



SAMH response to Social Security Committee consultation on Social Security Bill (Scotland)

Introduction

SAMH is the Scottish Association for Mental Health. Around since 1923, SAMH operates over 60 services in communities across Scotland providing mental health social care support, homelessness, addictions and employment services, among others. These services together with our national programme work in See Me, respectme, suicide prevention, sport and physical activity inform our public affairs work to influence positive social change.

SAMH welcomes the opportunity to respond to the Committee's call for views on the Social Security Bill (Scotland). In preparing our response we held a focus group with SAMH service users in Perth, in addition to focus groups held to gather evidence for our response to the Scottish Government consultation preceding the publication of the Bill.

SAMH is a member of Disability Agenda Scotland (DAS) and fully endorses the DAS submission to the call for views

Summary

SAMH wants to see:

- **A statement of purpose for disability benefits within the text of the Bill, or subsequent regulations, coproduced by people currently supported by the social security system**
- **A commitment from the Scottish Government on the nature of consultation and timescales for regulations**
- **Key principles for Disability Assistance placed in primary legislation. This should include a definition of disability, eligibility for benefits, timescales for determination and principles for assessment**
- **The reversal of recent changes to PIP regulations¹ by the UK government which make it harder for people with mental health problems to qualify for the higher rate of PIP**
- **Applications for Disability Assistance from people whose primary condition relates to mental health to be conducted by assessors who are experienced in mental health**
- **The majority of assessments to be paper based.**
- **The Bill or subsequent regulations to provide for automatic access to free travel as part of the initial benefit award, not requiring additional applications by the person in receipt of PIP or a Scottish replacement benefit.**
- **Industrial Injury Disablement Benefit (IIDB) or its replacement benefit to adequately support people whose mental health has been significantly and directly impacted by their employment**

¹ DWP [Changes to Personal Independence Payment Regulations](#) February 2017

- **An additional principle setting out the social security system’s role in promoting health and mental wellbeing added to part 1 of the Bill**
- **Clarity in the Bill or regulations over processes for individual recourse where the principles and obligations in the charter are breached by the state**
- **Consultation on the development of the charter, and wider development of the social security system, to include a proportionate number of people accessing benefits due to their mental health**
- **Regulations for Notification of Change of Circumstance (part 2 section 31) must be inclusive and not stigmatise or punish people who have made a mistake in the notification process due to their mental health**
- **The Social Security Agency, not the applicant, to be principally responsible for the collection of supporting evidence to help determine an application**
- **Clarity from the Scottish Government over provisions to share information between public bodies, with the consent of the applicant, to assist in determining an application.**
- **Short Term Assistance provisions to include people waiting for determinations, mandatory reconsideration, and intentional or unintentional delays in payments of reserved benefits**
- **Scottish Government to use its top-up powers to reverse cuts to Employment And Support Allowance Work Related Activity Group (ESA, WRAG) and equivalent Universal Credit (UC) ‘Limited Capability for Work’ group**
- **A legal right to advocacy for people engaging with the Scottish Social Security System to be included in the Bill. The Mental Health (Care and Treatment) (Scotland) Act 2003 provides a precedent**
- **The Bill to guarantee no award will be reduced following re-determination or appeal**
- **Tribunals to include a panel member with lived experience of the social security system., incorporating good practice from the Mental Health Tribunal for Scotland**
- **In the long term, Disability Assistance to include increased automatic entitlement, longer and life time awards and the introduction of a single whole of life disability benefit**

The Purpose of Disability Benefits

The bill provides a unique opportunity to restate the purpose of social security for people with mental health problems and other disabilities. We believe the central function of non-income related disability benefits should continue to be compensating disabled people for the additional costs of living they face. The Extra Costs Commission by Scope found that people with a disability spend on average £550 a month on disability.² Beyond this, disability benefits have key roles in tackling health inequalities and facilitating the full engagement of disabled people in their local communities. We would like to see a statement of purpose for disability benefits within the text of the Bill, or subsequent regulations. This statement should be coproduced by people currently supported by the social security system, including those sitting on the Experience Panels.

