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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**10th Meeting, 2024 (Session 6), Thursday,
28 March**

Client experience of Social Security Scotland's re-determination and appeals process

Introduction

This stakeholder session will consider the client experience of challenging Social Security Scotland decisions through redeterminations and appeals.

The Committee will hear from:

- Erica Young, Policy Officer, Citizens Advice Scotland (CAS)
- Richard Gass, Chair, Rights Advice Scotland
- Kirsty McKechnie, Child Poverty Action Group (CPAG)

At time of writing submissions have been received from CAS and Voiceability although Voiceability are unable to attend today. CPAG also sent the Committee further information following an evidence session on the Social Security (Amendment) (Scotland) Bill which is relevant to this evidence session.

Today's session is intended to allow a wider discussion about the client experience of redeterminations and appeals – going beyond the proposals in the Bill.

This paper provides background on redeterminations, appeals and reviews before suggesting three themes for discussion from p.13 onwards.

Background

If a client is unhappy with a decision about their benefit entitlement, they must first ask for a redetermination. The decision is then re-made by Social Security Scotland. Clients can then appeal to the First-tier Tribunal, and onwards up to, eventually, the Supreme Court. Most redeterminations and appeals are about Adult Disability Payment.

The benefits which can be redetermined and appealed are: Adult Disability Payment, Child Disability Payment, Carer Support Payment, Scottish Child Payment, Best Start Grant, Young Carer Grant, Winter Heating Payment and Child Winter Heating Payment.

The benefits which can't be redetermined or appealed are: Carer's Allowance Supplement, Best Start Foods and Job Start Payment. Best Start Foods and Job Start Payment can be reviewed. [To get a review, clients can phone Social Security Scotland.](#)

Information on how to challenge a Social Security Scotland decision is available at: <https://www.mygov.scot/browse/benefits/after-you-apply>

Redeterminations

In a redetermination, the benefit decision is re-made by a different case officer at Social Security Scotland.

Key points are set out below, taken from [guidance on redeterminations for Child Disability Payment](#) and [Adult Disability Payment](#).

Requesting a redetermination

Redeterminations can be requested by either:

- completing the redetermination request form included with the determination letter (pre-paid envelope provided)
- phoning Social Security Scotland

A redetermination form can also be downloaded from: <https://www.mygov.scot/request-redetermination-paper-form>

The form asks clients why they disagree with the decision and whether they have extra information to provide. Clients can provide additional information about what their circumstances were which may suggest a different determination ought to have been made. Extra information can be sent by post (pre-paid envelope) or clients can request help to find the extra information.

The deadline to request a redetermination is 42 days for some benefits (e.g. Adult Disability Payment) and 31 days for others (e.g. Scottish Child Payment).

Late requests can be accepted up to one year after the determination with 'good reason'. Examples of 'good reason' are:

- a hospital stay
- delays in being able to support required to make the redetermination request.

The Social Security (Amendment) (Scotland) Bill, currently being considered by the Committee, would enable requests for redetermination to be accepted after one year in exceptional circumstances.

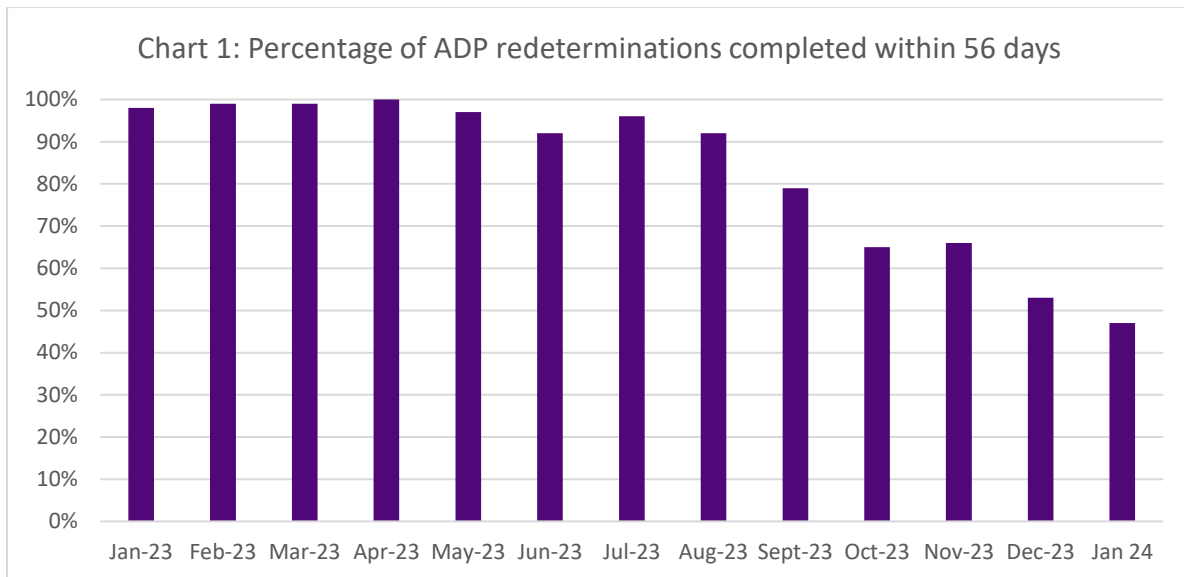
To be a valid request, it must be in the form required and made within the deadline.

