



Citizens Advice Scotland response Social Security (Scotland) Bill Social Security Committee August 2017

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, 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 Advice for Scotland provides information on rights and helps people solve their problems.

In 2015/16 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with over one million advice issues. With support from the network clients had financial gains of over £120 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.

Citizens Advice Scotland welcomes the opportunity to provide evidence to the Committee's inquiry. The devolution of social security powers is an extremely significant development in the history of the Scottish Parliament and represents a unique opportunity to create a new system that has the potential to make a positive difference for tens of thousands of Scotland's citizens.

In 2016/17, Scotland's CAB network provided advice on 94,301 new issues relating to the benefits being devolved, representing 37% of benefits advice given, or 16% of all advice given by Scotland's citizens advice bureaux in that year. CAS has provided a substantial body of evidence based on CAB clients and advisers' daily experiences of engaging with the current system, together with their priorities for the new Scottish system.¹ We look forward to continuing to work with the Scottish Parliament and Scottish Government to ensure the new system is fair, equal and responsive with Scotland's citizens at the heart of it.

Key points

- CAS believes there are a number of areas that could be included on the face of the Bill as opposed to being left to Regulations and guidance. Examples of this include details of the complaints and redress process for the new system; details of common residency requirements for the new system; further details of how decisions are communicated to them; and details of peoples' right to access independent advice and advocacy.
- Given the level of detailed scrutiny of Regulations required, and the importance of these, CAS would recommend that an equivalent body (or bodies) to the existing UK Social Security Advisory Committee should be an essential feature of the new system.

¹ A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

- The system of redeterminations and appeals could be improved by making it one seamless process from the perspective of the claimant. In our view, the best way to do this is to have the review decision passed directly from the Agency to the Scottish Tribunals Service, rather than the claimant having to lodge an appeal themselves.
- CAS believes that the Bill should include a duty on Scottish Ministers to make provision for access to free, confidential and independent benefits advice. Additionally, the Ministers should also be required to ensure that the advice sector is adequately resourced to provide any advice needed through this provision. This would help support people to understand and secure their rights in the new system, and to maximise take-up of the devolved benefits.
- The Bill would appear to make provision for overpayments as a result of an error by the Scottish Social Security Agency to be repaid by the claimant, which is of concern to CAS. Where the error was made by the Agency, and has led to an underpayment or an overpayment the Agency should pay the claimant any underpayment or backdate the payments accordingly, and the claimant should *not* be required to repay the overpaid benefit.
- Whilst CAS agrees that people are offered the option of direct deductions from benefit to repay debt, we recommend that they should not be deducted at more than 10% of their total benefit entitlement.
- Whilst CAS agrees that the new social security system should offer the option of providing goods or cash, we would be supportive of clarification within the Bill that people will always be given a choice of cash payments, even if an in-kind option is offered.
- A common system for uprating the values of devolved benefits may be an area more suitable for the face of the Bill than in regulations. CAS would recommend devolved benefits are uprated in line with inflation as measured by the Retail Prices Index (RPI) as a base, with additional uprating based on the annual increase in particular costs that the benefit is intended to meet the cost of.

1. The Bill aims to provide a framework for the creation of the Scottish social security system. In addition the Scottish Government has chosen to put most of the rules about the new benefits in Regulations. It believes that putting the rules in Regulations will make things clearer and less confusing. Parliament cannot change Regulations, only approve or reject them. The Scottish Government intends to develop Regulations with external help. Do you have any views on this approach?

Citizens Advice Scotland accepts the Scottish Government's view that setting out some of the rules for the new benefits should be made in Regulations. Much of the important detail affecting the operation of the social security system is contained in regulations and guidance which are regularly issued and updated. In consultation with CAB advisers there was consensus that the impact of the new Scottish system

on the need for social security advice provision would not be fully known until regulations and guidance are published.

However, it is not necessarily the case that all the detail must be made in Regulations. Details of eligibility and operation of many of the reserved benefits are included in primary legislation – for instance, the Welfare Reform Act 2012 goes into a reasonable level of detail about the rules for Universal Credit and Personal Independence Payment.² CAS is of the view that more detail around the eligibility and operation of the benefits should be included in the primary legislation.

As detailed elsewhere in this evidence, CAS believes there are a number of areas that could be included on the face of the Bill as opposed to being left to Regulations and guidance. Examples of this include details of the complaints and redress process for the new system; details of common residency requirements for the new system; further details of how decisions are communicated to them; and details of people's right to access independent advice and advocacy.

There is also no provision in the Bill for equivalents of two current advisory bodies that exist at UK level – the Social Security Advisory Committee (SSAC) and the Industrial Injuries Advisory Council (IIAC). These existing bodies will not be permitted to advise on aspects of the Scottish social security system. Citizens Advice Scotland believes that they play a crucial role in the current UK system, and recommend their functions should be performed by independent bodies in Scotland, particularly given the amount of detail intended to be contained in Regulations rather than in the Bill itself.

The SSAC regularly issues calls for evidence on areas covered by regulations, which enables full analysis of the impact of changes in areas such as waiting days³ and temporary absence regulations⁴. It also has the ability to produce reports and recommendations on its own initiative, such as on decision making and mandatory reconsideration⁵.

Whilst the UK Government is not bound to follow the recommendations made by the SSAC, it allows the full impact of changes to regulations to be known and taken into account. For instance, as raised in evidence, the increase in 'waiting days' for Universal Credit led to an increase in CAB clients who were left without income for an extended period and required a referral for a food parcel⁶.

² Welfare Reform Act 2012 - <http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted>

³ Consultation response on Universal Credit Waiting Days – Citizens Advice Scotland, October 2014 <http://www.cas.org.uk/publications/consultation-response-universal-credit-waiting-days>

⁴ CAS response to consultation on changes to Housing Benefit and Pension Credit temporary absence regulations – Citizens Advice Scotland, February 2016 <http://www.cas.org.uk/publications/cas-response-consultation-changes-housing-benefit-and-pension-credit-temporary-absence>

⁵ CAS response to consultation on Decision Making and Mandatory Reconsideration – Citizens Advice Scotland, March 2016 <http://www.cas.org.uk/publications/social-security-advisory-committee-consultation-decision-making-and-mandatory>

⁶ Learning From Testing Times: Early Evidence of the Impact of Universal Credit in Scotland's CAB Network – Citizens Advice Scotland, June 2016 <http://www.cas.org.uk/publications/social-security-advisory-committee-consultation-decision-making-and-mandatory>

This level of detailed scrutiny of regulations is likely to be beyond the resources or specific expertise of the Scottish Parliament's Committees. Given that seemingly small changes to regulations can leave large numbers of people with a substantial reduction in their income, CAS would recommend that an equivalent body (or bodies) to the SSAC should be an essential feature of the new system.

