

Public Document Pack



AUDIT AND SCRUTINY COMMITTEE THURSDAY, 23 AUGUST 2018

A MEETING of the AUDIT AND SCRUTINY COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS on THURSDAY, 23 AUGUST 2018 at 10.00 am

J. J. WILKINSON,
Clerk to the Council,

17 August 2018

BUSINESS		
1.	Apologies for Absence.	
2.	Order of Business.	
3.	Declarations of Interest.	
4.	Minute (Pages 3 - 8) Minute of Audit Committee held on 26 June 2018 for approval. (Copy attached.)	2 mins
5.	The Petitions Procedure (Pages 9 - 10) Copy of extract from the Scottish Borders Council Petitions Procedure attached.	2 mins
6.	Welfare Benefits Service Changes Petition	30 mins
	(a) Petition (Pages 11 - 20) Copy attached of Petition submission form	
	(b) Briefing Note by Service Director Customer & Communities (Pages 21 - 24) (Copy attached.)	
7.	Any Other Audit Items Previously Circulated.	
8.	Any Other Audit Items which the Chairman Decides are Urgent.	
9.	SCRUTINY BUSINESS	
10.	Delivery of the IT Strategy and Plan within Scottish Borders	20 mins

	Presentation by Chief Financial Officer. (Copy to follow)	
11.	Any Other Scrutiny Items Previously Circulated.	
12.	Any Other Scrutiny Items which the Chairman Decides are Urgent.	

NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

Membership of Committee:- Councillors S. Bell (Chairman), H. Anderson, K. Chapman, J. A. Fullarton, S. Hamilton (Vice-Chairman), N. Richards, H. Scott, R. Tatler and E. Thornton-Nicol

Please direct any enquiries to Fiona Henderson 01835 826502
Email: fhenderson@scotborders.gov.uk

SCOTTISH BORDERS COUNCIL AUDIT AND SCRUTINY COMMITTEE

MINUTES of Meeting of the AUDIT AND SCRUTINY COMMITTEE held in Council Chamber, Council Headquarters, Newtown St Boswells on Tuesday, 26 June 2018 at 10.00 am

Present:- Councillors S Bell (Chairman), H Anderson, K Chapman, S Hamilton, R Tatler and E Thornton-Nicol (during Item 4).
Apologies:- Councillors J Fullarton, N Richards, H Scott. Mr M Middlemiss.
In Attendance:- Chief Financial Officer, Chief Officer Audit and Risk, Financial and Commercial Director SB Cares, Democratic Services Officer (P Bolson); Mr A Haseeb and Mr G Samson– Audit Scotland.

1. **WELCOME**

The Chairman welcomed those present to the meeting of the Audit and Scrutiny Committee.

2. **MINUTE**

There had been circulated copies of the Minute of 7 June 2018.

DECISION

NOTED for signature by the Chairman.

3. **ACTION TRACKER**

There had been circulated copies of the Action Tracker for the Audit and Scrutiny Committee. With regard to the entry on 25 September 2017 relating to corrective action in place to address the issues identified in the Fleet Management Workforce Plan, it was agreed that the Chief Officer Roads would be invited to attend the next meeting to provide an update to Members of the Committee.

DECISION

NOTED:-

(i) **the Action Tracker; and**

(ii) **that the Chief Officer Roads would provide an update to Members at the next meeting of the Committee in respect of corrective action in place to address the issues identified in the Fleet Management Workforce Plan.**

4. **RISK MANAGEMENT IN SERVICES**

4.1 The Chairman welcomed Ms Jenni Craig, Service Director Customer and Communities, to the meeting. Ms Craig was in attendance to give a presentation on the strategic risks affecting her service and the internal controls and governance in place to manage and mitigate those risks. Ms Craig began by providing some background and explained that the areas covered by Customer and Communities, namely Customer Advice and Support; Business Change and Programme Management; Business Planning, Performance and Policy Development; and Communities and Partnerships each had Service Risk Registers. These Registers were reviewed on a quarterly basis and had been developed through the Business Planning Process. They were owned by the Service Managers, reviewed by the Service Directors and Management Team and were escalated to CMT when necessary. The key factors and major changes influencing the service included: financial pressures; resources and the changing demand on the skills mix required;

changing service delivery models; the increasing demand and requirement for IT; Government policies and legislation; Welfare Reform; and economic and environmental change. In terms of the key skills now required, work was ongoing with HR to ensure that these skills were in place both to enable staff to meet the increasing demand by the public and to allow the public to access Council services. Government policies and legislation could have tight implementation timescales with increased staff resources required, eg Universal Credit which had to be implemented by 13 June 2018, and risk could increase as a result. Current risks in the main were driven by service responsibility and included: failure of IT systems; unprepared for significant legislative change; ineffective change management to modernise the organisation; insufficient skilled resources to meet service demands; focussing on short-term savings which could result in failure to achieve objectives/targets and damage to the Council's reputation; not meeting customer service expectations; and unable to demonstrate best value due to failure to embed a self-assessment approach across the organisation. The Corporate Risk relating to a focus on short-term savings currently scored 9 (amber) on the Register and Ms Craig explained what mitigation had been and would be implemented. Management was working towards aligning Business Plans and Service Plans with available resources in order to reduce the risk. The Service Risk relating to major legislative and economic/social change which could result in increased demand on services and the ability of the service to provide customers with the help, advice and statutory assistance required currently scored 12 (high amber treat) on the Register. Again, Ms Craig explained what mitigation had been and would be implemented and this included exploring opportunities for Community Planning Partnership joint working; and having a flexible resource and agile methods such as manual work arounds when there was a need to react to late legislation. Single points of failure would also be identified and addressed to reduce risk. Ms Craig advised that within the Digital Customer Access Project, lack of resources within SBC and the potential impact on delivery of the project scored 12 on the Risk Register. Any resultant delays in delivery and benefits could potentially result in additional costs to the Council. Members noted the mitigation measures being implemented and the aim to provide a "seamless" experience for customers within a complex landscape. Ms Craig summarised the Service's approach to managing risk which included: adhering to a consistent corporate process and framework; effectively managing projects, programmes and change; delivering risk workshops as a key aspect of the Business Planning Process; conducting self-evaluation, inspections and internal/external scrutiny; delivering effective and appropriate training; and regular monitoring of strategic service and operation risks and performance indicators.

- 4.2 Ms Craig responded to a number of questions raised by Members. In terms of an internal communications strategy going forward, Ms Craig advised that work was ongoing to develop an internal communications plan for staff and arrangements were being considered for a programme of Roadshows across the Council area. Appropriate consultation was also taking place. The plan would be circulated to Members in due course. With regard to security of the IT network and pressure during severe winter conditions, the Chief Financial Officer explained how the huge increase in staff trying to access the Council network remotely caused severe pressure on the IT firewall. A decision was made to close off system access to staff to preserve access for those delivering emergency/essential services. Measures would be in place to avoid this situation in the future. In terms of Corporate Management involvement, Members were advised that Welfare Reform and Universal Credit were live issues and were being addressed by both the Service and Corporately. Further to the development of an Action Plan and staff training, additional work was being taken forward to consider what changes would now be required following the implementation of the new GDPR regulations. Ms Stacey confirmed that Information Governance, which included GDPR, and Workforce Planning were included on the Internal Audit Work Schedule for 2018/19. The Chairman thanked Ms Craig for her interesting and comprehensive presentation.

