



## **CAS Submission to the Public Audit Committee: Accountability, audit and the further devolution of powers Oversight of DWP activities in Scotland and Draft Clauses on welfare**

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer service, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Adviceguide provides information on rights and helps people solve their problems.

We are champions for both citizens and consumers and in 2013/14 the Citizens Advice Service in Scotland helped over **330,000 clients** in Scotland and dealt with **over one million issues** overall. In addition, the Scottish zone of our self-help website Adviceguide received approximately **4.2 million** unique page views. In 2013/14, our citizens advice bureaux recorded a financial gain for clients of over **£125 million**.

Our Citizens Advice Bureaux (CAB) network, which includes telephone helpline Citizens Advice Direct, deliver frontline advice services through more than 200 service points across the country, from city centres to rural communities. This network of bureaux is staffed by a team of paid staff and nearly 2500 volunteers.

If we paid our volunteers it would cost the service **£10 million**. Research by the Fraser of Allander Institute into the economic benefits of advice shows that the Scottish CAB Service contributes an annual total benefit to the common good in Scotland of nearly **£170 million**.

### **Introduction**

As the Committee's focus is primarily on the accountability and audit arrangements around bodies proposed to transfer reporting to the Scottish Parliament, and oversight of the Department for Work and Pensions' (DWP) Scottish activities, this submission will focus on the proposals surrounding the devolution of welfare benefits contained within Chapter Four of the UK Government's Command Paper '*Scotland in the United Kingdom: An enduring settlement*'. A separate submission from Citizens Advice Scotland will cover on the devolution of consumer advocacy and advice, and our role in delivering this in Scotland.

This submission is based on CAS' arguably unique insight into benefits administration in Scotland. In 2013/14, Scottish Citizens Advice Bureaux (CAB) dealt with over 324,000 benefits and tax credits issues – 36.6% of all CAB advice. In the nine months of April to December 2014, we dealt with a total of 248,000 issues – accounting for 37.2% of all CAB advice. CAB are the leading providers of advice in this area and we provide our service in 30 out of 32 local authority areas reaching 94% of the population.

Citizens Advice Scotland (CAS) welcomed the Smith Commission and much of the Command Paper, and look forward to working with all those involved in the transfer and transition of powers to the Scottish Parliament. We have called for this to be carried out in the best interests of the people of Scotland. Our submission to the Smith Commission focused on three principles – fairness, responsiveness and equality.

## Department of Work and Pensions

**5. Should the joint oversight of DWP development and delivery of Universal Credit be extended to include DWP specifically reporting to the Scottish Parliament on its Scottish activities and if so, what should they include in such reports?**

### Universal Credit

Devolving the ability for the Scottish Government to vary elements of Universal Credit within a wider system administered by the Department of Work and Pensions will be highly challenging, but possible. However, as CAS highlighted in our evidence to the Devolution (Further Powers) Committee<sup>1</sup> further clarity needs to be given on many practical arrangements involved in making successful devolution of these functions a reality.

Careful consideration must be given to how the Scottish Government can make their requirements work on a UK Government system. Data sharing and integration of shared systems and services is integral to this running smoothly to ensure that the Scottish Parliament and Government can fully exercise the range of devolved options available for variation in Universal Credit. It would not be in the best interests of vulnerable claimants if powers devolved could not be used in practice because of inflexible processes, incompatible IT systems, or disputes over responsibilities.

Therefore establishing joint working arrangements between the UK and Scottish Governments at the earliest possible stage is crucial, and ensuring effective oversight and accountability of these arrangements is important to allow for successful delivery. This is acknowledged in the Command Paper<sup>2</sup>, but the detail focuses on the draft legislative clauses which CAS believes should be redrafted to ensure that the Scottish Government can exercise its devolved function, whilst at the same time ensuring that practical considerations are reflected on the face of the forthcoming Bill.

As drafted, the process does not seem to be equitable. The clauses require the Scottish Government to consult the UK Government and to gain their agreement to the timing of any variance. However, should the UK Government wish to make regulations in this area that affected Scotland; they merely need to consult the Scottish Ministers, but are not required to seek their agreement.

