

**Barnardo's Scotland response to the Welfare Reform Committee's call for
evidence on the Welfare Funds (Scotland) Bill**

About Barnardo's Scotland

Barnardo's Scotland is Scotland's largest children's charity, running over 100 projects around Scotland and working with over 10,000 children and families every year. We work with some of the most vulnerable and disadvantaged children and families in Scotland for whom the interim Scottish Welfare Fund ("the Fund") arrangements are an important lifeline. Furthermore, we also work with young people making transitions, whether leaving care or a young offender's institution, for whom the Community Care Grant element of the Fund is a vital means of support to establish a settled way of life within their communities.

Summary

Barnardo's Scotland has supported the establishment of a Scottish Welfare Fund, and supports the policy intention of putting the Scottish Welfare Fund onto a statutory footing.

However we would like to propose a number of ways in which the Bill can be strengthened, including:

- Placing clear responsibilities on local authorities to promote awareness of and access to the Scottish Welfare Fund.
- Research by Barnardo's Scotland and NSPCC Scotland has shown that there are increasing numbers of families who are struggling to cope with extreme levels of hardship and poverty, and this should be recognised in the Bill.
- Eligibility for the fund should include the protection of the wellbeing of children and dependents.
- The face of the Bill should ensure that the Scottish Welfare Fund continues to be a grant making fund, rather than distributing loans.
- The Bill should make it clear that all young people who have been in the care of a local authority can benefit from the Fund, not only those who have been in residential care.

Responses to the specific questions of the Committee:

General

- 1. Are you in favour of the Bill and its provisions? Do you think the Bill fully achieves the Scottish Government's aim of providing assistance for short term need and community care?**

Barnardo's Scotland works with some of the most disadvantaged children and families in Scotland, for many of these families the Scottish Welfare Fund (SWF) arrangements are an important lifeline. Since the Westminster Government announced, through the Welfare Reform Act 2012, that elements of the welfare system would be devolved into the competency of the Scottish Government, Barnardo's Scotland has been calling for a distinctive approach in Scotland to the administration of welfare funds. Barnardo's Scotland has welcomed the Scottish Government's establishment of the SWF on a non-statutory basis, and its on-going investment into the SWF.

However, we believe that the early experiences of the administration of the SWF by local authorities suggest the need for a strong national framework and independent oversight. Barnardo's Scotland therefore welcomes the Welfare Funds (Scotland) Bill and supports the policy intention of putting the Scottish Welfare Fund onto a statutory basis.

In addition, we believe that the Bill creates an opportunity to learn from the SWF's implementation so far, and strengthen its operation, in order that the Fund can work more effectively and efficiently for Scotland's most vulnerable children and families. On this basis, we also propose in this evidence a number of ways in which the Bill can be strengthened.

2. The interim SWF scheme has already been running for two years. Do you feel that the Bill has suitably taken on the learning from this time?

The draft regulations, supplied with the Bill, address some of the issues that Barnardo's Scotland believes have been apparent in the administration of the interim SWF scheme.

In particular we are pleased that the draft regulations include a requirement that decisions on applications are communicated in writing to applicants, and that timescales for decision making are given a legislative basis by their inclusion in the regulations. Barnardo's Scotland had previously voiced concerns that there was significant variation across Scotland in the time it is taking different local authorities to process applications.

However, we have also stated previously a concern that there is a great deal of variation in the proportion of welfare funds that local authorities have spent. Whilst this has improved recently and there is a great deal of existing good practice, particularly in working together with third sector and community organisations, we believe that one way to address this would be through a more consistent approach across local authorities in Scotland to the promotion of the SWF. We believe that the Bill could still do more to address this issue, perhaps as part of the Ministers' power to publish guidance. We suggest that there should be clear requirement for local authorities to promote access and awareness of the Fund at a local level, and to provide an application service online, over the phone, by post and face-to-face.

3. Is there anything else that you feel should be included in the Bill?

Families under extreme financial pressure

As we mentioned in our earlier response to the Scottish Government's consultation on the draft Bill we are concerned about the terminology in section 2(1)(a)(i) of 'exceptional event or exceptional circumstance' with regards to qualifying individuals. We suggested the additional terminology of 'an emergency or disaster' and are disappointed to see that this was not included in the final Bill introduced to the Parliament.

As we have recently reported in our joint research report with NSPCC Scotland, *Challenges from the Frontline*¹, our services are increasingly reporting that the families they work with are finding themselves under extreme financial pressures, resulting from benefit sanctions and the increasing cost of living. These families are struggling on a day to day basis, they are not experiencing an exceptional event or circumstance, this is simply their normal, everyday life. We are therefore concerned that the categories as they stand in the Bill may be too restrictive, leaving those with a legitimate need unable to apply for the Fund. As CPAG suggest, we believe that there is a need to include a third category of qualifying person, '*families experiencing exceptional pressure*', under article 2(2) of the Bill. We would urge the Committee to support this call and to consider those families who struggle on a regular basis to make ends meet.

Dependents of individuals

Section 2(1) of the draft Bill sets out which individuals are eligible for support from welfare funds. However, we suggest that this section is expanded so that it explicitly includes, in addition, the needs and risks to the individual's dependents or children. We suggest that one way this could be achieved would be through the expansion of section 2(1)(a)(ii) to include the dependents of individuals.

The Welfare Fund as a grant making fund, rather than loans

It is clear, from current guidance and paragraph 5 of the explanatory notes that the Scottish Government intends for the SWF to provide assistance through grants, rather than through loans. This is welcome to Barnardo's Scotland. However, in response to the previous consultation, we proposed that the face of the Bill should clearly state that support from the SWF should, under no circumstances, take the form of a repayable loan. This proposal has not been addressed by the Bill, as introduced, and we believe that this is one way in which the Bill could be strengthened.

