

## **Further comments on options for second tier review of Scottish Welfare Fund**

1. On 5 March, 4 members of the Committee (Lauren Wood, Tom Mullen, Douglas Proudfoot and Marieke Dwarshuis) met with policy officials of the Scottish Government to discuss the STAJAC consultation response. Officials shared with the basis of their advice to Ministers, which concludes that the preferred and recommended option is to develop a new function in the SPSO as the vehicle for second tier review.
2. Members of the Committee made additional comments in the discussion, most of which have been reflected in the attached paper ( 'basis of advice to ministers). The Chair has, in response to this paper, again stressed the need to include a paragraph on the need for clarity on the extent of local discretion and the envisaged degree of national consistency.
3. We have been asked for any further comments we may want to make at this point, not on the attached paper (appendix A) as a whole, **but on the detail of the preferred option (SPSO) only**, in order that these may inform the policy instructions for the drafting of regulations, and the drafting of the regulations themselves.
4. It is therefore proposed we briefly discuss the relevant parts of this paper, and agree any further comments we may want to make on the SPSO option, and pull together some brief comments by early April (so that these may be taken into account in the policy instructions).

## **SWF Permanent Fund – Second Tier Review – Basis of Advice to Ministers.**

**For comment by the SWF Reference Group and other stakeholders by close on 14 March.**

This paper sets out the basis for and reasoning behind our advice to Ministers on second tier review of decisions under the Scottish Welfare Fund. There is no guarantee that the recommended option will be pursued.

### **Background**

During the development of the interim arrangements for the Scottish Welfare Fund (SWF) it became apparent that second tier review would be a challenging aspect of the scheme. There is a tension between achieving independence and achieving quick decisions. There are also a number of other factors to balance, for example identifying the most appropriate type of review for the type of decisions that are being made and ensuring that the lessons learned from review cases result in improved decision making.

For the interim SWF, second tier review is carried out by an impartial panel, convened by the Local Authority, in some cases, including an independent member. This is consistent with some other LA services, was the option most likely to result in a quick decision for applicants and was achievable within the timescale for setting up the SWF. It was also consistent with the discretionary nature and legal basis for the interim SWF.

As part of the consultation on the Welfare Funds (Scotland) draft bill, we have considered three options for second tier review under the permanent fund. These are:

- A panel convened by Local Government, with mandatory independent membership. This is based on the option under the interim SWF but we have considered some alterations to make it fit better with the desired characteristics of review.
- Second tier review by the Scottish Public Services Ombudsman (SPSO) probably with additional powers
- A tribunal, supported by the Scottish Tribunal Service

We had previously considered setting up a bespoke body to carry out review and concluded that this would add complexity to the public sector landscape and was probably not sustainable given the size of the fund and the unpredictable flow of reviews.

### **Options Assessment**

We have carried out an assessment of the three options against stated purpose of second tier review, combined with the desirable characteristics for the review process identified with stakeholders and tested and refined through the consultation.

The purpose of second tier review will be:

- To ensure that both initial decisions and decisions on First Tier Review are consistent with the legislation and guidance for the Fund and that discretion has been reasonably exercised.
- To identify any deficiencies in local authority decision-making and give feedback to local authorities on the quality of their decision-making;
- To give confidence to applicants for review and to the wider public that the arrangements for second tier review are independent and impartial and that there is an effective remedy for defective decisions by local authorities.
- To identify where the SWF regulations, guidance or local policies appear to be having unintended consequences and highlight these as appropriate.

The desirable characteristics we will aim to design in to the system are that it should:

- Be transparent, fair and accessible system
- Be timely, recognising the circumstances of the applicant
- Be high quality, impartial, free to use and independent
- Operate quickly, making sound and accurate decisions
- Communicate effectively
- Be proportionate and cost effective

An overview of how each option might work is attached at Annex A. The detailed assessment is at Annex B. We found that the SPSO is the most favourable option when tested against the criteria. The local government panel and tribunals have similar assessments but with different disadvantages and strengths.

### **Stakeholder Views**

The consultation on the Welfare Funds Scotland Bill asked questions which were designed to identify factors to take in to account in designing the second tier review process and to identify stakeholder views on the options under consideration. Respondents were asked to rate the three options. A table showing the breakdown of responses by sector is at annex D. The LA panel was the first choice for 22 respondents (predominantly LAs but also 6 third sector organisations), the SPSO for 11 respondents and a tribunal for 9 respondents. The SPSO and Tribunal were both popular second choices but the LA panel was the third choice in 13 cases, indicating that views on LA panels are polarised. This is borne out in the comments on the consultation which show that many respondents think that the need for independence outweighs other considerations, making the LA panel inappropriate. This is the expert view of the Scottish Tribunals and Administrative Justice Advisory Committee who emphasise that an independent review is essential to ensure the credibility of the fund with stakeholders and users. A further theme emerging from the consultation which mitigates in favour of a centralised approach is the wish for a national overview to ensure consistency between LAs in the operation of the fund and to drive improvement in decision making.