Establishing the role of the bodies in statute would guarantee their independence from government, allowing them to bring constructive criticism and challenge if needs be. CAS would envisage both as permanent bodies, which would also indicate a need for a statutory underpinning.

CAS would recommend that the existing functions of SSAC are reflected in the Bill, establishing in statute an independent expert body to provide advice to the Scottish Government on the development and drafting of regulations. We would also recommend that relevant Scottish Parliament Committees (currently the Social Security Committee and the Delegated Powers and Law Reform Committee) be permitted to make referrals to an independent expert body to allow advice to be provided on regulations to aid the Parliamentary scrutiny process. It may be desirable for more than one body to fulfil these different functions.

Mindful of the likelihood that a large amount of secondary legislation will quickly follow the passage of the Bill, CAS would also recommend interim arrangements are made to allow advice and scrutiny on the draft regulations ahead of the passage of the Bill. This would also allow the bodies to be established on a formal basis quickly after the passage of the Bill.

Given the challenges in developing a new Scottish social security system, CAS would support recommendations made by other organisations for an independent review of the operation of the Act, the new system and structure of the benefits after three years of the system being in operation.⁷ This should ensure that longer-term development of the benefits continues to take place, and may present an opportunity for some regulations to be incorporated into the Act.

2. The Bill proposes that the Scottish social security system will be based on...seven principles. What are your views on these principles and this approach? Please explain the reason for your answer.

CAS believes that the legislation should state overarching guiding principles to ensure that these form the foundations of the new system. These principles, to be effective in practice, will then need expanded on in more detail within a Charter or Regulations, for instance to define what 'dignity' and 'respect' mean in practice.

⁷ Response to A New Future for Social Security in Scotland: Consultation on Social Security in Scotland – Disability Agenda Scotland, October 2016
http://www.disabilityagenda.scot/images/das_documents/DAS-response-to-scot-social-security-consultation-FINALversion.pdf

CAS agrees that all seven of the Scottish Government's proposed principles should be placed in legislation. In our response to the Scottish Government's consultation⁸, CAS welcomed the (then) five principles, and we also support those subsequently announced. As a service which helps people to claim all the financial support they are entitled to, CAS welcomes the recognition of the Scottish Government's role in making sure people are given the social security assistance they are entitled to, although this needs to become meaningful in practice as well as principle. We also welcome the recognition of social security as a human right. Further consideration should be given to how this can be reflected throughout the design and development of the new system.

For incorporating respect within the guiding principles (including that claimants should be treated with dignity and respect) a similar approach should be taken to that within the Tribunals (Scotland) Act 2014. Scottish Ministers should be under a duty to have regard to the principles when exercising their regulation-making functions concerning social security in Scotland.

Are there other principles you would like to see included?

CAS has suggested two further principles that should be included within the legislation:

- The system should be accessible and fair
- Procedures, decision making, and reviews should be handled quickly and effectively

These additional principles would reflect those currently set out under the Tribunals (Scotland) Act 2014. Section 12 of the 2014 Act states that proceedings before the Scottish Tribunals are to be accessible and fair, and handled quickly and effectively. Scottish Ministers are under a duty to have regard to these principles in exercising their regulation-making functions under the Act. The Lord President and the President of Tribunals are under the same duty but in relation to exercising their leadership functions under the Act.

3. The Bill proposes that there will be a publicly available social security 'charter'. This will say how the Scottish Government will put the seven principles above into practice. It will also say what is expected from people claiming benefits. A report on the charter will be produced by the Scottish Government each year. Do you agree with the idea of the charter? Please explain the reason for your answer.

These principles, to be effective in practice, will then need expanded on in more detail within a Charter. The Charter can contain a level of detail that may not be appropriate for primary legislation. In addition the Charter is far more likely to be accessible to claimants for the purposes of understanding their rights and feeling

⁸ A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

empowered to challenge substandard service delivery and seek redress where appropriate.

CAS believes that the most important role of the Charter is to embed the principles into the system to empower claimants to challenge substandard service and seek redress, and to train all staff who come into contact with claimants. Whilst the requirement that Ministers produce an annual report to Parliament on the performance of the social security system is welcome, it is important that the Charter fulfils the important role as outlined above, rather than becoming a 'performance framework' for the new system.

The most important factor regarding the Charter is ensuring that it is "not just words". CAB advisers and clients were on the whole supportive of the idea that the charter would include both rights and responsibilities and would be aimed at both users of the system and those providing services. However, they did raise concerns about how this would work in practice, and were keen that the system would be designed and delivered with these principles in mind, to ensure that the social security charter would not be "just words on a page".

The Charter must strengthen the guiding principles by helping to embed them into the system in a practical sense. The Charter should be used for training all staff who will come into contact with claimants, to ensure they are aware of the rights and responsibilities of all parties involved, and to ensure they undertake, from the outset, to provide people with a respectful and dignified service where their rights will be respected. With that in mind, the Committee and Scottish Government may wish to consider whether it would be appropriate to give the rights outlined in the Charter a further statutory underpinning.

To empower claimants the Charter must be clear, accessible, and well-advertised. Claimants who do not receive the service they are entitled to should be able to use the Charter as an effective foundation from which to challenge substandard service and seek redress. Empowering claimants is in the best interests of the whole system. Empowered claimants help to ensure that where service falls short of the necessary standard, the affected individual is empowered to challenge this due to knowledge of their rights. This in turn helps to ensure that a high quality level of service delivery is maintained.

CAS believes the Charter should be produced by an advisory group which includes robust representation of system users, which can in part come from organisations with experience and expertise in supporting and representing those users.

It is essential that the views of those who interact with the current social security system on a frequent basis are at the heart of the development of the Charter. Therefore the advisory group must consult closely with current and potential users of the social security system from the outset, and continue this engagement throughout the entire process. A wider group of interested parties could be invited to provide feedback on a draft Charter further into the drafting process.

CAS believes the Charter will be strongest if it encompasses all parties involved in the social security system, rather than being solely aimed at claimants. CAS

welcomes the Scottish Government's desire to bring about a cultural change within the new system, and to embed dignity and respect at its heart. For this to be effective in practice, all parties involved need to take this principled approach. Therefore the Charter will need to apply to claimants, recipients, medical assessors, decision makers, and service providers. This supports CAS's stance that the Charter should include both rights and responsibilities, similar to the Charter of Patients' Rights and Responsibilities.

CAS also believes that the users of the system should be involved in the reporting of how the Charter has been fulfilled in practice, rather than a self-assessment by the Scottish Government, which would appear to be case from the wording of the Bill.

