

SPSO CONSULTATION ON SCOTTISH WELFARE FUND INDEPENDENT REVIEW PROCESS

1.0 EXECUTIVE SUMMARY

- 1.1 The Scottish Public Services Ombudsman (SPSO) launched a consultation on 4 September 2015 to help inform the way they will approach and manage reviews about Scottish welfare fund decisions. This is a new and different role for SPSO as up till now all such reviews have been carried out by the local authorities themselves.
- 1.2 The consultation sets out a draft statement of practice. This explains how they will approach decision-making, including some of the most important aspects of the process such as how they will decide when they can accept a review or how they will gather evidence. They are also consulting on draft rules for oral hearings, which will allow them to hold an oral hearing when that is the only fair way to resolve matters. In addition, they are consulting on their proposed approach to undertaking an Equalities and Human Rights Assessment of this new role and of their approach to it. The consultation closes on 27 November 2015.
- 1.3 The draft response is attached for approval.

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2.0 INTRODUCTION

- 2.1 The Scottish Public Services Ombudsman (SPSO) launched a consultation on 4 September 2015 to help inform the way they will approach and manage reviews about Scottish welfare fund decisions. This is a new and different role for SPSO as up till now all such reviews have been carried out by the local authorities themselves.
- 2.2 The consultation sets out a draft statement of practice. This explains how they will approach decision-making, including some of the most important aspects of the process such as how they will decide when they can accept a review or how they will gather evidence. They are also consulting on draft rules for oral hearings, which will allow them to hold an oral hearing when that is the only fair way to resolve matters. In addition, they are consulting on their proposed approach to undertaking an Equalities and Human Rights Assessment of this new role and of their approach to it. The consultation closes on 27 November 2015.

3.0 RECOMMENDATIONS

- 3.1 Policy and Resources Committee is asked to approve the draft response attached at Appendix 1.

4.0 DETAIL

- 4.1 The Welfare Funds (Scotland) Act 2015 gives the Scottish Public Services Ombudsman (SPSO) the responsibility of reviewing decisions made by local authorities in terms of awards of community care grants and crisis grants. Following an internal review stage, if the applicant is still not happy with the decision made by the local authority, there will be a second tier review carried out by SPSO. This is quite different from SPSO powers to investigate complaints under the SPSO Act 2002 which still apply alongside all requests for reviews.
- 4.2 Currently there are two review stages, but both are carried out by the local authority, with the second stage being carried out by officers independent of the service responsible for Scottish Welfare Fund decisions. The new legislation removes that responsibility from the local authority and moves it to SPSO who

will have more independence and also there should be more consistency of decision making as the one body will now do this for all Scottish local authorities.

- 4.3 The consultation sets out a draft statement of practice, and supporting these are draft regulations entitled “Rules on oral hearings for further reviews of welfare fund applications 2015”. The final part of the consultation is about their proposed approach to competing and equalities and human rights assessment.
- 4.4 From the council’s perspective the key change is that we will no longer have to carry out the second tier reviews ourselves, but we may have to attend oral hearings in relation to these to give evidence as to why we made the original decision. This may involve some travel – internal second tier reviews have all been done by Lync meetings without any need for travel.
- 4.5 From the claimant’s perspective, they may now need to present their case at an oral hearing, whereas previously we would just have gathered the evidence by telephone or in writing. This will only be done when it is considered appropriate and is unlikely to be done for crisis grants where the target timescale for a review is within one working day.
- 4.6 The numbers of second tier reviews to date for this council have been low. These are as follows:

	2013/14	2014/15	2015/16 to end September
Crisis Grants	1	3	0
Community Care Grants	7	2	2
Total	8	5	2

- 4.7 The draft response is attached at Appendix 1. In general it agrees with the proposals. It suggests that SPSO should consider practical issues such as child care and travel for claimants when deciding if an oral hearing is appropriate, and that such hearings should not be held on council premises as then the SPSO might not be considered independent of the council.

5.0 CONCLUSIONS

- 5.1 Policy and Resources Committee is asked to approve the draft response attached at Appendix 1.

6.0 IMPLICATIONS

- 6.1 Policy: In line with previous council responses on this topic.
- 6.2 Financial: The proposals will affect costs for SPSO in conducting reviews. There may be some minor costs for local authorities in attending oral hearings.
- 6.3 Legal: Legislation will follow in due course

- 6.4 HR: None.
- 6.5 Equalities: Changes will need to be subject to an equalities impact assessment at a national level.
- 6.6 Risk: Main risk is that the review could be disproportionately expensive for SPSO to conduct compared to amount of each award.
- 6.7 Customer Service: There may be a new requirement for claimants to attend oral hearings.

Appendices

1. Draft response to consultation questions

Background papers

Consultation on Scottish Welfare Fund Council 13 February 2014

Consultation on regulations and guidance under the Welfare Funds (Scotland) Act 2015 Policy & Resources Committee 20 August 2015

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12 October 2015**

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