

III Health and Disability Benefits Stakeholder Reference Group Meeting

Meeting 18
11 June 2020
MS Teams
11:00 – 12:00

Present:

Claire McDermott, Chair, Scottish Government
Cate Vallis, RNIB
Donna Burnett, NHS
Ed Pybus, CPAG
Emilia Crighton, NHS
Jim Hume, Support in Mind Scotland
Kate Burton, NHS
Rob Gowans, Citizens Advice Scotland
Gill Young, Castle Rock Edinvar
Patricia Moultrie, GP Committee of the BMA
Richard Gass, Rights Advice Scotland

In Attendance:

Heather Mole, Secretariat, Scottish Government
Marian McSeveney, Scottish Government
David George, Scottish Government
Shonagh Martin, Scottish Government
James Wilson, Scottish Government

Apologies:

Annie Gunner Logan, Coalition of Care and Support providers in Scotland
Bill Scott, Inclusion Scotland
Duncan McIntyre, Chair of Learning Disability Practice Network
Gerard McFeely, NHS
Hannah Ross, COSLA
Yvette Burgess, Coalition of Care and support Providers in Scotland
Dr Mini Mishra, Scottish Government

1. Welcome

1.1 Chair, Claire McDermott (CM), welcomed members to the 18th meeting of the III Health and Disability Benefits Stakeholder Reference Group.

2. Minutes of the last meeting

2.1 Jim Hume (JH) clarified that paragraph 2.3 should say, the Charity Support in Mind Scotland, who run the National Rural Mental Health Forum, support 1500 people per week.

2.2 Patricia Moultrie (PM) clarified that she represents the Scottish GP committee of the BMA. PM also asked that paragraph 2.2 be updated to say GP surgeries increased remote consulting in response to the Covid emergency.

2.3 Ed Pybus (EP) referred to point 2.4 in the minute and requested an update on the time limit issue on the Social Security Website.

ACTION: Officials to update previous minutes.

3. Follow up actions from the previous minutes

3.1 Action 2.4 of previous meeting: Members raised the issue that when the client progresses through the form and submits information that identifies their application as being late, they will see a message that says they may not be eligible but to progress anyway. To counter this, we have a disclaimer at the start of the form that says:

'If you're submitting a form that's late due to coronavirus (COVID-19), let us know by telling us in the 'Additional Information' box at the end of the form. You do not need to explain in detail, just tell us it's late due to coronavirus. Also, if you get any warning that your application is late when applying, ignore the warning and select 'continue with my application'.

3.2 Action from agenda item 6 of previous meeting: Members wanted to know the new timeline for the CDP regulations. The Social Security Programme is still working through the replan to determine the new delivery dates for the Wave Two benefits. The scrutiny process for the CDP regulations will be driven by the new delivery dates. We will provide a further update when available.

3.3 Action relating to 2.2 of previous meeting: Members raised the issue of the challenge of digital literacy for some members of the public and noted that the number for Social Security Scotland was difficult to find if clients are unable to access the internet. For clients who do not have access to the internet the phone number for Social Security Scotland has been made available in a radio and print media advertising campaign run by Citizen's Advice Bureau and funded by the Scottish Government. It is also available through intermediaries, for example Citizens Advice Bureau. Leaflets and factsheets are available to stakeholders who may meet with clients face to face or be dropping things off to them at this time. We've seen a pick-up in requests for stakeholder materials for people to issue to clients through food parcels etc. and we are reaching out to people again now that things are easing to find out what changes they are making to the way that they operate in case there are any more opportunities to push out messages and materials. We are working with the ALLIANCE to create some video content talking about the changes that we have made to our service in response to coronavirus, we are holding off on the decision about taking inbound calls again and hope to have something out early July.

4. Appointees and withholding harmful information

4.1 Claire McDermott (CM) provided some background on the appointee provisions explaining that they are included in the Social Security Administration and Tribunals Membership Bill that is before Parliament at the moment.

4.2 CM invited comments on the paper circulated to the group and welcomed any written submissions on this by 18 June if possible.

Who is best placed to act as an appointee and is it feasible to prescribe who is not?

4.3 Members did not raise any issues or questions regarding the first question.

How can we deal with disputes about capacity, who the appointee should be, and whether the appointee is acting appropriately?