### **Financial Consideration**

While cost is an important consideration and estimates are required for planning purposes, we do not think that they should drive the decision on the preferred option. Cost estimates for each of the options are included in Annex A. It is extremely difficult to make a reliable estimate of costs for any of the options so these are only indicative and need to be treated with caution. The indicative costs for each option are:

	Estimated Set up Cost	Estimated Annual Cost	Estimated Cost per case based on 2000 cases a year
<b>Local Government Panel</b>	£100k	£846- £1,035k	£423-518
<b>Scottish Public Services Ombudsman</b>	60-100k	£404k	£202
<b>Tribunal</b>	£66k	£828k	£413

The Local Government cost is surprisingly high. It reflects the administrative process involved in organising panels and the costs of LG staff and independent member time. The lower estimate is for a panel where lay members are unpaid and the higher level for a panel where lay members are paid at the same rate as LG members. Local Government identify a cost per case of around £60 for preparing a case for review, regardless of who undertakes that review. The costs for the Tribunal were based largely on the costs for the newly established Council Tax Reduction Review Panels which have a similar work flow. The SPSO has the lowest cost per case alongside the best fit with the desired criteria on the options assessment. It therefore appears to represent the most cost effective option. The SPSO was not able to make a detailed cost estimate but are content that we use the costs of the Independent Review Service in Northern Ireland, which has a similar caseload, as an indicator of their costs for this purpose.

### Quality Improvement

For all options considered, the cost per case is significant by comparison to the average Crisis Grant or Community Care Grant award. A key objective of the review process will be to drive improvement in decision making, adding to its cost effectiveness by reducing the need for future reviews. This is considered in the assessment grid at Annex B. Throughout the period of the interim scheme, the SG has worked with LAs to develop a quality improvement function. This includes sampling a proportion of the decisions and reviews undertaken, offering feedback on a range of aspects and developing case studies and other materials for decision makers. The aim is to improve the quality of decision making and promote consistency of approach between LAs. This quality improvement function will continue alongside whatever review arrangements are in place with the intention of drawing out the lessons emerging from reviews and helping LAs reflect these in decision making.

### Advice on options

**Tribunal – not a suitable option.** Based on the results of the options assessment, and stakeholder views, we have eliminated the option of setting up a tribunal. This is because it is not the most appropriate approach for the type of decision being made, is least likely to result in a good flow of improvement information to decision makers, it would be very difficult to achieve the required turnaround times and it is the most

costly option. In the judgement of the Scottish Tribunal service, a tribunal would be disproportionate financially and administratively. While there were positive comments about the independence of the a Tribunal and the fit with appeal processes for DWP welfare benefits expressed in the consultation, there was also concern that a tribunal would be slow and overly complex for SWF cases.

**LG Panel – could work but has significant disadvantages.** The local government panel has the advantage of already being in place and was the most popular option among those who expressed an opinion in the consultation, albeit skewed by the high number of LAs responding.

However, any option based in or facilitated by Local Government has the fundamental disadvantage that it is not independent and will therefore lack credibility. We have worked with COSLA to look at the existing arrangements to increase the independence of panels and provide access to an oral hearing. This means that this option would display more of the desirable characteristics of review than the LG panel arrangements under the interim scheme. However, by introducing these changes, we are likely to lose the advantages of quick turnaround and knowledge of local arrangements and policy and may introduce other unintended consequences. In addition, experience from other LG review and complaints panels such as the Social Work Complaints Review Committees tells us that, while LG panels may work well in some areas of the country, they are unlikely to be effective in all.

**SPSO – preferred option.** We recommend that second tier review is undertaken by the SPSO for the permanent SWF. This is because:

- the SPSO most closely fits the desirable characteristics for the review process and purpose of second tier review. In particular, it is independent of local and central government, providing a credible effective check on SWF decisions which will give users and stakeholders confidence in the fund – see section below on additional powers.
- The inquisitorial approach used by the SPSO is appropriate to the types of questions that are most likely to be raised by applicants, the majority of which are likely to relate to discretionary decisions.
- It will effectively support quality improvement and drive improvement in decision making. The SPSO also has an existing function in training and promoting improved decision making. We propose that the SWF Quality Improvement Officer would work with the SPSO to make sure that any themes emerging from decisions were effectively communicated to decision makers. This is already happening where the SPSO is making judgements on complaints about the operation of the SWF.
- It is a credible, acceptable option to the majority of stakeholders and the most cost effective option, based on our estimates.

The main concerns related to the SPSO taking on the role expressed by stakeholders through the consultation were over the time it would take to process reviews and that this option would be costly (which is not borne out by the cost

information we have available). There was also a concern expressed that the current processes in the SPSO are not suited to the rapid pace of decision making for the SWF and that a different culture would need to be established for an SWF Review unit under the Ombudsman. Some Local Authorities are concerned that the reviews would be perceived as complaints, which would have an adverse effect on their reputation.

We would need to work actively with the SPSO to design a service which meets the needs of users, local government and other stakeholders, particularly in terms of turnaround times and its style of operation. Stakeholders would like to see an operation which reflects the best practice of the Independent Review Service which undertook reviews for the discretionary social fund.

### **Additional Powers**

Under its current powers, the SPSO judges the actions of an LA against the standards of maladministration or service failure. In practical terms, the SPSO looks at the process undertaken to make the original decision and internal review and give an opinion on whether the LA has complied with statutory guidance, local policy or on any other aspects of maladministration or service failure.

Whether consultation respondents favoured the SPSO or not, they were positive about the Ombudsman having additional powers, if he were to take on the role, both to consider the merits of the case and to make decisions which are binding on LAs. 32 out of the 37 respondents who expressed an opinion on this question were in favour of additional powers in order to make the reviews consistent and meaningful. This includes 14 Local Authorities. Of those who were against additional powers, 5 were local authorities, who were concerned about limits on their discretion and decisions being made by another organisation which would have an impact on their budgets.

