

Reforming Benefits Decision-Making

A Report by JUSTICE and the Administrative
Justice Council

Chair of the Committee

Lord Low of Dalston CBE



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- to provide a forum for the exchange of information between Government, the judiciary, and those working with users of the administrative justice system;
- to identify areas of the administrative justice system that would benefit from research; and
- to make practical proposals for reform.

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The views expressed in this report are those of the Working Party members alone, and do not reflect the views of the organisations or institutions to which they belong.

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EXECUTIVE SUMMARY

Being denied benefits can have a devastating impact on individuals' and their families' lives. It can plunge people into debt, result in eviction and exacerbate or create health issues. The economic fall-out from Covid-19 has only increased these risks. It is therefore vital that there is a fair benefits system that is accessible and makes timely and accurate decisions, and for there to be an effective means of reviewing decisions once made.

This Report follows a number of previous reports raising concerns with the benefits system and putting forward proposals and recommendations for change. However, despite these prior efforts, it is clear that there remain ongoing issues with benefits decision making and barriers to effectively challenging those decisions when they have been wrongly made. This joint JUSTICE and Administrative Justice Council Working Party has focused on improving the administrative and procedural elements of the benefits system, from initial decision making, through to appeals, with a primary focus on the central government administered working age benefits.

The findings of this Report demonstrate that the benefits system is not working as well as it should, in particular for those with health conditions and disabilities, especially mental health conditions and fluctuating conditions. Many claimants are incorrectly denied the benefits that they are entitled to, demonstrated by the high success rates of appeals. This is due to a lack of knowledge regarding entitlements, decision making processes that are confusing, inaccessible and time-consuming, and barriers and inefficiencies caused by inflexible digital systems. DWP has recognised during our consultations for this report that individual errors ought not to have happened. But systemic, repeated errors continue to cause unnecessary hardship to many people in need of support.

The Report makes 44 recommendations that seek to ensure welfare support is made available to those that need it as quickly, accurately and effectively as possible. This

includes getting decisions right the first time and assisting claimants to challenge decisions that they do not think are correctly made:

Administrative decision making

Claiming benefits is often a highly stressful situation; the procedures and systems in place should seek to alleviate, not aggravate this. Claimants should be listened to and understood throughout the process, including through giving proper weight to claimants' own accounts of their health conditions and disabilities and assessment by health care professionals with relevant specialist knowledge of claimants' conditions. Assessment reports and decision letters must fully explain what weight is being given to each piece of evidence and why it is, or is not, being relied upon. We also recommend providing claimants with additional opportunities to explain their reasons for noncompliance with their claimant commitment (the conditions to receiving Universal Credit and some other benefits). Post-Covid-19 pandemic, we also recommend that a choice of video, telephone or face-to-face assessment is offered.

Clearer structures and rules are required for decision-making to ensure fairness and consistency, while also tailoring decisions to individuals' circumstances. For instance, requesting medical information where this is reasonably required to make an assessment from healthcare professionals directly rather than expecting claimants to source this (with the appropriate claimant consent and data protection in place). Protected characteristics must be more carefully considered when setting claimant commitments and applying easements, for example in the length of interviews, through standardised topics and use of specialist advice. We also consider that fewer sanctions should be imposed where claimants fail to comply with commitments through the trialling of an early warning system.

There must be improved and increased training as well as clear policy and guidance for decision makers, to ensure that they understand their obligations and the administrative processes. This includes training on the duty to make reasonable

adjustments under the Equality Act 2010, and on how and when additional evidence should be obtained.

Greater transparency and accountability is also required as to how the DWP makes its decisions and measures its performance. To that end we recommend the end to outsourcing of health and disability assessments, that claimants are provided with copies of their assessment reports as standard and the audio recording of assessments unless the claimant declines this. We also recommend an independent evaluation of performance measures and the introduction of an independent reviewer or regulator, as well as the publication of information on use of automation. Improved data collection and evaluation is also required, including on claimants' protected characteristics, and on the reasons for successful tribunal appeals.

Routes of Redress

Challenging incorrectly made decisions is a lengthy, daunting, stressful process and difficult to navigate. Claimants face repeated practical barriers and many give up on the long fight for their entitlement.