Is there anything specific you would like to see in this charter?

CAS's suggestions for what might be included in a charter are included as Appendix A. This is a summary of more than 165 ideas from 65 CAB advisers and clients that CAS consulted with between August and October 2016. This list is not intended to be comprehensive, but it does represent the views of those who interact with the current social security system on a frequent basis.

Provided with an extract of the NHS Patients' Charter, advisers were supportive of the idea that the social security charter would be similar in content and style. As detailed above, advisers and clients were on the whole supportive of the idea that the charter would include both rights and responsibilities and would be aimed at both users of the system and those providing services, but did raise concerns that the social security charter should not be "just words on a page".

4. The Bill proposes rules for social security which say: how decisions are made and when they can be changed, how to apply and what information people have to provide, how decisions can be challenged, when overpayments must be repaid, what criminal offences will be created relating to benefits. Do you have any comments on these rules?

Delivering dignity and respect in practice

As outlined elsewhere in this response, CAS welcomes the principles of dignity and respect underpinning the new system. It is vital that these are delivered in practice, through a range of actions. Some of these will not require legislation, such as fostering a dignified and respectful culture at every level of governance and management, and providing adequate resources for training. However, the Bill could make provision for claimants to be given a choice of communication methods with the Agency including face-to-face contact.

In addition, the Bill could set out rules for communicating with people, including ensuring that benefit claim forms are in clear, accessible language, and come accompanied by guidance on how to complete the form; and that written communications should be individualised, written in clear, plain English, avoiding medical jargon, legalistic language and abbreviations. There should also be an acknowledgement immediately sent when any benefit claim has been received with

reasonable and realistic timescales that someone can expect their claim to be dealt with included.

Redeterminations and appeals

CAS recommends that the new Scottish Social Security system should include an internal review process in order to reduce the demand on the appeals service, and to help claimants to receive the right decision and have their issues resolved as quickly as possible. However, this internal review process should differ in a number of ways from the current mandatory reconsideration process, which can discourage people from appealing entirely, effectively preventing the right to an independent appeal and acting as a barrier to justice.

The best way to reduce demand on both the internal review process and the appeals process is by improving the accuracy of initial decisions, including analysis of claimant feedback and a well-designed complaints process.

As discussed elsewhere in this response, CAS welcomes the introduction of the Short Term Allowance, which will continue payments through the review and appeal process for people who are in receipt of the benefits in question. However, there are two further key ways in which the new system could be particularly improved through the Bill.

Section 24 (5) of the Bill makes provision for statutory timescales to be introduced within which the review must be carried out, to be made in regulations. Avoiding the lengthy delays that have dogged the current Mandatory Reconsideration process is key to improving the new system. CAS would consider that placing the timescale on the face of the Bill, rather than in regulations would strengthen people's rights and provide a clearer target. We have recommended previously that a reasonable time period would be six weeks for the submission of further evidence, with no more than four weeks for the decision to be made.⁹

Additionally, the system of redeterminations and appeals could be improved by making it one seamless process from the perspective of the claimant. In our view, the best way to do this is to have the review decision passed directly from the Agency to the Scottish Tribunals Service, rather than the claimant having to lodge an appeal themselves. The complexity of the current system of reconsiderations and appeals has the potential to deter people from appealing and act as a barrier to justice. Part of the problem is that the claimant must have their decision reconsidered internally by the Department, and then, if they disagree with the reviewed decision, undergo the additional step of lodging an appeal. An example of how the system could reduce the perception of complexity and appear as a single process is included as Appendix C.

⁹ For further information about timescales for review and appeals, see pages 197 – 199 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

Independent advice and independent advocacy

Independent advice plays a key role in a well-functioning social security system, including support with entitlement, take-up, applications, complaints, appeals, access to information, outreach and continuous improvement. The development of the new Scottish Security System offers a unique opportunity to harness and support the key role of independent advice in Scotland, both to ensure access to quality independent advice through citizens advice bureaux, but also to support the aims of the new system.

Issues relating to benefits and tax credits are the most common area of advice provided by citizens advice bureaux, with over 253,000 new issues advised on in Scotland in 2016/17, representing 43% of their work. This equates to 970 new benefit issues for each working day of the year.

In order to continue this role, sustainable, reliable and long-term funding must be in place to ensure that the existing CAB infrastructure of advice, outreach and partnerships continues to support the people across Scotland that rely on it. Given the central importance of citizens advice bureaux and other independent advice providers to the current social security system, it is essential that this role is built into the development of a new Scottish system.¹⁰

CAS believes that the Bill should include a duty on Scottish Ministers to make provision for access to free, confidential and independent benefits advice. Additionally, the Ministers should also be required to ensure that the advice sector is adequately resourced to provide any advice needed through this provision. This would help support people to understand and secure their rights in the new system, and to maximise take-up of the devolved benefits.

We would also recommend that there should be a statutory requirement to make people aware in communications that they can get help from independent advice at key points of the system, such as when making a claim, when receiving a decision, in communications around appeals, and in situations where an overpayment occurs.

Independent advocacy also plays a crucial role in a well-functioning system particularly those with specific needs and vulnerabilities. CAS would also support a statutory duty to provide independent advocacy to those who need it. It is important to recognise that independent advocacy is different to independent advice, and that advocacy is most effective when it is undertaken in partnership with independent advice services.

Overpayments

The Bill would appear to make provision for overpayments as a result of an error by the Scottish Social Security Agency to be repaid by the claimant, which is of concern to CAS. Where the error was made by the Agency, and has led to an underpayment

¹⁰ For further information about the role of independent advice in the new system, see pages 169 - 182 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

or an overpayment the Agency should pay the claimant any underpayment or backdate the payments accordingly, and the claimant should *not* be required to repay the overpaid benefit. This has been common practice for social security benefits prior to the introduction of Universal Credit, and not only would CAS consider it to be unfair that someone was penalised for an error they were not responsible for, collection of the debt can lead to hardship for individuals.

The Policy Memorandum accompanying the Bill proposes that *“where overpayments are made as a result of agency error, they will not be pursued, unless under exceptional circumstances such as a very large and obvious overpayment.”*¹¹ This is more welcome, though CAS would consider that large and obvious overpayments would either count as claimant error (if it was so obvious that they should have notified the Agency but did not do so), or would be so large as to be unfair to pursue from someone on a low income. In any event, CAS recommends that the Bill is amended to provide clarity and certainty that people will not be pursued for overpayments as a result of official error, regardless of how large the overpayment was.