4.4 EP stated that there are two common situations where disputes are likely to arise. A dispute between two people who feel they should be the appointee for someone; and if someone doesn't feel they need an appointee. EP also raised the question of what evidence is required to assess someone's incapacity and whether this will be the same level of evidence required for guardianship.

4.5 Members agreed that to resolve conflict an independent route could be beneficial. It was suggested that the Agency be the first source for resolving disputes and secondly an independent dispute resolution process should be available if there were further disagreements over the Agency's initial decision. Tribunals were suggested however it was agreed that these may not be the best independent route as it would not fit well with their remit. It was suggested that the Public Services Ombudsman could be explored as an independent option for resolving disputes.

4.6 Members agreed that it would be useful for clients who have an appointee to be able to speak directly to the Agency (at present DWP will only speak to the appointee). This would allow any issues to be raised without the appointee necessarily being aware of it. This would be beneficial for young people transitioning from 16 to adulthood as they may no longer want their parent or guardian to be their appointee or where there is potential for coercion. This would also be useful for clients whose relationship with their appointee has broken down, or for clients who no longer feel they need an appointee. Members supported having a process in place that would allow young people turning 16 to take ownership of their own awards if they wish to.

4.7 Members agreed that the Agency should have the tools and training to enable them to communicate with claimants and appointees. The Agency should make clear the roles and responsibilities of an appointee as well as explaining the other forms of support available. The client should have the opportunity to give their opinion on whether they want an appointee and who that person should be.

4.8 MM welcomed any examples of disputes being resolved without having to go to an independent body for the paper.

ACTION: Members to submit case studies

How often should a review be undertaken and what should that entail?

4.9 It was noted that although a review would help in dealing with a lot of the issues with appointees, it is important that they don't feel harassed by the agency, or made to feel as though they are being investigated. It was also noted that appointees may also be reviewed by DWP if the client has DWP benefits as well.

4.10 Members agreed that the length of the review period should be based on the client's capacity. If the Agency are aware that a client's capacity isn't going to change they will not need a review as often. There was some discussion about the resource implications of trying to review everyone when they transition to the Scottish system. It may not be possible to review all appointeeships within a year of the client transferring. Members suggested the Agency could prioritise people who are most likely to need a review. Members agreed that a risk management approach would be useful when deciding who should be reviewed first. Young people transitioning from 16 to 18 will be high risk as they may want to change appointee or manage the benefit themselves.

Do you have any suggestions for improvement, or evidence generally about the current DWP process that assesses a) whether an adult requires an appointee and (b) whether the appointee is a suitable person?

4.11 Members did not raise any issues or questions regarding this question.

Should we review all DWP appointments where the appointee applies to continue to act in the Scottish system, and given the volumes how might we approach that?

4.12 Marian McSeveney (MM) noted that there could be up to 100,000 clients already in the DWP system and currently a paper process is in place to transfer them to the new systems for the short-term. MM asked if members would be comfortable with DWP appointments continuing in the interim and how those appointments could be converted to the Scottish system.

4.13 Members agreed that a review shouldn't be necessary straight away for most clients and appointees. The usual 5 year review period should be continued unless there is good reason to review earlier. It was noted that some appointees will have been in place for a long time and they may no longer be necessary therefore a review of such appointees during the transfer process could be appropriate. It was also suggested that a review of appointees could align with the scheduled review of a client's award.

What factors should we take into consideration when assessing the views of the child and their parent(s)?

4.14 Members did not raise any issues.

Which adults with capacity would benefit from an appointee?

4.15 Members agreed that the role and responsibility of an appointee needs to be clearly communicated. Sometimes a client may think they need an appointee but they just want someone to represent them, or to provide evidence for them. Clients

should be encouraged to access support through different channels depending on the level of support required. It was suggested that, if it is going to be a lengthy process to prove you need an appointee, there should be a system in place to have someone act on an interim basis as an appointee for the claimant, until it can be formalised.

Are there some aspects of the appointee/client role that could be different from the established ones?

4.16 It was suggested that one option could be to mirror the requirements of financial power of attorney or a welfare power of attorney. This would require the person to do what's in the best interests of the person in one of these specific capacities. Members agreed that an advocacy worker may be better for some clients rather than an appointee as all they need is someone to advise them. It was suggested a system could be developed to allow the client to provide a name of a family member or carer who has permission to help them out with parts of their application or award, for example, making a phone call.