This raises a number of issues. Firstly, enabling the UK Secretary of State to make regulations in an area which is devolved to the Scottish Parliament without its consent does not appear to be consistent with the Smith Commission agreement that the Sewel Convention should be put on a statutory footing. Secondly, whilst the intention appears that the timing of any changes needs to be subject to negotiation on what it is practically possible to do so, there is scope for wide interpretation of the circumstances it might be considered 'reasonable' for the Secretary of State to withhold their agreement to the Scottish Government utilising their devolved power to make regulations in this area.

Clear lines of accountability and responsibility will be crucial if the Scottish Parliament, Audit Scotland and the National Audit Office can oversee, scrutinise and audit the delivery of the devolved elements of Universal Credit. Citizens Advice Scotland believes the draft clauses proposed in the Command Paper would make that difficult to achieve.

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<sup>1</sup> CAS Submission to Scottish Parliament Devolution Committee – Implementing the Smith Agreement: Welfare benefits, March 2015 <http://www.cas.org.uk/publications/cas-submission-scottish-parliament-devolution-committee>

<sup>2</sup> Scotland in the United Kingdom: An enduring settlement, paragraph 4.2.8

Additionally, the Committee may wish to consider the oversight and accountability arrangements for the Joint Ministerial Working Group on Welfare<sup>3</sup>, and whether it may be appropriate for these to be included in the forthcoming legislation enacting the Smith Agreement.

### **Scottish Activities of Department for Work and Pensions (DWP)**

Citizens Advice Scotland recommends that the DWP should specifically report to the Scottish Parliament on its considerable Scottish activities which have a substantial impact on Scotland's citizens and devolved public services.

In 2013/14, the DWP was responsible for £14.4 billion of expenditure on benefits in Scotland.<sup>4</sup> Additionally, once Universal Credit is rolled out, it will replace Child Tax Credit and Working Tax Credit which are currently administered by HMRC, bringing further claimants into a DWP-administered benefit.

Across the UK, the DWP spent a further £5.4 billion on baseline spending. It has attempted to reduce administration costs in recent years, in particular by reducing staff numbers by over 24,500 between December 2009 and March 2014.<sup>5</sup>

In Scottish citizens advice bureaux, issues related to benefits and tax credits are the most common area of advice provided, accounting for almost 37% of issues brought by CAB clients. Many problems clients encounter relate to DWP administration. For instance, in the past year CAS has published evidence reports relating to a number of persistent problems for clients in Scotland, where DWP administration is a key factor:

- Delays of up to 15 months in Personal Independence Payment (PIP) assessments<sup>6 7</sup>
- The substantial impact of Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA) sanctions<sup>8 9</sup>
- The links between benefits administration problems and the growing demand for emergency referrals to food banks<sup>10</sup>
- Ongoing problems with ESA Work Capability Assessments, including inappropriate decisions and severe delays<sup>11</sup>
- Delays of several months in considering clients' mandatory reconsiderations of adverse benefit decisions<sup>12</sup>
- Problems with administrative errors and lost mail when clients submit medical evidence for claiming benefits.<sup>13</sup>

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<sup>3</sup> Joint ministerial working group on welfare – Scotland Office news release, February 2015

<https://www.gov.uk/government/news/joint-ministerial-working-group-on-welfare>

<sup>4</sup> Benefit expenditure by region 1996/97 to 2013/14 – DWP <https://www.gov.uk/government/statistics/benefit-expenditure-and-caseload-tables-2014>

<sup>5</sup> Departmental Overview: The performance of the Department for Work & Pensions 2013-14 – National Audit Office, October 2014 <http://www.nao.org.uk/report/departmental-overview-work-department-work-pensions-2013-14/>

<sup>6</sup> Voices from the Frontline: Halt the roll out of PIP in Scotland – Citizens Advice Scotland, March 2015