An accessible redress mechanism which enables claimants to challenge incorrectly made decisions is essential. We recommend that the DWP mandatory reconsideration stage is abolished so that claimants can appeal directly to the First-tier Tribunal (Social Security and Child Support) . This will trigger a mandatory review by DWP without the claimant taking any further steps. Decision letters should state that appeals can be lodged after the one-month deadline where there is good reason. DWP and HMCTS should utilise technology in the appeals process to reduce re-keying and delay. To help prevent adjournments we also recommend the piloting of file review by tribunal caseworkers and directing of parties to obtain missing information ahead of appeals.

Claimant Support

The information, support and advice provided to claimants about making and challenging benefits decisions is fragmented, can be inaccessible and is often insufficient.

Many claimants have additional needs and vulnerabilities that further exacerbate these issues. Claimants with health conditions, including mental health or neurodivergent conditions and/or who do not have English as a first language or are illiterate face additional challenges engaging with a system that often does not meet their needs. In particular, claimants who are digitally excluded face difficulties making and managing their Universal Credit claims due to its ‘digital by default’ nature.

We recommend that a claimant-centred system is developed, through clearer and more accessible communications and provision of information about the process at each stage, so that claimants understand what is expected of them and how the process is working. This would include using videos to explain processes and ensuring that key information is available in a range of clearly and simply expressed formats.

There should be a “no wrong door” approach to applying for and engaging with Universal Credit, including by having meaningful, non-digital channels.

Early advice and support is vital. We recommend reinstating legal aid for early benefits advice, expanding Help to Claim to provide support to people beyond the application process and through a greater range of providers, the co-location of advice providers covering related areas of social-welfare problems as well as non-legal services, and a single access “portal” directing to welfare benefits advice organisations, signposted to from all DWP webpages. We also adopt the recommendations of the JUSTICE working party report Understanding Courts for a single website point of entry that provides comprehensive, simple, accessible and jurisdiction specific information on the process of going to the Social Security

Tribunal, with a video to give a realistic overview of what a hearing is like. This should link to the advice portal and be provided to all appellants.

The benefits decision-making process is failing claimants. Our vision is of a system that prioritises dignity and respect and that places the user at its heart: a procedurally fair, efficient, accessible and robust system that works well for everyone, regardless of their digital capability, their health, their disabilities or their vulnerabilities, and which provides claimants with the support they require.

I. INTRODUCTION

“many aspects of the design and rollout of [Universal Credit] have suggested that the Department for Work and Pensions is more concerned with making economic savings and sending messages about lifestyles than responding to the multiple needs of those living with a disability, job loss, housing insecurity, illness, and the demands of parenting.”¹

Background

1.1 The benefits decision-making system forms a huge part of the administrative justice landscape in the United Kingdom however, the system is performing poorly. Individuals often lack knowledge as to their possible entitlements; the application process can be inaccessible and confusing; and many are incorrectly denied benefits to which they are entitled, or have their benefits stopped or reduced when they are wrongly sanctioned. Challenging incorrectly made decisions is often stressful and lengthy and many individuals give up when faced with a long fight for their entitlement.² Being denied benefits can have a devastating impact on individuals’ and their families’ lives. It can plunge people into debt, forcing them to rely on food banks, result in eviction from their homes and exacerbate or create health issues.³ As a result there is a fundamental lack of trust and confidence in the system.

¹ P. Alston, ‘[Statement on Visit to the United Kingdom by Professor Phillip Alston, United National Special Rapporteur on extreme poverty and human rights](#)’ (November 2018) p.5.

² As explained in **Chapter 3** there is a two-stage process to challenging a benefits decision: (i) an internal review by the Department for Work and Pensions (DWP) (or Department for Communities in Northern Ireland) called mandatory reconsideration; and if that is not successful claimants may (ii) appeal to an independent tribunal. For example, since PIP was introduced in 2013, up to September 2020 4.2 million initial decisions have been made by the DWP. Mandatory reconsideration has been requested in 965,260 or 23 per cent of cases. In 81 per cent (779,590) of cases the award has remained unchanged following the mandatory reconsideration. However, only 379,630 claimants go on to lodge an appeal after a mandatory reconsideration, despite the fact that 67 per cent of appeals that reach a hearing are successful (Statistics do not include decisions made by the Department for Communities which are recorded separately) (DWP, ‘[Personal Independence Payment statistics to January 2021](#)’, Table 5A (March 2021)).