In terms of debt recovery and overpayment, CAS recommends a tiered approach to investigating the circumstances (included as Appendix D), and recommends that people are offered the option of direct deductions from benefit to repay debt. However, given previous experience of direct deductions being taken at an unaffordable rate, CAS recommends that they should never be deducted at more than 10% of their total benefit entitlement. The Scottish Government must work closely with the DWP to ensure that an individual is not in financial hardship due to overpayments being recovered from reserved benefits and devolved benefits simultaneously.¹²

Complaints and redress

Whilst the Bill sets out procedures for redeterminations and appeals, it is silent on people’s right to complain about poor service, or where they feel that they have not been treated with dignity and respect. CAS would recommend that the Bill should guarantee people’s right to complain without prejudicing their claim, clearly setting out how people can make a complaint and receive redress. In addition to making the process clearer, this would also strengthen the rights-based approach to the design of the system. Precedent for this type of approach can be found in the Patient Rights (Scotland) Act 2011.

CAS agrees with the Scottish Government’s proposal to base the system around the existing Scottish Public Services Ombudsman’s Statement of Complaints Handling Principles. However it will be important to recognise when developing and implementing their CHP, to recognise the unique challenges faced by users of the social security system. A new culture of complaints handling must be created within the Scottish social security system as part of an overall service that instils principles

¹¹ Policy Memorandum page 46

¹² For more information about overpayments and debt recovery in the current system, see pages 211 - 215 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

of openness and trust in its users. Many people coming into contact with the Agency are likely to have reservations about the system. This could stem from prior experience of dealing with the wider social security system, or due to a number of other factors.

Having a strong CHP that is user-focused, accessible, and effective has the potential to distinguish the new system, make a new start, and show users that the Agency genuinely wants to get it right.

From consultation with CAB advisers, there are a number of barriers their clients face which discourage those clients from raising a complaint under the current social security system. These include:

- 'Biting the hand that feeds you' – concern about their complaint influencing any pending decisions on benefits, being sanctioned, or complaining about frontline staff who they may have to continue to deal with.
- 'What's the point' – not feeling that anything would be gained from raising a complaint, not expecting to be listened to, or not wanting to prolong their dealings with the service.
- Not knowing how to complain, having difficulty setting out their complaint comprehensively, or not wanting to ask the person who they wish to complain about how to access the complaints procedure.

In addition to placing people's right to make a complaint, and how complaints will be dealt with in the Bill, CAS also recommends that the Scottish Ministers:

- Ensure that service complaints are proactively identified and handled by the Agency within all procedures, including internal reviews, without requiring the user to expressly ask to raise a separate service complaint
- Establish a separate feedback/complaints service team that users can contact directly
- Ensure all frontline staff are well trained on the complaint handling procedures
- Publicise that current claims will not be prejudiced by providing service feedback
- Provide information to users on the feedback/complaints procedure at every contact with the system.¹³

¹³ For more information about complaints handling in the current, and new systems, see pages 183 - 191 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

Choice of cash or payments in kind

In the Bill, each benefit is described as ‘assistance (which may or may not take the form of money)’. Whilst CAS agrees that the new social security system should offer the option of providing goods or cash, the prevailing view amongst CAB advisers is that claimants should be offered a choice of goods or cash, but that it should always be a choice. CAS would be supportive of clarification within the Bill that people will always be given a choice of cash payments, even if an in-kind option is offered.

A majority of adviser survey respondents – 60% - said that claimants should be provided with the choice of cash or goods. However concerns were raised in CAB client focus groups around a number of issues arising from giving goods in kind without a choice. These included concerns about a loss of dignity; causing stigma; risks of paying for services causing the social security budget being conflated with the budgets for the provision of local services and depriving individuals of income that could have been used for whatever the individual most needed. Flexibility allows for choice, but also allows claimants to live an independent life.

Additionally, the Scottish Government should be wary of adopting a ‘one-size-fits-all’ approach to the provision of goods in place of cash. Instead, each benefit should be considered independently: what works well for one benefit will not necessarily work well for them all. For instance, whilst the popular Motability scheme should continue, this type of approach may not be appropriate for other benefits or in-kind options.

Uprating

A common system for uprating the values of devolved benefits may be an area more suitable for the face of the Bill than in regulations. CAS would recommend devolved benefits are uprated in line with inflation as measured by the Retail Prices Index (RPI) as a base, with additional uprating based on the annual increase in particular costs that the benefit is intended to meet the cost of. The following are examples of costs that could be used to trigger additional uprating.

- Annual energy bills – Disability benefits, Carers benefits, Winter Fuel Payments, Cold Weather Payments.
- Costs of funerals – Funeral Payments.
- Fuel costs – Disability benefits and Carers benefits (due to additional transport costs being one of the key costs met by the benefit).
- Average public transport costs - Disability benefits and Carers benefits (due to additional transport costs being one of the key costs met by the benefit).

Residency

A further area where common rules for the devolved benefits are required relates to residency requirements for making a claim. However, this area is not included in the Bill. To enable a consistent approach, it may be desirable to include these rules within the Bill, rather than in different sets of regulations. CAS recommends that

Scottish benefits are paid to individuals who are present and resident in Scotland. However, the definitions of presence and residence need to be suitably drafted to exclude, for example, those working offshore or overseas. Any habitual residence test that is applied to the devolved benefits should be common sense and if on balance of probability it seems that the individual *is* habitually resident, the requests on that individual to provide evidence should be reasonable and not overly onerous.¹⁴

5. The Scottish Government will take over responsibility for some current benefits. The Bill does not explain how they will work in detail. This will be set out in Regulations at a later date. What are your thoughts on the schedules in the bill in regard to these benefits?

The schedules set out areas where it is expected that regulations will be made for each benefit. Whilst full comment will not be possible on the detail until regulations are published, CAS would regard the following areas as high priorities to be covered in regulations. Comments regarding carer's benefits can be found in our response to question 8, and comments on the design of other benefits can be found in our response to the Scottish Government's consultation.¹⁵

Disability benefits

From consultation with several hundred CAB clients and advisers, the highest priority for the Scottish social security system was that the number of unnecessary medical assessments for disability benefits is substantially reduced by making the best use of existing evidence. There was an extremely clear view that the existing PIP assessment process was not working for clients, including not being treated with dignity or respect; poor quality of decision-making; charges for medical evidence; and people on DLA losing their award on reassessment.

CAS has recommended in assessing people's eligibility for disability benefits, much greater emphasis should be given to evidence from people who know the claimant, including health and other relevant professionals, carers and family members.¹⁶ There should be a tiered approach to assessment, with a face-to-face assessment only carried out in a small number of cases either when a claimant requests one or it has not been possible to gather enough information to make a decision. If an individual's condition or circumstances are unlikely to change, there should be no requirement for them to be re-assessed to continue receiving an award. Further information about this tiered approach to assessment can be found at Appendix E.