Q1 and Q5: Framework of Bill & Schedules

While SAMH understands the Scottish Government’s rationale, as set out in the policy memorandum, for placing the majority of rules on new benefits in regulations, we have serious concerns over the implications this approach has on opportunities for effective scrutiny. It is

² Extra Costs Commission 2015 [Driving down the extra costs disabled people face - Final report](#)

welcome that the Bill (Part 5 Section 55) requires regulations covering new benefits to be subject to the affirmative procedure. But even under this procedure, Parliament can only accept or reject, not amend. This limits opportunities for Parliament and stakeholders to influence their development. We will say more about this later in our response.

Disability Assistance

Schedule 4 of the Bill sets out the scope of disability assistance regulations. This includes eligibility criteria, liabilities, and award level and type. We believe key principles should be placed within the Bill itself rather than regulations. At a minimum these should include:

- A definition of disability. We recommend the definition from the Equalities Act 2010³
- Maximum timescales for determination of entitlement. We note that the Bill already includes maximum timescales for re-determination by Scottish Ministers
- Eligibility Criteria
- Principles governing assessments

As the Committee will know, the UK Government recently used regulations to overturn an Upper Tribunal ruling that people who find it hard to leave the house because of anxiety, panic attacks, and other mental health problems should be able to receive the higher rate of PIP. This type of action highlights the need for caution when relying heavily on regulations rather than primary legislation.⁴

If the Bill proceeds as currently drafted the Scottish Government must soon set out how it will consult upon future regulations. It is crucial that consultation is public and includes a broad spectrum of stakeholders and people who are or have been in receipt of disability benefits.

The Scottish Government should also consider creating an advisory body, equivalent to the Social Security Advisory Committee, to provide ongoing advice to the Government and Social Security Committee regarding the continued development of the Scottish Social Security System and subsequent regulations.

As mentioned above, recent changes to PIP regulations around mental health and travel came into force on 16 March 2017. These stigmatising changes will stop at least 160,000 disabled people with mental health problems across the UK getting the financial support they deserve.⁵ The Scottish government should reverse this change as soon as practicably possible.

Assessment for Disability Benefits and Mental Health

The Bill provides no detail on proposals for assessing applicants' eligibility for disability benefits. Research from SAMH has highlighted significant problems with the manner in which face to face assessments for PIP (as well as ESA Work Capability Assessments) work for people with mental health problems.^{6,7} These include a lack of understanding of the impact of mental health by

³ <http://www.legislation.gov.uk/ukpga/2010/15/section/6>

⁴ DWP [Changes to Personal Independence Payment regulations](#) February 2017

⁵ Disability Benefits Consortium [Over 30 charity chief executives call on Minister to rethink damaging PIP changes](#) March 2017

⁶ SAMH [Personal Independence Payment – What's the problem?](#) 2016

⁷ SAMH [Fit For Purpose](#) 2015

assessors; face to face assessments' inability to accurately assess the impact of fluctuating conditions; and stigmatising attitudes and behaviours by some assessors.

A SAMH service who took part in a focus group in preparation for this submission told us:

"The process itself [of applying and being assessed for PIP] personally has had a massive effect for the worse on my health when I'm trying to get better and I am trying to work towards getting back into society, their attitude and the worry and the stress and the poverty compounds all of that."

We welcome the Government's intention to reduce face to face assessments for disability benefits.^{8,9} Where possible assessments should be paper based, but where face to face assessments do have to take place they should be at a location accessible to the applicant and undertaken by an assessor with professional experience in mental health, if this is the primary reason for their application.

Travel costs

Social isolation has a detrimental impact on mental health. Consequently the cost of travel can act as a barrier to someone's engagement with their local and wider community as well as preventing engagement with services, such as those provided by SAMH. Currently, people who receive the mobility component of PIP or DLA are entitled to road tax discounts, while anyone on any rate of PIP is entitled to concessionary fares and free travel on buses.

The Policy Memorandum for the Bill (paragraph 127) states that the Scottish Government is committed to retaining all existing passporting arrangements for PIP, DLA and AA when responsibility for the benefits transfers to Scotland. SAMH welcomes this commitment but would like to see a further commitment guaranteeing free access to public transport as a right for all eligible to disability benefits under Scottish jurisdiction. The process for gaining free travel should be automatic and part of the initial benefit award, not requiring additional applications by the person in receipt of PIP or a Scottish replacement benefit. There may be benefit in looking at the Young Scot card, which gives holders discounted travel, as a possible model.