³ The Low Commission, [Getting it right in social welfare law: the Low Commission’s follow-up report](#) (2015), G. McKeever, M. Simpson and C. Fitzpatrick, [Destitution and Paths to Justice](#) (The Legal

1.2 These issues exist against the backdrop of the sweeping reforms made to working age benefits by the Welfare Reform Act 2012. Amongst other significant changes,⁴ the Welfare Reform Act introduced Universal Credit (‘UC’), a single working age benefit for those out of work or on a low income, which replaces six ‘legacy benefits’ and tax credits.⁵ The aim of UC was to simplify the system and improve work incentives.⁶ It is also the first major government service to be ‘digital by default’. This means that the application is made online and the interaction with the Department for Work and Pensions (DWP)/Department for Communities (DfC) (in Northern Ireland) is largely through a digital account, with claimants “nudged back” to the web channel.⁷ However, a significant cohort of benefits claimants are ‘digitally excluded’, due to an inability to access the internet or digital devices, a lack of digital skills or a lack of confidence in using the internet and digital devices.⁸ Simultaneously, Her Majesty’s Courts and Tribunals Service (HMCTS), is in the middle of a programme of court and tribunal reform which is expanding the use of digital technology in the justice system, including the First-tier Tribunal (Social Security and Child Support) (FTT (SSCS)), where benefits appeals are heard.

Education Foundation and The Joseph Rowntree Foundation, 2018), p. 51-52. See also forthcoming research by the Pro Bono Economics Unit and the AJC on the economic costs of wrongly made first instance decisions, due to be published September 2021.

⁴ For example, capping the total amount of benefit that can be claimed by a household – the ‘benefit cap’; cuts in Housing Benefit entitlement to social housing tenants whose accommodation is deemed larger than they need – the ‘bedroom tax. The Welfare Reform Act also introduced mandatory reconsideration which is discussed in **Chapter 3** below.

⁵ Income-based Jobseeker’s Allowance; income-related Employment and Support Allowance; Income Support; Child Tax Credits; Working Tax Credits; and Housing benefit.

⁶ DWP, *21st Century Welfare* (Cm 7913, 2010), p. 7; DWP, ‘[2010 to 2015 government policy: welfare reform](#)’ (2015).

⁷ G. Hitchcock, ‘[Universal credit to be first service ‘digital by default’](#)’ (*The Guardian*, 3 February 2012).

⁸ According to the 2018 Universal Credit Full-Service Survey only 54 per cent of all claimants were able to register their claim online unassisted and 25 per cent were not able to submit their claim online at all. Government Social Research and the DWP, *Universal Credit Full Service Survey* (2018), para 1.3.1.

- 1.3 At a time when significant changes to the benefits system were implemented and arguably advice and support was most crucial, access to legal assistance was severely attenuated by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO removed all welfare benefits advice and assistance from the scope of legal aid (with some very limited exceptions),⁹ resulting in a significant reduction in the number of people granted public funding in welfare benefits cases.¹⁰
- 1.4 The issues with the benefits system are not new and have been examined in a variety of reports and inquiries which have made recommendations for improvement. These include the inquiries of the Work and Pensions Select Committee,¹¹ the Occasional Papers of the Social Security Advisory Committee (SSAC),¹² the Independent Reviews of the Work Capability

⁹ (i) Legal help for appeals to the Upper Tribunal and Higher Courts, when the case involves a point of law and (ii) civil representation for appeals relating to council tax reduction schemes (which replaced council tax benefit under the Welfare Reform Act 2012). Legal aid remains available for judicial review and Equality Act 2010 claims – this includes those relating to a benefits decision. There was a £20.4 million reduction in spending for legal help and civil representation for welfare benefits between 2010-11 and 2016-17. H. Brooke, '[An Analysis of the Evidence](#)' in *Bach Commission on Access to Justice: Appendix 5* (2017).

¹⁰ Figures show that there were 135,751 legal help matter starts and 51 civil representation granted certificates in welfare benefits cases in 2008-09. These figures have plummeted to 443 legal help matter starts and nine civil representation granted certificates in 2017-18. The decline is at its steepest around the time LASPO was introduced in April 2013. There were 82,554 legal help matter starts in 2012-13, falling to 163 in 2013-14. This figure meanders up and down over the subsequent four years, but not by very much. Ministry of Justice, '[Social Security Benefits Appeals: Question for Ministry of Justice UIN 207160](#)' (10 January 2019)

¹¹ Of particular relevance to this report: Work and Pensions Committee, [PIP and ESA assessments, Seventh Report of Session 2017-2019](#) (HC 829, 2018); Work and Pensions Committee, [PIP and ESA assessments: claimant experiences](#), Fourth Report of Session 2017-19 (2018); Work and Pensions Committee, [Benefits Sanctions](#), Nineteenth Report of Session 2017-2019 (2018); Work and Pensions Committee, [Welfare safety net](#), Twenty-eighth Report of Session 2017-2019 (2019); Work and Pensions Committee, [Universal Credit: the wait for a first payment](#), Third Report of Session 2019-21, (HC 204, October 2020); and Work and Pensions Committee, [DWP's response to the coronavirus outbreak](#), First Report of Session 2019-21 (June 2020).