In the minority of cases where face-to-face assessments might be required, CAS recommends that these are carried out by a public sector body, either the NHS or

¹⁴ For more information about residency and cross-border issues in the new system, see pages 206 - 210 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

¹⁵ A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

¹⁶ Burden of Proof: The role of medical evidence in the benefits system – Citizens Advice Scotland, June 2017 <http://www.cas.org.uk/publications/burden-proof>

the Social Security Agency. There was a clear view amongst CAB clients and advisers that private companies should not have a role in assessments, due to the lack of specialist expertise, difficulties with the assessments requiring to be carried out in an inflexible 'box-ticking' manner, and due to a lack of clear lines of accountability in certain situations where it is unclear whether the DWP or contractor is responsible for particular actions.

In terms of eligibility for disability benefits, CAS recommends that an independent panel should be set up to monitor and review the eligibility criteria for disability benefits. This panel should include disabled people and representative organisations. However, from evidence from CAB clients, a number of changes should be made at the outset of the new Scottish disability benefit being introduced, compared with the current eligibility requirements for Personal Independence Payment.

The criteria for entitlement to the enhanced mobility component should be changed so that the relevant distance is increased from 20 metres to at least 50 metres, as was previously the case for DLA. An additional lower rate for the daily living component should also be introduced. The current PIP descriptors and points system should be reviewed to enable the new system to operate more flexibly and be suitable for all disabilities and health conditions, particularly fluctuating conditions. In particular, criteria and descriptors should be developed that ensure that people with mental health conditions and learning disabilities are equally able to qualify as those with physical impairments.¹⁷

Funeral Payments

The growing issue of funeral poverty – people being unable to afford a dignified funeral for a loved one – has been a concern for CAS during the past three years. Our annual 'Cost of Saying Goodbye' analysis of funeral costs revealed an average basic cost of burial fees in Scotland to be £1,363, with a £1,500 difference between the most and least expensive council areas.¹⁸

Whilst not the only solution, CAS would welcome any changes to the administration of the payment which would:

- Give certainty to the amount being paid allowing bereaved families to be certain of what will/will not be covered.
- A quicker decision or decision in principle that will give funeral directors and families the confidence they will receive financial support and allow funerals to proceed at the speed the family want.

¹⁷ For detailed information about CAB clients' experience of the current disability system and proposals for improvements, see pages 60 - 113 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016
<http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

¹⁸ The Cost of Saying Goodbye 2016 – Citizens Advice Scotland, September 2016
<http://www.cas.org.uk/publications/cost-saying-goodbye-2016>

- More clearly defined criteria in order to ensure that applicants have greater certainty. This would reduce the number of unsuccessful applications, which is high at present.
- Reducing the need for, or alternatively the ability to refund once the grant cleared, deposits which we know cause families substantial concern and anxiety in trying to afford.
- Any fast-tracking for those with terminal illnesses to have arrangements in place before they die to better allow them to plan their own funeral should they wish.

Specifically we would welcome fixed payment amount rewards and the removal of the need to check family relationships which we believe are the two most onerous parts of the current DWP benefit.¹⁹

6. The Bill proposes that a new type of short-term assistance will be introduced. This will be for someone who is challenging a decision to stop or reduce a Scottish benefit. What are your views on this proposal?

Citizens Advice Scotland warmly welcomes the introduction of the Short Term Allowance, which will address a major concern regarding the current mandatory reconsideration process. We would recommend this new form of support is automatically awarded rather than needing to be separately applied for, and should not require to be repaid.

Currently a disputed benefit entitlement is not payable pending a mandatory reconsideration. For example, those in receipt of Employment and Support Allowance (ESA) who wish to challenge a decision regarding their entitlement to that benefit, or which group they should be in, are no longer entitled to receive benefit payments at the assessment rate during the reconsideration process, and must instead claim Jobseekers Allowance (JSA). However, many ESA claimants are reluctant to claim JSA, or experience a delay in making a claim, and therefore experience (sometimes severe) financial hardship as a result.

In October 2015, CAS received responses from 15 CAB welfare rights advisers to a survey which included two questions about Mandatory Reconsideration. When asked about the impacts of Mandatory Reconsideration, 13 respondents mentioned the fact that clients are not in receipt of the benefit during the reconsideration period, and ten mentioned the financial impact that this can cause and used words like “hardship”, “poverty” and “reliance on foodbanks”:

“The main impact is loss of income. If a claim for ESA is subject to Mandatory Reconsideration then claimants lose out on potential components on an ongoing basis. It is alright to say that if the decision is overturned then the claimant receives a backdated payment of benefit, however the claimant has had to survive without it in the meantime.” – Western Isles Citizens Advice Service

¹⁹ For detailed information on funeral poverty and the potential role of Funeral Payments, see pages 134 – 145 of A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

“Clients either are unable to afford essential living expenses or end up deeply in debt. As one claimant said - you can't walk out of the Co-Op telling them you'll backdate payment for your groceries.” – Skye CAB

Although none of ESA, JSA or Universal Credit are being devolved, this issue still has the potential to affect those in receipt of disability benefits, as people in receipt of disability benefits often rely on this income to supplement other forms of income (whether from income-replacement benefits or other sources), and to abruptly stop these payments when a decision regarding entitlement is being challenged, can have a serious detrimental effect on the financial security of that individual and their household.

Therefore, CAS is of the view that, when the internal review concerns a decision regarding entitlement to a benefit, those *already in receipt of a benefit* should remain in receipt of benefit payments as they undergo the internal review process. However, this should not be the case for those who are newly applying for a benefit.

For example, if someone is in receipt of a disability benefit and is undergoing a reassessment because their condition has changed, and wishes to challenge the outcome of that reassessment, they should remain in receipt of the benefit payments during the internal review process. Conversely, if someone is making an initial claim for Carers Allowance, for example, and they are found to not be eligible for the benefit, they can challenge that decision, but should not be entitled to receive payments of the benefit in question while the decision is being reviewed. If they are successful however, their benefit should be backdated to the date they made the original claim.

The justification for this distinction is that the individual already in receipt of disability benefits who is challenging the decision would experience financial detriment if their payments stopped, and there is a higher likelihood that the decision might change, if not on review, then potentially on appeal.

7. The Bill includes the power for the Scottish Government to be able to top up ‘reserved’ benefits (ones controlled by the UK Government), but does not say how these will be used. The Scottish Government also has the power to create new benefits. This is not included in the bill. Do you agree with these proposals?

