

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Client experience of redeterminations and appeals

Introduction

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

The Committee will hear from:

- Gayle Devlin, Deputy Director for Health and Social Care, Social Security Scotland
- Tim Barraclough, Executive Director, Tribunals and Office of the Public Guardian; and
- Lesley Black, Director, Tribunals, Scottish Courts and Tribunals Service

Background

If a client is unhappy with a decision about their benefit entitlement, they can 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.

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 the [guidance on redeterminations for Child Disability Payment](#) and [Adult Disability Payment](#).

Requesting a redetermination

[Redeterminations can be requested by:](#)

- completing the redetermination request form included with the determination letter (pre-paid enveloped provided)
- phoning Social Security Scotland (freephone)
- downloading a paper form
- (for Adult Disability Payment or Child Disability Payment) applying online through '[mygov.scot account](#)' (also used to apply for benefits online)
- contacting the Text Relay Service for the hard of hearing. BSL users can use the Contact Scotland service ([download an app](#)).

The form asks why you disagree with the decision and whether you have extra information to provide. 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'.

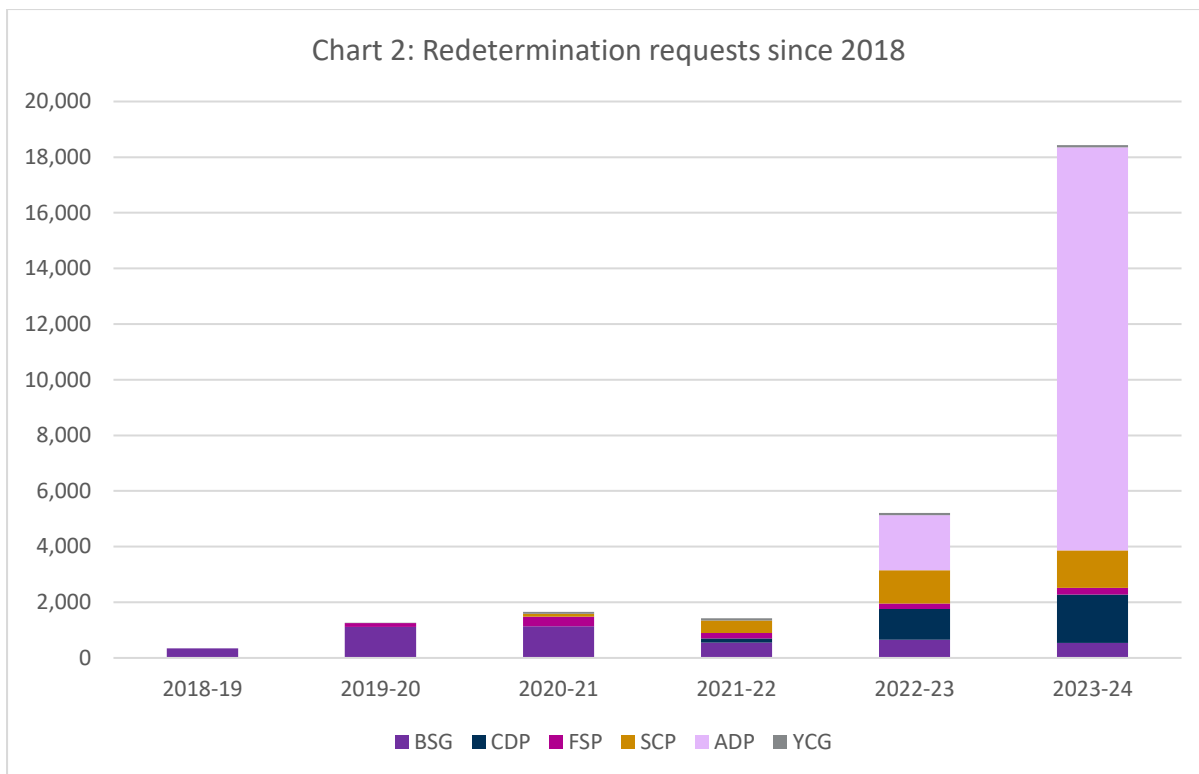
The Social Security (Amendment) (Scotland) Bill, currently being considered by the Committee, would enable requests for redetermination to be accepted after one year in exceptional circumstances.

To be a valid request, it must be made in the way prescribed by Ministers and made within the deadline.

If Social Security Scotland decide that there is no 'good reason' for being late or decide that the request is 'invalid' then the client can make a 'process appeal' to the First-tier Tribunal.

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.