¹² Of particular relevance to this report: SSAC, [Decision making and mandatory reconsideration: Occasional Paper 18](#) (2016); SSAC, [The effectiveness of the claimant commitment in Universal Credit: Occasional Paper 21](#) (2019); SSAC, [A review of the Covid-19 temporary measures: Occasional Paper 24](#) (November 2020).

Assessment,¹³ the Independent Reviews of the Personal Independence Payment Assessment¹⁴ the Independent Reviews of the Personal Independent Payment assessment Process in Northern Ireland¹⁵ and reports of a variety of non-governmental organisations.

- 1.5 However, in spite of these reports and the efforts of many organisations and individuals, many recommendations remain unimplemented and the issues with the benefits system persist. Further, the economic fall-out from the pandemic has seen a huge rise in the number of people applying for, and in receipt of, benefits. In the space of a two-week period from 20 March to 2 April 2020, 1.1 million applications for UC were made, over 10 times the weekly average for the preceding year.¹⁶ With increased unemployment and the full economic impact of the pandemic still yet to be felt due to the ongoing furlough scheme, the need to ensure a fair benefits system that is accessible and makes timely and accurate decisions is greater than ever.
- 1.6 We are also aware that the DWP is working on a Health and Disability Green Paper which aims to explore how the welfare system can better meet the needs of disabled people and those with health conditions. This is due to be published this summer.¹⁷ We hope that the recommendations in this report will help inform the work currently being done by the DWP to improve the experience of the benefits system for those with disabilities and health conditions.

¹³ Professor M. Harrington, [*An Independent Review of the Work Capability Assessment*](#) (2010); Professor M. Harrington, [*An Independent Review of the Work Capability Assessment – year two*](#) (2011); Professor M. Harrington, [*An Independent Review of the Work Capability Assessment – year three*](#) (2012); Dr P. Litchfield, [*An Independent Review of the Work Capability Assessment – year four*](#) (2013) Dr P. Litchfield, [*An Independent Review of the Work Capability Assessment- year five*](#) (2014).

¹⁴ P. Gray, [*An Independent Review of the Personal Independence Payment Assessment*](#) (2014); P. Gray, [*The Second Independent Review of the Personal Independence Payment Assessment*](#), (2017).

¹⁵ W. Rader, [*Personal Independence Payment - An Independent Review of the Assessment Process \(Northern Ireland\)*](#) (2018); M. Cavanagh, [*Personal Independence Payment – A Second Independent Review of the Assessment Process*](#) (December 2020).

¹⁶ Weekly average claims for year to 12 March 2020 was 54,000. DWP, [‘Universal Credit statistics, 29 April 2013 to 14 January 2021’](#), February 2021.

¹⁷ Justin Tomlinson MP, [‘Work and Pensions Committee Oral evidence: Disability employment gap, HC 189’](#), May 2021, Q 260.

The Working Party

- 1.7 This Working Party began its work in April 2020, as the UK entered its first national lockdown in response to the global pandemic. UC has withstood the huge rise in applications resulting from the pandemic, and acknowledge that this is due in part to its digital nature. For the majority who are able to engage digitally, the ‘digital by default’ system works well. However, the focus of this Working Party has been on improving the administrative and procedural elements of the benefits system, from initial decision making, through to appeals, so that it works well for everyone, regardless of their digital capability, their health, their disabilities or their vulnerabilities.
- 1.8 Given the scope of the Working Party, we have not looked at substantive issues such as the five-week wait prior to receipt of a first UC payment¹⁸ or the benefit cap. Our focus has been on procedural reforms that can help improve DWP and DfC decision-making and ensure routes of redress to remedy wrongly made decisions are effective, fair and efficient. A crucial part of this is making sure that claimants have access to clear information about these processes as well as specialist advice and assistance where required.
- 1.9 The pandemic has not only tested the capacity of the benefits system, but also required the DWP and DfC to make changes to the way in which benefits are administered, for example suspending face-to-face medical assessments and the work-related requirements. It has also necessitated changes to the way in which appeals are dealt with by the FTT (SSCS) and the way in which advice and support are provided. To the extent available, we have drawn on evidence of how these new approaches have been operating in practice and what lessons can be learnt for a post-pandemic era.
- 1.10 The Working Party focuses on the central government administered working age benefits that account for the majority of claims.¹⁹ Those are UC,

¹⁸ Work and Pensions Committee, *Universal Credit: the wait for a first payment* (see n. 11 above).