We think that it is appropriate that the SPSO should look at the merits of the case in regard to SWF complaints, to provide effective scrutiny of the quality of discretionary decision making, as a protection for applicants. As these are detailed decisions, made by officers rather than by elected members, there is no obvious conflict in accountability. It has been suggested that the SPSO might take on these powers for social work complaints and research is currently being commissioned to establish whether this would be an appropriate fit.

The current practice is to assess such judgments on the basis of reasonableness of the decision. If they have concerns about the decision, they could then recommend that an alternative decision should be made. Where the SPSO looks at the merits of the case for other services, this can mean that their decision is substituted, but they cannot require it to be.

In addition we are also considering whether the SPSO would benefit from powers to make their recommendations binding. This would mean that they could set aside a decision made by an LA and make a new decision in some or all cases. This would create powers beyond existing powers of the SPSO for any service. It would also mean that the SPSO was making decisions that would directly affect LA budgets.

There is a risk that these decisions may not be fully practical to implement or create unhelpful precedents. In practice, the vast majority of SPSO recommendations are implemented without these powers. However the nature of review may be different to complaints. The SWF is likely to involve a higher volume of lower level decisions over much shorter timescales so current practice may not be a good indicator. We are therefore taking advice on powers to make binding recommendations or other options for achieving some degree of SPSO control over the outcome of the case.

### **Next Steps**

The SPSO is funded by the Scottish Government Corporate Body. Subject to Ministerial agreement to the proposals outlined in this paper, we will need to approach the Corporate Body and secure their agreement to this additional role. We would also need to discuss further with the SPSO before Ministers take their final decision.

## **SWF Permanent Fund – Second Tier Review – Options for consideration**

### **Option 1 – Local Authority Panel with Independent Representation**

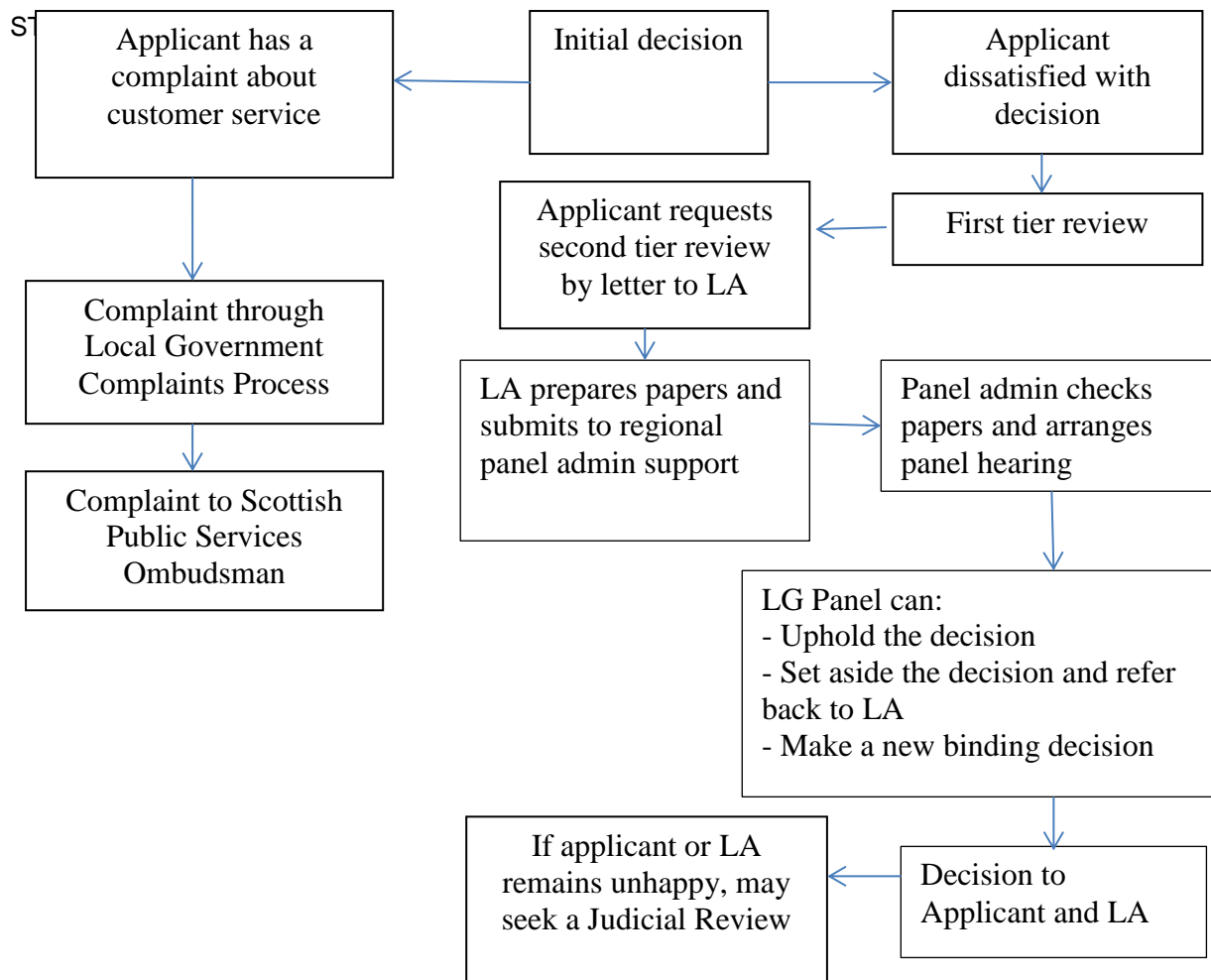
#### **Description of Proposal**

The current detailed guidance to LAs is available at <http://scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/scottishwelfarefundguidance>.