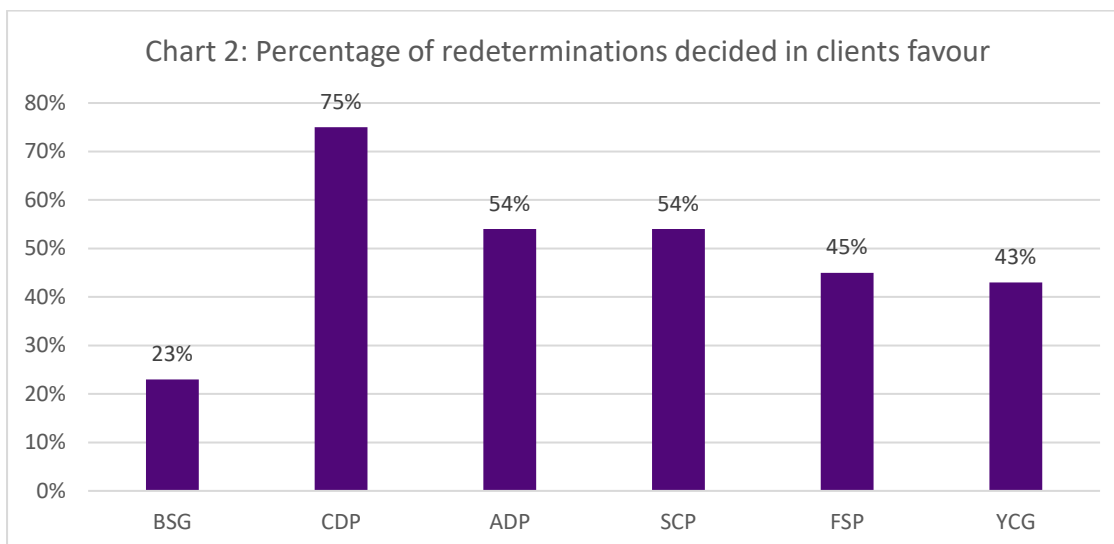
Administrative statistics show a large increase in redetermination requests in 2023-24, most of which are for Adult Disability Payment (ADP).



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.

Redetermination outcomes

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



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 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](#). The submission from the SCTS includes flow diagrams of the appeal process.

Requesting an appeal on benefit entitlement

Requests to appeal a redetermination or Social Security Scotland's failure to complete their redetermination in time are made to Social Security Scotland. The Social Security (Scotland) Act provides that:

[47Initiating an appeal](#)

- (1) In order to bring an appeal under section 46 against a determination, an individual **must submit to the Scottish Ministers the form provided** under section 44 or (as the case may be) 45 in relation to the determination.

Social Security Scotland pass the request on to the Tribunal together with the additional information they used to make their determination and/or re-determination. The Tribunal then requests a formal response from Social Security Scotland, to which the agency must respond within 31 calendar days. Copies are sent to the individual, who has 31 days to send further comments/document if they wish, which the Tribunal copies to Social Security Scotland.

[Guidance on ADP appeals](#) states that:

“Social Security Scotland should do all it can to help individuals who want to appeal by:

- providing information about the process
- providing the right form to make an appeal
- signposting to organisations who can support the individual with the process.”

Requesting a process appeal

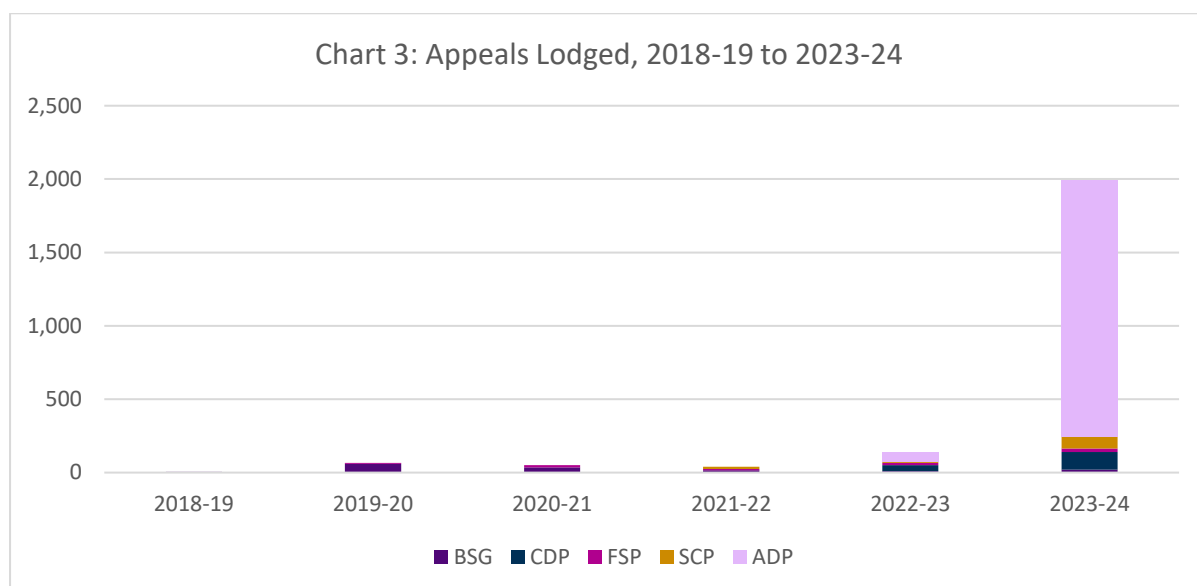
The procedure for process appeals is different. [Applications to appeal a process decisions are made directly to the Tribunal.](#) The [appeal form](#) is available on the Tribunal's website.

