###### RNIB Scotland logo

###### Questionnaire

# RNIB Scotland response to Scotland’s social security system: Enhanced Administration and Compensation Recovery Consultation

###### Introduction

The Royal National Institute of Blind People (RNIB) Scotland is the country’s leading charity working with blind and partially sighted people. We support children and adults with sight loss and help them to live full and independent lives, campaigning for their rights.

This response provides comments where RNIB Scotland consider that there could be an impact on blind and partially sighted people, either as benefit claimants/recipients themselves, or as parents with visual impairments claiming on behalf of their children.

Other comments relate to customer experience reported via the RNIB Helpline and Legal Rights Service.

###### Consultation Questions

This consultation seeks views on a wide range of issues. We have answered most questions, and where appropriate, grouped a response together where it deals with a common theme, for example, Questions 24-29 relate to Independent Advice and Scrutiny of Social Security, and Questions 31-35 on COVID-19 measures.

###### Questionnaire

Question 1 - Do you agree or disagree that it would be useful to be able to make changes to Scottish Child Payment that were not limited by the current approach that relies on ‘top-up’ powers?

Agree.

Question 2 - Please give reasons for your answer:

To date the Scottish Child Payment has been rolled out successfully. However, we agree that making changes to the Scottish Child Payment, including endorsing a flexible approach to determine eligibility criteria, would be beneficial. Particularly where there is a clear entitlement. At present eligibly is based on age of the child and the parent/s or guardian/s entitlement to means-tested benefits due to low income (i.e., Universal Credit (UC)).

There are still considerable concerns about the fundamental nature of the UC and the fact that it is a default online benefit. The system for applying, updating, claims on the web-based system can put parents with visual impairments at a disadvantage from the starting point, if they are unable to navigate and/or gain access to online systems.

We therefore suggest that there should be other powers to change eligibility criteria for Scottish Child Payment, particularly considering the cost-of-living crisis. Please see the response to Question 3 below.

Question 3 - Please give your views on the advantages that could arise from creating this additional flexibility.

An advantage may be the ability to fast-track benefit payments, so that whilst a case is being considered by Department for Work and Pensions, (DWP), there is flexibility to make payments where there is a valid application particularly where increased hardship is being experienced. This may be helped by using National Insurance records/contributions to determine eligibly, or other income letters such as bank statements, payslips, etc.

**Question 4 - Please give your views on the disadvantages that could arise from creating this additional flexibility**.

There may be issues with visually impaired claimants finding relevant evidence and uploading this onto web-based systems if they are unable to access these.

Question 5 - Do you agree or disagree that a client should be able to withdraw a re-determination request before Social Security Scotland (SSS) has made a re-determination decision?

Agree.

Question 6 - Please give reasons for your answer:

As the claimant instigated the re-determination it would be reasonable to allow the claimant to stop the process if the request to withdraw is submitted before the re-determination is made. This could happen where the claimant has subsequently sought advice. It’s not a situation that comes up often but overall, a helpful mechanism to have available and provides more flexibility than the current position.

In addition, claimants must also be able to receive accessible, accurate and up to date information, and independence advice where necessary, to make an informed decision on whether to continue or withdraw a redetermination.

Question 7 - Do you agree or disagree that a new determination should only be made if it gives the client everything they could get from the Tribunal?

Unsure.

Question 8 Please give reasons for your answer:

This is a tricky one.

We know that most appeals are successful based on the information and evidence available at the initial decision.[[1]](#footnote-1)

It is not that common for new evidence submitted later in the process being cited as the reason for a more favourable award.

There has been a lot of issues with the DWP making offers to claimants prior to appeal and enabling a redetermination to be made outside of the usual dispute process.[[2]](#footnote-2) If a case is going to appeal, there has already been an opportunity for Social Security Scotland (SSS) to redetermine the decision. It is important that the claimant’s right to a fair trial is protected.

The re-determination and appeals process is stressful for claimants. Often it involves gathering additional evidence and supporting statements to back up their reasons for requesting the original decision is looked at again. This can place added pressure, particularly when a claimant must request this from already overstretched, health, social care and third sector services. An additional barrier blind and partially sighted people face is not being able to access information in suitable formats, and therefore make an informed decision about what information is most helpful for the purposes of a redetermination.

Should new evidence, or existing evidence be used as a basis for overturning the original re-determination, in the client's favour, then they should be given time to consider whether they still wish to proceed to the first-tier tribunal, and whether it would bring any additional advantages. For example, if the standard rate is awarded already, would there be advantages in pursuing an enhanced award, particularly, if a claimant's case is borderline on the points allocated between the two rates. It may also help with additional top-ups/premiums should any other benefits be in payment (i.e., Universal Credit).