We have considered changes to the interim arrangements so that this option more closely meets the criteria for second tier review and to address the concerns expressed by stakeholders. The primary issues are the independence of any panel convened by Local Government and concern that the LG panel does not meet the principles of natural justice because the applicant's views are filtered through an LG officer.

These issues might be addressed by changing the constitution of the panel to increase the degree of independence, and introducing an oral hearing. In practical terms, this probably means organising reviews on a regional basis in order to have sufficient reviews to merit a panel meeting. For the purposes of the options appraisal, we have therefore costed an option under which four regional panels would consider second tier reviews for the LAs in their area. The panels would be serviced by a member of admin staff, based in an LA, who would organise panel dates, route paperwork and recruit members. Under the current ministerial guidance, it is recommended that at least one member of the community care grant panel should be independent of the LA. The regional panels would have 2 independent members, one of whom would act as the chair, and one member from Local Government, on rotation from the LAs in the region. This would give the majority decision and casting vote to independent members. The independent members would need to be paid in order to secure the commitment needed to undertake frequent review meetings to meet timescales and the training necessary to make high quality decisions. This option would also allow for oral hearings when requested, organised by the admin team. The process might look like this:





Further work would be needed to scope the detail of this type of solution. The Scottish Government would need to have some involvement, for example in the recruitment and training of panel members. This role might become part of the quality assurance role already undertaken in the SG policy team. The regional overview created by grouping the cases for review would have the benefit of highlighting themes in policy issues that could then feed in to improvement activity.

However, by introducing these changes, we are likely to lose the advantages of quick turnaround and knowledge of local arrangements and policy which were the advantages of the 32 LG panels. In addition, previous experience of review panels convened by LG has not been positive – e.g. Social Work Review Committees and Housing Panels. We would need to work hard to overcome the problems they encountered if this option were chosen.

### Costs

It is very difficult to estimate the costs attached to the LG panel. We have worked with COSLA and LAs to make estimate of the costs attached to the regional panel option described above. As with a tribunal, the majority of the costs arise from the time of panel members and admin staff, and other running costs. The costs are high because, under this option, there are costs for three panel members. The costs could be reduced significantly by not paying lay members but that would make it less easy to require them to meet short timescales and to undertake appropriate training. The total annual cost is estimated at between £846,000 and £1,035,500 a year.

depending on whether lay members are paid. The cost per case, based on 2000 cases per year would therefore be between £423-518. Set up costs are estimated at around £66,600. We have not done a detailed costing for 32 different local authority panels.

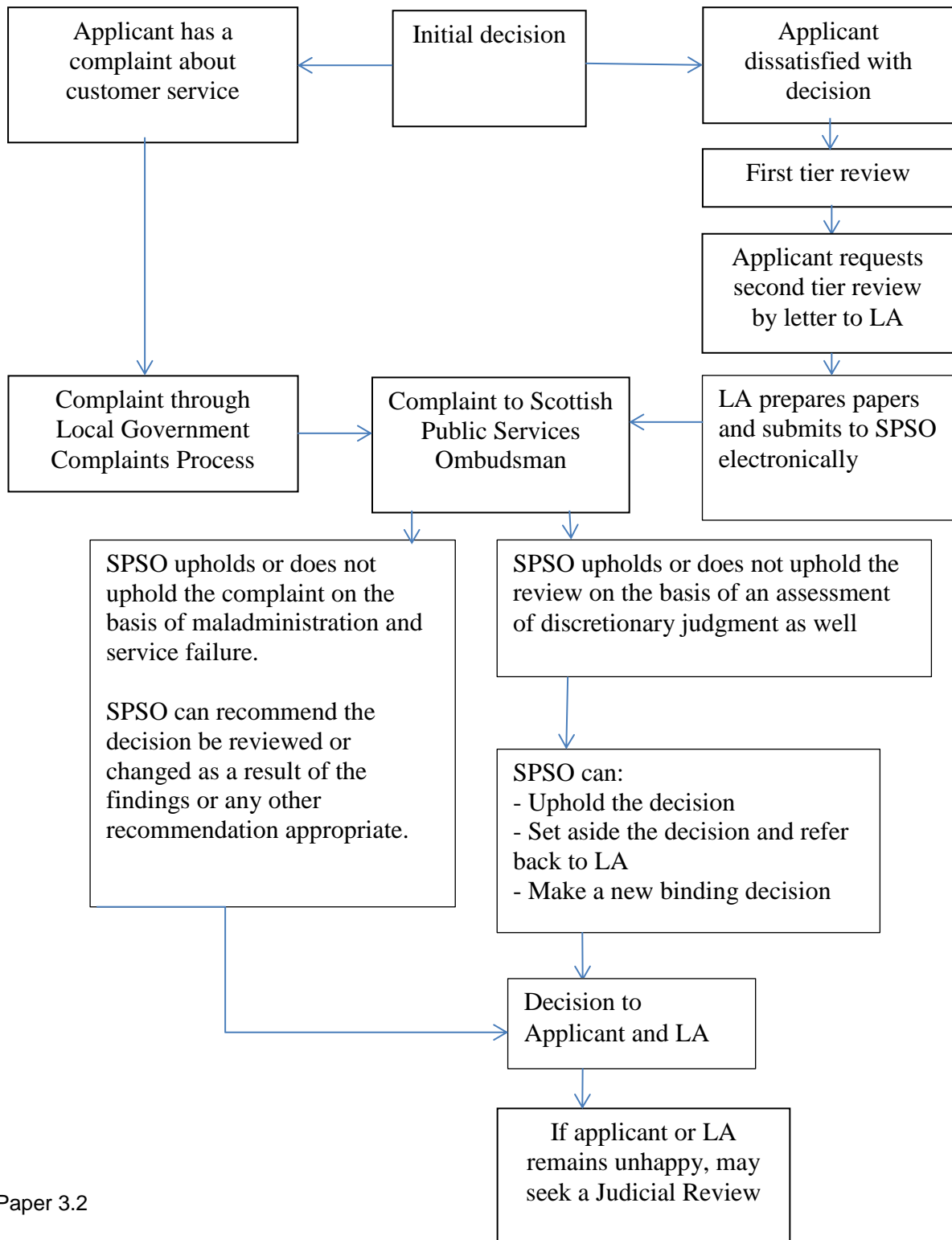
Local Government identifies a cost in staff time for preparing a case for review, regardless of who undertakes that review. They estimate this to be £60 per case.

