

christians  
against  
poverty

**CAP**

# ***Scotland's social security system: enhanced administration and compensation recovery***

***CAP's written response to the Scottish Government's  
consultation***

August 2022

**always hope.**



Official response to the ORGANISATION's *consultation on CONSULTATION NAME*

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## Summary

### Key points:

- The Scottish Child Payment is vitally important in helping boost income and lift families out of poverty, protecting them from problem debt and bringing Scotland closer to reaching the interim child poverty targets. However, the narrow qualifying criteria is limiting and means that some low income families are being missed.
- Greater flexibility with the Scottish Child Payment could allow for a range of measures including tapering and more focused support for single parent families. It would enable the Scottish Government to be responsive to needs and increase the impact, bringing Scotland one step closer to ending poverty.
- Any flexibility that is brought in should not result in a more complex and arduous application process that would be a barrier to people applying for the Scottish Child Payment.
- Enabling clients to withdraw a re-determination request before Social Security Scotland has made a decision is central to giving clients agency. However, this should be done in a way that ensures safeguarding is in place for vulnerable clients and taking into account the complex nature of the challenges clients are facing, such as mental ill-health.
- New determinations after an appeal is lodged should only be made if clients are in agreement. Acting without the consent of a client would leave Social Security Scotland open to ongoing challenge. Every effort should be made to make contact with a client when a new determination is available ensuring that individuals are treated with dignity, fairness and respect.
- In the vast majority of cases, allowing a (Department for Work and Pensions) DWP appointee to remain in place until Social Security Scotland have completed its appointee process would be beneficial. A clear timeframe should be established and it is imperative that safeguarding is in place to remove an appointee passported from the DWP system where there are concerns of abuse.
- It is vitally important that clients are able to challenge liability in a way that is straightforward and accessible, avoiding an unnecessary, expensive and stressful procedure.
- In cases of suspected fraud, it is appropriate and imperative that any decision of criminality is taken outside of Social Security Scotland and within the impartiality of the Crown Office and Procurator Fiscal Service (COPFS). COPFS have the legal expertise, impartiality and accountability to handle these cases, and it should only be escalated when it is a high level and criminal intent is apparent.
- Where a third party has acted deceitfully and had personal gain from an overpayment, it is just and right that they should be included in the scope of statutory liability. However, liability needs to be clear up front and should not be a barrier to people acting on behalf of a client.
- We recommend that scrutiny and advice are kept separate with scrutiny remaining independent. Scrutiny needs to have weight behind it so that Social

Security Scotland is held to account, and this is distinct from providing advice on how to improve the services provided by Social Security Scotland.

- The COVID-19 measures brought in by Social Security Scotland have served their purpose. As long as any backlog in other services, due to the pandemic, are taken into account then it would be appropriate for these measures to be lifted. The ability to apply late, where there is good reason, should be clear and consistent across the range of benefits provided by Social Security Scotland.

## Questions

### 1. Do you agree or disagree that it would be useful to be able to make changes to Scottish Child Payment that were not limited by the current approach that relies on 'top-up' powers?

Agree

### 2. Please give your reasons for your answer.

At Christians Against Poverty (CAP) Scotland, we predominantly support those on the lowest incomes experiencing problem debt, via a network of 25 Debt Centres based in local communities across Scotland. The vast majority of CAP clients in Scotland (85%) rely on some form of social security for their income, with 46% reporting it as their only source of income.<sup>1</sup> The Scottish Child Payment is vitally important in helping boost income and lift families out of poverty, protecting them from problem debt and bringing Scotland closer to reaching the interim child poverty targets.

However, we recognise the limitations that exist with the Scottish Child Payment in its current format. We are concerned that families on a low income could be missed due to the narrow criteria currently in place and that the loss of qualifying benefit, for a number of reasons, will result in a large and sudden loss of income through no longer qualifying for the Scottish Child Payment as a result. Consequently, this could act as a barrier to employment or career progression as potential earnings could take an individual over the income threshold meaning they are no longer in receipt of a qualifying benefit. The resulting loss of income from no longer qualifying for Scottish Child Payment, combined with income from qualifying benefits, will likely outweigh any benefit from increased income through employment, especially for families with two or more children. Even fear of losing the payment, at the same time as losing income from qualifying benefits, could act as barrier to people claiming Scottish Child Payment.