Question 9 - Do you agree or disagree that a client should be asked for their consent before a new determination is made?

Don't know/Unsure.

Question 10 Please give reasons for your answer.

Bringing in the claimant at this stage of the dispute process is complicated. The client may not be fully informed of their rights, what their statutory entitlement is etc., and they could feel under pressure to consent to an unfavourable decision. To offer a fully transparent and accountable service, based on a human rights approach, the client should give consent before a new decision is made. If they report any change in circumstances which results in a new determination, this should also be communicated clearly, including who is responsible for gathering any additional information if required to inform decisions.

Question 11 Please provide your views on what challenge rights the client should have on the new determination.

Should the new determination go against the claimant, i.e., result in a reduction or stopping of a benefit, the claimant should, with support, be offered the opportunity to appeal to the first-tier tribunal or request that another decision maker look at the decision. Should this take longer than the stipulated period, claimants should maintain their right to submit an appeal to the first-tier tribunal if they wish to.

Question 12 - Do you agree or disagree that Social Security Scotland should be able to make payments to a DWP appointee until it completes its appointee process?

Agree.

Question 13 Please give reasons for your answer:

Several factors should be considered, including capacity of the individual to make an informed decision on who their appointee is. In some cases, there may already be an arrangement which would override the need to go through a separate appointee process, for example Power of Attorney, Guardianship Order, or another court order allowing the appointee to manage the person’s benefits.

Appointee's awareness of the responsibility they hold as a person's appointee must be clearly communicated to them, including:

* Ability to apply for all the person’s awards which SSS administer.
* Answer mail, emails, and phone calls about these awards.
* Report relevant changes of circumstances.
* Receive the person’s payments and spend them on the claimants, wants and needs.
* Repay any overpayments (see response to Question 22).
* Follow any instructions or guidance issued by Social Security Scotland.

It would be prudent to ascertain, where possible, whether the claimant has given informed consent, for the DWP appointee to continue receiving their payments, if the arrangement exists at time of transfer (i.e., from Personal Independence Payment (PIP) to Adult Disability Payment (ADP)). Where **new claims** are made for SSS benefits then it must be the responsibility of SSS to determine if an appointee is suitable to receive payments on the claimant's behalf.

At the earliest opportunity SSS should arrange a visit with the claimant and the person they want to appoint, whilst also maintaining an individual's a right to confidentiality.

Question 14 - Do you agree or disagree that the Scottish Government should introduce rights of challenge against Social Security Scotland’s decision that someone is liable to repay an overpayment?

Agree.

**Question 15 Please give reasons for your answer**.

Overpayments may occur for a range of reasons, and we believe the individual's right to challenge an overpayment must be upheld. Reasons may include administrative errors, and/or the claimant may have been unaware of changes due to inaccessible information. Blind and partially sighted people may not be able to access letters sent to them, hence why their right to accessible information, and challenge decisions, at all stages, must be upheld.

Question 16 - Please provide your views on the most appropriate way to hear challenges against Social Security’s decisions that someone is liable to repay an overpayment, bearing in mind that the aim is to avoid clients having to go to court.

We agree that where possible there should be a system in place to challenge a decision which avoids the person having to enter court proceedings.

Suggestions include:

* Requesting another case manager or decision maker, whose role it is to review all information again and report fully on the reasons for their decision.
* If this falls out-with a certain time frame, or the decision is not in their favour, the claimant should have the option to appeal to the First Tier Tribunal if they wish to.
* The option to have independent advice, information and support must be offered, to enable the person to fully consider their options, including a check on whether any repayment is justified and whether there are options to negotiate another agreement.

Question 17 - Do you agree or disagree in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid because of injury or disease for which a third party is liable?

Don't know.

Question 18: Please give reasons for your answer

This is an area we don't have much experience of.

Question 19 Do you agree or disagree that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally?

Don't know.

Question 20 Please give reasons for your answer.

There are a number of factors to consider here and criminal prosecution is not an area that RNIB specialises in. Safeguarding concerns must also be assessed.

**Question 21 If you agree, please describe what alternatives to prosecution you consider might be appropriate where small sums of money have been obtained illegally?**

No further comments on this issue.

Question 22 - Do you agree or disagree that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described above?

Don't know.

Question 23 Please give reasons for your answer:

Again, this is a complicated issue where there may be many factors at play, and an area we don't have much experience in.

Questions 24-29 - Independent Advice and Scrutiny of Social Security

RNIB Scotland believes it is crucial that there is a comprehensive, independent process for reviewing and scrutinising the continued delivery of social security in Scotland.