If Social Security Scotland decide that there is no 'good reason', or if the request is 'invalid', then the client can make a 'process appeal' to the First-tier Tribunal. (See below under Appeals).

Completing the redetermination

Redeterminations are processed within the Client Experiences Team at Social Security Scotland who 're-make' the decision based on the client's circumstances at the time of the initial application. This will take into account any new information provided. Because it is an entirely new decision, it's possible that the outcome may be less or more advantageous to the client or stay the same.

Social Security Scotland has 56 days or 16 working days to complete a redetermination, depending on the benefit. If they miss this deadline the client can lodge an appeal. The chart below shows that since September, fewer Adult Disability Payment (ADP) redeterminations have met that deadline. This trend is not evident for other benefits. Over 90% of Child Disability Payment (CDP) and Best Start Grant (BSG) redeterminations are completed within the deadline. In most months, over 90% of Scottish Child Payment (SCP), Young Carer Grant (YCG) and Funeral Support Payment (FSP) redeterminations are completed within the deadline.



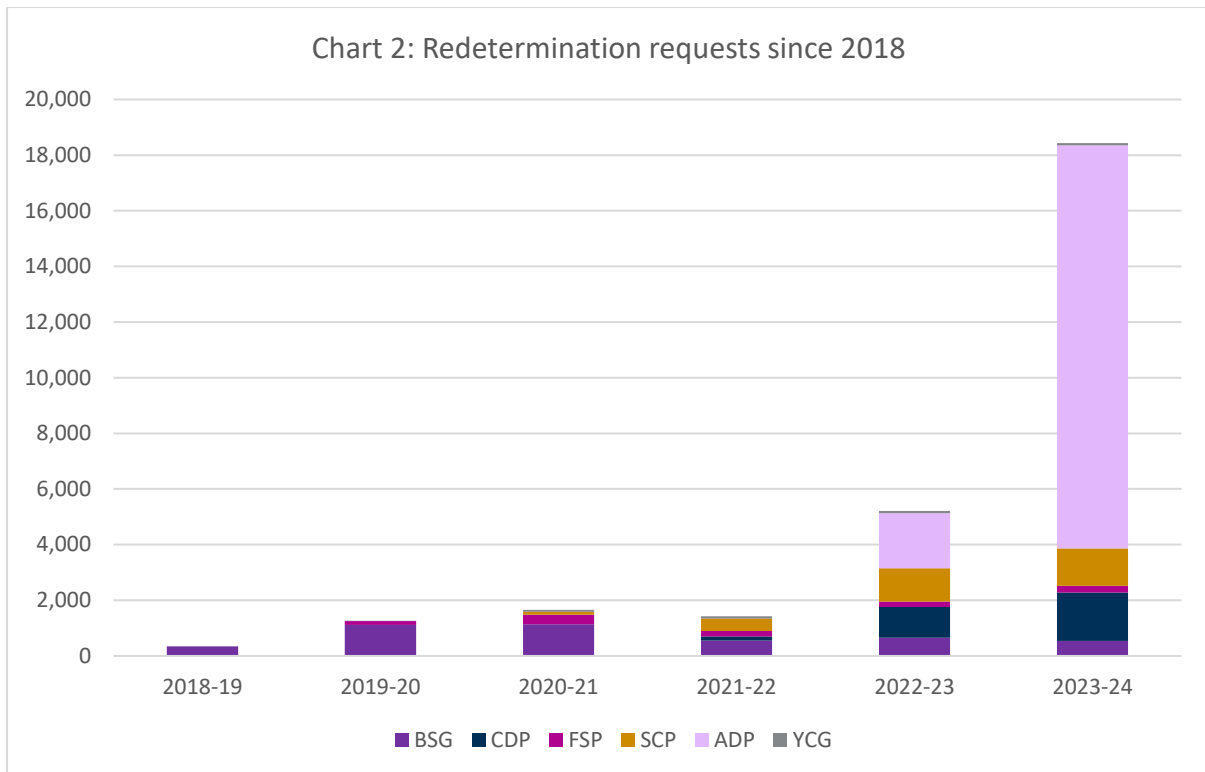
Source: Social Security Scotland statistics.

Having made a redetermination, Social Security Scotland must notify the client of the redetermination, the reasons for it and their right to appeal to the First-tier Tribunal.