Having increased flexibility in the qualifying criteria for Scottish Child Payment would allow the Scottish Government to mitigate for situations like these in a variety of ways, for example, through increasing the number of qualifying benefits, additional criteria or a taper rate. Greater flexibility would also allow the Scottish Government to be responsive to needs in Scotland without being restricted by the current qualifying criteria. This flexibility could be central to Scotland reaching the child poverty targets.

### 3. Please give your views on the advantages that could arise from creating this additional flexibility.

The interim evaluation conducted by the Scottish Government<sup>2</sup> highlights many of the positive impacts of the Scottish Child Payment even at this early stage. It has reduced pressure on households finances and on financial stress felt by many. The Scottish Child

<sup>1</sup> CAP Client report: On the edge, [capuk.org/clientreport](https://capuk.org/clientreport)

<sup>2</sup> Scottish Child Payment: interim evaluation, [gov.scot/publications/interim-evaluation-scottish-child-payment](https://gov.scot/publications/interim-evaluation-scottish-child-payment)

Payment has been cited by families as preventing them from being pushed into debt by paying for essentials. It is a significant measure brought in that is moving Scotland closer to reaching the interim child poverty targets and one step closer to ending poverty in Scotland. Increased flexibility would allow for a wider remit and therefore a wider impact.

At CAP Scotland we recognise that increased flexibility with Scottish Child Payment could allow for tapering which would avoid families losing the entirety of their Department for Work and Pensions (DWP) benefit and Scottish Child Payment at the same time. This could help to protect families from being trapped on lower incomes for longer.

Over a quarter of CAP clients (28%) are single parents, many of whom have insufficient income to afford everyday essentials. Single parent families are at greater risk of debt, poverty and hardship as they are disproportionately impacted by rising costs and often have less ability to absorb income shocks. In their latest report, *Living without a lifeline*,<sup>3</sup> One Parent Families Scotland (OPFS) highlighted the impact that rising costs are having on single parent families. Three in five (61%) of their participants said they are finding it extremely difficult to afford or could no longer afford electricity, and 44% said the same about food. In our experience, single parents who are not the main carer also experience financial strain, often without access to additional support. Therefore, we would strongly encourage the Scottish Government to look at what flexibility could be afforded to all single parent families within the Scottish Child Payment.

#### **4. Please give us your views on the disadvantages that could arise from creating this additional flexibility.**

While we would hope that additional flexibility will bring the opportunity for more people to benefit from the Scottish Child Payment, we recognise the additional complications this could bring. At the moment the application process for Scottish Child Payment is very straightforward due to having qualifying benefits in place.

The interim evaluation<sup>4</sup> completed by the Scottish Government shows that uptake for the Scottish Child Payment is strong at 77%. However, more can be done and it is important that every step is taken to ensure as much uptake as possible, including exploring the feasibility of auto-enrolment through passported benefits. It is important that any flexibility brought in does not result in a more complex and arduous application process that would be a barrier to people applying for the Scottish Child Payment.

#### **5. Do you agree or disagree that a client should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision?**

Agree

#### **6. Please give reasons for your answer.**

<sup>3</sup> *Living without a lifeline*, OPFS, [opfs.org.uk/get-involved/news-and-events/news/lwal-report/](https://opfs.org.uk/get-involved/news-and-events/news/lwal-report/)

<sup>4</sup> Scottish Child Payment: interim evaluation, [gov.scot/publications/interim-evaluation-scottish-child-paymen](https://gov.scot/publications/interim-evaluation-scottish-child-paymen)

At CAP Scotland we would always advocate for people to have the agency to make decisions for themselves wherever possible. Changing the process to allow for individuals to withdraw a re-determination request would allow for a change in circumstances or a different decision to be reached after seeking impartial advice.

