involving redeterminations and appeals. I appreciate that

the committee is examining those issues in other evidence sessions; I believe that you have the agency and the tribunals service coming before you next week. We, too, will look to continuously improve what the system looks like—whether that has to be done through a bill or whether it is about practices, and I am sure that, if it wishes to do so, the committee will investigate that with the agency in relation to operational matters.

Jeremy Balfour: This is an opportunity to reflect on how things have gone over the past five or six years. There seems, from some of the evidence that we have taken, to be some concern around the information that Social Security Scotland is recording and our ability to monitor that. Do you think that that should be included in the bill, with more of a statutory duty for information to be recorded, so that we can see how that is going? There is quite a lot of evidence that that is not happening at the moment.

Shirley-Anne Somerville: I do not think that that needs to be included in the bill. There is a requirement for flexibility, and needs will change. Looking way into the future, when we have all moved on to other things, we would perhaps be obligating the agency to collect information by statute that it does not necessarily want to collect. Say, for instance, we entirely changed a benefit but we still had something in legislation requiring the agency to collect information. That would be quite a blunt instrument.

What is behind your questioning is the fact that we need to ensure that we are gathering the right information, and I accept that that is correct. We are developing that process with the agency, which I know is keen to have systems in place to allow the collecting of more management information for its own benefit and, therefore, that of the client.

I do not think that that needs to be in the bill, partly because of that inflexibility but also because you are pushing at an open door, Mr Balfour—indeed, we all agree that more needs to be collected, and I am always happy to have suggestions from the committee about where that might be.

I often have discussions with the chief executive and the senior team on the level of management information that we have and what it is possible to publish to allow full transparency. I sometimes have frustrations that, at this point, we cannot publish as much as I would like in order to be able to demonstrate how well the system is going.

11:00

Jeremy Balfour: Thank you. I will reflect on those comments.

We took some evidence in regard to First-tier Tribunal for Scotland hearings which, as you will remember, we looked at quite carefully. The question of whether tribunals would be held face to face or done on paper was very much meant to be client led. Interestingly, a freedom of information request came back just a couple of days ago that said that there had been only one in-person tribunal in the whole of Scotland in the past year. We have heard evidence that people are finding it difficult to get a face-to-face tribunal. It is in the 2018 act that that should be the person's choice, but if it is not happening in practice, do we need to strengthen the legislation to ensure that people are getting what they want? I do not mean that they should be forced to go in person but that, if they want to go, that is an absolute right. Can we strengthen that in the legislation?

Shirley-Anne Somerville: I am happy to reflect on that. I will perhaps direct you to those people from the tribunals service who are coming to give you evidence—it is perhaps a matter for them rather than for the Government. I hear what you are saying, Mr Balfour, and that you feel that that is a concern. I am happy to reflect on the question that you have given me and to listen carefully to, and reflect on, next week's evidence if that is something that you bring up again, as I presume that it is. However, I think that that is an issue for the tribunals service rather than the Government.

The Convener: Thank you, cabinet secretary and officials. That concludes the evidence session and our public business for today. The committee will now consider all the evidence that was received at stage 1 and will report its findings in May.

11:03

Meeting continued in private until 11:25.

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