DECISION

NOTED the presentation.

5. **SCOTTISH BORDERS COUNCIL DRAFT REPORTS AND ACCOUNTS 2017/18**

5.1 With reference to paragraph 6 of the Minute of 28 June 2017, there had been circulated copies of a report and associated papers by the Chief Financial Officer on the draft Annual Report and Accounts for Scottish Borders Council, Scottish Borders Council Pension Fund, Common Good Funds, Charitable Trusts, Bridge Homes LLP, SB Supports LLP and SB Cares LLP. The report provided the Audit and Scrutiny Committee with an opportunity to scrutinise the draft Annual Reports and Accounts for the year ended 31 March 2018 for Scottish Borders Council and associated Group Accounts prior to submission for External Audit Inspection by the statutory deadline of 30 June 2018. The report summarised the financial transactions for 2017/18 and the balance sheet positions as at 31 March 2018 as set out in the Local Authority Accounts (Scotland) Regulations 2014. In addition, Section 12 of the Local Government in Scotland Act 2003 required annual accounts to be prepared in accordance with proper accounting practice, primarily comprising the Code of Practice on Local Authority Accounting in the United Kingdom 2017/18 and the Service Reporting Code of Practice 2017/18 supported by International Financial Reporting Standards (IFRS). The Pension Fund Accounts were required to adhere to the Local Government Pension Scheme Amendment (Scotland) Regulations which specified what must be contained in the Annual Report and Accounts. The Common Good and Trust Reports adhered to the Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing accounts in accordance with the Financial Reporting Standard for Smaller Entities (FRSSE), the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Accounts (Scotland) Regulations 2006 (as amended). Following audit and a public inspection period the finalised Audit report and Audited Accounts would be submitted to Council in September 2018.

5.2 The Chief Financial Officer then summarised Scottish Borders Council draft reports and accounts by means of a presentation. He detailed the 2017/18 highlights which included – a Revenue out-turn of £1.029m underspend; and £12.286m of Financial Plan savings delivered, of which 64% was recurring. Net Assets (excluding Pension Fund liabilities) had increased by £38.6m net on the Balance Sheet. The Balance Sheet demonstrated a significant improvement, materially affected by Actuarial Gains on the Pension Fund Net Assets/Liabilities (£70.5m) and an overall surplus on the revaluation of Property, Plant and Equipment (£53.6m). Capital Expenditure was £36m with Fixed Asset NVB of £536.5m. The presentation included the requirements under the Local Authority Accounts (Scotland) Regulations 2014 and the Council's own Accounts timetable. The Chief Financial Officer advised that the Council's Audited Accounts were required to be published on its website no later than 31 October 2018. The presentation included an analysis of Revenue Expenditure by department and a breakdown of how efficiency savings had been achieved. A reduction in turnover was reported in respect of external trading by SB Contracts and Members noted that this was as a direct result of a continuing challenging external market. Mr Robertson went on to explain the - Statutory Accounting Adjustments; General Fund Balances; Balance Sheet overview; and Capital Out-turn for 2017/18. Group Accounts were consolidated as detailed in the full report for Scottish Borders Council.

5.3 With reference to the Pension Fund, Mr Robertson confirmed that Scottish Borders Council was one of the best funded LGPS nationally. In response to a question relating to Common Good Funds, Mr Robertson advised that an Annual Seminar was scheduled to take place on 28 August 2018 and it was agreed that the Statement of Common Good Trustees' responsibilities would be circulated to all Members separately.

DECISION

(a) **NOTED the Draft Annual Report and Accounts 2017/18 for Scottish Borders Council and associated Group Accounts; and**

(b) AGREED to:-

- (i) support their submission for review by the External Auditors, Audit Scotland for Scottish Borders Council, Scottish Borders Council Pension Fund, Common Good and Trust Funds Accounts; and**
- (ii) support submission for review by KPMG who continued to provide the external audit of the Council subsidiaries SB Cares, SB Supports and Bridge Homes which were not Registered Charities.**

ADJOURNMENT

The meeting was adjourned at 11.45 am and reconvened at 11.50 am.

6. EXTERNAL AUDIT INTERIM MANAGEMENT REPORT 2017/18

With reference to paragraph 4 of the Minute of 28 June 2017, there had been circulated copies of an Interim Management Report by Audit Scotland for the year 2017/18. The report summarised the key issues identified during the year and included testing key controls within the Council's financial systems to gain assurance over the processes and systems used in the preparation of financial statements. In addition, Audit Scotland had carried out early substantive testing of income and expenditure transactions and had reviewed the Council's progress with the National Fraud Initiative (NFI). The findings would be used by Audit Scotland to determine its approach during the 2017/18 financial statements audit. Further work had been carried out on the wider dimension audit of reviews of NFI investigation, General Data Protection Regulation (GDPR) and the results would be detailed in the Audit Scotland Annual Audit report. Mr Samson advised that some control weaknesses had been identified during the audit as summarised in Exhibit 2 within the report. The Management response/action plan in each case was also included in the report. Officers clarified a number of points raised by Members and Mr Samson confirmed that Business World ERP was, in the main, delivering what was expected. There were, however, some aspects of the system that were not yet fully operational but the Chief Financial Officer confirmed that work was ongoing with CGI to resolve these issues within the contract. It was noted that the Committee had a continuing role to scrutinise this area of Council business.

DECISION

NOTED the report.

7. NATIONAL PERFORMANCE REPORTS BY AUDIT SCOTLAND

7.1 With reference to paragraph 6 of the Minute of 28 June 2016, there had been circulated copies of a report by the Chief Officer Audit and Risk providing Members of the Audit and Scrutiny Committee with a list of recently published National Performance Reports by Audit Scotland which were relevant to Local Government. The report also proposed their scheduled presentation to Committee for consideration. The report noted that the Audit and Scrutiny Committee's purpose was to have a high level oversight of the framework for internal control, risk management and governance within the Council and it was regarded good practice for the Committee to take account of relevant reports from external inspection bodies such as Audit Scotland. Ms Stacey advised that two reports entitled "Challenges and Performance 2018" and "Councils' Use of Arm's-Length Organisations" were two such documents of interest to SBC which could also be used for learning purposes. Ms Stacey also notified Members that presentations to the Committee on the circumstances and situations relating to the Dundee City Council Significant Fraud and the City of Edinburgh Council Report on Schools would be scheduled for September 2018.

7.2 Discussion followed and Members' questions were answered. With reference to the publication entitled "Challenges and Performance 2018", Members requested that the Scrutiny Tool for Members referred to on page 8 of the document be circulated to assist them in their scrutiny role. Concern was raised in respect of the level of waste collected

within the Scottish Borders. Members considered the document to be very user friendly and easy to understand. The Chief Financial Officer confirmed that reports such as this from Audit Scotland were regularly included on the Corporate Management Team Agenda for discussion and were also circulated to Members.