However, we also recognise the risk for individuals who may be experiencing financial abuse who may feel under pressure from their abuser to remove a re-determination request. We would recommend that additional checks and safeguarding are brought in to ensure that, as far as possible, this does not happen.

Almost half of CAP clients (46%) are impacted by mental-ill health. We recognise the complexity of this and the impact it can have on individuals on a day by day basis. If someone is experiencing particularly severe symptoms, going through a re-determination process could seem overwhelming and result in them wishing to withdraw their request. There is a risk that this is something they may later regret. We would recommend that a cooling off period is introduced which would help to mitigate this.

We would also recommend that signposting to reputable and trustworthy organisations that provide support locally, such as welfare rights advice, is built into this process. This is imperative in providing essential support to people who are struggling with mental ill-health or at risk of financial abuse.

**7. Do you agree or disagree that a new determination should only be made if it gives the client everything they could get from the Tribunal?**

Disagree

**8. Please give reasons for your answer.**

New determinations should be made if the client is in agreement. There may be instances where a client would prefer to accept a new determination even if more could be obtained through tribunal because they would prefer not to go through these lengths. This would act in a similar way to settling a case outside of court. It is vitally important that the issue of consent is taken into consideration. Acting without the consent of a client would leave Social Security Scotland open to ongoing challenge as a result of a determination being made that a client is not satisfied with.

**9. Do you agree or disagree that a client should be asked for their consent before a new determination is made?**

Agree

**10. Please give reasons for your answer.**

We believe that, just as with an overpayment, every effort should be made to reach an agreement with a client if a new determination could be reached during an appeal process. This is inline with the repayment process and Social Security Scotland's commitment to treat people with dignity, fairness and respect.

Without consent there is a risk that a client would be left feeling powerless or facing a more complicated and costly process to challenge the determination. We recognise that

communication can be difficult and recognise the potential need to build in timeframes for seeking and receiving consent that are suitable for people in vulnerable circumstances and with communication barriers, including mental ill-health.

**11. Please provide your views on what challenge rights the client should have on the new determination.**

If consent is included in the process outlined above then challenge rights become less of an issue. However, if there is no consent included then challenge rights are vitally important. We believe that making consent part of the process would mitigate the complications of needing to have a challenge process in place.

**12. Do you agree or disagree that Social Security Scotland should be able to make payments to a DWP appointee until it completes its appointee process?**

Agree

**13. Please give reasons for your answer.**

We agree that allowing Social Security Scotland to use the same appointee as DWP until it completes its appointee process would be beneficial in the vast majority of cases. However, there are some risks that would need to be taken into account and processes established to protect individuals.

It is essential that a clear timeframe should be established from the start which would allow cover for Social Security Scotland to do their own due diligence. This process would treat appointees with dignity, trust and respect which is inline with Social Security Scotland core values.

We recognise that the appointee process for the DWP is currently open to abuse. There is no route for vulnerable individuals to challenge an appointee and we are concerned that the DWP does not have robust processes in place to handle allegations of abuse well. We would strongly advocate for Social Security Scotland to be acutely aware of this and ensure that safeguarding is in place to remove an appointee passported from the DWP system, to mitigate these risks and protect vulnerable clients.

**14. Do you agree or disagree that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone is liable to repay an overpayment?**

Agree

**15. Please give reasons for your answer.**

We understand that Social Security Scotland are committed to making every effort to ensure no one is wrongly repaying an overpayment. However, it is vitally important clients are able to challenge liability in a way that is straightforward and accessible, avoiding an unnecessary expensive and stressful procedure. This change is in line with the core values of Social Security Scotland being rooted in dignity, fairness and respect.



While we recognise that Social Security Scotland are committed to ensuring repayment plans are affordable for clients, having this extra layer of protection will also help to reduce the impact and risk of clients being pushed into debt as a result of mistaken liability.