The Bill would appear to be structured so that future supplementary (‘top-up’) payments would be added to Part 3 as they arise. A range of suggestions for how the powers could be used have been made by various organisations and stakeholders. CAS has recommended that the power could be used to make an ‘Assessment Payment’ to people who would otherwise spend six weeks without income whilst waiting for a first Universal Credit payment, if the UK Government did not take action in this area²⁰. In general, CAS would consider assisting people who

²⁰ Learning From Testing Times: Early Evidence of the Impact of Universal Credit in Scotland’s CAB Network – Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/learning-testing-times>

are left destitute or requiring emergency support from a food bank as a result of having gaps in income as a high priority for action²¹.

Other suggestions have included a £5 per week top up to Child Benefit²², and a destitution fund for refugees and migrants who find it difficult to obtain support from elsewhere²³, together with other proposals which are worthy of consideration. CAS would recommend that the Scottish Government give strong consideration to using these powers to prevent poverty and inequality.

The power to create new benefits in areas of devolved responsibility is not included in the Bill, though it may be the intention to add these to Part 2, Chapter 2 as they are introduced. The Scottish Government has previously consulted on the introduction of a Job Grant, which would make a payment to young people starting work after a period of long-term unemployment, but no mention is made of this in the Bill. It is unclear whether the Scottish Government intends to amend the Bill to introduce this at a later date.

8. The Bill proposes that carer's allowance should be increased as soon as possible to the level of jobseeker's allowance (from £62.70²⁴ to £73.10 a week). What are your thoughts on this proposal?

CAS welcomes the Scottish Government's commitment to increase the level of Carer's Allowance to the same rate as Jobseekers Allowance, which we would regard as a good start towards a carers benefit that better recognises and provides for Scotland's carers. However, that rate is not sufficient to fully compensate carers for loss of income, nor fully recognise the substantial effort put into caring for a loved one.

The proposal in the Bill involves making a bi-annual payment to Carer's Allowance recipients of £270.40 (the difference in value between the two benefits) from the summer of 2018. There have been some concerns that receiving payments as a lump sum may cause difficulties for family budgeting. We would welcome further clarification from the Scottish Government as to why the payments will be structured in this way.

The interactions between Carer's Allowance and other benefits are complex, particularly 'overlapping' with Income Support/Universal Credit for those of working age, and the State Pension and Pension Credit for those who have retired.²⁵ These

²¹ Living at the Sharp End: CAB Clients in Crisis – Citizens Advice Scotland, July 2016 <http://www.cas.org.uk/publications/living-sharp-end>

²² Use new powers to invest £5 a week in every child, say child poverty campaigners – Child Poverty Action Group in Scotland, April 2016 <http://www.cpag.org.uk/content/use-new-powers-invest-%C2%A35-week-every-child-say-child-poverty-campaigners>

²³ Securing Women's Futures: Using Scotland's New Social Security Powers to Close the Gender Equality Gap – Engender, June 2016 <https://www.engender.org.uk/content/publications/Securing-Womens-Futures---using-Scotlands-new-social-security-powers-to-close-the-gender-equality-gap.pdf>

²⁴ The current value of Carer's Allowance is £62.70 per week, not £62.10 as stated in the consultation questions

²⁵ For more information about the interaction between Carer's Allowance and other benefits, see pages 114-117 of A New Future for Social Security: Consultation on Social Security in Scotland –

complexities are illustrative of some of the difficulties that may be faced in making changes to Carer's Allowance or creating a new Scottish Carer's benefit. Despite reassurances that the Fiscal Framework agreed by the Scottish and UK Governments guarantees that additional income for a benefit recipient provided by the Scottish Government will not result in an automatic offsetting of entitlement to reserved benefits by the UK Government²⁶, CAB advisers and clients who took part in our consultation were still concerned that people might inadvertently lose out, or would see no change to their income despite intentions to the contrary.

CAS recommends that the Scottish and UK Governments set out plans for any necessary changes to regulations to ensure that people receiving the Carer's Allowance supplement do not lose any of the topped-up payment, due to the change in their income affecting entitlement to any passported benefits or services.

The Bill makes no mention of the idea of a Young Carer's Allowance, though we understand that the Scottish Government continues to pursue the idea. Citizens Advice Scotland supports the creation of a Young Carer's Allowance in some form. In particular, a Young Carer's Allowance should remove restrictions on carers in full-time education from receiving carer's benefits, if that is not done within Carer's Allowance itself.

For young carers under the age of 16, a package of financial support could be provided, along with an increase in support services and respite care. The package of financial support could include grants for occasional costs, support for transport costs and additional tuition, support for leisure activities or other similar possibilities, although consideration should be given to whether a regular payment would be appropriate for young carers.

Using this to help identify young carers could also open up opportunities to link them up with existing support. Caution must be taken however to ensure that a Young Carer's Allowance is not merely a repackaging of existing support, but represents additional support for carers under the age of 16. Non-financial support for young carers should be increased including additional funding for respite care and support services.

In the longer term, the opportunity should be taken to develop a Scottish Carer's Benefit that better meets the needs of Scotland's carers. The eligibility criteria should be reviewed with a view to broadening it to ensure that carers do not unfairly lose out on support.

In particular CAS recommends that carers who receive the State Pension, carers in full-time education, and carers who earn the equivalent of 21 hours per week at the Scottish Living Wage should be entitled to receive carer's benefit. CAS also recommends the Scottish Government consider a number of other groups for

Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

²⁶ The agreement between the Scottish Government and United Kingdom Government on the Scottish Government's fiscal framework – February 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503481/fiscal_framework_agreement_25_feb_16_2.pdf

support from a Scottish Carer's benefit, potentially as part of a two-tier structure with a higher and lower rate of award. Further details of the rationale for this can be found in our response to the Scottish Government's consultation²⁷ and an illustrative example of how a two-tier system might operate is included as Appendix B.

In terms of delivery of the benefit CAS recommends the application and assessment process can be improved by ensuring paper forms are available for applications, entitling carers to receive benefit whilst an application for disability benefit is being considered, ensuring appropriate levels of phone and face-to-face support for claimants, and ensuring that any changes to the eligibility criteria do not complicate the application process.

9. The Bill proposes that discretionary housing payments continue as they are. They will still be paid by local authorities. The Bill does not require any local authority to have a discretionary housing payments scheme but if they do, they must follow Scottish Government guidance on running it. Do you agree that discretionary housing payments should continue largely as they are?

CAS agrees that the Discretionary Housing Payment (DHP) scheme should largely continue in its present form. The Bill broadly transfers the legislative underpinning for the present scheme into the new Scottish system, and appears to be acceptable. However, to ensure that a DHP system exists in every local authority as long as there is still a need for it, CAS would recommend adding a requirement for local authorities to operate a scheme as long as funding continues to be provided.

