

Disability and Carers Benefits Expert Advisory Group: Independent Advocacy

To: Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People
By e-mail

13 November 2020

Dear Shirley-Anne,

Independent Advocacy

On 22 July 2020, DACBEAG received a letter from the Scottish Independent Advocacy Alliance (SIAA) and the Health and Social Care Alliance (the Alliance) highlighting concerns they had regarding the interim independent advocacy service the Scottish Government put in place from June of this year. In the letter (attached at annex A), we were asked to, “consider commenting on the process, design and implementation of the current independent advocacy arrangements and whether they meet the rights and requirements of disabled people accessing Scotland’s social security system.”

After internal deliberation, we decided this issue falls clearly within our remit, and asked officials to attend a meeting with ourselves and representatives of SIAA to discuss this matter on 17 September 2020. At this meeting, we concluded it would be proper to provide proactive advice regarding this issue.

We welcome the commitment by the Scottish Government to ensure safe and secure delivery of the newly-devolved benefits, and to improve the claiming process for all recipients. We understand that our advice may incur risks, implications and challenges for the Scottish Government. These will be made explicit in this advice note and we aim, where possible, to signpost a proposed solution.

We have worked with officials to ensure that our advice is informed by information available at this time and relevant to the current policy landscape.

Clearly, information and the current policy landscape may change in ways that cannot be foreseen at this time, so the advice we give now is with the caveat that this too may change in light of developments.

We set out below some issues and recommendations arising from our discussions to which we wish to draw to your attention. Our recommendations are summarised at the end of this letter.

The interim service

We understand that the independent advocacy service currently in place is an interim service that was rolled out to meet the requirements set out in section 10 of the Social Security (Scotland) Act 2018 (the Act) and the relevant commencement regulations that required provision of such a service by June of this year. If this service were not in place, the Government would have been forced to amend the

relevant regulations, something that would be difficult to do in the timelines allowed, or be in breach of its legal duties.

Our understanding is that a more robust service was planned and a tendering process underway when the COVID-19 outbreak struck and delayed the roll out of many benefits, including the disability benefits. This in turn meant the tendering process needed to be abandoned, as the expected demand for such a service would be greatly diminished as a result of the benefit delivery delays. Therefore, an interim service was put in place in which Social Security Scotland (the Agency) will connect claimants to a local advocacy service if they request one.

In principle, we understand what drove the Scottish Government to approach the interim service in this way and recognise fully the immense pressure the COVID-19 outbreak has put on Government capacity. However, we believe that there are several areas that could have been approached in a way that better reflects the principles set out in the Act.

Moreover, we learned about several issues that arose even before the COVID-19 outbreak and would like to address some of these as well. For example, we understand that the process was abandoned after a difficult period for stakeholder involvement. We would hope and expect government to be open to robust and constructive challenge from stakeholders with a common interest in developing the best independent advocacy support to serve the interests of potential beneficiaries.

We believe these issues are significant enough to suggest the interim advocacy service is not currently fit for purpose as some people are not able to readily access it.

We set out our views below.

Transparency

One major issue is the perceived lack of transparency in the development and implementation of the interim service. Even after meeting with officials, it is unclear which advocacy services are providing this service; that is, it is unclear how the Agency chooses which local services it will connect claimants with. A recent FOI response, setting out the guidance for Agency staff when a claimant requests advocacy support, provides no further insights, explaining only that, "The advocacy team will pass on the clients details to a suitable advocacy service."¹ This lack of transparency undermines the trust of support agencies that work with disabled people, as they do not know who they may be sending their clients to or even how such a service might be chosen.

We understand this interim service has had very little take up since it was launched. We also understand that there has been no concerted effort by the Scottish Government to advertise the interim scheme. We note for example that the

¹ Access to Independent Advocacy Service for Social Security Scotland staff guidance: FOI release, August 2020. <https://www.gov.scot/publications/foi-202000058909/>

mygov.scot website signposts individuals to contact SIAA and does not mention the scheme.²

We understand this service needed to be implemented quickly as a result of a dramatic change of circumstances. However, we feel some form of stakeholder engagement could and should have taken place. We, for example, are always willing and able to give responsive advice of this nature.

Additionally, we believe a “test and learn” approach should be taken to learn as much as possible from the interim service. For example, an analysis of who is, and who isn’t, using the interim service and user feedback will prove useful in improving the current service and making the service proper as good as it can be when it is rolled out.

Recommendation 1: The Scottish Government should commit to and demonstrate a greater degree of transparency regarding the current interim independent advocacy service, especially with regards to what and how individual advocacy services are selected. Furthermore, we seek reassurance that the organisations and services currently used in the interim service fully meet the recently published independent advocacy standards.

Recommendation 2: Significant stakeholder engagement should take place and a “test and learn” approach should be adopted with a view to improving the current interim service and learning lessons for the service proper before it is rolled out.