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 3 below shows the large increase in appeals lodged in 2023-24, mostly for ADP.



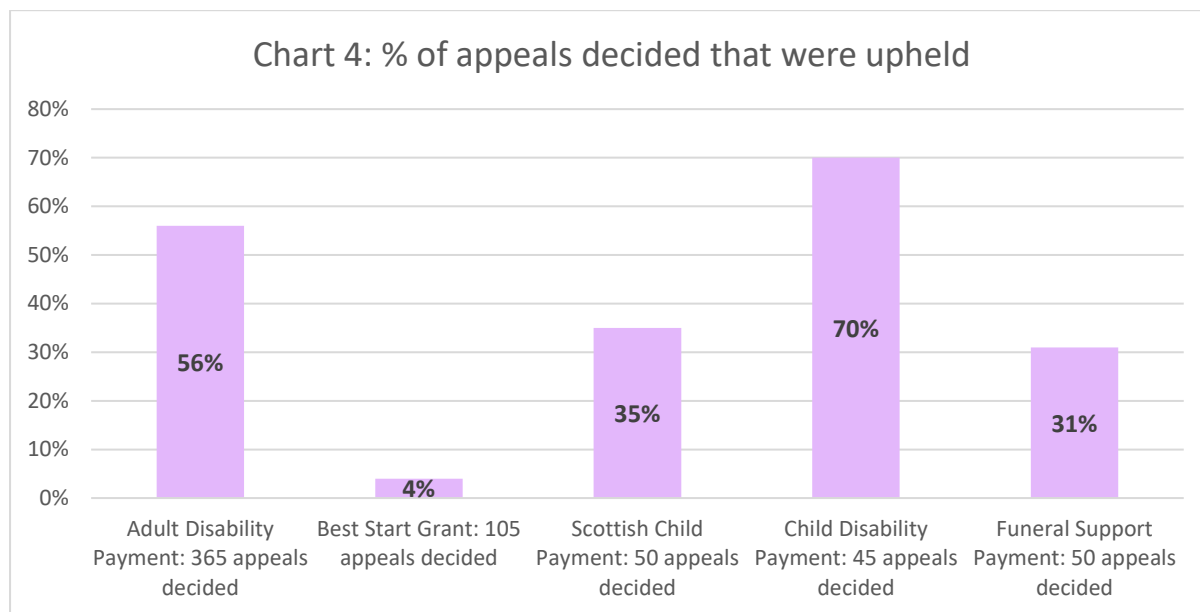
Source: Social Security Scotland benefit statistics. n.b 2023-24 is an incomplete year.

There were 1,810 ADP appeals received by 31 January 2024. Of those, 365 have had an appeal hearing taking place, with 56% being upheld and 44% not being upheld ([ADP statistics to end January 2024](#)).

The SCTS has provided additional information also showing that large increase in appeals in 2023-24. For the whole of 2023-24, the SCTS received a total of 2,615 appeal requests, made 774 disposals and held 1,125 hearings. 1% of hearings were in person, 1% video-conference, 76% teleconference and 23% on the papers. (SCTS written submission).

Outcomes

Chart 4 below shows that different benefits have different ‘success rates’ at appeal. CDP appeals were the most likely to find in favour of the client. The least likely to be upheld are appeals about BSG.



Source: Social Security Scotland benefit statistics

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 Minister in July 2025.

Previous Consideration

During consideration on the Social Security (Amendment) (Scotland) Bill and in the session on [28 March on client experience of redetermination and appeals](#), witnesses have raised various issues with both legislation and operational practice. The Committee also received written submissions on this topic from [Children Poverty Action Group](#) (12 April), [Citizens Advice Scotland](#) (19 March) and [Voiceability](#) (18 March).