4.17 CM advised that there is currently a 3rd Party Policy in development that will cover this. CM offered to explore including this on the agenda at a future meeting.

ACTION: Members to submit written comments by 18 June.

ACTION: Policy to invite an official to next meeting to discuss 3rd party policy

5. Suspensions

5.1 David George (DG) gave the group some background on the paper on Suspensions. DG explained that the Cabinet Secretary for Social Security and Older People, Ms Shirley-Anne Somerville, had intimated that she would be interested in making provisions for suspensions provided that there is sufficient stakeholder support and interest. The paper sets out the current approach with regard to suspensions in the Social Security system, with particular emphasis around circumstances in which suspension might be deemed appropriate by DWP.

5.2 DG added that they are looking to understand stakeholders' views regarding whether there is an appetite for a mechanism to suspend payment. What factors should the Scottish Government look to consider in deciding whether a suspension is appropriate. What sort of system of safeguards would the group envisage as being required, particularly in the context of disability benefits where a client is more likely to be vulnerable and dependant on the financial assistance? Suggestions for improvements were invited

5.3 DG furthered explained that no decision has yet been made in relation to creating powers of suspension. CM will circulate contact details for anyone who would like to discuss the paper further and written submissions will be welcome.

5.4 Members were supportive of the power to have suspensions when someone is going into a hospital or care home as this would prevent someone from being

required to reapply for the benefit. It was noted that the power to suspend should be narrowly focused on the hospital/care home stays. Members raised concern about suspension due to suspected fraud as this could cause someone to be without their assistance for some time.

5.5 It was noted that often hospitals will inform DWP that a hospital stay has begun, but will not advise when it has ended. This can cause clients problems in re-establishing payments. There has to be a process for having a benefit unsuspending as this doesn't just affect the client, it could also affect others' benefits.

5.6 It was noted that, if someone no longer lives at their last known address, their benefit can be suspended. This has consequences for homeless people who move around a lot. It was also noted that communication on suspensions should be clear to assist with client's understanding. Clients should be assumed to be innocent rather than fraudulent as the paper states that in the current system a suspension can be put in place 'if there is doubt'. MM confirmed that there was no intention to suspend benefits while an investigation was ongoing unless something concrete and akin to a report of change of circumstances occurred such as a statement by the client that there had been a relevant change.

5.7 It was noted that the Agency shouldn't have the power to make a negative determination if a client does not provide information requested by the Agency. Instead suspension could be used to retain underlying eligibility and an award reinstated, if appropriate, when further information is provided. This would allow section 54 (2018 Act) to be revoked. DG clarified the intention would always be to make a determination on the basis of the information available, a negative determination would happen rarely and only when it is not possible to make an assessment as to whether the eligibility criteria has been met.

5.8 CM offered to circulate the details of CM, DG and MM and welcomed any written submissions on the Appointees paper or the Suspensions paper by June 18.

ACTION: CM to circulate DG and MM contact details

6. Update on information from DWP and feedback on any issues clients are experiencing accessing disability benefits

6.1 Due to a lack of time, the group did not discuss this.

7. AOB and Close

7.1 Information from DWP about contingency measures was provided with the papers. SG are keen to continue receiving feedback on these and DWP have offered to look into any specific issues clients are having. It was noted a pdf version of PIP 2 should be available so that social distancing measures can be followed and requested that this suggestion is passed to DWP.

7.2 There was a 58% reduction in the number of new claims in April 2020 (compared to April 2019) across Great Britain. In Scotland this reduction was 49%. Statistics suggest that this is a result of the impact of coronavirus. We have contacted DWP to better understand whether this a real time drop or an issue with registrations. They advise that they do not think it is an issue with registrations and is more likely being driven by client behaviour.

7.3 The Cabinet Secretary is keen to understand whether this is something that you are aware of through the support you provide to individuals. We would therefore welcome your feedback on this issue.

7.4 CM clarified that documents can be shared with wider organisation and thanked members for attending for their valuable input.

ACTION: Members to continue to feedback questions or issues about the current contingency measures.