DECISION

(a) NOTED:-

- (i) the report and list of recently published National Performance reports by Audit Scotland; and**
- (ii) the reports by Audit Scotland entitled “Local Government Challenges and Performance 2018” and “Councils’ Use of Arm’s Length Organisations”.**

(b) AGREED the proposed schedule for presentation of the National Performance reports by Audit Scotland.

8. PROGRESS ON IMPLEMENTATION OF INTERNAL AUDIT RECOMMENDATIONS

With reference to paragraph 6 of the Minute of 13 November 2017, there had been circulated copies of a report by the Chief Officer Audit and Risk providing an update and overview to the Committee on the status and implementation by Management of audit recommendations previously agreed in Internal Audit reports. Information relating to Internal Audit recommendations which had not yet been fully implemented was detailed in the Appendix to the report. Some concern was raised regarding four outstanding recommendations relating to Complaints, to which Ms Craig responded earlier in the meeting, one outstanding recommendation relating to Fleet Management workforce plan referred to in the Action Tracker, and two outstanding recommendations relating to Roads Management and Flood Risk and Coastal Management and it was agreed that the appropriate officers would be asked to attend the next meeting of the Committee to address these items. Ms Stacey answered Members’ questions relating to the Appendix.

DECISION

(a) ACKNOWLEDGED satisfaction with the progress made by Management in implementing Internal Audit recommendations, subject to those concerns raised being addressed.

(b) AGREED that appropriate officers would be asked to attend the next meeting of the Committee to address one outstanding recommendation relating to Fleet Management workforce plan and two outstanding recommendations relating to Roads Management and Flood Risk and Coastal Management.

9. AUDIT AND SCRUTINY COMMITTEE ANNUAL REPORT 2017/18 AND ANNUAL SELF-EVALUATION

With reference to paragraph 5 of the Minute of 28 March 2017, there had been circulated copies of a report by the Chief Officer Audit and Risk providing Members with the Audit and Scrutiny Committee Annual Report 2017/18. The report also incorporated the annual self-assessment using the CIPFA Audit Committee Guidance. The report noted that the outcome of the self-assessments was a high degree of performance against the good practice principles and a medium degree of effectiveness. This was considered to be the result of the significant change in membership of the Committee following Local Government elections in May 2017. With reference to external membership of the Committee, Ms Stacey confirmed that a report would be submitted to Council in August 2018 requesting that a Selection Committee be convened to progress external appointments to the Audit and Scrutiny Committee.

DECISION

- (a) APPROVED the Audit and Scrutiny Committee Annual Report 2017/18 which incorporated its self-assessments using the CIPFA Audit Committee guidance.**
- (b) AGREED that:-**
 - (i) the Audit and Scrutiny Committee Annual Report 2017/18 be presented to Scottish Borders Council and published on the SBC website; and**
 - (ii) that a report be presented to Council in August 2018 requesting that a Selection Committee be convened to progress external appointments to the Audit and Scrutiny Committee.**

The meeting concluded at 12.40 pm



Scottish Borders Council
Extract from the Audit & Scrutiny Committee Petitions Procedure

14. The procedure at the meeting, for each petition considered, shall be as follows:
- (i) the meeting shall be in public unless the subject matter of the petition would be deemed to be confidential under the terms of Section 7A of the Local Government (Scotland) Act 1973;
 - (ii) the principal petitioner, or named deputy, shall give a statement in explanation of the petition;
 - (iii) there will be an opportunity for Members of the Committee to ask questions of the petitioner or their named deputy;
 - (iv) there will be an opportunity for any Director(s), Executive Member(s) and Community Planning Partner representative(s) present to ask questions of the petitioner or their named deputy;
 - (v) a response to the petition may be heard from a Director, Executive Member and/or Community Planning Partner representative present at the meeting;
 - (vi) there will be an opportunity for Members of the Committee to ask questions of any Director, Executive Member(s) and Community Planning Partner representative(s) present at the meeting;
 - (vii) there will be an opportunity for the petitioner or their named deputy to ask questions of any Elected Member, Director or Community Planning Partner representative present at the meeting;
 - (viii) Members of the Committee shall then discuss the information available and consider their findings. The Committee may defer a decision should further information be required.

Note: any contribution on behalf of the petition from a second or other speaker(s) shall be at the discretion of the Chairman. The public will not be allowed to speak at the meeting unless invited to do so by the Chairman.

15. The Audit & Scrutiny Committee shall agree to one of the following:-
- (i) refer the petition to another Committee or Director, with or without a recommendation or comment. That Committee or Director shall then make the final decision which could include taking no further action;

- (ii) refer the petition to the relevant Community Planning Partner, with or without a recommendation or comment, if appropriate;
 - (iii) that the issue(s) raised do not merit or do not require further action.
- 16. The decision of the Audit & Scrutiny Committee, and any reason for that decision, shall be recorded in the Minute of the Meeting and a copy of the Minute shall be sent to the principal petitioner by Democratic Services staff. Where the petition is referred to a Director or another body, the responsibility for communicating the final outcome of the petition is also referred. Updates on these outcomes will be provided to the Audit & Scrutiny Committee.
- 17. There will be no right of appeal in response to a final decision made in response to a petition.
- 18. The usage and effectiveness of the petitions procedure shall be reviewed on an annual basis.

Reference (official use)



Petitions – submission form

If you wish to submit a petition for consideration by the Audit and Scrutiny Committee, please complete the form below. You are advised to refer to the Guidance Questions and Answer sheet provided.

Details of Principal Petitioner	
Please enter the name and contact details of the person raising the petition. <i>The Principal Petitioner must be on the Register of Electors for the Scottish Borders Council area.</i>	
Name:	Jenny Mushlin
Address:	18 Fleming Place
	Fountain Hall
	Galashiels
Postcode:	TD1 2TA
Telephone no:	
Email:	

Title of Petition and Petition Statement
Please enter the title of the Petition and a statement to cover the main subject of the Petition or the action you would like the Council to take.
Title: Welfare Benefits Service Changes

Statement (no more than 250 words):

We, the undersigned require that Scottish Borders Council, in its redesign of the standalone Welfare Benefits Service into the Customer Advice and Support Service must maintain the same standard of service to ensure the most vulnerable and deprived people in the Borders are not unfairly disadvantaged or face inequality of access to support services and income maximisation through benefits.

We request that SBC:

- Employ Welfare Benefits Assistants or other staff who have a specific remit to assist with initial completion of form applications.
- Regularly monitor and listen closely to Citizens Advice Bureaux on their workload with initial and pre-assessment support, including waiting times for the public to receive support.
- Is able to offer a comprehensive service, giving advice on all aspects of the welfare benefits system - from initial claims to representation at tribunals
- Ensure that home visits are provided, at any stage, for those unable physically or financially to get around (this is not currently recognised in the Equality Impact Assessment)
- Ensure there are sufficient staff resources within SBC for maximization of benefit entitlement in the Borders and to ensure that all receive their right to a fair hearing.
- Acknowledge the error made in not carrying out any public consultation for the changes to the Welfare Benefits Service
- Monitor and report on the impact on the groups with protected characteristics listed as negatively impacted by the Equality Impact Assessment (poverty, age, disability, and we would suggest, those classified as living in remote small towns, accessible rural and remote rural areas)

Further information.

Please enter below any measures already taken, or persons/organisations approached to attempt to resolve the issues. Attach additional sheets to this form if required but please note that this information must be limited to no more than 4 sides of A4 paper.