Numbers and type of redeterminations

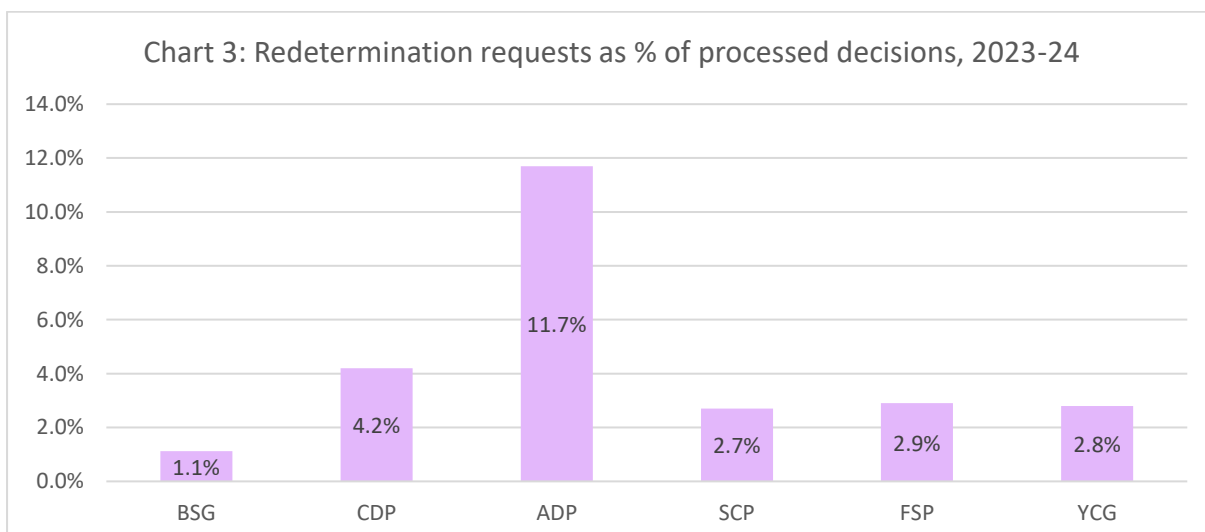
Most redeterminations are about ADP. In their [written submission](#), Voiceability said that 16.5% of all their cases are requests for support with redetermination (794 cases). Citizens Advice Scotland said that redeterminations were the third largest area of ADP advice.

This is reflected in administrative statistics which show the large increase in redetermination requests in 2023-24, most of which are for ADP (14,480 ADP redetermination requests from April 2023 to end January 2024).



Source: Social Security Scotland statistics. Best Start Grant, Child Disability Payment, Funeral Support Payment and Scottish Child Payment data to end December 2023. Adult Disability Payment data to end January 2024, Young Carer Grant data to end September 2023.

People applying for ADP are far more likely to request a redetermination than people applying for any other devolved benefit. Chart 3 below shows how the proportion of processed decisions that result in a redetermination request varies by benefit.



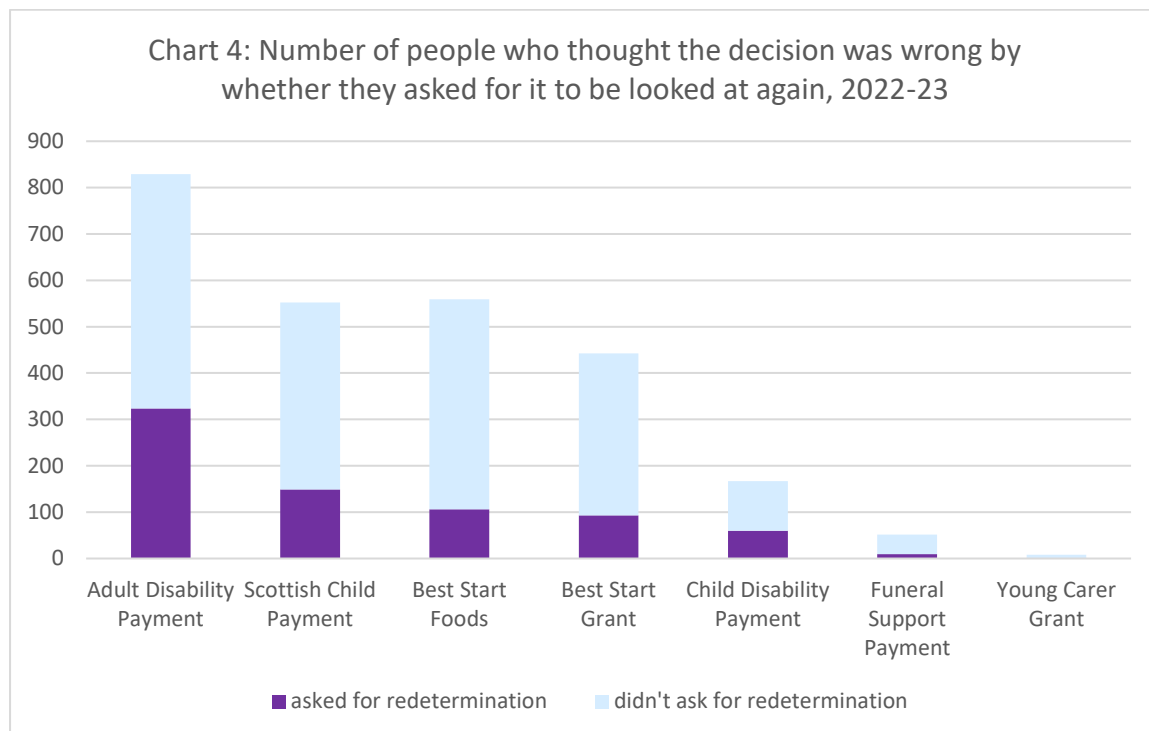
Source: Social Security Scotland statistics. Incomplete year. Data to Dec 23 except , YCG is to end Sept 23 and ADP is to end Jan 24.

Client Survey – redetermination requests

The latest published [client survey relates to 2022-23](#), when ADP was just starting. (ADP was only available nationally from end of August 2022).

The survey asked whether clients disagreed with Social Security Scotland's decision, and if so, whether they asked for a redetermination.

Chart 4 shows that only a minority of people who disagreed with the decision on their benefit went on to request a redetermination.



Source: [Social Security Scotland, Client Survey 2022-23](#), table 9.2. nb Best Start Foods has a review rather than a redetermination or appeal.