¹⁹ In Northern Ireland these benefits are administered by the DfC with largely parallel legislation. See paragraph 1.12 below.

Employment and Support Allowance (ESA)²⁰ and Personal Independence Payment (PIP).²¹

Geographical scope and devolution

- 1.11** This report is relevant to claimants and potential claimants across the United Kingdom. However, social security benefits are a mixture of devolved and reserved matters. In Wales all social security benefits are reserved. The Scotland Act 2016 devolved significant new social security powers to Scotland. The Scottish Government now has competence over eleven benefits, including disability and carers' benefits,²² however, Universal Credit remains a reserved benefit. The recommendations in this report which relate to the DWP are therefore applicable in England and Wales, and in Scotland in relation to reserved benefits.
- 1.12** Whilst in Northern Ireland almost all social security benefits are devolved, Northern Ireland maintains 'parity' with social security, child maintenance, and pensions systems in England and Wales.²³ Whilst there are some differences in social security provision in Northern Ireland, these are relatively minor. However, benefits in Northern Ireland are delivered by the DfC, rather than the DWP. Where there are relevant differences, we have sought to highlight these, otherwise, our recommendations apply to both the DWP and DfC.

Dignity and respect

- 1.13** Scotland's devolved social security powers are given effect through the Social Security (Scotland) Act 2018. Executive competence for all the devolved

²⁰ A payment for people with a disability or health condition which affects how much they can work.

²¹ A supplementary payment for people with long term ill-health or disability. Number of claimants as of August 2020 were UC 5,571,000; PIP 2,572,000; and ESA 1,885,000 (DWP, 'Universal Credit Statistics 29 April 2013 to 14 January 2021', see n. 16 above).

²² However, the introduction of Adult Disability Payment to replace PIP has been delayed until Spring 2022.

²³ Northern Ireland Act 1998, s.87.

benefits was handed over as of April 2020, with the expectation that the full transfer of claimants to the Scottish system would be completed by 2024, however this timetable has been pushed back due to Covid-19. Phase one of the roll-out focused on straightforward one-off payments.²⁴ Phase two will involve the delivery of the new disability and carer benefits, including the Adult Disability Payment which replaces PIP.

1.14 Section 1 of the Social Security (Scotland) Act 2018 sets out eight guiding principles that underpin the new Scottish social security system. These include that “[s]ocial security is itself a human right” and “[r]espect for the dignity of individuals is to be at the heart of the Scottish social security system”.²⁵ These principles are reflected in the 2019 Scottish Government Charter on Social Security,²⁶ which was co-designed with members of the public with experience of using the social security system, third sector advice organisations and Scottish Government and Social Security staff.²⁷ The charter articulates the organisational ethos of Social Security Scotland and what claimants can expect from the Scottish system.

1.15 In drafting the Social Security (Scotland) Act 2018 and designing the devolved system, the Scottish Government undertook a consultation process

²⁴ Carer’s Allowance Supplement – a supplementary payment made to carers in Scotland who already receive full or partial Carer’s Allowance from the DWP; three Best Start Grant payments – Pregnancy and Baby Payment, Early Learning Payment and School Age Payment; Funeral Support Payment; Job Start Payment; Young Carer Grant; Child Winter Heating Assistance; and Scottish Child Payment.

²⁵ The full list of principles are: a) Social security is an investment in the people of Scotland; b) Social security is itself a human right and essential to the realisation of other human rights; c) The delivery of social security is a public service; d) Respect for the dignity of individuals is to be at the heart of the Scottish social security system; e) The Scottish social security system is to contribute to reducing poverty in Scotland; f) The Scottish social security system is to be designed with the people of Scotland on the basis of evidence; g) Opportunities are to be sought to continuously improve the Scottish social security system in ways which— i) put the needs of those who require assistance first, and ii) advance equality and non-discrimination; and h) The Scottish social security system is to be efficient and deliver value for money.