**Option 2 –Independent scrutiny of decisions by the Scottish Public Services Ombudsman (SPSO) for complaints handling, possibly with increased powers.**

**Description of Proposal**

The legislation which sets up the permanent SWF could provide for second tier reviews to go to the SPSO.

We anticipate that if this option is chosen, the work would be undertaken by a separate team of SPSO staff, working to quicker response times, trained in the SWF statutory guidance and in handling the issues likely to arise for the client groups. The anticipated flow of cases is shown below:



NB – LAs would want to distinguish between reviews and complaints for reputational reasons.

- A small specialist team of staff would be recruited under the leadership of the Ombudsman.
- They may need to be housed in a different building as there is no capacity in the existing building.
- The team would be made up of a team leader and 5 complaints handlers/reviewers. This model would work at review levels of 1000 a year or more. There would be some multi-skilling of complaints handlers/reviewers to allow for workload management across jurisdictions.
- The application for a second tier review would be made to the LA. This could be done on the basis of some qualifying criteria/parameters or no restriction i.e. a third opportunity for a decision on the full case. The LA would then prepare the papers and transfer them to the SPSO following a standard format where possible. There would also be an option for an applicant to contact the SPSO direct to ask for a review so that there was no perception of bias or possibility of gate keeping.
- All papers will be sent electronically to save time and money where possible.
- A review officer will review the case, taking an inquisitorial approach. He will seek additional information from the applicant/LA and anyone else as necessary.
- The reviewer will either uphold the LA decision, set it aside and return it to the LA with a recommendation or make a new decision to the LA, subject to additional powers.
- For decisions that are overturned, in the case of Crisis Grants, the applicant and the LA would be notified of the decision as soon as possible by phone to allow the need to be met.
- All decisions would be issued in writing. Summary decisions would be published as part of the routine publication of decisions by the SPSO.
- Where the SPSO found a theme in complaints, they might produce a subject report. They might also be required to produce a report periodically on areas for improvement in the fund's regulations and guidance.
- SPSO would work with SG quality improvement officer and LG practitioners to contribute expertise to support improvements in decision making.
- SPSO data is available annually and could be included with the annual SWF data. We could work towards statistics on complaint numbers and outcomes being published alongside the SWF quarterly data on performance reporting.

