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Chair: Disability and Carers Benefits Expert
Advisory Group
c/o Scottish Government

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Dear Jim,

Thank you for your letter of 14 April 2020 regarding decision-making and consultations for Disability Assistance. I am pleased to hear of your constructive discussions with officials and welcome your feedback. I have considered all of your recommendations and am pleased to confirm that I broadly support most of them. I would like to address each in turn.

Consultations

Recommendation 1: The Scottish Government should implement a significant public engagement exercise to improve insight around this and related social security objectives, to build public support for designing a more dignified approach to disability assessment and to ensure the proposed consultations are effective and sustainable.

I am happy to accept this recommendation. I recognise the Group's concern that the public may lack sufficient understanding of the changes and consequently believe that the new system is more vulnerable to fraud. A public engagement exercise will be undertaken in advance of delivering Disability Assistance for Working Age People. It will convey the principles of treating disabled people with dignity and respect but it will also make clear that the Scottish Government is implementing a robust approach to decision making.

Recommendation 2: The Scottish Government should uphold its commitments regarding the use of informal observations despite the move to consultations.

I am happy to accept this recommendation. I am committed to providing a flexible, person-centred consultation service across Scotland in which individuals will be offered a choice of an appointment date and time that suits them. I have already made clear that observations made during a consultation must be evidence based and transparent. A client will have opportunity to respond to any observations made and there will be a recording of the consultation unless the client wishes to opt out. This will be the case regardless of the location of the consultation including if the consultation takes place over the phone.

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I anticipate that the majority of consultations will take place over the phone and will only happen face to face when it is requested by the client, required for accessibility reasons or the agency consider that due to the client's particular condition/impacts it would be beneficial to see the client face-to-face. Where face-to-face or phone conversations are not feasible for clients, we will also be able to offer consultations via video call. This is aligned with the Scottish Government's commitment to provide individuals with choice and flexibility, taking into account what form of consultation best suits their needs, views and wellbeing. This is reflected in the Social Security Charter which states that Social Security Scotland will ensure "that face-to-face assessments are carried out in a way that puts [the individual's] wellbeing first".

Recommendation 3: Case managers and practitioners should be positively encouraged to make use of the specially trained practitioners. Specially trained practitioners should have a quality control role to identify areas where additional advice would be helpful.

I am happy to accept this recommendation. Case managers will be proactively encouraged to use the specialist knowledge of practitioners and this will be built into different aspects of training and service design. The training that case managers will receive will regularly incorporate prompts to refer to practitioners when they need advice.

Referral pathways to practitioners are being developed to establish the best methods for case managers to engage with practitioners depending on the depth of information they require, including whether that advice should be from a practitioner trained in mental health conditions or learning disabilities. This referral process will also record the efficacy of this advice, allowing for quality assurance and continuous improvement. Furthermore, quality assurance measures involving the practitioners will be applied during the initial decision making process and throughout the redeterminations and appeals processes.

Recommendation 4: Consultations must consider and mitigate the fact that some disabled people, especially those with learning difficulties, may underplay the impact of their condition.

I am happy to accept this recommendation. Social Security Scotland practitioners will have more time to understand a client's condition or disability and to consider whether reported symptoms are consistent with all of the information available. It is vital that clients are not disadvantaged by removing physical examinations which only offer a snapshot into the life of an individual. Training and guidance will therefore be provided to case managers and practitioners on relevant conditions, how they may be underplayed during the application process and how this should be identified and addressed.

Gathering information from external agencies

Recommendation 5: The Scottish Government must recognise that where it is putting extra pressure on external organisations to provide information relevant to a claimant's application, it must evaluate and address the resource implications of this pressure.

I am happy to accept this recommendation in principle. Officials have been prioritising working with the health sector and local authorities. The Scottish Government is collaborating with these sectors to ensure that we find the best way to gather information to reduce the impact as much as is feasible. Future work with stakeholders including those outside of the health sector and local authorities, will explore the best methods of sharing information with Social Security Scotland in order to reduce the resource implications.

