

## Social Security Committee meeting 29<sup>th</sup> March 2018 - SAMH Briefing

### Summary

- SAMH believes that the panel for first-tier Social Security tribunal chamber should include an Ordinary Member with lived experience of disability.
- SAMH welcomes the draft regulations provision for ordinary members of the tribunal with experience of disability. We have a number of concerns that the role as drafted is overly restrictive.
- SAMH welcomes reference to the Social Security Charter as part of the overriding objectives for draft regulation 2 and 3, outlining the rules of the first-tier and upper social security tribunal.

### Introduction

SAMH welcomes the opportunity to brief the Committee ahead of their evidence taking session on the 29 March. SAMH is currently developing our substantive response to the consultation on draft regulations making provision in relation to social security appeals. This briefing provides our general position in regards to the composition for the planned First Tier Tribunal for Scotland Social Security Chamber.

### Composition of First-Tier Tribunal – Principle

SAMH supported amendment 127 of the Social Security (Scotland) Bill, lodged by Pauline McNeill MSP during stage 2. The amendment aimed to guarantee that an “ordinary member” – someone with lived experience of the social security system, or who supports someone with lived experience – would be included as a member in the first-tier tribunals. SAMH welcomed the Scottish Government’s acceptance of that principle. We agree that the consultation on draft regulations making provision in relation to social security appeals is the means to make this a reality.

SAMH believes lived experience representation at the tribunal will help embed principles outlined in bill into the Scottish social security system. In particular the principle: “*respect for the dignity of individuals is to be at the heart of the Scottish social security system*”. We believe the Mental Health Tribunal for Scotland provides a positive model for involving people with lived experience in the tribunal process.<sup>1</sup> Every sitting of the Mental Health Tribunal involves 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).<sup>2</sup> The role of the general member is invaluable, providing a lived experience perspective to the tribunal.

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<sup>1</sup>[The Mental Health Tribunal for Scotland](#)

<sup>2</sup>[Mental Health Tribunal For Scotland: Panel Members](#) [accessed August 2017]

Research undertaken by SAMH with people currently receiving PIP has found distrust with the current appeals process and incidents of unacceptable and stigmatising behaviour.<sup>3</sup> The experience was reported as onerous and stressful even where the final result was positive. One SAMH service user described her experience as:

*“I never got enough points [when assessed for PIP] so I had to go to a tribunal. Sitting with the head doctors and all those scary folk. I had a CAB woman there but she couldn’t say anything – I had to say it all myself. It was terrible”*

The presence on the decision making panel of someone with lived experience of the social security system is a sensible step to improve the tribunal experience for applicants.

### Composition of First-Tier Tribunal – Draft regulations

Draft regulation in **Annex D** of the consultation paper sets out rules for the composition of the first-tier tribunal. These broadly mirror existing arrangements at the UK level, outlined in practice statements rather than regulations.<sup>4</sup> The draft regulations make provision for the appointment to the first-tier tribunal of an ordinary member with lived experience of disability and a registered medical member in cases “involving assessment of medical issues in relation to entitlement to disability assistance”.<sup>5</sup> In cases involving a medical assessment relating to entitlement to employment-injury assistance, the ordinary member will be a registered medical practitioner. Additionally the draft regulations provide flexibility for the appointment of ordinary members for appeals brought against decisions on entitlement to assistance by way of top up payments. All other cases will be dealt with by a legal member alone.

SAMH believes these rules go some way towards implementing a system based on dignity and respect, with lived experience at its heart. But we are concerned that the regulations may be overly restrictive. We request the Committee seek clarity on:

- **The scope of the use of ordinary members.** What is the Scottish Government’s rationale for restricting ordinary members to cases involving the assessment of medical issues relating to entitlement, rather than following the model of the Mental Health Tribunal for Scotland, which has an ordinary member present in all cases?
- **The appointment of ordinary members.** SAMH welcomes the definition of eligibility of an ordinary member in draft regulation The Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2018:<sup>6</sup>

*A person is eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland if the person—*

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<sup>3</sup> [SAMH Personal Independence Payment – What’s the problem? 2016](#)

<sup>4</sup> [Tribunals Judiciary. Practice Statement: Composition of Tribunals in Social Security and Child Support Cases in the Social Entitlement chamber on or after 1 August 2013](#)

<sup>5</sup> [Scottish Government Tribunals \(Scotland\) Act 2014: Consultation on draft regulations making provision in relation to social security appeals Annex D](#)

<sup>6</sup> [Scottish Government Tribunals \(Scotland\) Act 2014: Consultation on draft regulations making provision in relation to social security appeals Annex E](#)

*(a) is a registered medical practitioner; or  
(b) is experienced in dealing with the needs of persons who have a disability within the meaning of section 6 of the Equality Act 2010(3) because they work with persons with a disability, in a professional or voluntary capacity, provide care to a friend or family member who has a disability, or themselves have a disability.”.*

We would like clarity on how ordinary members will be appointed to specific cases. For example, where the case involves someone whose primary disabling condition is a mental health problem, will the ordinary member appointed have lived experience of mental health? SAMH believes this should be the case.

### **Other points**

We would like to highlight a number of points regarding the draft regulations:

- We welcome reference to the Social Security Charter in the draft schedule for regulations 2 outlining operative rules for the first-tier tribunal. The draft schedules state: “The overriding objective of these Rules is to enable the First-tier Tribunal to deal with cases fairly and justly and having regard to the Scottish Social Security Charter”. We also welcome the equivalent provision in the draft regulations pertaining to the upper tribunal.
- We broadly welcome provision for supporters and representatives (sections 11 and 12 of Regulation 2 and 14 and 15 Regulation 3)

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