<http://www.cas.org.uk/publications/voices-frontline-halt-roll-out-pip-scotland>

<sup>7</sup> Voices from the Frontline: Personal Independence Payment – Citizens Advice Scotland, October 2014

<http://www.cas.org.uk/publications/voices-frontline-personal-independence-payment>

<sup>8</sup> CAS response to the Work and Pensions Committee sanctions inquiry – December 2014

<http://www.cas.org.uk/publications/cas-response-work-and-pensions-committee-sanctions-inquiry>

<sup>9</sup> Sanctioned: what benefit? – Citizens Advice Scotland, July 2014

<http://www.cas.org.uk/publications/sanctioned-what-benefit>

<sup>10</sup> Voices from the Frontline: Food parcels and the benefits system – Citizens Advice Scotland, April 2014

<http://www.cas.org.uk/publications/voices-frontline-food-parcels-and-benefits-system>

<sup>11</sup> CAS response to the Fifth Independent Review of the Work Capability Assessment – August 2014

<http://www.cas.org.uk/publications/cas-response-fifth-independent-review-work-capability-assessment>

<sup>12</sup> Voices from the Frontline: Mandatory Reconsideration – Citizens Advice Scotland, June 2014

<http://www.cas.org.uk/publications/voices-frontline-mandatory-reconsideration>

Issues such as these can have a devastating impact on vulnerable claimants, and will have a knock-on impact on devolved areas of public spending such as the Scottish Welfare Fund, health and social housing. The Scottish Parliament has taken a close interest in scrutinising the impact of changes to the social security system through the work of the Welfare Reform Committee, acknowledging the impact on Scottish citizens and on public services.

Establishing a formal DWP reporting requirement to the Scottish Parliament would strengthen this necessary scrutiny and accountability in Scotland, building on the work of the National Audit Office and House of Commons Public Accounts Committee. This should include a requirement on DWP Ministers to provide evidence to the Scottish Parliament in person, which does not currently happen, despite a number of requests being made.<sup>14</sup>

In terms of the content of the reports, CAS would encourage scrutiny to take a holistic view of the value and efficiency of administration of the benefits system in Scotland, including the impact on the lives of vulnerable claimants, impact on wider public services and on charity and community services such as food banks.

***6. If the Scottish Parliament agrees that DWP should continue to deliver devolved benefits, should DWP report to the Scottish Parliament on their performance in administering those benefits; and if so, what performance measures should they report on?***

Close scrutiny of the administration of devolved benefits will be critical, including the Scottish Parliament receiving reports auditing and assessing the performance of whichever public agency delivers them. This should involve reports being laid before the Scottish Parliament, and Ministers and officials asked to give formal evidence as appropriate. As above, CAS would recommend that a holistic approach is taken to measuring performance, including the impact on claimants of devolved benefits administration.

This should be the case whether the administration of devolved benefits is carried out by the DWP or by the Scottish Government. If devolved benefits are to be administered by the Department for Work and Pensions, CAS believes that legislation must ensure that no ‘parity principle’ is applied to Scotland in the case of benefits (as there is in practice in Northern Ireland).

## **Draft Clauses**

When the Command Paper was published by the UK Government on 22 January, CAS welcomed much of the paper, although we expressed our ‘deep disappointment’ that the migration from Disability Living Allowance (DLA) to Personal Independent Payments (PIP) was to continue when we had called for it to be halted.<sup>15</sup>

Areas we welcomed were the transfer of powers over some benefits which we believe could lead to the Scottish Government setting up new processes and practices that will deliver a more responsive and fair system of benefits for Scotland’s people; the joint Ministerial Working Group on Welfare; and for these reasons the joint arrangements for the oversight of DWP development and delivery of Universal Credit between both governments is to be commended.

