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| To: POLICY & RESOURCES (FINANCE & CUSTOMER SERVICES) SUB COMMITTEE | | Subject: RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION ON THE DRAFT WELFARE FUNDS (SCOTLAND) BILL |
| From: HEAD OF E-GOVERNMENT & SERVICE DEVELOPMENT | | |
| Date: 28 January 2014 | Ref: IMcK/SD | |

1. Purpose of the Report

- 1.1 The purpose of this report is to provide committee with the detail on the response which has been submitted to the Scottish Government Consultation on the draft Welfare Funds (Scotland) Bill.

2. Background

- 2.1 The Scottish Welfare Fund, which went live on the 1st April 2013, is a Scottish Government scheme administered by local authorities on behalf of the Scottish Government. The fund is currently an interim two year scheme that delivers Community Care Grants and Crisis Grants to those who apply to the fund and meet the criteria for an award.
- 2.2 The consultation on the draft Welfare Funds (Scotland) Bill (see Appendix 2) is part of the Scottish Governments arrangements for designing and organising the permanent scheme which will make Scottish Welfare Fund a statutory service.
- 2.3 The response to the consultation (Appendix 1) seeks to clarify the role of the Scottish Government and its relationship with local authorities administering Scottish Welfare Fund on behalf of Scottish Ministers.
- 2.4 The deadline for responses to the consultation was 7th February 2014.

3. Corporate Considerations

- 3.1 The response contained within Appendix 1 of this report was the subject of internal consultation with all relevant Council Services, including Housing & Social Work Services, Finance & Customer Services and Corporate Services.

4. Recommendations

- 4.1 It is recommended that committee:-
- Notes the response to the Scottish Government's draft Welfare Funds (Scotland) Bill consultation as detailed in Appendix 1.

Irene McKelvey

Head of E-Government & Service Development

Members seeking further information on the contents of this report are asked to contact Irene McKelvey, on tel. 01698 302532 or Stephen Devine, Scottish Welfare Fund Manager on tel. 01698 524816

SWF Consultation on Draft Bill and Regulations

Q1 - Does the Bill as drafted contain the elements you would expect it to contain?

Yes

No

Don't know

No, The draft Bill contains no reference to the discretionary nature of the fund and as a first principle this should be clear for all. A robust section should be added, making clear that local authorities have the power to make decisions to award or refuse a grant on a discretionary basis. This would help provide clarity for customers and third parties that there is 'no automatic entitlement' to a grant under the act.

Are there any elements you would add to the Bill?

Yes

No

Don't know

Yes, a robust section should be added, making it clear that local authorities have the power to make decisions on a discretionary basis. As Local Authorities cannot make decisions which fall out with the regulations or guidance – the regulations will be statutory, and Section 6(1) of the Bill says that local authorities must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of their functions under the Act, the power to make discretionary decisions should be clear.

Local authorities must have the power within either the act or the regulations to make discretionary decisions in the face of individual circumstances where exceptional circumstance require such decisions.

The bill should contain a 'ring fence' provision to the funding for the welfare fund. This maintains the separation of the scheme as a Scottish Government one, administered by local authorities on behalf of the Scottish Ministers.

Are there any elements you would take out of the Bill?

Yes

No

Don't know

Yes,

1. under section 5 subsection 2 (f) reference to 'types of decision which are, or are not, to be subject to review in pursuance of section 3' should read '**decisions which are to be subject to review in pursuance of section 3**'. Removing reference to '**Types of decision**' and '**or are not**' creates clarity about only those decisions which should fall under review. Reference to anything other than decisions to make or decline awards simply serves to confuse and cause potential future challenges.

Those decisions not mentioned in section 5 subsection 2 (f) are by omission not subject to review for the purposes of Scottish Welfare Fund decision making under section 3 of the Bill.

2. Scottish Welfare Fund is a Scottish Government Scheme administered by local authorities. It is not a Local Authority scheme, the budget for both the fund and the administration of it, originate with the Scottish Government.

Section 1 of the Bill states as follows:

“Welfare funds

*Each local authority is to maintain a fund (called a “welfare fund”) comprising—
(a) any grants paid into the fund by the Scottish Ministers, and
(b) any amounts paid into the fund by the local authority.”*

This should read as:

“Welfare funds

*Each local authority is to maintain a fund (called a “welfare fund”) comprising—
(a) any grants paid into the fund by the Scottish Ministers,”
(b) any amounts paid to local authorities by the Scottish Ministers for the purpose of
addressing costs to local authorities of administering the fund and the costs of
providing a system of review on behalf of the Scottish Ministers”*

This will more accurately reflect the relationship between the Scottish Government and local authorities in regard to Scottish Welfare Fund and the financing of the scheme.

Local authorities can then create separate budget headings for Crisis, Community Care and Administration Costs (including the cost of reviews)

If section 1 remains within the Bill as currently drafted, then Section 5 subsection (1) requires to be amended to reflect that Scottish Ministers may, by regulations, make further provision about welfare funds or local authorities’ functions solely in relation to any funds provided by the Scottish Government for the purpose of the ‘Welfare Fund’.

Q2 - Do you agree with the proposed list of topics to include in regulations?

Yes

No

Don't know

No, neither the Bill nor the draft regulations contain specific provisions for ‘discretion’ when making decisions. This should be explicit within both the Bill and the regulations. Local authorities must have the power within either the act or the regulations to make discretionary decisions in the face of individual circumstances. This should be both clear and prominent as it is one of the defining characteristics of the Scottish Welfare Fund.

Each Local authority will face different geographic, cultural, and economic pressures, therefore local authorities require to be able to make decisions which fall out with guidance where the local authority is satisfied that it is appropriate to do so in the circumstances of the individual applicant.