The survey asked why people didn't make a redetermination request when they disagreed with the decision. They said:

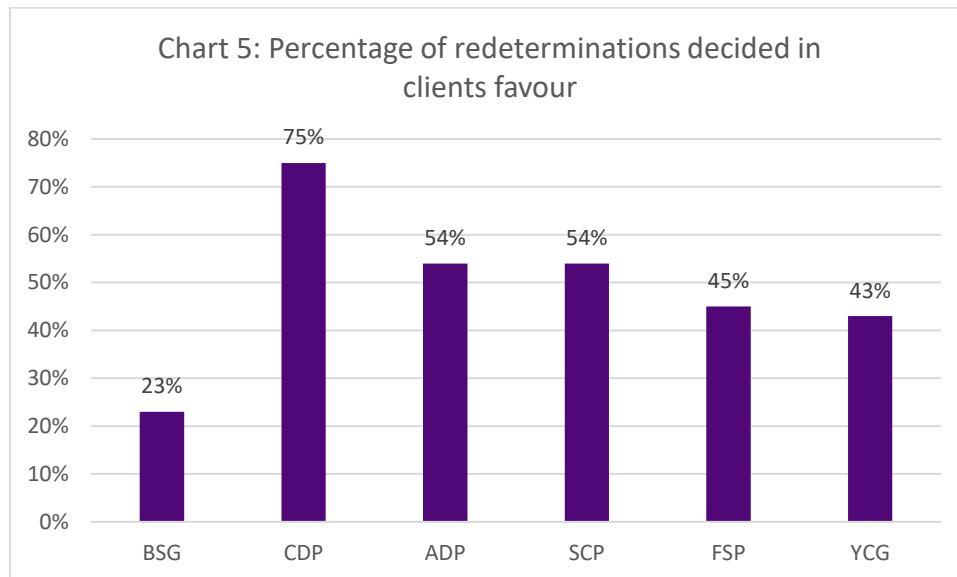
- I thought it would not be successful (47%)
- I didn't feel I could (22%)
- I didn't know how to (16%)
- I thought it would be too hard (15%)
- I thought it would take too long (14%)
- I worried about possible consequences (9%)
- Prefer not to say (5%)
- Other (16%).

At the Committee meeting on 14 March, Craig Smith (SAMH) emphasised the difficulty of making a challenge:

“It might take someone a long time to build up the confidence and emotional strength to engage with the system and challenge a benefit decision.”
([Committee Official Report](#), 14 March, col 4).

Redetermination outcomes

The 'success rate' for redeterminations varies by benefit. While around three quarters of Child Disability Payment (CDP) redeterminations are in favour of the client, less than a quarter of Best Start Grant (BSG) redeterminations are.



Source: Social Security Scotland statistics.

Appeals

The outcome of the redetermination can be appealed, in the first instance, to the First-tier Tribunal.

There are far fewer appeals than redetermination requests. This is partly because issues will be resolved at the redetermination stage, but also, when a benefit first starts, it will take time for the number of appeals to build up.

There are two types of appeal:

- Appeals on entitlement decisions (such as whether a client got the correct amount of benefit)
- Appeals on process decisions (such as whether the application was made in the correct way).

Appeals are heard by the [Social Security Chamber of the First-tier Tribunal](#). Appeals on entitlement decisions can be appealed to the Upper Tribunal and onwards up to

the Supreme Court. There is no further right of appeal for process decisions beyond the First-tier Tribunal.

The rules for appeals are set out in [sections 46 to 49](#) and [section 61](#) of the Social Security (Scotland) Act 2018, with the detail provided in [regulations which set out the First-tier Tribunal Rules](#). There are separate regulations governing the [Upper Tribunal](#).

Requesting an appeal

Requests to appeal a redetermination or Social Security Scotland's failure to complete their redetermination in time are made to Social Security Scotland, who then pass it on to the First-tier Tribunal. The request [must be made on the correct form](#). Forms to request these types of appeal are available at: [Request an appeal by paper form - mygov.scot](#)

Requesting a process appeal

The procedure for process appeals is different. [Applications to appeal a process decisions are made directly to the Tribunal](#). The [appeal form is available on the Tribunal's website](#).

Support during an appeal

Appeals can be made 'on the papers' – without the client having to attend. Where there is a hearing, the client can have a supporter present and/or a representative.