Issues with the legislation

Witnesses have raised several issues that would require a change in legislation:

- Abolishing the redetermination stage
- Creating consistent timescales for requesting and completing redeterminations
- Not requiring that an application for redetermination is made ‘in the form prescribed by Ministers’
- Not requiring that an application for appeal is made on the form provided
- Introducing a ‘cooling off’ period - whereby a person who withdraws a redetermination is able to re-instate it within a fixed period of, for example, 14 or 30 days.

Issues with policy and practice

The following issues have been raised with the Committee, mainly by Citizens Advice Scotland (CAS), on the policy and practice of challenging benefit decisions.

- **Decision making** - CAS highlighted examples of ‘inconsistent’ decision making on ADP, particularly in the approach to seeking out supporting information and application of case law ([written submission](#) and evidence session on [28 March](#)).
- **Inaccurate information** - CAS gave examples of Social Security Scotland giving inaccurate information about deadlines for redetermination and appeal (evidence session on [7 March](#), and [written submission](#)).
- **Lack of flexibility** in the way a redetermination request is made was discussed by CAS and Rights Advice Scotland (Evidence sessions on 7 and 28 March).
- **Simpler processes**, clarity and flexibility within the system that allow those with additional needs to be supported was a theme discussed by both Alzheimer Scotland and Carers Scotland on [21 March](#). It was also key theme in the evidence from CAS and Welfare Rights Scotland on 7 March.
- **In-person appeals** - Witnesses discussed the difficulty in getting in-person appeal hearings. (e.g. CAS, Welfare Rights Scotland).
- **Delays** - The time taken for both redetermination and appeal was raised by CAS and Rights Advice Scotland.

Themes for discussion

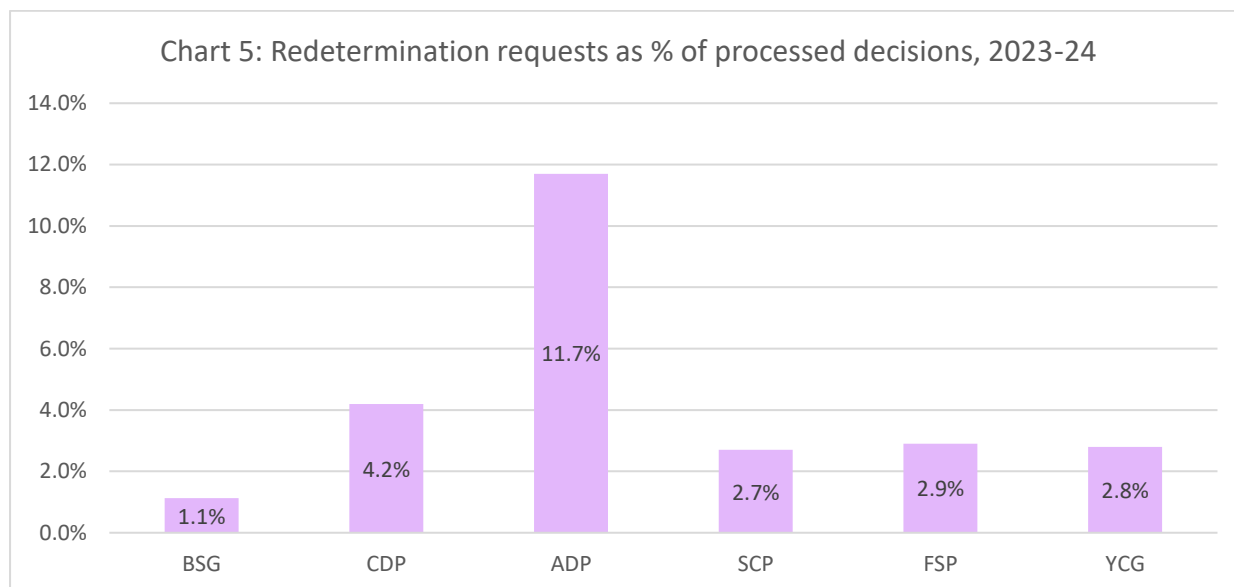
The following suggests four themes for discussion.

- **Theme 1: Getting decisions right first time**
- **Theme 2: Simplifying processes**

- Theme 3: Quicker processes
- Theme 4: In-person appeal hearings

Theme 1: Getting decisions right first time

Getting the decision right first time should reduce the volume of redeterminations and appeals. Only a small minority of clients request a redetermination, but the rate is notably higher for ADP than other benefits as set out in the chart below.