Jenny Mushlin has written, on behalf of The Mental Health and Wellbeing Forum and other Borders Care Voice members to Tracey Logan, Chief Exec (CC'ing Elected Members, MSPs and MPs) and has received a reply, along with a copy of the EIA. However, it was felt that few of the concerns raised - if any - were really taken on board in the response and there were no assurances given about how and when any negative impacts would be monitored and reported.

To ensure adequate scrutiny of the decisions around these changes, and in light of a lack of any public consultation, it was agreed to submit a petition to the Audit & Scrutiny Committee.

Presentation of petition to the Committee.

Please indicate below if you would like the opportunity to make a statement at the meeting of the Audit and Scrutiny Committee when your petition is considered. Whether or not you will be invited to do so will be at the discretion of the Chairman.

*I do/~~do not~~ wish the opportunity to make a brief statement about the petition.

*I would like my deputy named below to make a statement on my behalf.

Name of deputy

Contact details

Signature of deputy.....

* please delete as appropriate

Signature of Principal Petitioner.

If you are satisfied your petition meets all the requirements as stated in the Guidance Questions and Answers please add your signature and date below.

Signature of Principal Petitioner.....

Date 8th Feb 2018

Accompanying signatures.

Your petition must be accompanied by at least 10 signatures in total, from persons aged 16 and over, resident in the Scottish Borders. The signatures must be from a minimum of 3 separate addresses.

Please be aware that if the petition is on the agenda for a meeting of the Audit and Scrutiny Committee the names and addresses, but not signatures, of all signatories will be published on the Council website.

	Name	Address	Signature
1	G. NICOLLET	1 STATION ROAD STOW, GALASHIELS TD12 5QJ	
2	M. ROPER	KIECHILL FARM LEWREWOOD	
3	M GREEN	72 WOODSIDE AVE GALASHIELS TD1 2EG	
4	N. Glendinning	3 Walker Street, Innerleithen, EH44 6UR	
5	J Smith	Thorn Cottage, High St Eorleston TD4 6OE	
6	G. ANDERSON	STABLEGATE COIT LEWIS TD5 7QS	

7	Margaret Mackay	5 HUME HALL HOLDINGS GREENLAW TD10 6HW	
8	Margaret Lewrie	34 TRINITY PARK JUN S.	
9	Noire McLachlan	20 DOONSHILL JESBURG	
10	Past Evans	Makone Northburn Vias Eyemouth TD14 5BG	

Attach additional sheets of signatures if you wish.

Please submit this form and any additional sheets to:-

Clerk to the Council, Scottish Borders Council, Council Headquarters, Newtown
St Boswells, Melrose, TD6 0SA,
or email to:
committeepapers@scotborders.gov.uk

When is a UC claim defective?

Given that it is only when a valid claim for UC is made that the various provisions terminating existing awards or HB, tax credits and IS and abolishing income-related ESA and income-based JSA can operate, it is important to understand what counts as a 'valid' claim for UC. That is a question not just of the law but also of how the claim process is designed administratively.

Electronic claims for UC are considered properly made when completed in accordance with the instructions on the electronic claims system (regulation 8(3) of the Universal Credit (etc.) (Claims and Payments) Regulations 2013).

The online claim does not ask the claimant to provide any documents proving identity before the point at which the claimant's journal notifies it that the claim details have been submitted. Instead, once the claim details are submitted, the claimant has an instruction on her/his journal that s/he must verify her/his identity (which can be done online, or if that does not work, at an appointment at the job centre which must be booked by calling the UC helpline). It is at this stage that the claimant provides a national insurance (NI) number – thus although having provided, or having applied for, an NI number is still a condition of entitlement to UC, doing so no longer appears to be part of making a valid claim.

Given this design of the online claim process, it seems that a claimant will count as having made a valid claim once s/he has answered all the questions on the online form (indicated by getting to the point at which a claimant can post on her/his journal). There may be situations where a claimant gives incorrect information deliberately to get to that stage (eg, entering incorrect rent details) and then puts a note on her/his journal to say the information is incorrect and s/he will provide it when s/he can – there it is arguable that the claim is still defective at that point.

In summary, it seems likely that, in most cases, the arguments that a claim is defective and thus that legacy benefits should not be terminated will work only up to the point before the online journal records that the claim has been submitted. Advisers should be cautious with arguments to the contrary, as it is likely that in the future it will be in claimants' interest more generally to argue for the widest possible conception of when a valid claim counts as having been made.

Withdrawing claims

Perhaps a more common situation advisers will face is in advising claimants who would be worse off on UC, and who could remain on legacy benefits but who have already made a

valid claim for UC. In cases where that claim has not yet been decided, then it is possible for the claim to be withdrawn (regulation 31 of the Universal Credit (etc.) (Claims and Payments) Regulations 2013). Withdrawals of claims take effect by operation of law² as soon as they are received by the DWP (in other words, there is no need for a decision maker to make a decision that a claim is withdrawn).

In a case where a claim is withdrawn in this way, then it is arguable that it is, for all purposes, as if the claim had never been made. Thinking about this in terms of whether income-related ESA and income-based JSA are abolished and whether existing awards of tax credits, HB and IS should terminate:

- a decision as to the first day of the period in respect of which a claim for UC was made, necessary in order to set the date from which income-related ESA and income-based JSA are abolished, cannot be made (there is no claim in existence in respect of which that can be determined);
- similarly, there is no claim before the Secretary of State for Work and Pensions in

respect of which she needs to satisfy herself that the four basic conditions of entitlement are met and so no triggering of termination of tax credits, HB and IS. Furthermore, regulation 8(2) does not allow a determination of an end date for these benefits in this case – the claimant is not entitled to UC and the reason s/he is not entitled is not because s/he does not meet all the basic and financial conditions but rather because s/he has withdrawn her/his claim.

Caution will be needed in advising claimants to withdraw a UC claim before determination as there is a risk the local authority, HMRC or DWP will not accept these arguments and decide that the UC provisions are triggered. However, that is a risk a properly advised claimant, who is a significant net loser on UC, may be prepared to take.

¹ For example, Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015, SI No.634

² Reg 31(2) Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regs 2013, SI No.380

Test Case:

'Safely' in personal independence payment

Activities in the personal independence payment (PIP) test must be capable of being carried out 'safely'. That word is defined in regulations, but has been the subject of an important decision of the Upper Tribunal and, most recently, updated official guidance. Ed Pybus explains.

The regulations

In order to determine entitlement to personal independence payment (PIP), a claimant's ability to undertake certain activities is assessed, using a range of descriptors to determine the level at which the claimant can complete the activity. The regulations provide that in the PIP assessment, a particular descriptor only applies if the claimant can carry out the activity, at that level 'reliably'. This includes being able to perform the activity among other things, 'safely'.¹ Some activities include a descriptor that awards points if the activity can only be completed with

assistance or supervision. The regulations define these concepts further: "'safely' means in a manner unlikely to cause harm to C [the claimant] or to another person, either during or after the activity"² and "'supervision" means the continuous presence of another person for the purpose of ensuring C's safety'.³

The Upper Tribunal

Last year, three joined cases were looked at by a three-judge panel of the Upper Tribunal where these issues were considered. The resulting decision was *RJ, GMcL and CS v SSWP (PIP)* [2017] UKUT 105 (AAC). This decision must be followed by decision makers and First-tier Tribunals in preference to that of a single Upper Tribunal judge.