**16. Please provide your views on the most appropriate way to hear challenges against Social Security Scotland's decisions that someone is liable to repay an overpayment, bearing in mind the aim is to avoid clients having to go to court.**

Social Security Scotland already has robust processes in place for clients through the re-determination and appeal processes. We recommend that this same approach is utilised for challenging liability as it is more straightforward for clients to navigate through an already known or established process.

In order for this process to be done fairly and successfully, it is imperative that clients have access to how information is recorded in order to provide support to any re-determination or appeal process. One area of concern here is in how clients inform Social Security Scotland of a change of circumstances, especially in the case of Scottish Child Payment where a client has to inform both DWP and Social Security Scotland. This increases the likelihood of human error and raises questions about the robustness and accessibility of the current system which could result in overpayments.

**17. Do you agree or disagree in principle that the Scottish Government should undertake recover of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party is liable?**

Don't know

**18. Please give reasons for your answer.**

This is not an area that we have the expertise or experience to offer advice in either direction.

**19. Do you agree or disagree that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally?**

Disagree

**20. Please give reasons for your answer.**

We would be deeply concerned about any move to fraud being handled outwith legal proceedings. While we applaud the ethos of Social Security Scotland and recognise that clients are treated with dignity and respect, it is extremely difficult to identify fraud versus error.

We understand that the DWP has more flexibility in being able to issue administrative penalties of up to 50 per cent of the value of the fraudulently obtained overpayment. However, we would be deeply concerned by this approach being adopted in Scotland. From our experience, penalties like this disproportionately and negatively impact low income households. These penalties

and overpayments are excluded from debt solutions, such as insolvency, meaning that some of our clients have been forced into hardship due to unaffordable repayment terms. If a client is liable for a small amount then there should not be any additional penalty.

**Case study**

A client approached CAP for help with a housing benefit overpayment from the DWP for several thousands of pounds. This had been claimed for a property she rented from her father, who had assured her that she could claim housing benefit to cover the rent payments to him. She had not been aware that rules prevent housing benefit being claimed if the property is owned by a relative, and therefore the money she had received needed to be repaid as an overpayment. This overpayment was judged to be fraudulent, however, the client had claimed this in good faith and not with the intent to defraud. The treatment of this overpayment as fraud rather than error meant that the forbearance available to her was limited, and the deductions for repaying the overpayment were taken at a higher rate pushing her into hardship without recourse to reduce these to an affordable level.

We believe that fraud should remain under the Crown Office and Procurator Fiscal Service (COPFS), who have the legal expertise, impartiality and accountability to handle these cases, and that it should only be escalated to this level when it is a high level and criminal intent is apparent. It is appropriate that any decision of criminality is taken outside of Social Security Scotland and within the impartiality of COPFS.

**21. If you agree, please describe what alternatives to prosecution you consider might be appropriate where small sums of money have been obtained illegally?**

n/a

**22. Do you agree or disagree that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described above?**

Agree

**23. Please give reasons for your answer.**

Where a third party has acted deceitfully and had personal gain from an overpayment, it is just and right that they should be included in the scope of statutory liability. We welcome the added protections this change would bring over financial abuse. However, liability needs to be clear up front and done in a way that does not bring up any unnecessary barriers for people acting on behalf of a client. It is important that the same protections that exist for clients around overpayments also include third parties. Clarity over who is liable when someone is appointed by an organisation such as social services should also be evident up front.

**24. To what extent do you think the current arrangements for the provision of independent scrutiny and advice work effectively?**

Don't know

**25. Please give reasons for your answer.**

The current arrangements for the provision of independent scrutiny and advice are outwith our area of expertise.

**26. If the current arrangements were changed, would it be right to:**

- a) Maintain separation between independent scrutiny and advice.

**27. Please give reasons for your answer.**

We recommend that scrutiny and advice are kept separate with scrutiny remaining independent. Scrutiny needs to have weight behind it so that Social Security Scotland is held to account, and this is distinct from providing advice on how to improve the services provided by Social Security Scotland.