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Recommendation 6: External organisations must be provided with substantial guidance to ensure the information they provide is as useful as possible to case managers. This should be provided as early as possible so organisations can prepare internal policies and procedures.

I am happy to accept this recommendation. Current work with the health sector and local authorities has seen the development of templates that will be user tested to ensure that organisations are able to respond productively, providing only useful and relevant information. The Scottish Government will also engage with external organisations outwith the health and local authority sectors on what information will be helpful in supporting a client's application, to seek their input into how this is communicated to clients and the process for sharing information with Social Security Scotland to ensure external organisations are provided with the necessary guidance on supporting information. We recognise the importance of all organisations having sufficient time to prepare for sharing this information with Social Security Scotland including consideration of GDPR requirements. Stakeholder input will be vital in ensuring that the approach we ultimately decide on works for them.

Recommendation 7: The relationship between external agencies and claimants must be considered. Where an external agency is unable to or does not wish to provide such information to the Agency, communications should be crafted in a way which mitigates risks to this relationship.

I am happy to accept this recommendation. The Scottish Government will ensure that, where third party organisations, such as third sector organisations or private care companies, have the capacity to support clients by providing supporting information, we will collaborate with them to make the processes clear and transparent. Conversely, if they do not have capacity, or consider that the relationship with their clients could be damaged by providing this information, we will aim to ensure that communication with clients minimises putting this relationship at further risk. We will have data sharing agreements with local authorities and health boards in place to facilitate the provision of supporting information from these sources.

Gathering supporting information from clients

Recommendation 8: Requests for further supporting information from claimants should involve pre-booked interactions to allow claimants to secure the support they require.

I am happy to accept this recommendation in part. Pre-booked interactions will happen when clients are invited to participate in a consultation. In terms of requesting supporting information, depending on the client's preferred method of communication, they will be notified that Social Security Scotland would like to gather further supporting information and invite the client to engage in discussion about that (through whichever channel they have selected). This element of the service design will be user tested, the testing will inform the development of this process and take into account the diverse needs of individuals. It will incorporate the needs of those who find interactions anxiety-inducing, need interpreters or an advocate or friend with them when communicating with Social Security Scotland.

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Recommendation 9: We welcome the commitment for information gathering to be claimant led. Therefore, we recommend the Scottish Government commit to rarely, if ever, using the powers set out in section 54(2) of The Social Security (Scotland) Act 2018.

I am happy to accept this recommendation in part. I recognise the Group's concerns that use of this power could result in case managers using this power frequently to make an automatic negative determination and I agree with the Group that this power should be avoided. If case managers have requested further information from the client but the client cannot or does not provide this, the case manager will make a determination based on the information they hold such as the application form and/or any other supporting information. This power will only be used where despite every effort case managers are unable to obtain the information are unable to make an assessment of whether the client meets the eligibility criteria. To ensure that this is the case and that these powers will be used in ways that ensure fairness, dignity, and respect, we will provide case managers with clear guidance setting out how this power should be used.

Recommendation 10: The way the Agency requests information relating to changes of circumstances must be carefully considered to ensure claimants are not inadvertently or unfairly subject to an offence of failing to notify as described in section 72 of The Social Security (Scotland) Act 2018.

I am happy to accept this recommendation. We are carefully considering which processes we need to put in place to ensure that requirements to report a change of circumstance are communicated clearly and transparently, ensuring that clients understand what changes they will need to report. A case managers' assumption should always be that the client has acted in good faith. The Scottish Government will provide case managers with detailed guidance to ensure that they do not penalise clients that have not intentionally acted dishonestly.

Gathering supporting information from third parties

Recommendation 11: Supporting information sent by third parties to the agency at a claimant's request should be immediately available for review by the claimant. This must be balanced with ensuring quality decisions are made quickly.