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.

Getting the right information onto the application form will help ensure the right decision is made first time.

Social Security Scotland has undertaken user-testing of its forms and made adjustments in response to feedback. For example – adding pictures and useful examples aimed at helping people understand the questions more easily. This does mean the form is very long. They say:

“We tried to achieve a very fine balance between the need for case managers to have enough information to make decisions and keeping the form from becoming unmanageable.” ([Social Security Scotland, ‘making our application forms accessible, 30 March 2023](#))

The local delivery service is available to provide help with filling in applications forms and advising on the type of supporting information that is needed. The Committee recently [wrote to Social Security Scotland](#) asking for more information about this service. In their [reply on 12 April 2024](#), the agency stated that:

“Face to face appointments to support our clients are delivered across every local authority in Scotland from over 180 venues.

The service is consistent across all local authority areas but how it is delivered varies depending on geography. The aim is to deliver a consistent national service that responds to the needs of different local communities. We can offer face to face appointments in people's homes, in one of our venues such as libraries or community centres, and in prisons or hospitals.

People can access the service by calling the Social Security Scotland freephone number on 0800 182 2222 or via webchat, where clients can arrange an appointment at the most appropriate venue, at the most appropriate time, to fit their individual circumstances.”

It was launched in July 2021 and by August 2022 “[more than 10,000 appointments](#) have been arranged”, with most being in people's homes or by video.

Having the right supporting information could be considered particularly important as there is unlikely to be a face-to-face consultation of a client's needs. A letter from [Social Security Scotland, \(dated 12 March 2024\)](#) stated that only around 5% of ADP applications by 25 March 2023 had included a consultation and most consultations are by telephone.

The Committee received a further [letter from Social Security Scotland](#) on 22 March 2024 about how the agency collects supporting information. This noted some challenges with getting information from local authorities and health boards, saying that:

“We are working with Local Authority and Health Board staff to increase awareness of the importance of Social Security Scotland receiving good supporting information timeously.

For Child Disability Payment applications; receiving supporting information from schools during holiday periods, particularly over the summer months, has been problematic. To mitigate this, Social Security Scotland are working with Local Authorities and Health Boards to ensure a good understanding of information clients may already hold, which could be used as supporting information to enable the team to make decisions on applications quicker.”

There is a large volume of PIP case law that would be relevant to ADP decision making. Erica Young, CAS described some confusion about the extent to which it applies. She said:

“I have also found that some confusion exists among decision makers—I have on-going work with Social Security Scotland on which case law applies that had previously been applied to the equivalent criteria in PIP, and on the extent to which that case law then carries over to the same criteria in relation to adult disability payment. It particularly affects social engagement, planning and following journeys activities at the moment— those are the ones that I would pick out. The other factor in all that is the balance of responsibility in

relation to supporting information. Evidently, it is much easier for a decision maker to get a decision right first time if all the correct supporting information is supplied from the outset of a claim in adequate detail, but that is not a simple, straightforward thing for any client to provide.” (Committee Official Report, 28 March, col 22).

With complex benefits such as ADP, it is not necessarily clear what the ‘right’ decision is. In their written submission, CPAG point out the subjective nature of ADP decision-making, saying:

“It is quite possible for two decision makers to reach a different decision whilst presented with the same set of facts based on their interpretation of the law and guidance.”

Members may wish to discuss:

- 1. What impact is the local delivery service having on ensuring clients provide full information in their initial application form? (Is the agency monitoring whether contact with local delivery reduces to likelihood of redetermination?)**
- 2. Why do witnesses think there are so many more requests for redetermination and appeal for ADP than for other benefits?**
- 3. How many redeterminations and appeal decisions are based on new information compared to taking a different view of essentially the same facts? Does the complexity of ADP mean that it is reasonable for different decision makers to come to different conclusions on the same facts?**
- 4. Is there often information provided at redetermination or appeal stage that could have easily been obtained during initial decision-making? If so, how could that be addressed?**

Theme 2: Simplifying processes

Several witnesses referred to how stressful the appeal process can be. (e.g. RNIB, [14 March](#), col 7; Alzheimer Scotland, 21 March, col 6).

Some of the redetermination and appeals process is set out in legislation, other aspects are policy and operational decisions of Social Security Scotland and the Tribunal.