The decision mentioned above by the UK Government to deny people with mental health problems the higher rate of PIP highlights a lack of understanding of the impact mental health can have on someone's ability to travel unsupported. It is crucial that the emerging Scottish social security system takes full account of the impact of mental health on a person's ability to travel and engage with services and their wider community.

Employment-Injury Assistance

Current employment injury assistance (principally Industrial Injury Disablement Benefit or IIDB) does not adequately support people whose mental health has been significantly and directly affected by their employment. The devolution of IIDA provides the opportunity to redress this, while retaining the benefit's purpose as a means of compensation for workplace harm. We propose the following:

⁸ Scottish Parliament [Ministerial Statement - Social Security Minister Jeane Freeman](#) 27th April 2017

⁹ Page 26 paragraph 126 [add full reference]

- Re-examine findings from the 2004 Industrial Injuries Advisory Council (IIAC) ruling on PTSD, particularly in relation to whether PTSD should be included as a prescribed disease.¹⁰
- Co-produce guidance for decision makers and medical examiners on eligibility on grounds of stress related conditions. This should include full participation from third sector mental health organisations; representative medical bodies (e.g. RCGP and Royal College of Psychiatrist); trade unions; and people with lived experience of mental health.
- Ensure that the impact of non-work related factors on a claimant’s mental health is not automatically a barrier to eligibility, where work can also be shown to be impacting the person’s health.
- Ensure that where someone is claiming IIDA on the grounds of their mental health, medical decision makers have a psychiatric background and adequate training.
- Create links between the benefit and the Scottish Government’s employability programmes
- Conduct a full review of eligibility criteria of IIDA (or successor benefit) to determine if the current list of prescribed illness is fit for purpose
 - This review should include full consideration of mental health and of whether individual diagnoses should be included in a new list of prescribed illnesses, if such a list is retained.
 - The review should also use international learning, particularly from Denmark, Finland, Italy, Sweden and Switzerland where psychological harm related to work placed injuries is compensated for

Question 2: Principles

SAMH welcomes the principles set out in the Bill, particularly the inclusion of social security as a human right. But it is not clear from the Bill what legal status the principles will have, or if people engaging with the social security system will have avenues for redress where the state breaches these principles. The UK is a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) which places a legal duty on the state to enable persons with disabilities to live independently.¹¹ Key to the realisation of this right, and human rights more generally, is their implementation, monitoring and accountability of state parties. The Bill provides no detail of how the principles will be realised in practice beyond providing the basis for the charter.

SAMH calls for an additional principle setting out the social security system’s role in promoting health and mental wellbeing. We suggest:

“The Scottish social security system has a role in promoting improved health and mental wellbeing for all individuals accessing the system”.

Question 3: Charter

SAMH welcomes the proposed charter as a tool to ensuring that the Scottish Government’s stated principles are understood by members of the public as well as by staff administering social security benefits in Scotland. The Bill does not include any reference to recourse in the event that commitments (from the state) are breached. For the charter to have real meaning, applicants should

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328600/iac-pp13.pdf

¹¹ UN [Convention on the Rights of Persons with Disabilities](#)

have an avenue to complain and have legal redress if the social security agency breaches its commitments in the future charter.

The charter must be developed through consultation with a wide group of stakeholders including people with lived experience of disabilities and the benefit system. As such we welcome the list of prescribed groups in Section 3 (part 3) of the Bill who must be consulted during the preparation of the first charter. SAMH would also draw attention to the fact that as of April 2017, 37.7% of all people in receipt of PIP in Scotland have a mental or behavioural disorder as their main health condition. This is significantly higher than any other group.¹² Consultation on the development of the charter, and wider development of the social security system, must include a proportionate number of people accessing benefits due to their mental health. We have made enquiries regarding the proportion of people on Experience Panels who have mental health problems and have not yet received a response: this may be something that the Committee wishes to investigate.

Question 4: Rules for the Social Security System

Notification of change of circumstance

Part 2 Section 31 of the Bill empowers Scottish Ministers to develop regulations that place duties on applicants to notify the Agency of changes in their circumstances. Regulations can also be placed which mean that failure to notify changes may be an offence under Section 40 of the Bill.

Changes in circumstances can be challenging for people with mental health problems, as can engaging with official systems and processes. Regulations need to be developed that are inclusive and do not stigmatise or punish people who have made a mistake in the notification process, due to their mental health. Communication processes must also be inclusive as possible with a variety of options available that do not rely on constant internet access or costly phone calls.