## **Costs**

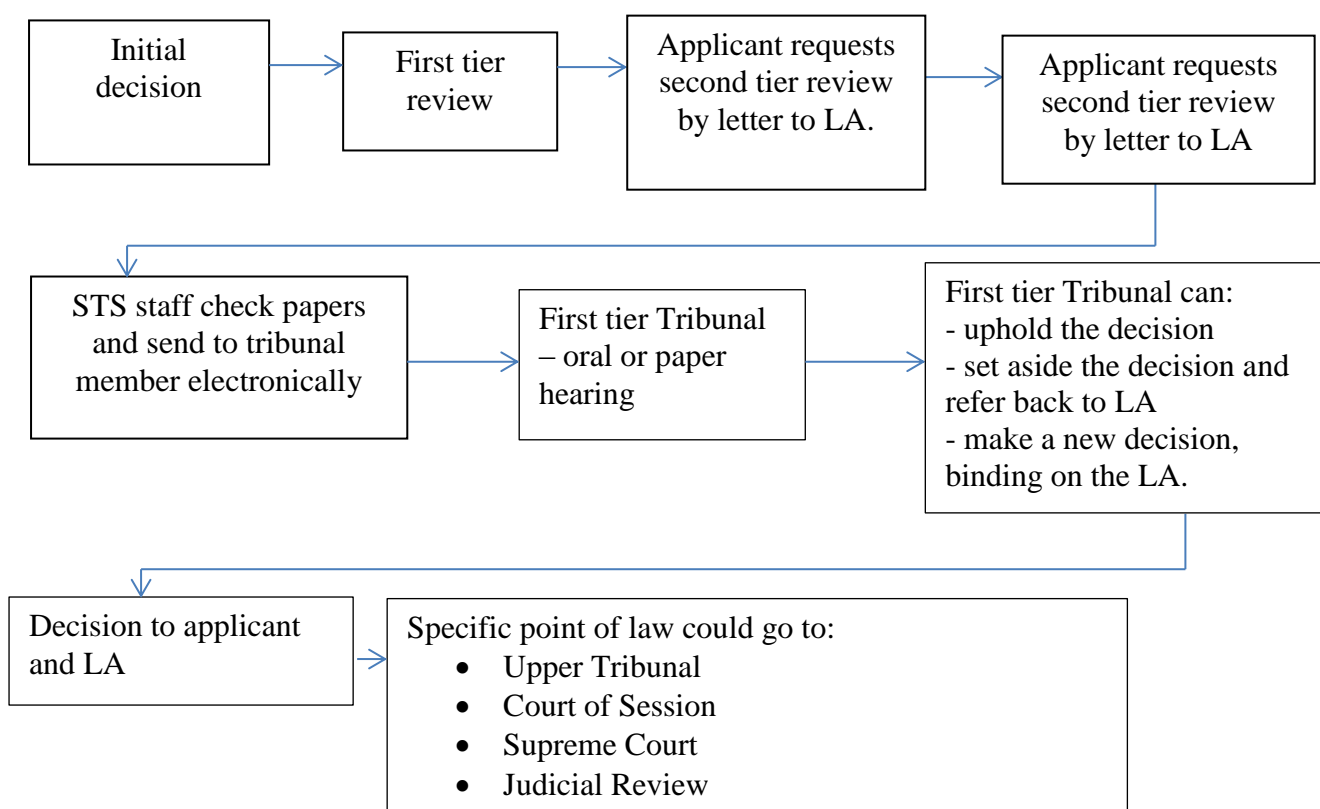
The SPSO anticipates that annual running costs would be in the region of 404k. The cost per case, based on 2000 cases a year, would therefore be £202. This is based on the costs of the Officer of the Social Fund Commissioner in Northern Ireland which has a similar caseload and staffing complement. The SPSO anticipate that set up costs would be between 60 and 100k, based on previous experience of acquiring new complaints caseloads. Running costs would build up in the six months leading up to the new service starting with full costs being required three months before the first case was taken.

### Option 3 – Establishing a Tribunal

#### Description of Proposal

The primary legislation which establishes the permanent SWF could create a new tribunal to hear second tier reviews for crisis grants and community care grants.

Tribunals are a route for appealing decisions. The route for maladministration cases would remain the SPSO. The route for cases would be:



- A panel of tribunal members would be appointed who would have experience of the SWF and/or the wider benefits system.
- A President or Convener would be appointed to provide leadership to the tribunal.
- Clerking and administrative support would be provided by the Scottish Tribunal Service/Scottish Courts and Tribunal Service. This would allow for clerks and certain back office services such as IT, Finance and HR support to be shared with the other tribunals/reviews they currently/will administer.
- The application for a second tier review would be made to the LA. The LA would then prepare the papers and transfer them to the STS following a standard format where possible.
- All papers will be sent electronically to save time and money, possibly using encrypted upload to the SWF Tribunal website.

- Hearings will need to take place at existing tribunal venues or at appropriate non LA local venues where this is not possible. Finding suitable local venues within a reasonable travelling distance could be challenging depending on the geographical location. In the longer term, it may be possible to look at hearings by video-conference.
- Decisions will be taken either on paper or at oral hearings with one panel member. Paper consideration would speed up the process and potentially help keep costs lower. However, experience suggests that many applicants will want to have a face to face hearing to explain their case. We estimate that the split would be around one third of cases decided on paper and around two thirds to have an oral hearing.
- Paper hearings will be slotted in to half day sessions alongside oral hearings to optimize use of judicial time.
- Cases would be heard by a legal member, sitting alone, in order to meet the timescales.
- At oral hearings, the appellant and the LA would usually be given the decision on the day. All decisions will be sent in writing. Full findings and reasons would be available on request. We estimate that full findings will be requested in around a third of cases.
- The senior convener would work with stakeholders to analyse trends and feedback to decision makers and stakeholders.
- We would aim to publish all decisions on the tribunal website, anonymised as appropriate. Appropriate consents will need to be obtained from the appellant.
- Statistics on tribunal case numbers and outcomes would be published alongside the SWF data on performance reporting.
- The turn-around times for crisis grants are likely to be particularly challenging. If needed, in the longer term we could consider recruiting more conveners in order to meet the deadlines for response on crisis grants (5 working days) and wide ranging geographical coverage. The MHT achieves 5 working days for 50% of cases but with standardised information requirements. The discretionary nature of SWF decisions and the wider variety of situations covered by the Fund will make it difficult to standardise paperwork which means that more staff time will be required for checking papers than for other tribunals.

### **Costs**

We have made an estimate of the costs attached to a new tribunal based mainly on the costs of the Council Tax Reduction Panels and the Home Owners Protection Panel, adjusted for caseload. The majority of the costs arise from the time of panel members and admin staff, venue hire and other running costs. The total annual cost is estimated at £828k a year. The cost per case, based on 2000 cases per year would therefore be £413. Projected set up costs are around £100,000.