Q3 - Do you agree that characteristics of the review process and the purpose of second tier review should be the same under the permanent SWF as they are under the interim SWF?

Yes

No

Don't know

Yes, however, there should be a clear distinction drawn between the first and second tier and a clear line drawn between the first tier review decision being a ‘whole look at the case’ and the second tier decision being a test for ‘fairness, transparency and error’. It is vital that the two stages are not confused for being identical in nature. In order to provide good

governance of any review system, the review applicant must be clear about exactly what they can ask for as part of a review and those areas which are out with the scope of the second tier.

Q4 – What do you think are the most likely issues to present at second tier review under the interim SWF i.e. what are the most common reasons that people will ask for a review?

It is too early to say what the most common reason for review will be as there has been a low volume of review applications to this point.

Q5 – If the SPSO is the chosen option, should this be with additional powers to:

- review discretionary decisions on the merits of the case?

Yes

No

Don't know

No, the merits of the case form part of a whole look at the case and this is carried out at the original decision and first tier stage. The second tier decision should remain a test for transparency, fairness and error. To award additional powers to the SPSO would fundamentally undermine the purpose of second tier review and would simply replicate the first tier review process and outcomes.

- make an alternative decision which would be binding on the Local Authority?

Yes

No

Don't know

Yes, all second tier decisions should be binding on the local authority whether made by the SPSO, H.M. Courts and Tribunals or Local Authority Review Panels. If decisions at the second tier are not binding, then the legitimacy of the second tier is lost.

Q6 – Please rank the 3 options for second tier reviews in order of preference - where 1 is the option you would most like to see implemented and 3 is the option you would least like to see implemented:

| Option | Priority you would give the option: |
|-----------------------------------|-------------------------------------|
| Local Authority Panel | 1 |
| Scottish Public Service Ombudsman | 3 |
| A Tribunal | 2 |

Local Authorities are experienced at making decisions and can offer the least costly and most effective and efficient delivery of decisions to SWF customers.

The SPSO already have a role within the Local Authority complaints process and to involve them in this area of decision making will ultimately confuse their role where it is currently well understood. The SPSO option is expensive and resource heavy.

A tribunal whilst preferable to the SPSO, is also potentially hugely expensive and may not be able to deliver timely outcomes.

Stephen Devine

Manager, Scottish Welfare Fund

Welfare Funds (Scotland) Bill

CONSULTATION DRAFT

An Act of the Scottish Parliament to make provision about the maintenance of welfare funds and to provide for them to be used to help certain individuals; and for connected purposes.

1 Welfare funds

Each local authority is to maintain a fund (called a “welfare fund”) comprising—

- (a) any grants paid into the fund by the Scottish Ministers, and
- (b) any amounts paid into the fund by the local authority.

2 Use of welfare funds: assistance for short term need and community care

(1) A local authority may use its welfare fund only in order to provide occasional financial or other assistance to or in respect of individuals—

- (a) for the purposes of meeting, or helping to meet, an immediate short term need—
 - (i) arising out of an exceptional event or exceptional circumstances, and
 - (ii) that requires to be met to avoid a risk to an individual’s wellbeing, or
- (b) for the purposes of enabling qualifying individuals to establish or maintain a settled home.

(2) A “qualifying individual” means an individual who has been or, without the assistance, might otherwise be—

- (a) in prison, hospital, a residential care establishment or other institution, or
- (b) homeless or otherwise living an unsettled way of life.

(3) A local authority may exercise its power under subsection (1) by making a payment to a third party with a view to the third party providing, or arranging the provision of, goods or services to or in respect of an individual.

3 Review of decisions

A local authority must make arrangements under which decisions it makes in pursuance of section 2 may be reviewed.

4 Administration of welfare funds

(1) A local authority may make arrangements for another person to administer its welfare fund on its behalf.

(2) Two or more local authorities may make joint arrangements under subsection (1) for another person to administer the authorities’ welfare funds jointly in accordance with any instructions agreed between the authorities.

(3) Such arrangements may include arrangements under which a joint committee established by the local authorities administers the authorities’ welfare funds jointly.

5 Welfare funds: further provision

- (1) The Scottish Ministers may, by regulations, make further provision about welfare funds or local authorities' functions in relation to those funds.
- (2) Regulations made under this section may, in particular, make provision—
 - (a) about the eligibility of individuals to receive assistance in pursuance of section 2,
 - (b) about other circumstances in which assistance may, or may not, be provided in pursuance of section 2,
 - (c) about the type of assistance which may be so provided,
 - (d) about circumstances in which amounts may require to be repaid or recovered in respect of assistance which has been so provided,
 - (e) setting out the types of arrangements which must be made under section 3,
 - (f) prescribing types of decision which are, or are not, to be subject to review in pursuance of section 3,
 - (g) requiring a local authority to provide the Scottish Ministers with such information in connection with the exercise of its functions under this Act as may be specified in the regulations,
 - (h) about arrangements which may be made in pursuance of section 4.
- (3) Regulations made under this section may make—
 - (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) Regulations made under this section are subject to the negative procedure.

6 Guidance

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers in connection with the exercise of its functions under this Act.
- (2) Guidance may—
 - (a) be general or specific,
 - (b) relate to all local authorities or such local authorities as may be specified,
 - (c) be varied or revoked.
- (3) Before issuing, varying or revoking guidance, the Scottish Ministers must consult—
 - (a) every local authority to which the guidance relates, or
 - (b) where it relates to all local authorities, such body representing local authorities as they think fit.
- (4) The Scottish Ministers must publish guidance issued under this section in such manner as they consider appropriate.

7 Commencement

- (1) This section and section 8 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order made under this section may include incidental, supplementary, consequential, transitional, transitory or saving provision.

8 Short title

The short title of this Act is the Welfare Funds (Scotland) Act 2014.