**28. There are different options for organising independent advice and scrutiny e.g. formal arrangements in the form of a statutory body like a non-departmental public body and paid board members, or informal arrangements at Ministerial invitation with members participating on a voluntary basis.**

**Please describe your views on how independent advice and scrutiny should be organised in the future.**

As outlined above, we believe that scrutiny and advice should be kept separate and that scrutiny should be independent. We are concerned that if an employee of the Scottish Government is responsible for scrutiny then it would be difficult for them to remain impartial. The level of scrutiny we believe should be in place would normally be provided by a non-departmental public body with paid board members.

**29. Do you agree or disagree that a public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance?**

Don't know

**30. Please give reasons for your answer.**

This is outwith our area of expertise.

**31. Do you agree or disagree that requests for a re-determination should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is COVID-19?**

Agree

**32. Please give reasons for your answer.**

The coronavirus measures brought in have served their purpose. At this point in the pandemic, we believe it is acceptable to remove these provisions. The existing timeline of one year is a reasonable timeframe for clients to be able to request a re-determination. However, we would highlight the importance of having the option to easily reinstate these measures if needed again in the future.

**33. Do you agree or disagree that applications for an appeal should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is related to COVID-19?**

Agree

**34. Please give reasons for your answer.**

The coronavirus measures brought in have served their purpose. At this point in the pandemic, we believe it is acceptable to remove these provisions as long as any backlogs related to the pandemic have been taken into account and do not prevent clients from being able to engage in the appeals process. The existing timeline of one year is a reasonable timeframe for clients to be able to submit an appeal. However, we would highlight the importance of having the option to easily reinstate these measures if needed again in the future.

**35. Do you agree or disagree that applications for assistance to Social Security Scotland should no longer be able to be treated as made on time where they are made late and the reason for that delay is related to COVID-19?**

Agree

**36. Please give reasons for your answer.**

At this point in the pandemic, we believe it is acceptable to remove these provisions. However, we would recommend that the time allowed for an application is reviewed in light of many services still working through backlogs related to the pandemic. For example, Adult Disability Payment currently allows eight weeks for an application to be completed, yet many health services still have long waiting lists which could impact a client's ability to meet this deadline.

**37. Do you agree or disagree that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19?**

Agree

**38. Please give reasons for your answer.**

The ability to apply late, where there is a good reason, should be extended across the range of benefits offered as this would create a more uniform approach that is inline with the ethos and values of Social Security Scotland. Currently there is a lack of consistency with some benefits, such as the Best Start Grants, having no flexibility built

in while the new Adult Disability Payment does. Making all forms of social security the same will make things fairer, more straightforward and easier for clients to navigate.

As there is currently no definitive list of what constitutes a good reason for a late application, we would also advocate for increased clarity. While we recognise the values of treating people with dignity, fairness and respect ensure a person centred approach is adopted, we believe that increased clarity will help to ensure these values are enacted across all clients. This clarity will also ensure greater accountability and consistency in how clients are treated by Social Security Scotland.

**39. Do you have any information you wish to share on the impact of the proposals on groups who share protected characteristics?**

We have no further information to add at this time.

**40. Do you have any information you wish to share on the impact of the proposals on Island communities?**

We have no further information to add at this time.

**41. Do you have any information you wish to share on the impact of proposals on reducing inequality caused by socio-economic disadvantage?**

We have no further information to add at this time.

**42. Do you have any information you wish to share on the impact of these proposals on children's rights and wellbeing?**

We have no further information to add at this time.

**43. Do you have any information you wish to share on the impact of the proposals on businesses or organisations in the public, private or third sector?**

We have no further information to add at this time.

## About Christians Against Poverty (CAP)

CAP is an FCA accredited charity that works across both Scotland and the rest of the UK in partnership with 580 local churches to restore hope for people in desperate need. Through a network of 26 CAP Debt Centres in Scotland, CAP offers a free face-to-face debt help service, with advice and ongoing support provided from head office. CAP also runs the CAP Money Course, Job Clubs and Life Skills groups to help people overcome unemployment, and provide financial education, all with community and holistic support at their core. CAP's services are completely free and available to all regardless of age, gender, sexual orientation, faith or background.

## Requests for further information

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