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<sup>13</sup> Voices from the Frontline: Medical evidence for benefits – Citizens Advice Scotland, April 2014 <http://www.cas.org.uk/publications/voices-frontline-medical-evidence-benefits>

<sup>14</sup> Invitations to UK Ministers to provide formal evidence – Welfare Reform Committee <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/55809.aspx>

<sup>15</sup> Citizens Advice Scotland calls for a halt to introduction of PIP until new Scottish system introduced – Citizens Advice Scotland, January 2015 <http://www.cas.org.uk/news/citizens-advice-scotland-calls-halt-introduction-pip-until-new-scottish-system-introduced>

That said, we believe there are a lot of questions remaining over the process of the transfer of powers and how practically this will take place. Many areas in the legislation also need clarification. With a view to the accountability and oversight arrangements, there are a number of issues in the draft clauses that we believe will need to be addressed, which we would draw the Committee's attention to:

- CAS is very concerned that the DWP are continuing to take funding and policy decisions in areas that are to be devolved. We recommend that the UK Government now effectively 'stop the clock' with the areas that are to be devolved outwith decisions on purely operational matters. No policy decisions should be made to the processes or regulations governing any of the welfare benefit powers that are to be devolved between now and the point of devolution.
- Legislation and practice must ensure that there is no duplication of work and effort from Scottish and UK systems which will result in citizens getting caught between two systems.
- We would like to have full understanding and clarity of what will happen to current Discretionary Housing Payments (DHPs) made available to local authorities from UK Government funding, if Scottish Ministers chose to make exemptions to the Underoccupancy Charge such as those CAS advocate, or indeed choose to remove it altogether. In particular, we would like clarity over whether the funding from the UK Government currently allocated to Scottish local authorities' DHP pots would remain, or whether the full £50m burden of mitigating this policy would fall entirely on the Scottish Government. This will have an impact on who has responsibility for overseeing an already-complex scheme with UK, Scottish and local government all having roles.
- We can envisage problems if there were two governments with very different views on the policy surrounding the housing cost elements of Universal Credit and one was reliant on the other to enact the policy through its infrastructure and staff and decide the costs that that would be incurred. Co-operation and transparency would be essential if this power was to be enacted.
- CAS welcomes the devolution of legislative competence over the design of employment programmes, but remains concerned about how this structure will also sit alongside the current discredited sanctions regime which remains reserved to the UK Government and is administered by the DWP. In our view, maintaining a requirement on a Scottish Government-devised employment support programme to continue to refer people for sanctions will result in a massive strain between governments which have a different view of the sanctions and conditionality regimes put in place by the UK Government.
- Legislation should ensure there is full and transparent data sharing between the DWP and Scottish Government. This will reduce any problems of maladministration, duplication of work, and importantly help ensure citizens do not get caught between two systems or slip through the net altogether.
- It is also important that both the Scottish Parliament Welfare Reform and Devolution (Further Powers) Committees have access to, and are able to work with, the DWP during the legislative changes and transition process if they are to truly be able to scrutinise legislation and the transfer of powers.

***7. In considering the audit arrangements for each of the issues addressed...what should the role of the National Audit Office and/or Audit Scotland?***

As we have raised in our responses to questions 5 and 6 above, CAS would encourage scrutiny to take a holistic view of the value and efficiency of administration of the benefits system in Scotland, including the impact on claimants, impact on wider public services and on charity and community services such as food banks. We have no view on whether the National Audit Office or Audit Scotland is best placed to undertake these activities – this may depend on whether the DWP or Scottish Government is responsible for administering particular benefits.

***8. Where should any agreed audit and accountability arrangements for the proposed new powers be set out (such as through the Fiscal Framework, Memorandums of Understanding or explicitly set out within the UK Bill)?***

Given the importance of clear lines of accountability and responsibility to ensuring effective scrutiny of the delivery of devolved benefits, and the Scottish Government's powers over Universal Credit, CAS would recommend the agreed arrangements are explicitly set out within the UK Bill.

***9. Are there any other areas of the draft clauses where you consider the audit and accountability arrangements need to be strengthened?***

Citizens Advice Scotland will be submitting separate evidence to the Committee on the devolution of consumer advocacy and advice, and our role in delivering this in Scotland.