## **Organisational Change in the STS**

The Scottish Tribunals Service (STS) operates as a delivery arm of the Scottish Government. The STS currently provides support to six tribunals and the Council Tax Reduction Review Panel.

The Scottish Ministers and the Board of the SCS have agreed that legislation should be brought forward in the new year to bring a merger of the Scottish Tribunals Service and the Scottish Court Service into effect. Creating a joint administration which is independent of the Scottish Ministers is a sensible approach and there was wide support for it in the responses to a recent consultation on the proposals.

The Tribunals (Scotland) Bill was introduced to Parliament in May 2013. The Bill will create a new, simplified structure for devolved tribunals in Scotland with a First-tier Tribunal for first instance decisions (into which most tribunal jurisdictions will be transferred) and an Upper Tribunal where the primary function will be to dispose of appeals from the First-tier. These will be collectively known as the Scottish Tribunals. The tribunals currently administered by the STS will be among the first to have their functions transferred into the new structure in a phased programme. It is expected that these tribunals will have had their functions transferred-in by the end of 2018. The Bill allows for new tribunals to be added to the list in schedule 1 to the Bill that can be transferred into the structure over time.

The First-tier Tribunal will deal with cases in the first instance from which there will be a general right of appeal on a point of law to the Upper Tribunal. The Upper Tribunal may also decide on petitions for judicial review which have been transferred from the Court of Session.

The Bill enables the First-tier Tribunal and the Upper Tribunal to review their own decisions where, for example, simple administrative errors have occurred. This does not affect the users' right of appeal.

## SWF Permanent Fund – Second Tier Review – Assessment Grid

The grid tests the three options against the purposes of second tier review identified as:

- To ensure that both initial decisions and decisions on First Tier Review are consistent with the legislation and guidance for the Fund and that discretion has been reasonably exercised.
- To identify any deficiencies in local authority decision-making and give feedback to local authorities on the quality of their decision-making.
- To give confidence to applicants for review and to the wider public that the arrangements for second tier review are independent and impartial and that there is an effective remedy for defective decisions by local authorities.
- To identify where the SWF regulations, guidance or local policies appear to be having unintended consequences and highlight these as appropriate.

Combined with the desirable characteristics for first and second tier review, identified as:

- Be transparent, fair and accessible system
- Timely, recognising the circumstances of the applicant
- Be high quality, impartial, free to use and independent
- Operate quickly, making sound and accurate decisions
- Communicate effectively
- Be proportionate and cost effective

### Assessments

High = high probability of meeting this criterion

Medium = medium probability of meeting this criterion

Low = low probability of meeting this criterion

### Assumptions:

2000 second tier reviews per year. The same turnaround times as for the interim arrangements for all 3 options i.e.

- 5 working days for Crisis Grants
- 30 working days for Community Care Grants



	Criterion	Local Government Panel	Scottish Public Services Ombudsman	Tribunal
1	<b>Independent, fair and impartial, supporting the credibility of SWF</b>	<p><b>Medium</b> – the panel would be coordinated by LG staff and would have some members from LG.</p> <p>Revised arrangements would improve independence by requiring a majority independent membership and creating a regional panel so that LA members would rarely be considering cases from their own authorities.</p> <p>Numbers and outcomes of reviews would be published in the quarterly SWF statistics, allowing for scrutiny.</p> <p>Applicants would receive a resolution and an explanation from one source so that confidence in the service is not undermined by another organisation reversing decisions.</p> <p>However, the panels would be supported by LA staff so some in built bias is possible whether conscious or not. There is also scope for</p>	<p><b>High</b> – no influence by LG or SG. Expertise in the organisation and additional powers ensure credibility.</p>	<p><b>High</b> –independent of the LG and SG. Tribunals are seen as the gold standard in independent scrutiny by stakeholders. Decisions of tribunals are bound by law. This can lead to greater consistency and fairness in the decision making process.</p>

		regional variation. Stakeholders have concerns over the independence of a Local Government Panel.		
2	<b>SWF decisions are subject to appropriate scrutiny. Makes high quality, sound, accurate review decisions</b>	<p><b>Medium</b> – Revised arrangements would offer an opportunity for the voice of the applicant to be directly heard. Creating a regional panel would mean increased case numbers so that panel members could be paid and required to undertake more substantial training and build a greater expertise in the SWF regulations and guidance.</p> <p>However, panel members are less likely to have a good knowledge of the local Fund arrangements if they are being asked to look across a number of LAs. This may have an impact on their ability to feed back to decision makers on performance.</p>	<p><b>High</b> – SPSO is well respected and has a good track record. Quality assurance processes are in place for ombudsmen, ensuring ongoing high standards. The SPSO has made decisions on several cases under the interim fund, all of which have been acted on by the LAs involved and which have provided valuable improvement information for all LAs. However, this may not be a good indicator for the future, as numbers of decisions increase. Stakeholder views expressed in the consultation indicate that additional powers to review the merits of cases and make binding decisions would be needed to ensure credibility for the SPSO in this role.</p> <p>Using the SPSO would mean a one stop shop for complaints and second tier reviews which is simple and transparent for people who do not necessarily</p>	<p><b>High</b> –Option for applicants to be present at the oral hearing means that the voice of the applicant is heard. Members would develop an expertise in the national legislation and statutory guidance, as long as appropriate training is provided.</p> <p>While decisions are issued to appellants and LAs, they are not routinely published which allows for less public scrutiny.</p>