Advocacy for all Scottish benefits

While we understand that people claiming disability benefits will be one of the most common groups of people that may benefit from advocacy support, and therefore understand why the tendering process was abandoned given the delay to the start of Disability Assistance, disabled people who feel they would benefit from advocacy services may be eligible for and need help applying for the whole range of Scottish benefits, including the forthcoming Scottish Child Payment, and the payments that are already available.

It is therefore imperative that the independent advocacy service is not thought of as only relevant to disability benefits but rather to any payment that disabled people may apply for.

Moreover, there is no clear timeline for how long this interim scheme is expected to last and when the service proper will begin. While we understand the delivery schedule of Scottish benefits is undergoing re-planning, since there are benefits currently available that people may require advocacy to access, the more robust fit for purpose scheme should be implemented as soon as possible.

² <https://www.mygov.scot/advocacy/> - accessed 27 October 2020

Recommendation 3: Independent advocacy should be available to individuals applying for all Scottish benefits, including those already available. Therefore, a fit for purpose, well-advertised, independent advocacy service should be implemented as quickly as possible.

The scheme pre-COVID-19

As discussed above, we also have concerns regarding the approach to developing the scheme even before it was disrupted by the COVID-19 outbreak. For example we heard that for-profit multi activity organisations expressed interest in the contract.

We have sought advice from procurement specialists and understand that that the Scottish Government is legally required to open any tender exercise for services to both for-profit and non-profit organisations. However, several members indicated they would recommend excluding for-profit organisations from bidding for this contract if it was an option.

While we understand that the Scottish Government has a responsibility to deliver services that reflect value for the tax payer, it is important that independent advocacy is not provided by an organisation who was simply the lowest bidder. As we learned with medical assessments for disability benefits, there is a real danger that taking such an approach will lead to a poor quality service that claimants will not want to access. This is especially the case with regards to specific companies that deliver other public services with whom claimants may have had a negative experience. It is important to keep in mind that independent advocacy is not the sort of service that could be delivered via a “spot purchase” model. Independent advocacy is most often a long term ongoing activity and should be delivered as such. The degree to which an organisation can meet and promote the needs of claimants must be the most important factor in deciding a provider.

We believe the expertise of local services currently delivering independent advocacy must be harnessed and utilised as part of the scheme. We are pleased to see that the Service Specification required the Service Provider to ensure that staff involved in the delivery and management of this support were appropriately experienced and knowledgeable in delivery of advocacy support, and if possible Scottish social security, and believe it is unlikely for-profit companies could meet these conditions.

Recommendation 4: The expertise of local independent advocacy must be harnessed and utilised when developing and implementing a national independent advocacy service. The degree to which an organisation can meet and promote the needs of claimants must be the most important factor in deciding a provider.

Advice vs advocacy

Finally, we learned that during discussions regarding the advocacy service some stakeholders felt that the difference between advice, general support, and advocacy was not always clear. These are three distinct kinds of support: advice is sharing pertinent information and recommending actions to clients, general support is helping clients with the practicalities of things like claiming benefits – e.g. filling in

forms - and advocacy is speaking up for and on behalf of the client. It is important that these concepts are not conflated as each require different skill sets and may be delivered by different organisations that require distinct funding. An individual may require all three services at some point.

Recommendation 5: It is important that the distinct concepts of advice, general support, and advocacy are not conflated when developing the independent advocacy service.

Conclusion

The COVID-19 outbreak has put tremendous pressure on public services but this is only a symptom of the extreme pressure it has put on individuals. It is now more important than ever that people eligible for claiming Scottish social security benefits have the advocacy necessary to make and maintain their benefit claims as espoused in the principles of the Act.

We believe the current interim service falls short of these principles and believe the more robust independent advocacy service proper should be developed and implemented as soon as possible.

Recommendations

Please see below our key recommendations.

Recommendation 1: The Scottish Government should commit to and demonstrate a greater degree of transparency regarding the current interim independent advocacy service, especially with regards to what and how individual advocacy services are selected. Furthermore, we seek reassurance that the organisations/services currently used in the interim service fully meet the recently published independent advocacy standards.

Recommendation 2: Significant stakeholder engagement should take place and a “test and learn” approach should be adopted with a view to improving the current interim service and learning lessons for the service proper before it is rolled out.

Recommendation 3: Independent advocacy is necessary for applying for all Scottish benefits, including those already available. Therefore, a fit for purpose, well-advertised, independent advocacy service should be implemented as quickly as possible.

Recommendation 4: The expertise of local independent advocacy must be harnessed and utilised when developing and implementing a national independent advocacy service. The degree to which an organisation can meet and promote the needs of claimants must be the most important factor in deciding a provider.

Recommendation 5: It is important that the distinct concepts of advice, general support, and advocacy are not conflated when developing the independent advocacy service.

I hope this is helpful. I look forward to your response and we would be pleased to discuss this further with officials.

With best wishes,

A handwritten signature in black ink, appearing to read "Jim McCormick". The signature is written in a cursive, flowing style.

Dr. Jim McCormick
Chair