Legislative issues

The Committee has heard how some of the legislative requirements can create complexity. For example:

- The requirement that appeals be made on the form provided ([s.47, 2018 Act](#))

- The requirement that redetermination requests be made “in such form as the Scottish Ministers require” ([s.41, 2018 Act](#))
- Inconsistency in legislative deadlines (eg 42 days or 31 days to request a redetermination depending on the benefit, some deadlines set out as working days, others as calendar days).
- The requirement to have a redetermination before an appeal.

Policy and operational issues

Other issues are more related to operational decisions and communication.

Examples of where problems had occurred were raised by CAS in their [written submission](#):

- Inaccurate information given by Social Security Scotland about appeal deadlines - “A pattern is emerging that when clients ask for documents needed to pursue an out of time redetermination within 12-months, they are falsely told that the 6-week limit is an absolute limit, so documents cannot be produced.”
- When a client asked for copies of her completed application form and supporting information with a view to submitting a re-determination request, she was asked to submit a Freedom of Information request.
- Erica Young, CAS, pointed out that; “people get an overwhelming amount of paperwork” but at the same time, in their written submission she noted that: “Communications from the Tribunal can be vague and sparse.” ([28 March, col 16](#))
- “Unless they have a mygov.scot account, which is very difficult for people, they cannot electronically submit a redetermination request, [...] An electronic route that is not through a mygov.scot account would be helpful. ([28 March, col 17](#))
- A profoundly deaf couple were offered a home visit but “in order to access that home visit, clients were required to download an app on their phone and arrange a video appointment to book the home visit.” ([28 March, col 17](#))

Erica Young did caveat her comments by saying: “Social Security Scotland has made enormous progress in the way that it handles evidence on quite a few different levels, so I would not say that that is a general critique.” ([28 March, col 17](#))

In their [written submission](#), Voiceability set out points on which they sought further clarity, including:

- 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.

Vicki Cahill (Alzheimer Scotland) and Fiona Collie (Carers Scotland) discussed the need to support those with additional needs. Vicki Cahill said:

“It is important that we have simplified and easier processes. We also need to ensure that there is clarity and flexibility in the system to allow people with additional needs to be supported through the entire process from start to finish, whether that support is provided by a family member or loved one or by a professional who can provide some overarching guidance.” (Committee Official Report, [21 March](#), col 7).

Members may wish to discuss:

5. **The legislation requires redetermination requests to be made in the way prescribed by Ministers. Are there any flexibilities that could be introduced at an operational level that would make things simpler for the client?**
6. **How does Social Security Scotland respond to requests from clients for copies of their completed application form and supporting information?** (CAS gave an example of a client being asked to submit a freedom of information request).
7. **How does Social Security Scotland and the Tribunals service meet the needs of those who are not comfortable dealing with things online?**
8. **How does Social Security Scotland and the Tribunals service try to get the balance right between providing too little and too much information to clients?**

Theme 3: Quicker processes

The Committee has heard concerns about how long the process takes from initial application to appeal decision.

Initial decisions

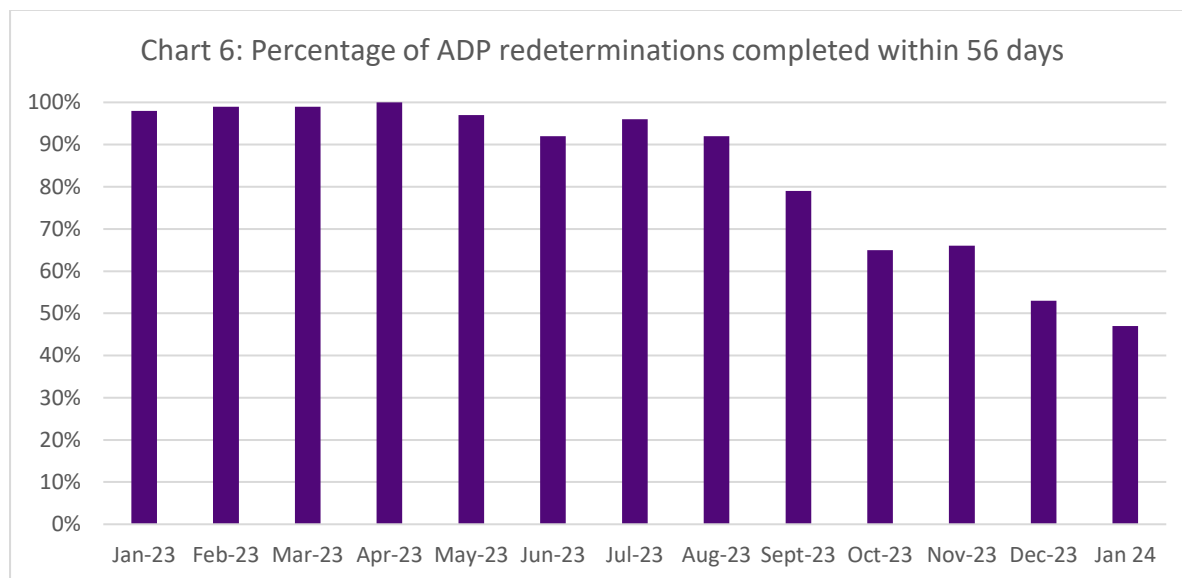
The time taken to process initial decisions has been discussed previously by this Committee. The Committee last heard from Social Security Scotland on this issue on [1 February 2024](#). At that meeting, measures highlighted to improve processing times included:

- Making better use of in-house health and social care team
- Improving the flow of supporting information.

In January 2024, the [median processing time for ADP decisions](#) was 59 working days, down from a peak of 96 days in April 2023. The [median processing time for CDP in December 2023](#) was 97 working days, down from a peak of 114 days in May 2023.

Redeterminations

Social Security Scotland has 56 days or 16 working days to complete a redetermination, depending on the benefit. The chart below shows that since September 2023, fewer ADP redeterminations have met that deadline. This trend is not evident for other benefits. Over 90% of CDP and BSG redeterminations are completed within the deadline. In most months, over 90% of SCP, Young Carer Grant and Funeral Support Payment redeterminations are completed within the deadline.



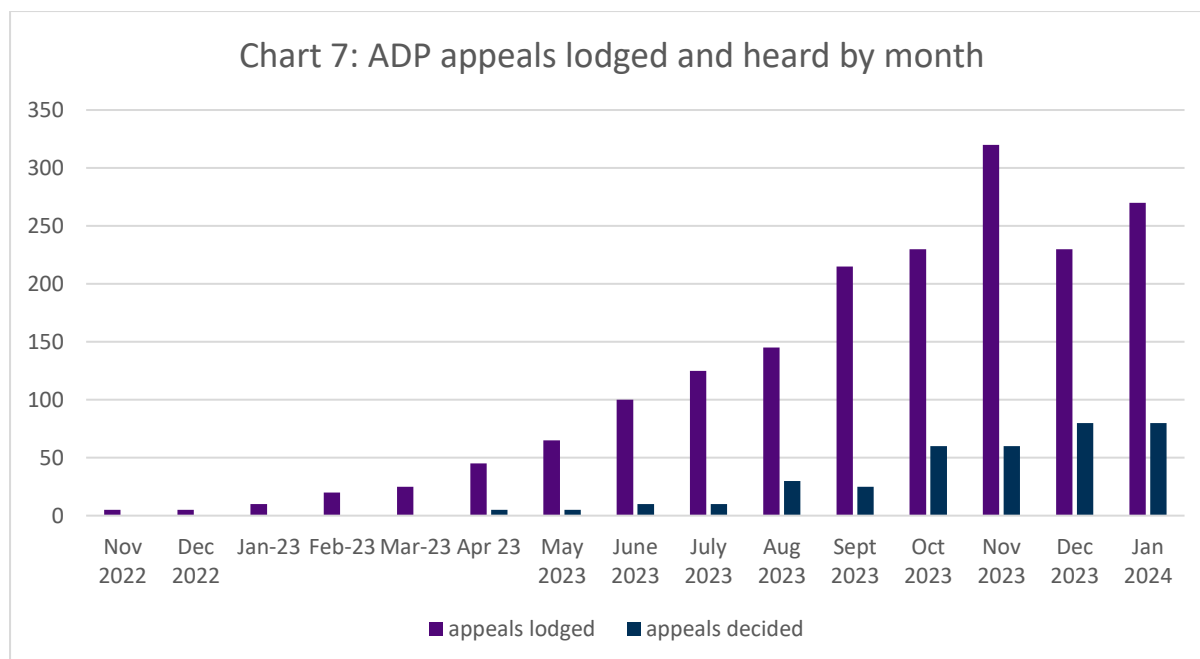
Source: Social Security Scotland statistics.

This point was raised by CAS in evidence on 28 March and in their [written submission](#). They point out that these delays are on top of long waits for initial decisions, saying: “Delays cause distress, anxiety and financial instability.”

If Social Security Scotland miss the deadline for redetermination, then the client can lodge an appeal.

Appeals

There are no statistics published on the length of time appeals take, but comparing the numbers lodged with the numbers decided gives an indication. The chart below shows the lag in ADP appeals.



Source: Social Security Scotland statistics.