			<p>distinguish a complaint from a request for review or where there is an overlap between the two.</p> <p>Decisions are issued to the LA and published, allowing for public scrutiny.</p>	
3	<p><b>Free to use and Responsive – likely to meet targets for processing</b></p>	<p><b>Medium</b>– There panel would be free to use for the applicant.</p> <p>The support arrangements would need to be designed to ensure that administrative processes attached to a regional panel do not result in delays to decisions.</p> <p>There are costs for the applicant of attending hearings, should they choose to, but these would be re-imbursed.</p>	<p><b>Medium</b> – The SPSO has a dedicated staff and inquisitorial approach with no cost for the applicant.</p> <p>However, the timescales are much shorter than for other SPSO decisions and would present a challenge.</p>	<p><b>Medium</b> – this option includes an extra stage in terms of co-ordinating hearings and organising judicial time. Advice from the Scottish Tribunal Service is that it would be extremely difficult to meet the target timescales. There are costs for the applicant of attending hearings, should they choose to, but these would be re-imbursed.</p>
4	<p><b>Appropriate to the type of decision being made</b></p>	<p><b>High</b> – a panel is appropriate in looking at discretionary decisions and testing for reasonableness. Oral hearing adds an opportunity for the applicant to be heard.</p>	<p><b>High</b> - The inquisitorial nature of the SPSO investigation process allows for communication with the applicant to get to the core of the problem. This option provides the best fit with the AJTC mapping factors for administrative justice, which suggest an</p>	<p><b>Low</b> - because of discretionary nature of decisions and the types of issue that are likely to result in review. Tribunals are mainly designed to look at points of law. This would mean that first tier review was the only opportunity to look at whether</p>

			inquisitorial approach, and is closest to the Independent Review Service which was previously in place under the Social Fund.	the decision has been a reasonable one which would probably not be appropriate for such a discretionary scheme. It would be difficult to have a national panel make decisions on locally managed funding.
<b>5</b>	<b>Effective in driving improvement in decision making and identifying where regs and guidance has unintended consequences</b>	<b>High</b> - Panel has an explicit role in feeding back to the decision maker and in the local and national policy making role. However, a regional panel would make this more difficult. SG quality improvement role takes an overview of themes in LA review stats and shares experience between LAs to improve decision making.	<b>High</b> - The SPSO publishes summaries of its cases on line and provides statistical feedback. It also provides a detailed response on each case to the body concerned which LAs can then share with others. SPSO can be funded to provide training and improvement information. Reporting can be tailored to feed in to service improvement planning. Some activity would be needed by SG to use this information to systematically drive improvement.	<b>Medium</b> - Detailed reasons will only be written up for cases when requested. Tribunal conveners commonly work with policy interests etc to draw out themes in decisions. Some activity would be needed by SG or LG practitioners to use this information to systematically drive improvement. Hearings might create an adversarial relationship with LG rather than an improvement culture.
	<b>Overview</b>	High = 2 Medium = 3 Low = 0	High = 4 Medium = 1 Low = 0	High = 2 Medium = 2 Low = 1
	<b>Cost effective and proportionate to the size of grant</b>	Estimated Cost per case: £423-518 Systematic feedback of improvement information depends on the configuration of the panel.	Estimated Cost per case: £202 This option is likely to result in systematic feedback of improvement information.	Estimated Cost per case: £413 This option is not likely to result in systematic feedback of improvement information.

### SWF Permanent Fund – Second Tier Review – Consultation Responses

#### Question 5 (a): If the SPSO is the chosen option, should this be with additional powers to review discretionary decisions on the merits of the case?

Respondent type	Yes	No	Don't know	No response	Total
Third sector	14				
Local Authority	13	6			
Social enterprise	2		3		
Business	1				
Individual					
Other public sector	1		1		
<b>Total</b>	<b>31</b>	<b>6</b>	<b>4</b>		

#### Question 5 (b) : if the SPSO is the chosen option, should this be with additional powers to make an alternative decision which would be binding on the Local Authority?

Respondent type	Yes	No	Don't know	No response	Total
Third sector	14			6	
Local Authority	14	5			
Social enterprise	2		3	4	
Business	1				
Individual				1	
Other public sector			1	2	
<b>Total</b>	<b>32</b>	<b>5</b>	<b>4</b>	<b>13</b>	

#### Question 6 Please rank the three options for second tier reviews in order of preference.

Respondent Type	Local Authority			SPSO			Tribunal		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
Individual	0	1	0	0	0	1	1	0	0
3rd Sector	3	0	10	6	4	0	4	6	3
Advocacy and Advice	0	0	0	0	0	0	0	0	0
Business	0	1	0	1	0	0	0	0	1
Local Authority	15	1	1	1	8	8	1	8	8
Other Public sector	1	0	0	0	1	0	0	0	1
Social Enterprise	3	1	2	3	1	2	3	0	3
<b>Total</b>	<b>22</b>	<b>4</b>	<b>13</b>	<b>11</b>	<b>14</b>	<b>11</b>	<b>9</b>	<b>14</b>	<b>16</b>

#### Easy Read responses

2 favour LA panel, 2 favour SPSO