Improvements to the existing DHP system can mostly be achieved through guidance and improved administration of the local schemes. In particular, future guidance should ensure that Housing Benefit and Universal Credit claimants who are affected by the underoccupancy charge (or 'bedroom tax') should be able to receive a DHP mitigating their full losses until such time as it is fully replaced by Universal Credit and the Scottish Universal Credit flexibilities are fully operational.

CAS also recommends that people affected by the Benefit Cap continue to be considered a priority for DHP support, and Local authorities should look to make longer-term Discretionary Housing Payment awards to people affected by the Benefit Cap, covering the full value of the loss. Guidance should also be reviewed to ensure that administrative issues, such as delays and differential treatment of claimants at the beginning and end of the financial year are minimised.

*The Scottish Association of Citizens Advice Bureaux - Citizens Advice Scotland
(Scottish charity SC016637)*

²⁷ Pages 123 – 129, A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

Appendix A – CAB client and adviser suggestions for what could be included in the Social Security Charter

Underpinning principles and priorities

- Social security offers a cradle-to-the-grave safety net
- Social security allows for people to fulfil their potential, despite life circumstances
- Social security protects people in a time of need
- Value should not be measured in monetary terms alone
- The right not to experience hardship or be left without any income is paramount
- The right to know that staff will be held accountable if they fall below the standards set out in the charter
- The charter should reflect expectations of both users and service providers
- The social security system is not to be abused; it is there to provide support to people when they need it.

Rights

Accessibility

- The right to an accessible social security system which makes reasonable adjustments for those with protected characteristics
- The right to have needs taken into account and an acknowledgement of the various difficulties people face when accessing social security
- The right to have vulnerabilities identified and addressed
- The right for people's changing needs to be recognised and provided for

The right to information

- The right to free, prompt advice
- The right to information in multiple formats including online and hard-copy information leaflets and booklets
- The right to up-to-date information about other benefits, not just devolved benefits
- The right to, at the point of claiming benefits, be made aware of all benefit they may be entitled to and information about the claiming process
- The right to open and transparent information that is written in unambiguous plain English, and other languages as required

Dignity and respect: how people can expect to be treated

- Both the agency staff and the benefit claimant should have the right to mutual respect throughout the entire process of applying for and receiving benefits
- The right to be treated in a fair and consistent manner
- The right to be trusted
- The right to have opinions and experience respected
- The right to be treated as an individual and to have specific limitations taken into account
- The right to be treated with sensitivity – to prevent those who react strongly due to health conditions from being turned away
- The right to be believed and listened to by non-judgemental staff
- The right to be supported through traumatic events, such as bereavement
- The right for any conditionality and expectations placed on the claimant to be reasonable and meaningful
- The benefit department should be able to help the claimant more inclusively in using on-line services to claim benefits if they are requesting claimants use this method of submitting a claim.

Processing times

- The right to timely assessment, decision and payment of benefits
- The right to have a claim dealt with efficiently, correctly, with reasonable timescales and with regular updates
- The right to have a decision reviewed within a specified timeframe

Communications

- The Social Security Agency will communicate with clients in the clearest most easily understood terms when explaining their claims whether it be in writing, by telephone or face to face
- The right for claimants speak to someone who is aware of and knows about their case.
- The right for the client to say how they wish to be contacted, depending on personal circumstances; the right to a flexible approach to contact method including face-to-face, letter, phone, paper forms, online and email
- The right to be kept fully informed of all decision-making from the beginning of the process and throughout
- The right for phone calls to be answered within a reasonable and specified time; and for users to be called-back within a timescale which is appropriate and set
- The right to be spoken to with respect and for agency staff to take a user-centred approach to communications
- The right to receive written communications that are relevant to the individual (i.e. not just a template)
- The right to have confirmation that the agency has receipt of information (for example, regarding changes of circumstances)
- The right to speak to trained and skilled advisers who have a good knowledge of reserved and devolved social security benefits

Complaints, reviews and appeals

- The right to an easily accessible and confidential complaints process which: is responsive to feedback within strict time limits; offers meaningful redress to the user; and will not affect any current claim
- The right to provide feedback (even if through intermediaries)
- The right to challenge decisions through a streamlined review and appeal process, and have their review and/or appeal determined within a reasonable fixed time limit
- The right to an independent appeal and a fair hearing

Working with other agencies and access to independent advice

- Commitment by the Social Security Agency to form partnerships and good working practices with other public and voluntary organisations resulting in appropriate referrals for users and the ability to address emerging issues
- The right to give permission to allow data sharing to ensure efficiency and correct decision making for benefits eligibility
- The right to free and independent advice, advocacy and representation throughout the claim, review and appeal process
- The right to be signposted or referred to other services as appropriate
- The right to expect relevant information to be shared between agencies to ensure accurate benefit awards and therefore avoid both under and overpayments

Decisions

- The right to high quality decision making by trained professionals and to expect the right decision first time
- The right to receive feedback regarding how decisions have been reached, with reference to the relevant evidence

Continuous improvement

- There should be reviews of processes and systems in accordance with client experiences
- A quality and audit department should be introduced into the new agency, to flag up systemic problems
- Effective tools for gathering feedback from other agencies and service users should be embedded
- Processes and services should be evidence based

Assessments and use of evidence

- The right for unnecessary assessments to be avoided
- The right to, where necessary, receive assessments which are fit for purpose and inquisitorial rather than adversarial
- The right to identify the best people to give evidence in their case, and for all evidence to be accepted
- The right to provide evidence and have this considered in an unbiased appraisal of all the relevant evidence
- The right to a paper-based assessment if the medical evidence suggests this is appropriate
- The right for medical information to be collected from all relevant health professionals as identified by the client

Responsibilities

Underpinning principles

- Responsibilities should mirror rights – e.g. if clients have a time limit, the Agency should have a time limit
- Claimants' responsibilities should be underpinned by mutual respect
- Responsibilities should be clearly stated at the start of any claim and reiterated throughout the journey
- Responsibilities need to be built into the charter, though must be flexible enough to fit personal circumstances

To treat staff with respect

- The responsibility to treat staff with the same dignity and respect that they would expect to receive

Sharing information

- The responsibility to provide a means of contact and where this is not possible, the responsibility to co-operate with the agency in establishing an appropriate means of contact
- The responsibility to provide all necessary information
- The responsibility to not knowingly provide incorrect information
- The responsibility to provide evidence where necessary
- The responsibility to communicate changes of circumstances as soon as possible