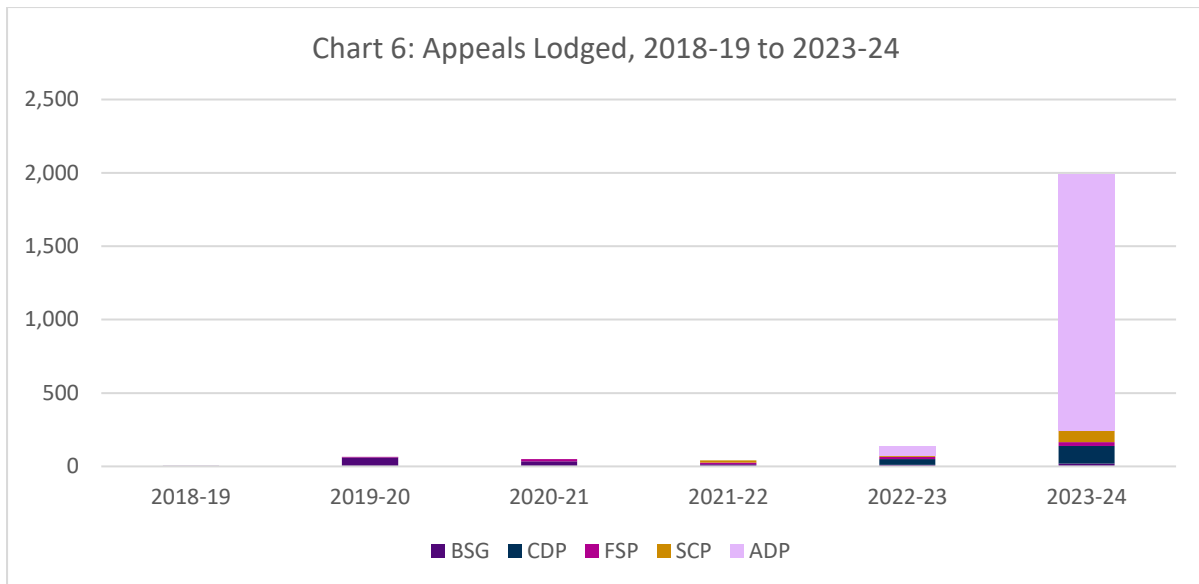
Number of appeals requested and decided

Chart 6 below shows how most appeals have been for Adult Disability Payment, even though it has been going for less time than other payments.

The [SCTS annual report 2022-23](#) had noted that:

“Appeal volumes continue to be significantly lower than forecast. In the period from 01 April 2022 to 19 April 2023, the Chamber received 169 appeals.”

However, as can be seen from the chart below, the number of appeals has since increased considerably, almost entirely due to ADP.

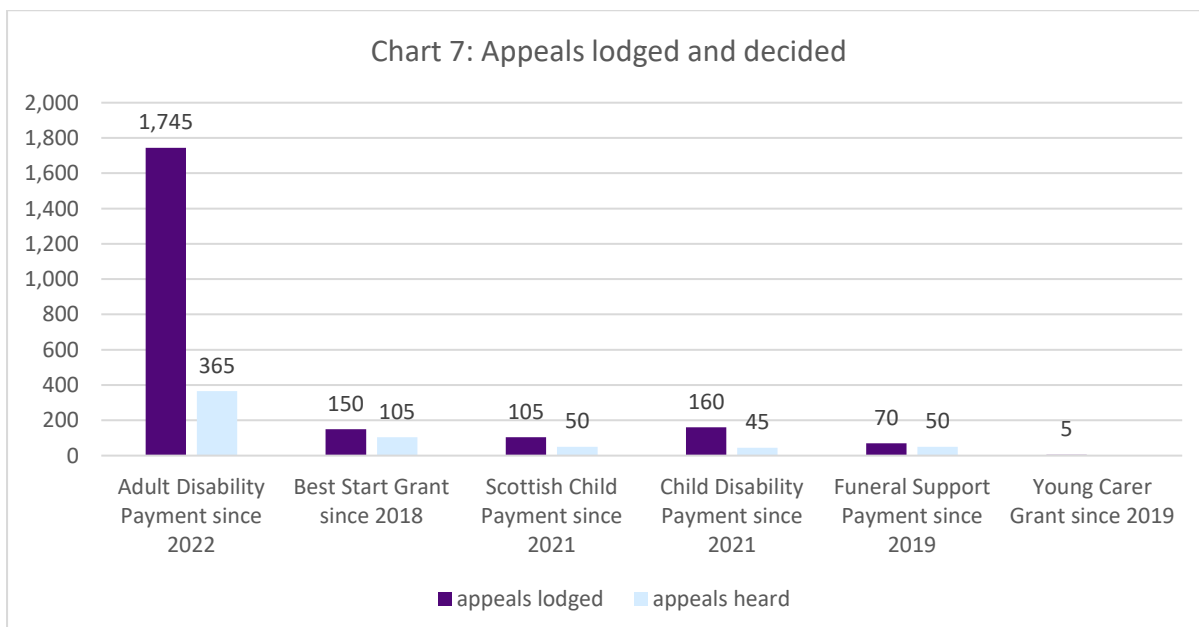


Source: Social Security Scotland benefit statistics. n.b 2023-24 is an incomplete year.

Looking ahead, beyond 2022-23 the annual report noted that:

“The number of appeals is increasing and the pressure on operations staff continues to increase.”

Chart 7 below shows the small proportion of submitted ADP appeals that had been decided by the end of January 2024.



Source: Social Security Scotland statistics.

The Committee has heard concerns about the lack of ‘face to face’ hearings. The latest data is in the 2022-23 SCTS annual report – when number of appeals was far lower. This recorded, for the 61 decisions in 2022-23, that there were:

- 43 telephone hearings

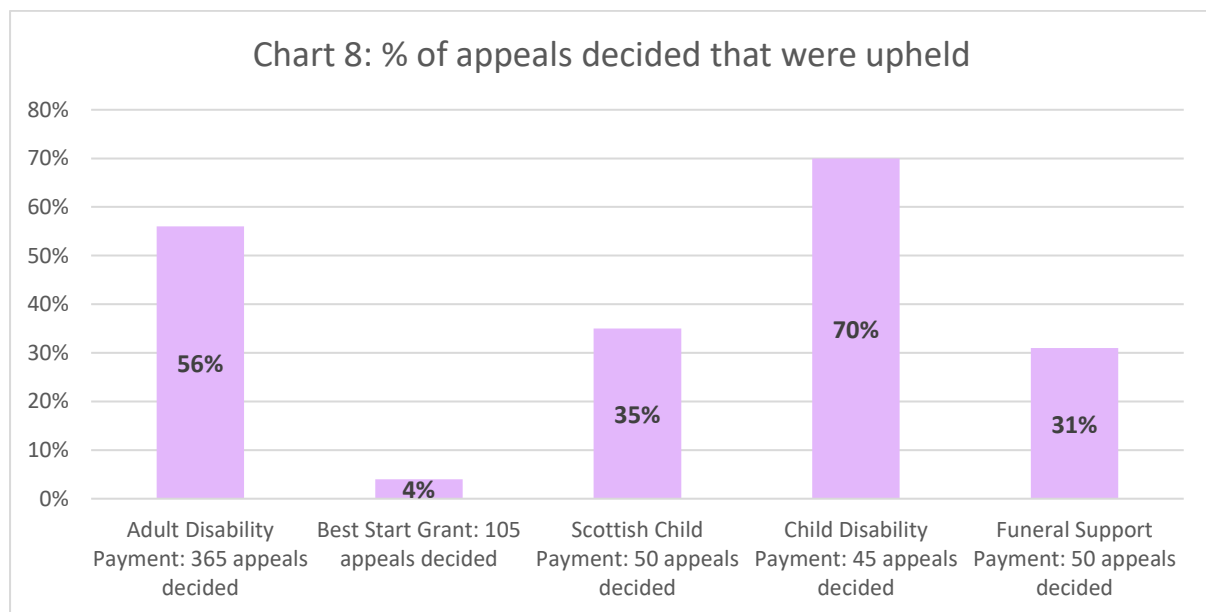
- 18 decided 'on the papers'

The report stated that:

“Whilst the majority of hearings will continue to be telephone hearings, facilities do exist for video link hearings and on cause shown the Chamber President can authorise in-person hearings.”

Outcomes

Chart 8 below shows that different benefits have different 'success rates' at appeal. Child Disability Payment appeals were the most likely to find in favour of the client. The least likely to be upheld are appeals about Best Start Grant.



Source: Social Security Scotland benefit statistics

The [Social Security Chamber of the First-tier Tribunal issues 'decision reports'](#) highlighting “matters of interest and points of law” raised in appeals. Since 2018 they have issued 16 reports.

- 8 on Best Start Grants
- 3 on Funeral Support Payments
- 3 on Child Disability Payments
- 1 on Young Carer Grants
- 1 on Scottish Child Payments.

Most (9 out of 16) of the decision reports highlight lack of flexibility around application deadlines, particularly for the Best Start Grants.

A couple of issues raised have led to the regulations being changed. For example recognising £0 awards of Universal Credit as a qualifying benefit for SCP and setting

out arrangements for resolving ‘competing claims’ where two people are eligible to claim SCP for the same child.

Other issues raised have been:

- Definition of ‘supervision’ in CDP
- Eligibility for funeral support payment (definition of nearest relative and requirement that funeral must take place in Scotland)
- Qualifying conditions for Young Carer Payment.

Upper Tribunal decisions have related to:

- Funeral Support Payment - late application for benefit ‘related to COVID’ and so the flexibilities for late application should have applied ([CD v Social Security Scotland](#)). Discussion on the application of the social security principles.
- Adult Disability Payment – First-tier Tribunal should have used its procedural powers to request further information ([NB v Social Security Scotland](#)).
- Best Start Grant – school age payment – Ministers were entitled to decide that BSG school age payment should be based on the age a child would normally be expected to start school rather than when they actually start school. Discussed European Convention on Human Rights’ arguments. ([DR v. Social Security Scotland and Lord Advocate](#))

Short term assistance

In ADP and CDP, a client can apply for ‘Short Term Assistance’ (STA) while they challenge Social Security Scotland’s decisions. This applies where a benefit award of ADP or CDP has been stopped or reduced. It ‘tops up’ the benefit to what it was before the decision that is being challenged.

There were 125 ADP clients who had received STA by 31 January 2024 and 20 CDP clients who had received STA by December 2023.

Any backdated ADP or CDP awarded as a result of a successful appeal is reduced by the amount of STA already received. This ‘clawback’ is needed to avoid paying clients twice for the same period. However, if it results in no backdated benefit being paid then it is possible that clients could miss out on receiving other benefits. For example, as CPAG has pointed out in a [blog](#) and in [a letter to the Committee](#), CDP is a qualifying benefit for Carer Support Payment but STA is not. In the letter to the Committee, CPAG state:

“Although we hear informally from officials that the issue is resolved, there has been no change in the law. We have not yet been able to get written confirmation that getting short-term assistance does not have the impact on carers’ benefits described above in practice.”

On a different issue relating to STA, the Committee has recently been informed in [a letter from the Scottish Commission on Social Security](#) of technical amendments to ADP regulations which have been considered by SCOSS. These are intended to clarify that if someone is challenging how their award is changed at review, STA will 'top up' benefit to the level of initial award before review. The level of STA will not be varied to reflect any changes to the benefit award during the challenge process.

Independent Review of Adult Disability Payment

The review of ADP includes consideration of clients' experience of challenging ADP decisions. The [terms of reference](#) include:

"people's experiences of applying for, receiving or challenging a decision about Adult Disability Payment or undergoing a review (including unsuccessful applicants)."