We also share CPAG's concern that section 5(2)(f) of the Bill as introduced gives a power for Scottish Ministers to create regulations about circumstances in which paid funds can be required to be repaid or recovered. Whilst there should of course be mechanisms to deal with fraudulent claims, there is very little explanation available of how the Scottish Government intends to use this power. On that basis, we support CPAG's call that this power should be removed from the Bill.

¹ *Challenges from the frontline: Supporting families with multiple adversities in a time of austerity*, NSPCC Scotland and Barnardo's Scotland, 2014, http://www.nspcc.org.uk/Inform/research/findings/multiple-adversities-report_wdf103854.pdf

4. Will the Bill and its provisions have a particular impact on equalities groups?

Care leavers

Barnardo's Scotland works extensively across Scotland with young people who have been in the care of a local authority, and these are one of the groups of young people who often have recourse to the Scottish Welfare Fund. However, we believe that the Bill could go further in supporting this particularly vulnerable group of young people.

Both the Bill, as drafted, and the draft regulations make reference to individuals who have been or who, without assistance, might otherwise be in 'a residential care establishment', as being eligible for financial support from the Fund. We would welcome clarification and confirmation from the Scottish Government that, as drafted, this will include those children and young people who are looked after and accommodated by a local authority.

However, we would also like to highlight that Scots Law, including the recently passed Children and Young People (Scotland) Act 2014, identifies a much broader group of looked after and formally looked after young people as being vulnerable and in need of greater assistance from their local authority. In particular, both research and recent inquiries by the Education and Culture Committee have shown that young people who were formerly looked after at home by the local authority are the group who, on average, have the poorest outcomes of all formally looked after young people, and who have specific need of additional support.

We believe that the Bill would be stronger if it was amended to make it clear that all young people who have been looked after by the local authority are potentially eligible to support through the Fund.

Whilst most of the responsibility for welfare and social security is currently reserved, the Scotland Act 1998 makes some exemptions, including for young people formerly looked after by local authorities, welfare can therefore fall within the competence of the Scottish Parliament:

(...) sections 22 (promotion of welfare of children in need), 29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.

(Schedule 5, part II, Section F1, Scotland Act 1998)

The existing Fund guidance² makes it clear that the Fund may be used to support people who have been subjected to sanctioning by the DWP. However, the guidance also makes it clear that SWF Grants are normally intended as one off forms of support and cannot normally be used to provide a regular source of alternative income.

However, we believe in the context of this Bill that the Scottish Government should consider how, given the exemption in the Scotland Act we have outlined, they could

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<http://www.scotland.gov.uk/Topics/People/welfare/reform/scottishwelfarefund/scottishwelfarefundguidance>

support local authorities to fulfil their aftercare responsibilities to formally looked after young people³ by providing them with an alternative source of income, in the event that they are sanctioned by the DWP. This would mirror the support that it is clearly expected families would give to young people in this kind of situation, however because many formally looked after young people lack this family support, corporate parents should consider their role.

For example, as one step, the Scottish Government could include young people who are eligible for throughcare, as defined in the Children and Young People (Scotland) Act 2014, in section 5(2) of the draft regulations of the Welfare Funds (Scotland) Bill.

Administration of Welfare Funds

5. Do you agree with the proposal that local authorities have the option to outsource the provision of the fund to a third party or jointly administer the fund across local authority boundaries? What are the benefits or drawbacks to this approach?

Whilst in principle we understand that outsourcing provision of the Fund to a third party may on occasion be necessary or beneficial, in order to address the specific needs of the applicant or their family, we remain concerned that this should only be the case in specific situations and where the case is appropriate. We believe that this should be set out in regulations and as highlighted in our original response to the draft Bill we suggest that section 2 (3) be replaced with:

"Except in such circumstances as may be prescribed in legislations, a local authority must exercise its power under subsection (1) by providing financial assistance to the applicant"

In addition to this we would also like to see suitability for third party providers laid out in regulations. We support the view of CPAG that regulations should lay out the specific criteria the third party provider must satisfy in order to be considered suitable. This is to ensure the needs of the applicant are met and their dignity and individuality considered. Third sector providers must have knowledge of the scheme and be aware of the specific vulnerabilities of the applicants they will be dealing with.

Review of decisions and the SPSO

6. What are your views on the proposed internal local authority review process?

7. Do you agree that the SPSO is the appropriate body to conduct secondary reviews?

Yes, we agree that the SPSO are best placed to conduct second tier reviews. We believe that this level of external scrutiny will encourage a culture of reasoned, well-documented decision making within local authorities. We also believe that the inclusion of SPSO in the second tier of decision making would promote a perception of the review scheme as entirely independent and impartial, making the process more transparent and attractive to those wishing to apply to the Fund.

³ As set out in Part 9 of the Children and Young People Act 2014:
<http://www.legislation.gov.uk/asp/2014/8/part/9>

There may still be a need to further consider whether the SPSO should take on a role similar to that of the previous Independent Review Service in terms of being able to issue guidance and recommendations to decision makers, in order to promote consistent interpretation and understanding of the relevant guidance and legislative provisions.

We envisage that the second tier review process would act as a means with which to proactively identify problems in delivery of the Fund and thereby be able to shape policy, best practice and provide a feedback mechanism to local authorities. We would hope to see this covered in guidance.

For further information please contact:

Mark Ballard, Head of Policy, Barnardo's Scotland

111 Oxfords Road North, Edinburgh, EH14 1ED

mark.ballard@barnardos.org.uk / 0131 446 7028