Evidence

Chapter 3 Section 20 of the Bill sets out provisions for Scottish Ministers to make regulations to determine what evidence applicants are required to provide to support an application. The section also states that Ministers must publicise these requirements. SAMH believes the Agency should be principally responsible for the collection of supporting evidence to help determine an application. While SAMH agrees that it is appropriate for the detail of specific evidence to be outlined in regulations, we are concerned that the Bill places all responsibility on the applicant to provide supporting evidence.

In announcing the Social Security Agency, the Minister for Social Security stated to parliament on 27th April:

“I have begun to explore the potential to use the existing information and expertise of the health and social care sector.

I want a genuine partnership to access only the already known information which is relevant to social security decisions, with appropriate consents and robust safeguards.

¹² Stat-Xplore [Dataset: PIP Claims in Payment](#) [accessed August 2017]

And in doing so, to limit the time health and other professionals spend dealing with the negative impact of the current UK system on individuals, so our skilled and professional health and social care staff can focus on the role they have trained to do – care for and support their patients’ and clients’ health and social care.”¹³

Unfortunately there is nothing in the Bill about sharing information between public bodies to support accurate decisions on awards. We know that the current system, where responsibility for collecting additional and supporting evidence for PIP lies with the applicant, is inappropriate for many people with mental health problems. Citizen Advice Scotland reports that their clients have difficulties obtaining additional evidence and can face fees and a lack of clear advice from the DWP. CAB advisors found evidence could be gathered from mental health providers with ease in only 23% of cases, with difficulty in 59% of cases, and with great difficulty in 18% of cases.¹⁴

In our view responsibility for the collection of evidence should lie with the Social Security Agency, after the applicant gives consent. The applicant should be given adequate guidance and opportunity to choose who they think would be the most appropriate person or people to provide evidence. This could be a specialist doctor, GP, community nurse, support worker or even friend or family member, depending on the nature of the evidence required. Where entitlement is automatic based on an applicant’s condition, the relevant person/ professional should only have to confirm the diagnosis.

Question 6: Short Term Assistance

SAMH welcomes the proposals to create a benefit to provide short term assistance. However neither the Policy Memorandum nor the Bill make clear whether eligibility for short term assistance will also include people waiting for determinations, mandatory reconsideration or suffering, intentional or unintentional delays in payments of reserved benefits. We believe people in those circumstances should be eligible for short term assistance from the Scottish system to mitigate both the financial and psychological harm that delayed payments can cause. As the Committee will be aware, and as SAMH service users have told us, there are significant issues with the 6 week wait for initial payment of Universal Credit (UC), resulting in real financial hardship and negatively impacting applicants’ mental health. We believe short term assistance payments should be used to mitigate this.

Question 7: Top Up Powers

Part 3 (Section 45-46) of the Bill outlines provisions for Scottish Government Ministers to set out regulations to top up reserved benefits. It does not include specific policy aims and rules over entitlement and assessment. SAMH believes top ups to reserved benefits should occur where the Scottish Government determines provision of the reserved benefit is inadequate to meet its purpose, as a whole, rather than at an individual applicant level.

A case in point is the Employment and Support Allowance, Work Related Activity Group (ESA WRAG). SAMH and others across the disability sector were deeply disappointed with the UK Government’s recent decision to cut by £30 Employment and Support Allowance for those in the Work Related

¹³ Scottish Parliament [Ministerial Statement - Social Security Minister Jeane Freeman](#) 27th April 2017

¹⁴ CAB Scotland [Burden of Proof: The role of medical evidence in the benefits system](#) 2017

Activity Group and the equivalent 'Limited Capability for Work' group.¹⁵ This cut, which brings the value of ESA WRAG down to that of JSA, takes no account for the additional costs of disability or of the barriers to work caused by people's health, or indeed of the fact that people in the WRAG group have been assessed as being unfit for work. Over half of people receiving ESA in Scotland do so on the basis of a mental health problem,¹⁶ so it's clear this unjust cut disproportionately affects people with mental health problems.

We would like the Scottish Government to use its top-up powers to reverse this damaging and stigmatising cut at the earliest practical opportunity.