Drawing on the approach taken by the House of Lords⁴ when looking at the likelihood of harm in the context of protecting people against future harm, the judges held that the approach taken in previous caselaw, which

referred to the infrequency or remoteness of harm occurring and the need for the descriptor to be satisfied most of the time, was incorrect. Instead the Upper Tribunal concluded that:

'an assessment under the PIP Regulations that an activity cannot be carried out safely does not require that the occurrence of harm is "more likely than not". A tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. Both the likelihood of the harm occurring and the severity of the consequences are relevant. The same approach applies to the assessment of a need for supervision.'

So decision makers and First-tier Tribunals should not consider that a claimant can undertake an activity safely if there is a real possibility of harm to either the claimant or another person.

Supervision

The decision in *RJ* also held that Judge Jacobs was correct when in *JM v SSWP* [2015] UKUT 680 (AAC), he stated that 'a risk that gives rise to a need for supervision need not be a risk that is unique to a particular activity [...] It is sufficient if it is a general risk'. So if there is a real possibility of harm, either to a claimant or to others, if the claimant isn't supervised, the claimant may score points under the descriptors that include supervision, regardless of whether or not the risk of harm is related to the activity.

Updated guidance

The Secretary of State is not appealing against *RJ* and has issued guidance and updated the PIP assessment guide to take account of the judgment. The PIP assessment guide now states that it is necessary to consider the likelihood of harm and the severity of harm that may occur.⁵

Also, guidance issued to decision makers advises that three factors should be used when considering whether an activity can be performed safely:⁶

- the frequency of incidents [that could cause harm];
- the severity of harm caused by an incident; and
- the extent to which the condition is predictable, controlled or the risk can be mitigated.

The frequency and severity of harm are highlighted in *RJ* as relevant factors. The guidance to decision makers goes on to advise that it is important to consider the likelihood that the incident occurs at the exact moment when an individual is undertaking an activity that could

cause harm. The example the guidance uses is of a claimant who has one seizure a day, but only spends 45 minutes per day cooking; it therefore concludes that the likelihood of the seizures occurring at the time s/he is cooking is low, suggesting s/he would be able to undertake the activity safely.⁷ It is arguable that this analysis fails the 'real possibility test' outlined in *RJ*.

The predictability of an incident occurring is not covered in detail by the judges in *RJ*, but in one of the cases under consideration they note that the First-tier Tribunal's reasons for awarding points under Activity 4 due to the unpredictability of her seizures was consistent with its own approach. This suggests that the predictability, or otherwise, of an 'incident' occurring would be relevant.

Mitigation of risk

Many of the examples in the guidance to decision makers cover the ways in which a claimant could be expected to mitigate the risks, and therefore undertake the activity safely. There is no discussion of mitigation of risk in the judgment.

While in some instances mitigation of the risks may be reasonable, in some it may not. Under the regulations, the claimant must still be able to undertake the activity 'to an acceptable standard'.⁸ Also, in *PE v SSWP (PIP)* [2015] UKUT 309 (AAC), reported as [2016] AACR 10, Judge Jacobs held that a tribunal is entitled to 'consider reasonable and practical alternatives' when assessing a claimant's ability to complete an activity, but also noted: 'There must be a balance struck that prevents claimants generating their own entitlement while at the same time not allowing their own disability to be used against them.' These comments were made regarding Activity 6 but could potentially apply to other activities and the reasonableness of mitigating risk.

Reviewing awards

The second part of the guidance to decision makers discusses the process for revising awards.⁹ It states that all decisions made between the date of the judgment in *RJ* (ie, 9 March 2017) and the date of the guidance (November 2017), and all PIP awards in payment on the date of the judgment, will be reviewed in an 'independent exercise'. It also outlines the process that the DWP should take when reconsidering awards that may be affected by *RJ*.

Conclusion

Advisers should be aware that if there is a real possibility of harm occurring, then the claimant cannot be considered to be able


to undertake the activity safely. Advisers should be prepared to explain why the claimant cannot mitigate the risk.

If a claimant's awards would be increased as a result of *RJ*, the awards should be reviewed by the DWP, but the claimant can request a supersession or revision of her/his award instead.

- 1 Reg 4(2A)(a) Social Security (Personal Independence Payment) Regs 2013, SI No.377 ('SS(PIP) Regs')
- 2 Reg 4(4)(a) SS(PIP) Regs
- 3 Sch 1 SS(PIP) Regs
- 4 In *Re H and others (minors)(sexual abuse: standard of proof)* [1996] AC 563
- 5 *DWP, PIP Assessment Guide: part 2 – the assessment criteria*, para 2.1.15
- 6 Memo ADM 29/17
- 7 para 16 Memo ADM 29/17
- 8 Reg 4(2A)(b) SS(PIP) Regs
- 9 Memo ADM 30/17

New CPAG policy book

Poverty: the facts



This eagerly awaited new edition of CPAG's flagship policy publication provides the clearest and most comprehensive picture of poverty in the UK today.

With four million children now living in poverty in the UK, and independent experts forecasting that figure is set to rise, the significant progress made at the turn of the millennium to eliminate child poverty is being reversed.

Based on the latest official figures, **Poverty: the facts** looks at why UK child poverty rises and falls.

- What do we mean by poverty?
- How do we measure poverty?
- Who is at risk of poverty?
- Who is in poverty?
- How does the UK compare with other countries?
- What can we do about it?

Written by leading academics and policy analysts, **Poverty: the facts** is essential for anyone wanting to understand the policy and political debates around poverty, and is essential reading for academics, students, social workers, welfare rights workers, financial inclusion teams and the wider policy community.

Cover price £15.00 • £12.75 for CPAG members and CAB customers

To order, call 020 7812 5227, email bookorders@cpag.org.uk or visit www.shop.cpag.org.uk/books.

PIP and psychological distress

The DWP is reviewing personal independence payment (PIP) decisions, following a High Court decision that found changes to mobility descriptors in March 2017 unlawfully discriminated against claimants with mental health problems.

The background

Schedule 1 to the PIP regulations¹ outlines the PIP activity descriptors. Mobility activity 1, 'planning and following journeys', initially included the following descriptors:

- c. Cannot plan the route of a journey;
- d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid;
- e. Cannot undertake any journey because it would cause overwhelming psychological distress; and
- f. Cannot follow the route of a familiar journey without another person, assistance dog or orientation aid.

These descriptors respectively scored eight, 10, 10 and 12 points.

Resolving a dispute in the caselaw, Upper Tribunal judges Rowland, Rowley and Hemingway held in *MH*,² dated 28 November 2016, that descriptors 'c', 'd' and 'f' could be satisfied by claimants by virtue of 'overwhelming psychological distress'.

Unhappy with this interpretation, the government amended the PIP regulations from 16 March 2017, replacing the word 'cannot' in descriptors 'c', 'd' and 'f' with the phrase: 'For reasons other than psychological distress, cannot'.³

Crucially, this meant that claimants whose ability to plan and follow journeys was impaired by mental, rather than physical, health problems could only score a maximum of 10 points under descriptor 'e'⁴ – it precluded them from entitlement to the enhanced rate of the PIP mobility component.