I do not accept this recommendation as I am concerned about resource implications and duplication of effort. The intention is to send the client a decision letter which will always include the consultation report (where relevant) and a summary of any other supporting information that Social Security Scotland have gathered from or on behalf of the client. Section 40 of the 2018 Act also requires the client's determination letter to set out the reasons for the determination. This will include any facts that have been material to the decision. The recommendation that the client receive copies of all information gathered may therefore be an unnecessary duplication of effort which would have cost and resourcing implications. Should a client wish to have a copy of the information gathered they can of course submit a Subject Access Request to receive this.

Recommendation 12: There should not be a strict time limit put in place regarding how long a case manager should wait for information from third parties or how long they should continue searching for further information.

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I am happy to accept this recommendation in principle. Guidance will be provided for case managers to make appropriate decisions when setting a time limit for waiting for information from third parties. Setting a clear time limit in the guidance will be necessary to allow case managers to complete the process of gathering information and to make a decision within an appropriate timeframe so that clients are not kept waiting unnecessarily. While time limits will be required to ensure that applications are progressed efficiently, the guidance will allow for a common sense approach to making exceptions when appropriate. For example, the guidance will discuss handling supporting information from a third party or client when it is clear that supporting information will be provided but is taking longer than expected.

Decision making matrix

Recommendation 13: Forms used by case managers, including the decision making matrix, should minimise possibilities for unconscious bias where possible. We stress that this data must be collected and analysed, but it must only be available to case managers where it is necessary to make a quality decision.

I am happy to accept this recommendation in principle. I agree that the influence of unconscious bias on decision-making in the Scottish social security system must be minimised to ensure clients' needs and entitlements are met and all interactions and decisions are based on fairness, dignity, and respect. However, anonymising application forms with respect to certain characteristics, such as gender and name would only be effective if all supporting information that will be provided in various formats (e.g. reports and letters) is also to be anonymised, which would substantively complicate the information gathering process.

In order to deliver a person-centred approach to interactions with clients, case managers will have to access information about a client's preferred name and pronoun. This would not be feasible with anonymised applications. The client's experience of communicating with Social Security Scotland would be negatively impacted if case managers are unable to access this information.

To minimise the impact of biased decision-making by case managers, the agency will offer unconscious bias training as part of the mandatory training for all client-facing staff. This training will be adjusted to each role to be as effective as possible. In their intensive ten-week training new case managers will be applying, and reflecting on, what they have learned in the unconscious bias training by working through complex case studies. This will reinforce our person-centred approach. Additional training will be provided to familiarise case managers with the social model of disability and work is underway with stakeholders in disability rights on developing further training. Training material is also being developed on lived experience which will be provided to case managers throughout their career in Social Security Scotland. All training is designed to reinforce the values of dignity, fairness, and respect and is subject to ongoing quality assurance.

To further minimise unconscious bias, the Scottish Government will develop and implement processes that incorporate mitigating elements to reduce unconscious bias throughout application, decision-making, and review processes. We will collect and analyse equalities data to understand the impact of our policies, processes, and staff training to continuously improve our services to ensure that those eligible for disability benefits receive the support they need.

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Recommendation 14: We welcome the policy to have case managers cite the guidance they referenced when making their decision. Case manager guidance, and operational guidance if different, must be published in full to allow claimants and their advisers to easily reference these citations. This guidance must cite the law where relevant, and be clear about what parts of guidance are not based in law and are therefore not legally binding.

I am happy to accept this recommendation in principle. The decision-making guidance will be published and publicly available. It should be noted that the guidance is a policy document. It will therefore be periodically updated and published to reflect any policy changes. The document will cite relevant regulations where applicable, and once Scottish case law develops, it will be cited in the guidance as appropriate.

I recognise the merits of publishing the operational guidance, the Group will be aware that I have committed to publishing the operational guidance for Wave One benefits by the end of this summer. I'm sure that you will appreciate that the operational guidance for disability assistance is more complex. Work is underway to consider how the guidance could be published and hosted in a way that meets the needs of those who wish to use it. I will revert to the Group at a later date on this recommendation.