As noted above, most redeterminations and appeals concern ADP. The ADP review plans to report to Ministers in July 2025.

Reviews

Not all Social Security Scotland benefits can be redetermined and appealed. Job Start Payment and Best Start Foods are made under different legislation and have 'reviews' instead.

Job Start Payment is a very small-scale benefit with only 12,920 payments made since its launch in August 2020. Best Start Foods is much larger, with 281,830 processed decisions since its launch in August 2019.

Requesting a review

Social Security Scotland's [guidance on internal reviews for Job Start Payment](#) includes:

- Requesting a review by phoning Social Security Scotland or completing the form included in the determination letter
- Clients have 31 days to request a review, or up to a year with good reason.

Extended deadlines were put in place due to COVID.

Table 1 below shows the relatively low rate of requests for reviews and that clients are unlikely to have the decision changed at review.

Table 1: Best Start Foods and Job Start Payment

	Best Start Foods Data to Dec 2023	Job Start Payment Data to Sept 2023
Total processed decisions	281,830	12,920
Total reviews requested	1,390	320

% decisions resulting in review request	0.3%	2.8%
Median time taken to complete a review	11 days	9 days
% reviews decided in favour of client	39%	30%

BSF launched in 2019 and JSP in 2020. Table gives data since launch of the benefit. Source: Social Security Scotland [BSG/BSF statistics to end December 2023](#), [Job Start Payment statistics to end September 2023](#).

Themes for discussion

The following suggests three themes for discussion.

- Theme 1: Redeterminations
- Theme 2: Appeals
- Theme 3: Reviews

Theme 1: Redeterminations

In the course of taking evidence on the Social Security (Amendment) (Scotland) Bill, the following issues have arisen in relation to redetermination.

Issues with the legislation

Requirement for redetermination

CAS have suggested that it is unnecessary to require a redetermination prior to appeal, particularly once the ability to 'lapse' appeals is introduced. Jon Shaw (CPAG) drew attention to the pre-2013 social security system, in which it was not necessary to have a reconsideration prior to appeal (7 March, col 18). Mandatory reconsideration was introduced by the Welfare Reform Act 2012.

Others have said that "going straight to appeal would put a lot of our vulnerable clients off" (Diane Connock, 7 March, col 14), and that the time limit to complete a redetermination means it is a quick and inexpensive way to get decisions changed. Claire Andrews (RNIB) said "our overarching view is that the redetermination process is working and should remain" (14 March, col 8).

Craig Smith (SAMH) agreed, while suggesting that: "if most mandatory redeterminations were being overturned at appeal, that would be a strong argument for saying that redeterminations were not working." However, he considered there had not yet been enough appeal decisions to take a view on this (14 March, col 9).

Timescales

A number of witnesses suggested that the timescales for requesting and completing redeterminations should be consistent and extended (Jon Shaw, CPAG, 7 March, col 14). Kirsty Henderson (RNIB) suggested that the big difference between DWP mandatory reconsideration, 'which served only to delay decisions,' and the Scottish system is the existence of a statutory deadline for completion. "That is a good protective factor." (14 March, col 8). In their written submission, CAS drew attention to the growing number of ADP redeterminations that are not completed by Social Security Scotland within the statutory timescale (see chart 1 above).

Greater flexibility in how redeterminations are requested.

[Section 41\(3\) of the 2018 Act](#) requires that redetermination requests are made 'in such form as the Scottish Ministers require.' A similar rule applies to applications at

[s.38\(1\)](#). Richard Gass, Glasgow City council, I pointed out that this means they can't use their standard letter (7 March, col 36).

A 'cooling off' period

This was recommended by CPAG, Stirling Council and RNIB, whereby a person who withdraws a redetermination is able to re-instate it within a fixed period of, for example, 14 or 30 days. RNIB suggested that people should be "signposted to independent advice and advocacy and given an opportunity to access advice services before a final decision is made" (14 March, col 6).

Issues with policy and practice

The following issues have been raised with the Committee on the policy and practice of challenging benefit decisions.

- **Decision making** - The written submission from CAS highlights examples of 'inconsistent' decision making on ADP, particularly in the approach to seeking out supporting information.
- **Supporting information** – CAS describe how a client who needed copies of the supporting information in order to formulate their redetermination request was asked to put in a Freedom of Information Request.
- **Inaccurate information** - Erica Young (CAS) gave examples of Social Security Scotland giving inaccurate information about deadlines for redetermination and appeal (7 March, col 13, and written submission).
- **Poor communication** – In their written submission, CAS describe examples of poor communication by Social Security Scotland, such as crediting money to a client's account without explaining why, and being unable to discuss the matter on the phone.
- **Phone waiting times** - In their written submission, Voiceability said "advocates may wait as long as two hours for a phone call to Social Security Scotland to be answered."
- **Clarify what 'self-identification as disabled' means.** Voiceability said that this term can cause confusion for clients.
- **Forms to request redetermination** – are available to download but cannot be filled in and submitted online. Voiceability point out that 55% of their support is delivered remotely.
- **Simpler processes** - clarity and flexibility within the system that allow those with additional needs to be supported was a theme discussed by both Vicki Cahill and Fiona Collie last week.