Unlawful discrimination

In *RF*,⁵ the High Court held on judicial review that this was 'blatantly discriminatory' on the basis of disability, in breach of Articles 1, 8 and 14 of the European Convention on Human Rights (ECHR), as it treated people with mental health problems less favourably than people with physical health problems.

Mr Justice Mostyn did not accept the government's submission that this discrimination was objectively justified by its policy intention of saving nearly £1 billion a year. He therefore quashed the amendments, reinstating the original wording.

Government review

The Secretary of State for Work and Pensions confirmed that the government would not appeal against the outcome in *RF*, and that the DWP would review 'all affected cases'.

The Minister for Disabled People went on to state that the government would be 'going through all cases in receipt of PIP and all decisions made since the judgment in *MH* to identify anyone who may be entitled to more as a result of the judgment', estimating that 1.6 million claims would be reviewed.

The 'anti-test case rule'

As the DWP has indicated it will link the review to the ruling in *MH*,⁶ it is implicit that it is applying the 'anti-test case rule',⁷ whereby the outcome of a test case is only applied to other similar cases from the date of the test case judgment.

Consequently, arrears under the review are being limited to, at most, the date of the decision in *MH* – ie, 28 November 2016.

MH approach

The Secretary of State now seems to accept the approach taken in *MH* – although she had lodged an appeal to the Court of Appeal against that decision, it is understood that that appeal has now been withdrawn.

MH actually referred to 'overwhelming' psychological distress. Although this wording may appear to be set a high- or difficult-to-meet threshold, in practice, if someone's psychological distress impairs her/his ability to mobilise outdoors to such an extent s/he cannot plan where s/he is going, or go there unaccompanied, it should be self-evident that the level of her/his distress is 'overwhelming'.

Advising affected claimants

The DWP is engaging on a review programme in the light of the decision in *RF*.

Parliament was told that:

'We will be going through all cases in receipt of PIP and all decisions made since the judgment in *MH* to identify anyone who

may be entitled to more as a result of the judgment... The effective date will be either the date of the claim or the date of the *MH* judgment (November 2016), whichever is the later date. Claimants do not need to write to DWP in order to receive the correct award.'⁸

It has also been confirmed that the DWP will be 'reviewing people who had zero points in their original claim. We are currently considering the best way to handle an appeals process.'⁹

A DWP 'frequently answered questions' document issued to stakeholders in April 2018 indicated that guidance would be completed and the review process would begin in 'early summer 2018'.¹⁰ The document includes that those disallowed PIP before 28 November 2016 but who might benefit from the decision in *MH* should 'consider making a new claim'. Those disallowed on or after that date will (like those with an award) have that decision considered as part of the review, and the DWP will write to the claimant if s/he is 'identified as affected'.

At the moment, there is a lack of clarity about how long the DWP review process will take, or what it will entail in terms of decision making – it has not been stated that everyone who has their claim reviewed to ascertain whether they should have scored points under mobility activity 1 descriptors 'c', 'd' or 'f' will be notified of the outcome of the review, and given appeal rights. It has simply been stated that it is currently 'considering the best way to handle an appeals process'.¹¹

At the time of writing, it was possible that only positive review decisions will be notified, meaning people whose claims are reviewed but who are still not awarded points under one of these descriptors are not given the opportunity to challenge that review decision.

In the absence of clarification of such matters, claimants may therefore want to consider whether to proactively challenge relevant PIP decisions in the light of *RF* and *MH* – ie, without waiting to be contacted under the DWP review programme. The usual rules concerning mandatory reconsideration and appeal time limits, including the 'absolute' time limits for late applications, would apply.

The basic argument in all proactive challenges would be that the government now accepts that, where applicable, points should be awarded for psychological distress from the date of the decision in *MH* (28 November 2016) or, if later, the date of claim. People can argue that failure to award points under one of these descriptors because the cause of their impairment was mental health disability rather than physical should now be regarded as wrong.

Claimants with an existing award will need to think carefully about such a proactive request. On the one hand, it provides at least a chance of getting a quicker decision (and, potentially, arrears) than under the DWP review programme, which does not have a clear timetable. On the other hand, the Department may simply respond by telling the claimant that the request will be dealt with as part of the review programme. Moreover, as is usual when requesting an increase to an existing award, a request for a decision to be looked at again creates the possibility that the award will be reduced rather than increased. While such decisions can, of course, themselves be challenged, the stress of potentially needing to do so may be off-putting. In such cases, a proactive request may only be advisable if there is specific, supportive medical evidence, covering the period in question. The DWP says that the review programme itself will not lead

to claimants seeing a reduction in their award. It says 'decision makers will not be reducing PIP awards as a result of applying the *MH* judgment.'¹²

- 1 The Social Security (Personal Independence Payment) Regulations 2013, SI No.377
- 2 *MH v SSWP (PIP)* [2016] UKUT 531 (AAC)
- 3 The Social Security (Personal Independence Payment) (Amendment) Regulations 2017, SI No.194
- 4 It is also notable that the threshold is also higher in descriptor 'e' – only claimants who cannot go out at all can satisfy it, in contrast with descriptors 'd' and 'f', which can be satisfied by people who can go out, if accompanied.
- 5 *RF v SSWP and Others* [2017] EWHC 3375
- 6 *Personal Independence Payment: Mental Health*, Written question 124307, *Hansard*, 29 January 2018
- 7 s27 Social Security Act 1998
- 8 *Personal Independence Payment: Mental Health*, Written question 124307, *Hansard*, 29 January 2018
- 9 House of Commons, *Hansard*, 30 January 2018, cols 703–4
- 10 FAQs document issued to PIP stakeholders by DWP PIP Forums, 5 April 2018
- 11 House of Commons, *Hansard*, 30 January 2018, cols 703–4
- 12 FAQs document issued to PIP stakeholders by DWP PIP Forums, 5 April 2018

The project can only assist, however, where the claim relates to a provision of the Equality Act 2010. This means that the case must relate to potential discrimination, harassment or victimisation related to one or more of the 'protected characteristics'. These are:

- age;
- disability;
- gender reassignment;
- marriage or civil partnership status;
- pregnancy/maternity;
- race (including colour, nationality or ethnic origins);
- religion or belief;
- sex; *and*
- sexual orientation.

The project is therefore unable to assist with general housing or social security matters, such as appeals concerning entitlement to a benefit, unless the case raises a complaint under the Equality Act 2010. It also cannot assist if the claim relates solely to the public sector equality duty.

Assistance offered

The EHRC is able to assist by providing funding for front-line advice from solicitors, funding legal representation in the courts/tribunals, and providing funding for disbursements, such as counsel's fees or expert reports. Applications for assistance are accepted from solicitors and the advice sector. Funding cannot be offered retrospectively and can only be provided following the acceptance of a formal application, so if you think you have a case that would benefit from the project's support, get in touch with the EHRC as soon as possible.