Question 10: Other issues

Independent Advocacy

The Scottish Government funded the Welfare Advocacy Pilot Project between March 2015 and August 2016, which found that advocacy support throughout the assessment process of both ESA and PIP¹⁷:

- Reduced the stress and anxiety for applicants
- Increased applicants' confidence about communicating and their understanding of the process
- positively impacted the behaviour of assessors
- Increased the accuracy of assessment outcomes.

Almost three quarters of people supported by the project had a mental health problem as their primary health condition. Nine out of ten of those participating received a positive result from their claim.¹⁸

The benefits of advocacy are clear. SAMH believes that everyone engaging with the Scottish Social Security System should have a legal right to advocacy. The Mental Health (Care and Treatment) (Scotland) Act 2003, which provides that everyone with a mental health problem in Scotland is entitled to advocacy, is a precedent for this.¹⁹ It is vital that the Scottish Government commits to resourcing independent advocacy services to meet need.

Determination of eligibility and Tribunals

Chapter 3 of the Bill sets out the process of challenging a determination, firstly through 'redetermination' then appeals to first and second tier tribunals. We welcome the proposal that a re-determination should have strict timescales for Scottish Ministers to adhere to (unlike mandatory reconsiderations at the UK level) and that the process should be based on treating the applications as new rather than re-examining the original decision. However, we are concerned that people who

¹⁵ Disability Benefits Consortium [Open Letter to Government on Second Chance to stop ESA cut](#) November 2016

¹⁶ NOMIS [benefit claimants - employment and support allowance – February 2017 dataset](#) [accessed August 2017]

¹⁷ Alliance [Welfare Advocacy Support Project evaluation report](#) 2016

¹⁸ Alliance [Welfare Advocacy Support Project evaluation report](#) 2016

¹⁹ <http://www.legislation.gov.uk/asp/2003/13/contents>

appeal may have their entitlement and award reduced after re-determination. Previous research with SAMH service users has highlighted high levels of anxiety associated with the appeals process.²⁰ Fear that an award will be reduced will be an added disincentive to challenge award decisions. We would like the Bill to guarantee no award will be reduced following re-determination or appeal.

Tribunals

SAMH would like the Scottish Government to incorporate good practice from the Mental Health Tribunal for Scotland.²¹ The primary role of the Tribunal is to consider and determine applications for compulsory treatment orders (CTOs) under the 2003 Mental Health Act and to consider appeals against compulsory measures.

A key feature of the Mental Health Tribunal is that every sitting is presided over by three members: a legal member (who acts as Convener), a medical member and a general member. The general member is someone with lived experience of a mental health disorder, a carer or someone with qualifications in social care that include a mental health specialism (e.g. a mental health social worker).²² The role of the general member is invaluable, providing a lived experience perspective to the tribunal. We would like to see a similar provision in future social security tribunals, with every tribunal including someone with lived experience of the social security system personally or professionally. Provisions for this should be set out in regulations to Chapter 3 of the bill.

Long term aspirations – Disability Assistance

SAMH recognises that the Social Security Bill is only one, albeit crucial, step in the creation of a Scottish Social Security system. We welcome the creation of the Experience Panels and the Expert Advisory Group on Disability. This consultation allows us the opportunity to set out a number of longer term aspirations for devolved disability assistance. These are derived from the DAS response to the Scottish Government's A New Future for Social Security consultation.²³

- Greater automatic entitlement built into the social security system would assist people to access the support they are entitled to, and would save some resource and also the impact on people, compared to the current system.
- Indefinite or extended awards should be made in all cases where the person's condition is highly unlikely to improve, is degenerative or terminal. This should include people with mental health problems where appropriate.
- The introduction of a single whole of life disability benefit, replacing DLA, PIP and AA. This would provide more consistent criteria across the benefits and the life of a person. It would be fairer as arbitrary changes to entitlement and levels of support would no longer occur due to age.

Craig Smith, Public Affairs Officer

SAMH, August 2017

²⁰ SAMH [Personal Independence Payment – What's the problem?](#) 2016

²¹ [Mental Health Tribunal For Scotland](#) [accessed August 2017]

²² [Mental Health Tribunal For Scotland: Panel Members](#) [accessed August 2017]

²³ DAS Disability [Agenda Scotland \(DAS\) A New Future for Social Security: Consultation on Social Security in Scotland – consultation submission](#) (October 2016)