Members may wish to discuss:

1. **Social Security Scotland's client survey suggested that most people who think a benefit decision is wrong do not ask for it to be redetermined, mostly because they thought they wouldn't be successful. What more should Social Security Scotland be doing to support clients who wish to request a redetermination?**
2. **Are there any differences between rural, semi-rural and urban areas in clients' experience of redeterminations?**
3. **75% of CDP redeterminations are decided in favour of the client. Does this raise any concerns about decision making for this benefit?**
4. **Why do you think most requests for redetermination are about ADP? Does it suggest anything about Social Security Scotland's decision making for this benefit?**
5. **In recent months, Social Security Scotland has been taking longer to complete redeterminations for ADP. Do witnesses have any indications of why that might be the case and what impact this is having on clients? How might these delays be addressed?**
6. **What other changes, not previously discussed, are needed to the redetermination process?**

Theme 2: Appeals

As noted above (chart 6), the number of appeals lodged has increased hugely during 2023-24 reflecting the continued roll-out of ADP.

In the course of taking evidence on the Social Security (Amendment) (Scotland) Bill, the following issues have arisen in relation to appeals:

Most tribunals are heard over the phone rather than face to face. Erica Young (CAS) stated that: "phone hearings are the default position". (Committee Official Report, 7 March col 12). Richard Gass told the Committee that: "we have been advised that [face to face appeals] will take place only in exceptional circumstances." (7 March, col 12). Diane Connock said that: "there have been a couple of occasions where we've ticked the box for a face to face hearing and that has not been offered." (7 March, cl 17). (The SCTS [annual report 2022-23](#) stated that: "Only one request was made for an in-person hearing".)

The proposal to **lapse appeals was welcomed** with CAS suggesting in their written submission that it reduces the need for a redetermination stage. Claire Andrews (RNIB) said that although RNIB agreed with redeterminations in general, they did not see the need for it if someone wanted to challenge the determination resulting from a lapsed appeal (14 March, col 8). Others suggested that independent advice and

advocacy should be available to help clients decide whether to agree to lapsing an appeal (e.g. Kirstie Henderson, RNIB, 14 March col 7).

Allow a **'cooling-off' period** to withdraw and re-instate an appeal (Diane Connock, Committee Official Report, 7 March, col 16) and "be given the opportunity to seek independent advice as to whether the offer is a good one." (Kirstie Henderson, RNIB, Committee Official Report 14 March, col 7).

The process from application to appeal can **take a long time** (Erica Young, CAS, Committee Official report, 7 March, col 17/18). In their written submission, CAS describe a long delay to an appeal due to Social Security Scotland not issuing the appeal bundle.

Communications from the Tribunal service can be: "vague and sparse" (CAS written submission)

Several witnesses referred to how **stressful the appeal process** can be. (e.g. Claire Andrews, RNIB, 14 March, col 7). It takes time for the volume of appeals to grow. By end of January 2024, across all Social Security Scotland benefits, there had been over 2,000 appeals requested and around 600 decided. Diane Connock pointed out that:

"I think that it is too early within the process to be highlighting much. Given the time that it has taken for things such as Adult Disability Payment to be processed, we are just starting to see the challenges coming in." (Committee Official Report 7 March, col 17).

In their written submission, Voiceability set out additional points:

- **Clearer communication** needed about how long an appeal may take and to explain to clients that they have a choice whether to appeal if Ministers miss the deadline for making a redetermination.
- It's unclear whether **interpretation services** are available, in addition to translation services.
- **Clarity of the role of advocates** at appeal hearings especially where there is no legal advocate or representative present.

Members may wish to discuss:

7. **What experience do you have of supporting clients with Social Security Scotland benefit appeals? How does it differ from appeals on reserved benefits?**
8. **In their written submission CAS refer to: "prolonged wait times for an appeal to be listed, poor communication and administrative 'hold-ups' emanating from both Social Security Scotland and the Tribunal Service. Can they expand on the issues clients are facing? Do witnesses have any evidence of whether such problems are widespread?"**

9. The Committee has heard concerns that Tribunal hearings are being held over the phone rather than in person. How does this practice affect the quality of decision making?
10. In their written submission, Voiceability raised concerns about the availability of interpretation services. What is witnesses experiences of supporting clients who needed interpretation or translation services?
11. One innovation in the Scottish system is the availability of Short Term Assistance which 'tops-up' people's benefits while they are challenging a decision. Do witnesses have any views on whether it is working as intended?
12. What other changes are needed that would improve the appeals process?

Theme 3: Reviews

Two benefits – Best Start Foods and Job Start Payment have reviews instead of redeterminations and appeals. This is because they are made under different legislation than other Social Security Scotland benefits. To date there have been:

- [1,390 reviews for Best Start Foods](#) between August 2019 and December 2023 representing 0.3% of processed decisions (average of 27 per month). It took, on average, 11 days to respond and 39% were allowed or partially allowed.
- [320 reviews of Job Start Payment](#) between August 2020 and September 2023, representing 2.8% of processed decisions. It took, on average, 9 days to complete a review and 30% were allowed or partially allowed. The number of requests has fallen over time, with 5 or fewer review requests per month in 2023.

Reviews can be [requested by phoning Social Security Scotland](#).

Members may wish to discuss:

13. What experience do witnesses have of supporting clients to request reviews of Best Start Grant or Job Start Payment?
14. What are witnesses views on having a review process for these benefits as opposed to a redetermination and appeals process?

Camilla Kidner
SPICe
22 March 2024