Some examples

Examples of cases the project has supported or is currently considering include:

- funding a judicial review of a landlord's decision not to soundproof a flat;
- challenging failures to make reasonable adjustments in the provision of advice to social security claimants;
- providing legal advice and representation to a disabled child of Traveller heritage who was excluded from school; *and*
- bringing a challenge in the county court about a school uniform policy which indirectly discriminates against non-white children.

Essential criteria

The essential criteria are that the claim raises a complaint under the Equality Act 2010, and that it is related to one of the areas described above. It also must appear likely that the client will not be able to access justice without assistance from the EHRC, and the case must appear to

Legal Support Project launched

Eirwen Pierrot of the Equality and Human Rights Commission (EHRC) describes its Legal Support Project. The project launched in September 2017 and provides funding for legal representatives in England and Wales in claims concerning discrimination in education, housing or social security. In Scotland, the project is able to provide funding for legal representatives acting in Equality Act 2010 claims concerning education, housing and the provision of services.

What is the aim of the project?

The project's objective is to increase access to justice for:

- victims of discrimination under Part 6 of the Equality Act 2010 – ie, discrimination claims against schools, further and higher education providers, or general qualifications bodies;
- victims of discrimination under Part 4 of the Equality Act 2010 – ie, discrimination claims concerning the disposal and management of premises; *and*
- victims of discrimination under Part 3 of the Equality Act 2010 concerning the provision

of services or public functions. In England and Wales, applications are limited to cases related to housing and access to social security benefits. In Scotland, applications are limited to cases related to housing and the provision of services.

Because the aim is to assist those who may otherwise not be able to access justice, the project only provides funding where it is satisfied that this will help someone access justice in circumstances where s/he might not otherwise be able to do so. Funding is not therefore available if the individual is eligible for legal aid.

What kinds of cases does the project fund?

The project considers applications for funding for discrimination claims against schools, colleges, universities, qualifications bodies; and discrimination claims relating to the provision of housing or social security benefits against local housing authorities, housing associations, private landlords, the DWP, HMRC, Jobcentre Plus, and private sector companies providing services on behalf of these bodies. In Scotland, applications for claims against other service providers are considered.

City	State	Postal Cod	Country	Date	Comment
broughton	Scotland	m112 6qh	UK	20/12/2017	These people saved my life when up against the DWP. Please reconsider.
Jedburgh	Scotland	TD8 6LJ	UK	20/12/2017	We need to help protect the most vulnerable in society, not disadvantage them.
Galashiels	Scotland	TD1 2UB	UK	20/12/2017	Please do NOT disadvantage those that NEED the help MOST Anyone having to deal with DWP is ALREADY DISADVANTAGED by them !!!
Kelso	Scotland	TD5 7EL	UK	20/12/2017	Cutting essential services is truly backwards thinking & creating bigger issues in the short to medium term
Gordon	Scotland	TD3 6LE	UK	21/12/2017	This is a typical cut by a Tory Council. Should not be a surprise, there will be many more cuts and reductions in Social Care.
Jedburgh	Scotland	TD8 6BD	UK	21/12/2017	Many Carers and claimants are exhausted and confused by the forms and system. A relentless system of reviews and assessments while you are ill. In hospital or undergoing treatment. The advice service is an essential lifeline. Preventing destitution and homelessness
Edinburgh		EH1	UK	27/12/2017	much needed service, disadvantaged people relying on this service. cut's cut's cut's.
Jedburgh	Scotland	TD8 6TX	UK	27/12/2017	we need the specialist and excellent service always delivered by the dedicated staff, it is simply unacceptable to withdraw this and put the most vulnerable at risk
Galashiels	Scotland	td1 1ha	UK	27/12/2017	This is invaluable and should remain
LANARK	Scotland	ML11 9EL	UK	28/12/2017	I lived and worked in the Borders for 15 years when the Regional Council was cautious but had a conscience.
Selkirk	Scotland	TD7 5ED	UK	03/01/2018	It's an important service which is very much needed in the Scottish Borders.
Jedburgh	Scotland	TD86HU	UK	03/01/2018	Because the level and disproportion of inequality of vulnerable people will be exploited
Newcastle upon Tyne	England	NE5 1SN	UK	03/01/2018	Those in the most need should not be disadvantaged further.
Jedburgh	Scotland	TD8 6ST	UK	03/01/2018	Absolute disgrace that this has happened and no public consultation. There are lots of locals who have to use, and need, this service.
Galashiels	Scotland	TD1 2LJ	UK	03/01/2018	I'm signing because I've used this service and will continue to need this service. There is no way I would have been able to successfully complete my son's DLA form, of over 70 pages! Without the help and support of this service. A service which made a very difficult and highly emotional application bearable. A service which did not forget about me, a service that made sure what should be in place was in place!
Selkirk	Scotland	Td7 4lx	UK	04/01/2018	I see the citizens of our region effected by welfare reform. People need more help -not less as is ultimately the consequence of the WBS cuts to its service. The specialist knowledge of a complicated benefit system is crucial in helping people fight for their rights and this expertise is being cut and diminished
Selkirk	Scotland	TD7 4EY	UK	04/01/2018	Again this government is neglecting, and even inhibiting, the poor and vulnerable
Stow	Scotland	Td1 2rh	UK	04/01/2018	The specialist knowledge of this complicated benefit system is crucial in helping people fight for their rights. This expertise is being diminished and this is wrong.
Newstead	Scotland	TD6 9DA	UK	04/01/2018	This service has offered a valuable lifeline to those plunged into the confusion of the benefits system. When people find themselves unemployed or unable to work through physical or mental health conditions they often become vulnerable, their lives at risk of further deterioration. This service gives those in most need support to understand the help that is available to them. It also gives them a voice when they are shouted down by the bureaucracy which usually accompanies benefit claims. The third sector used to compliment statutory services, now they are expected to offer the only lifeline to struggling families whilst their own funding is slashed due to the cruel affects of Tory Austerity. The SBC Welfare Team provide an invaluable service and, as a local council tax payer, I insist that this vital service is retained to help overcome the increasing poverty affecting our communities.
Newstead	Scotland	TD6 9DA	UK	04/01/2018	conditions they often become vulnerable, their lives at risk of further deterioration. This service gives those in most need support to understand the help that is available to them. It also gives them a voice when they are shouted down by the bureaucracy which usually accompanies benefit claims. The third sector used to compliment statutory services, now they are expected to offer
Peebles	Scotland	EH459AH	UK	04/01/2018	I work in the frontline of welfare benefits help and see the misery caused by cuts every day. MORE services are needed not less!
Duns	Scotland	TD11 3WW	UK	10/01/2018	I'm signing because the WBS helps people claim the benefits they are entitled to despite a complex and confusing Benefits System. Their independence of the JCP ensures that they can do the job without quotas and directives from the JCP.
Kelso	Scotland	TD58HE	UK	10/01/2018	There is so little advise support within in the Borders to start with closing this service is a travesty . It should be extended not closed .
DUNS	Scotland	TD11 3EN	UK	11/01/2018	Yet again the Borders' most vulnerable people are being cast aside by their local authority, simply to save money.
Selkirk	Scotland	TD7 4DL	UK	13/01/2018	I worked with the team before I retired and they gave a fantastic service to many people who were struggling with appeals. Many vulnerable people were given the help they needed which was NOT available anywhere else.
Selkirk	Scotland	TD7 4EN	UK	14/01/2018	People need to be assisted in completing forms and knowing which forms are the correct ones to be completed in order to get all the help they are entitled to. It saves lives!
Peebles	Scotland	EH459AH	UK	03/02/2018	The need for support and representation for the public navigating the complex benefits system is huge! To cut services at this point when UC is about to hit full force is contradictory to a public service organisation.
Kelso	Scotland	TD5 7HT	UK	03/02/2018	I totally agree there are many vulnerable people who need help and support filling in forms and attending reviews on time. SBC need to learn from what has happened in other areas and take steps to ensure the worst aspects of this change are mitigated
Lanton	Scotland	TD8 6SU	UK	03/02/2018	People need help to get the welfare they are entitled to
Greenlaw	Scotland	TD106XN	UK	05/02/2018	I worked long and hard doing any job rather than sit on my seat. How many have never worked and get everything. bottom of the pile for everything, at my time of life loss of mobility money but my problems have not gone away.
DUNS	Scotland	TD11 3EN	UK	05/02/2018	A backwards step by SBC, especially with so many changes happening to the benefits system. People should be supported, not abandoned.
Newtown Saint Boswells	Scotland	TD6 0SF	UK	05/02/2018	Due to fluctuating mental health difficulties I would not have been able to negotiate my way through the application process of, and the preparation for, my Tribunal for the PIP Benefit. The Welfare Benefits Service was absolutely essential. It enabled me to keep going where, had I been alone, I would certainly have given up.
Seaford	England	BN25	UK	06/02/2018	This is a vital service - all the more so because so many inhumane and wrong decisions are made when people first apply for benefits they are entitled to. Please don't let this service close!
Lauder	Scotland	Td2 6sl	UK	08/02/2018	I won my case with the help of Derek Bell, was a DLA case at old gala house
Edinburgh	Scotland	EH12 5SZ	UK	11/02/2018	As a welfare right officer, I'm well aware of the role in preventing and alleviating poverty.