The process from application to appeal can take a long time which can be very stressful for the client ([Erica Young, CAS, 7 March, col 17/18](#)).

In their [written submission](#), CAS describe delays to appeals saying:

“Prolonged wait times for an appeal to be listed, poor communication and administrative “hold ups” emanating from both SSS and/or the Tribunals service have all been described by the network, with very serious implications for the health and well-being of the clients involved”.

They give a number of examples including:

- A West of Scotland CAB reports in February 2024 of a client whose appeal is yet to be listed. This is because SSS (Social Security Scotland) has not issued the appeal bundle. The client’s appeal was accepted by SCTS (Scottish Courts and Tribunals Service) in October 2023 and SSS issued a response in November.
- A West of Scotland CAB reports of regularly having to follow up with the Tribunals service for relevant information on an appeal. The CAB reports that the communication they receive from the Tribunals service is “vague and sparse”

Richard Gass (Rights Advice Scotland) told the Committee that:

“I took a couple of straw polls over a length of time, and the view is that Social Security Scotland appeals are taking approximately 15 months from decision

to tribunal while DWP appeals are taking about 11 months.” (28 March, col 30).

Voiceability said in their written submission that clearer communication is 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.

In their written submission SCTS have provided their estimates for the number of appeals expected in the next few years. Almost all appeals are expected to be for ADP.

Table 1: Social Security Chamber workload forecasts based on Scottish Government assumptions received March 2024

| Annual appeal forecast | 2024-25 | 2025-26 | 2026-27 |
|------------------------|--------------|--------------|--------------|
| Total receipts | 9,700 | 9,200 | 9,200 |
| <i>Of which, ADP</i> | <i>9,400</i> | <i>8,800</i> | <i>8,500</i> |

Source: SCTS written submission

The Scottish Fiscal Commission forecast that the ADP caseload will be: 536,000 in 2024-25, increasing to 569,000 in 2025-26 and 595,000 in 2026-27 ([SFC forecasts, December 2023, Figure S5.4](#))

Members may wish to discuss:

- 9. Social Security Scotland has been working to bring down processing times for initial decisions. What impact has this had on the time taken to complete redeterminations?**
- 10. What additional resource are the Tribunals service and Social Security Scotland putting in place to manage the expected number of ADP appeals?**
- 11. As the disability benefit caseload is expected to grow, why is the number of ADP appeals expected to fall?**
- 12. What type of issues lead to delays in the appeal process? How can these be addressed?**
- 13. What can Social Security Scotland and the Tribunals service do to reduce the stress of the appeal process for clients?**

Theme 4: Face to face appeal hearings

The Committee has heard concerns about the lack of face to face hearings. The latest published 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, and

- 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.”

In answer to an FOI submitted by Jeremy Balfour MSP, the Tribunal said in the period from 1st January 2023 to 31st January 2024, there had been 343 oral hearings for ADP of which:

- 343 were teleconference
- 10 were video conference
- 1 was in person.

Erica Young (CAS) stated that: “phone hearings are the default position” (7 March col 12). Similarly, 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 (Stirling Council) 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, col 17).

The SCTS’ [annual report 2022-23](#) stated that: “Only one request was made for an in-person hearing”.

CAS’ [written submission on 19 March](#) stated that:

“The CAS network is receiving wide ranging reports that in-person hearings are not being accommodated, even in circumstances in which representations have been made as to why such a hearing is being sought”

[...]

“In person conversations with an appellant can be a critical part of the holistic, inquisitorial, not intrusive, approach required to tease complete evidence from an appellant who may have normalised the help that they need, to the extent of no longer being aware of it. Cogent oral evidence can be especially persuasive in circumstances in which in person contact with Social Security Scotland in relation to the claim has not happened.”

On 19 April, the SCTS wrote to the Committee saying:

“in the light of feedback from users and user representatives, we are revising the template letter that is sent to appellants. The letter will now include a clear invitation to the appellant to state their preferred form of hearing (telephone,

videoconference or in-person), should they wish a hearing to take place. The Tribunal will accommodate this preference wherever possible.”

Members may wish to discuss:

- 14. How often are in-person hearings requested?**
- 15. The Committee has heard concerns that it is more difficult for the Tribunal to assess a client’s needs over the telephone compared to seeing them in person. What are witnesses’ views?**
- 16. The Scottish Courts and Tribunals Service has said that, in light of feedback, it will accommodate appellant preference ‘wherever possible’. Does the Tribunals Service expect that this will lead to an increase in face to face hearings? What preparations are being made to accommodate any increase?**

**Camilla Kidner
SPICe
April 2024**