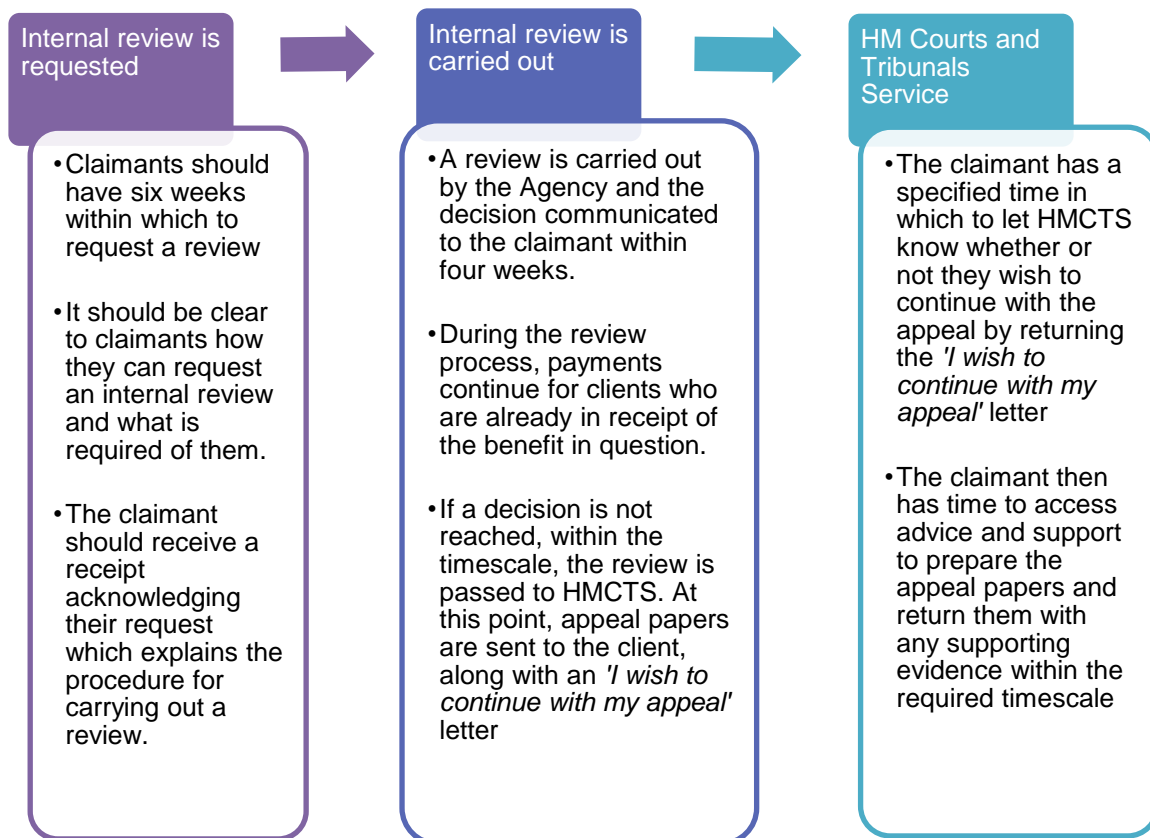
To engage and co-operate

- The responsibility to engage and co-operate with all relevant agencies (within the individual's capabilities)
- The responsibility to adhere to the terms and conditions of the contract and to receive both a paper and digital copy of any agreement between the claimant and the Agency
- The responsibility to attend appointments or communicate if that is not possible

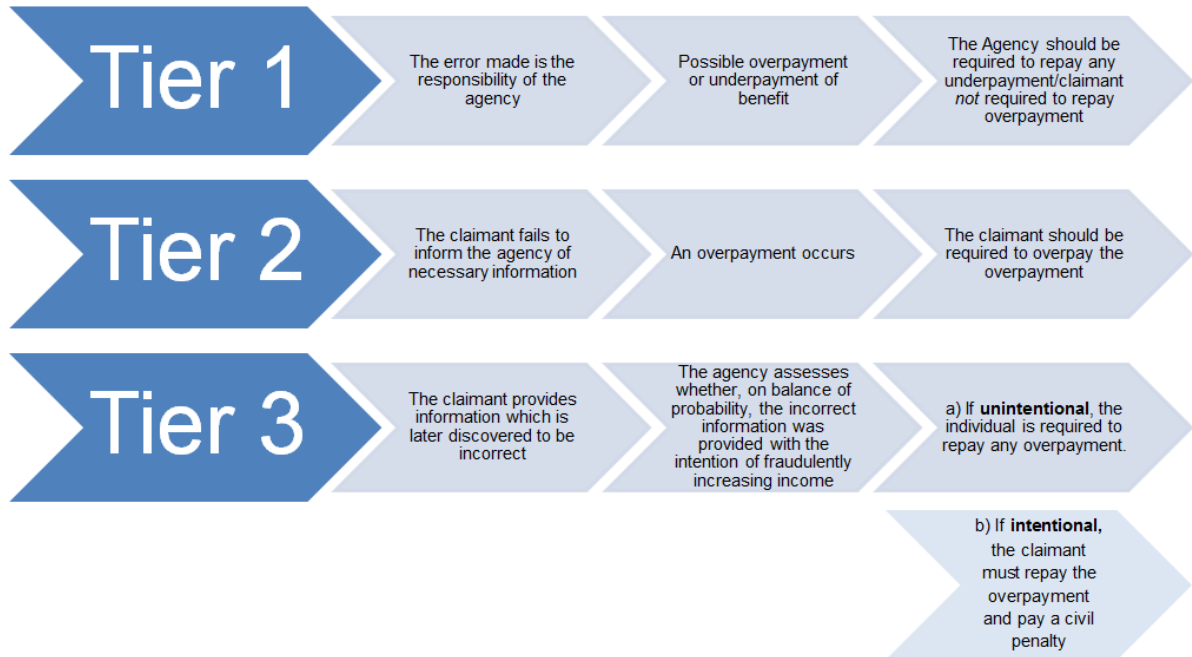
Appendix B – Possible structure of a Scottish Carer’s benefit with two rates of award

Higher rate	Lower rate
<ul style="list-style-type: none"> • All those currently eligible for Carer’s Allowance • Carers in full-time education (or Young Carer’s Allowance at same rate) • Working carers who earn less than the equivalent of 21 hours per week at the Scottish Living Wage 	<ul style="list-style-type: none"> • Carers in receipt of State Pension who do not qualify for Pension Credit • Carers under the age of 16 (or Young Carer’s Allowance package of support) • Carers who spend between 28-34 hours per week caring for someone • Carers who spend at least 35 hours per week caring for someone, but earn more than the earnings threshold • Carers who provide care to more than one person (in addition to higher rate) • People who share caring responsibilities for someone • People caring for people who have applied for disability benefit but have not yet received an award.

Appendix C– How the internal review process should work



Appendix D - A tiered approach to investigating the circumstances of overpayments



Appendix E – A tiered approach to assessment for disability benefits