Recommendation 15: How negative determinations are communicated to claimants must be carefully considered. These communications should leave claimants feeling informed about why the decision was reached, what further options are available to them and where they can receive support to access those options.

I am happy to accept this recommendation. Case managers will be required to rationalise their decisions, referencing the decision-making guidance along the way. This rationalisation will allow the case manager to clearly explain the logic of their decision to a client, which we are required to do by law. The client will receive a decision letter and any consultation report explaining the material facts that contributed to the decision and what supporting information the case manager used.

The client will also receive information about the redetermination and appeals process, the availability of short-term assistance and signposting to other support services. All communication will be written in plain English. There will be significant user testing on all communications, including negative decisions, to ensure that the message we communicate is clear, articulates the logic behind the decision and can be understood by clients.

Recommendation 16: Communications from the Agency to terminally ill claimants must be carefully considered. It is especially important that risks regarding communicating with claimants that are unaware of their terminal prognosis are mitigated.

I am happy to accept this recommendation. The need to communicate with clients who are terminally ill and their representatives in a sensitive and thoughtful manner has been a key priority in both the design of the service and corresponding training which agency staff will undergo. Where a client is terminally ill but unaware of their prognosis, Social Security Scotland will be alerted to this by the medical professional completing a Benefits Assessment under Special Rules in Scotland (BASRiS) form. The wording used in notifications will be carefully developed to ensure that it is sensitive and does not disclose information that has been withheld by a medical professional.

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Provisions have been included in the Social Security Administration and Tribunal Membership (Scotland) Bill currently progressing through parliament to allow for the non-disclosure of harmful information. This will allow an adapted notification letter to be sent to clients who are unaware of their prognosis thus ensuring that Social Security Scotland does not disclose this information.

User testing undertaken with clients and stakeholders will ensure that all aspects of the service, including for example notifications letters, have been fully tested, meet the needs of the user and reflect our values of dignity and respect.

Recommendation 17: “Information” should not be used to describe both descriptive facts and evidence used to prove those facts. Communications should make it clear that what is being determined is eligibility, not whether or not the information in the claimant’s application is being taken as genuine.

I do not accept this recommendation because I am concerned about using confusing language. I do agree that it is vital that we communicate clearly and inclusively with our clients. It is important that clients know why we are asking for information. They also need to know how the information they give us will help us make the right decision about their application.

The Social Security (Scotland) Act 2018 requires the Scottish Government and Social Security Scotland to engage with clients in a way that meets their needs. We will ask people where, when and how they want to receive information and to communicate with us. Using separate terms to describe ‘descriptive facts’ and ‘evidence’ may cause confusion for clients. I consider that keeping the current term ‘supporting information’ will help to ensure that clients understand what we are asking of them and to help them understand how this be used. I would be happy to consider this issue again, if it can be dealt with without overly complicating terminology.

Looking outwith social security

Recommendation 18: The Scottish Government should look outwith DWP decision making to other decision making contexts including the legal system, social care and Ombudsman for insights into good decision making policy and practice.

I am happy to accept this recommendation in principle. My officials advise that your Group had sight of the process maps and the tool for decision making at both the workshop on the 14 February and at the meeting on the 27 February 2020. However I understand that further foundational work was not discussed due to time constraints. In developing the decision making approach the examples suggested by your Group were considered and where relevant they have informed the Scottish Government’s approach. My officials would be happy to discuss this development work with you and I would welcome further views from the Group should you consider that there is something fundamental missing from the Scottish Government’s proposed approach.

Please note that my response to these recommendations reflect the approach to decision making in a domestic setting. Officials continue to consider how the decision making approach will apply to clients living abroad. Further information can be provided on exportability as this service is developed.

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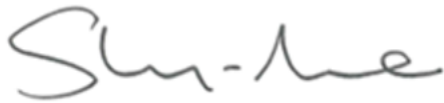
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Thank you for your continued support as we work toward delivering Disability Assistance reflective of our ethos of dignity, fairness and respect.

Yours sincerely,



SHIRLEY-ANNE SOMERVILLE

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