Scrutiny and expertise offered so far, cannot be underestimated, and investment in mechanisms with clarity of purpose and responsibility must be prioritised. This will help ensure there are robust systems to mitigate possible risks and provide further scrutiny on all aspects of Social Security Scotland, as recommended by the Convenor of the Public Audit Committee from 4th of July 2022 [[3]](#footnote-3) The letter states: "It becomes more pressing as activity is expected to increase hugely over the next few years which presents substantial risks, particularly in relation to financial sustainability, staffing, digital solutions and assessing relevant data."

We would also advocate for Audit Scotland's recommendations in its report: "Social security: Progress on implementing the devolved benefits", including:

* More regular public reporting on implementation costs is required to better support transparency and scrutiny.
* Clarity about the intended impact of the investment in social security on outcomes for the people of Scotland to assess value for money over the coming years. [[4]](#footnote-4)

A regulatory framework with sufficient powers and investment to scrutinise and review all aspects of Social Security Scotland would establish a formal structure and may lead to greater accountability. This would also help on specific policy development, such as Employment Injury Assistance, due to replace Industrial Injuries Disablement Benefit (IIDB).

Where possible, RNIB Scotland advocate for and on behalf of blind and partially sighted people in Scotland, and along with other third sector organisations, we would hope that genuine coproduction and involvement of disabled people, and those with lived experience, continues to feature prominently in the development and delivery of social security in Scotland, whilst reimbursing representatives for their time and expertise.

Questions 31–35 – questions relating to no longer accepting reasons for delay that relate to COVID-19.

Given the pandemic has receded, it may be reasonable to revert to the one-year timeframe to submit a late redetermination, appeal etc. The test to determine whether a late re-determination/appeal should be accepted is if there was “good reason” for the delay. As there is no definitive list of good reasons and it is decided on the individual facts of the case, it may not be rational to continue to highlight COVID-19 as a good reason.

Equally, it should not be specifically excluded either. If COVID-19 is cited as the reason for a delay, it should be reasonably considered and not simply excluded from the outside as failing to meet the “good reason” test.

Outlining examples of good reason may inadvertently disadvantage those who may not neatly fall into a definition of “good reason” and therefore prevent them from seeking advice and support on whether their case could be considered and their reasons as acceptable for the delay.

Again, not withstanding existing instruments which already exist, there should be broad and clear interpretation to enable for individual circumstances, even when these do relate to COVID-19, either as a primary or secondary reason and enabling a person to request supersessions, based on their own circumstances. It is not possible to predict every possible occurrence where COVID-19 has impacted on a person, to the extent it has affected their ability to appeal a benefit decision within time limits set. There also needs to be due regard taken in relation to Equalities Act/legislation if long covid is recognised as having a severe and enduring impact on the life of a claimant.[[5]](#footnote-5)

Question 39 Do you have any information you wish to share on the impact of the proposals on groups who share protected characteristics? Please provide details, referring to the specific proposal or proposals to which your comments relate.

RNIB Scotland does not have any further comment to add and would foresee appropriate Equality Impact Assessments carried out for each of these groups prior to implementation of proposals.

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1. Webpage from Rightsnet accessed 20/10/22: [Tribunals reach different conclusion on substantially the same facts as DWP decision makers in almost 60 per cent of successful PIP appeals - Rightsnet](https://www.rightsnet.org.uk/welfare-rights/news/item/tribunals-reach-different-conclusion-on-substantially-the-same-facts-as-dwp-decision-makers-in-almost-60-per-cent-of-successful-pip-appeals) [↑](#footnote-ref-1)
2. Webpage Disability Rights UK accessed 20/10/22: <https://www.disabilityrightsuk.org/news/2021/july/dwp-stop-%E2%80%98cold-calling%E2%80%99-disabled-people-make-low-benefit-%E2%80%98offers%E2%80%99> [↑](#footnote-ref-2)
3. Letter from Convenor of Public Audit Committee, 4th July 2022: [letter-from-public-audit-committee-about-auditor-general-for-scotland-evidence-session-4-july-2022.pdf (parliament.scot)](https://www.parliament.scot/-/media/files/committees/social-justice-and-social-security-committee/correspondence/2022/letter-from-public-audit-committee-about-auditor-general-for-scotland-evidence-session-4-july-2022.pdf) [↑](#footnote-ref-3)
4. [Social security: Progress on implementing the devolved benefits (audit-scotland.gov.uk)](https://www.audit-scotland.gov.uk/uploads/docs/report/2022/nr_220519_social_security.pdf) - May 2022. [↑](#footnote-ref-4)
5. Webpage accessed on 201022: [Whether long COVID is treated as a disability: Long COVID – advice for employers and employees - Acas](https://www.acas.org.uk/long-covid/whether-long-covid-is-treated-as-a-disability) [↑](#footnote-ref-5)