This page is intentionally left blank



PETITION - WELFARE BENEFITS SERVICE CHANGES

Briefing Note By Service Director Customer & Communities

AUDIT & SCRUTINY COMMITTEE

23 August 2018

1 PURPOSE AND SUMMARY

- 1.1 The briefing note advises the Audit & Scrutiny Committee of the background to a petition received in relation to Welfare Benefits Service Changes.**
- 1.2 Since 1 November 2017 Customer Services, the Homelessness and Welfare Benefits Services have merged and restructured to become one integrated service called Customer Advice and Support Service.
- 1.3 Welfare Benefits Officers are now known as Financial Inclusion Officers, forming part of the Financial Support and Inclusion Team along with the Scottish Welfare Fund Team. This team sits within the wider Homelessness and Financial Support Team.
- 1.4 The aim of the restructure was to ensure that the level of service provided continued and in some areas improved, ensuring Scottish Borders Council (SBC) was prepared for ongoing Welfare Reform including the rollout of Universal Credit. The Department for Work and Pensions (DWP) expectation on customers to self-serve online has created increased demands on Council services to assist customers.
- 1.5 Prior to 1 November 2017 the equivalent of 1.7 Welfare Benefit Assistants were employed to assist with basic benefit enquiries including form filling with customers. We now have 49 Customer Advice & Support Advisors (CASA's) across a wider range of locations, with a remit to assist customers at the first point of contact with their enquiry whether they present in a locality office face to face, over the telephone or online. These Advisers already deal with a range of benefit enquiries and applications as well as carrying out assessments for blue badges. The aim is to provide a holistic service where a customer can speak to the same member of staff on a range of topics.

- 1.6 The re-development of some former welfare benefits staff into other areas within CASS has retained their expert knowledge and skills within the service. Both customers and staff are therefore benefiting from easier knowledge and service accessibility and the new structure provides wider, better accessibility to learning opportunities, access to systems, training and support.
- 1.7 SBC has for many years contracted the Borders Citizens Advice Consortium (BCAC) to provide services to customers including benefit, money and debt advice and assistance to challenge benefit decisions. Contract monitoring meetings occur quarterly between SBC managers and BCAC managers. Quarterly liaison meetings occur between front line SBC team leaders and BCAC managers to discuss trends, issues and share best practice. SBC and BCAC staff regularly attend external meetings to discuss current benefit related issues. SBC team leaders are in regular contact with BCAC managers via email or telephone to immediately respond to any issues.
- 1.8 Comprehensive advice continues to extend from initial contact advice to representation at appeals; the delivery of that advice is continuing to evolve to improve speed and efficiency to the advantage of customers.
- 1.9 Telephone calls are being answered by Customer Advice and Support Service's via the 0300 100 1800 number. This provides additional capacity for call handling including taking calls over extended hours. Customers are provided with the correct advice at the first point of contact reducing any delay in assistance and eradicating backlogs. This change has ensured that contacts going to Financial Inclusion Officers have now reduced allowing Financial Inclusion Officers to concentrate on their core duties rather than handling routine enquiries which do not require their expertise.
- 1.10 The SBC website is being continually updated to allow customers to access more benefit information online. An e-form is currently in development to allow customers to request assistance with a benefit appeal online.
- 1.11 Home visits continue to be available to those in need though on occasions this is appropriate for other organisations such as Department of Work and Pensions (DWP) rather than SBC. The new Scottish Government Social Security Agency to be set up from 2019 has made a commitment to offering home visits to customers. This will increase the home visiting capacity across the Scottish Borders to ensure the most vulnerable customers are able to access benefit advice and assistance.
- 1.12 Resources exist to assist in the maximisation of benefit entitlement however this is a wider responsibility than SBC and is delivered in various ways by SBC, DWP, BCAC, Registered Social Landlords and third sector organisations. The DWP welfare reforms have placed an expectation on customers to self-serve online; this has created new and increased demands on SBC staff to assist customers with digital skills to allow access to benefits.
- 1.13 It is acknowledged that a wider consultation should have taken place and this will be borne in mind for the future.

- 1.14 Monitoring of the financial position of people within the Borders will continue, however the degree of impact which can be attributed to any single measure within SBC is impossible to gauge. Since major reforms and changes are taking place nationally that directly affect a cross section of the population in a large number of ways, it would be impossible to attribute any particular impact or outcome solely to the restructure which has taken place within SBC.
- 1.15 The level and type of resources will be continually reviewed as the impact of Universal Credit is better understood and further welfare reforms take place. The shape of the local support of the new Scottish Society Security Agency will also be an important factor in the services provided in the future.

2 RECOMMENDATIONS

- 2.1 **I recommend that the Audit & Risk Committee acknowledges the Petition for Welfare Benefits Service Changes but takes no further action at this time.**

Approved by

Jenni Craig

Service Director Customer & Communities Signature

Author(s)

Name	Designation and Contact Number
Jenni Craig	Service Director Customer & Communities

Background Papers:

Previous Minute Reference:

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jenni Craig can also give information on other language translations as well as providing additional copies.

Contact us at Jenni Craig, Council Headquarters, Newtown St Boswells, Melrose, Scottish Borders TD6 0SA, 01835 824000, jcraig@scotborders.gov.uk

This page is intentionally left blank