²⁶ Scottish Government and Social Security Scotland, [‘Our Charter: What you can expect from the Scottish Government and Social Security Scotland’](#) (January 2019).

²⁷ Scottish Government, [‘Developing the Social Security Charter: co-design in action’](#) (19 June 2019),

to garner public opinions on how devolved benefits should be delivered.²⁸ The focus upon dignity and respect was in part driven by the responses from these consultations, with these two characteristics frequently identified as missing from the reserved system,²⁹ which has been described as ‘stressful, complicated, and inhumane’.³⁰ The Scottish Government has resolved to “do things differently.”³¹ We have therefore looked towards the devolved Scottish benefits system to understand how the Scottish Government has attempted to realise a social security system focused on the principles of dignity and respect in practice. Although it is still in a nascent stage, where possible, we have sought to draw lessons from it.

Language

- 1.16 We use the term claimants throughout this report to describe individuals who apply for, or are in receipt of, benefits, as well as those challenging benefits decisions. We appreciate this term is not ideal, as it minimises the fact that individuals are entitled to certain benefits in order to ensure a minimum standard of living - a fundamental human right. However, we use the term for clarity and prefer it to the term “customer”, used by the DWP/DfC which implies that the process is a commercial transaction and not about people’s lives, dignity and rights.

²⁸ Scottish Government, [*Analysis of Written Responses to the Consultation on Social Security in Scotland*](#) (2017).

²⁹ *Ibid.* p.2.

³⁰ Scottish Government and Social Security Scotland, ‘Our Charter’ (see n. 26 above) p.3.

³¹ *Ibid.*

II. ADMINISTRATIVE DECISION-MAKING

“The administration of Philippa Day’s benefits claim was characterised by multiple errors, some of which occurred repeatedly throughout the period of her claim....The failure to administer the claim in such a way as to avoid exacerbating Philippa Day’s pre-existing mental health problems was the predominant factor, save for her severe mental illness, affecting a decision taken by Philippa Day to take an overdose of her prescribed insulin on the 7th or 8th August 2019.”³²

- 2.1** The current application process for benefits often fails to correctly assess individuals’ entitlement and does not accommodate individuals’ needs. This Chapter examines the DWP/DfC decision making processes in relation to making initial entitlement decisions, setting claimant commitments and sanctions decisions. We review the procedures and processes for making first-instance decisions to see if these can be improved so that a greater volume are made correctly first-time round.
- 2.2** The proportion of successful appeals to the FTT (SSCS) remains high. In 2020/21, 75 per cent of PIP and ESA appeals and 61 per cent of UC appeals were successful.³³ In Northern Ireland 63 per cent of PIP appeals were successful in 2019/20.³⁴ In addition, in 2019/20, 29 per cent of PIP appeals lodged were lapsed, meaning that the DWP changed its decision in the appellant’s favour before it was heard by the Tribunal.³⁵ Whilst this must of course be viewed against the large volume of overall decisions made,³⁶ success rates this high indicate that there are fundamental issues with DWP

³² Her Majesty’s Assistant Coroner Clow, [*Regulation 28: Report to Prevent Future Deaths - Philippa Jane Louise Day \(died 16 October 2019\)*](#) (February 2021), section 3.

³³ Ministry of Justice, [‘Tribunal Statistics Quarterly: January to March 2021’](#) (10 June 2021), Main Tables SSCS_3.

³⁴ Northern Ireland Assembly, [*Official Report*](#) (November 2020). Statistics on the appeal success rate for other benefits in Northern Ireland are not currently publicly available.).

³⁵ DWP, [‘PIP Statistics to January 2021’](#) (March 2021) Table 5B: PIP experimental statistics by period of initial decision, initial decisions following a PIP assessment, MRs and appeals. Similar statistics are not available for ESA and UC.

³⁶ From April 2019 to March 2020, 781152 PIP decision were made (DWP, [Stat-Xplore: PIP Clearances](#)).

and DfC decision making.³⁷

- 2.3 Getting benefits decisions right first time is imperative to prevent individuals from suffering the often severe, detrimental impacts of being wrongly denied, or stopped, benefits to which they are entitled. In the longer term it will save the DWP and DfC money as they spend fewer resources dealing with challenges to decisions.³⁸ Furthermore, it will likely result in significant public sector savings beyond the DWP, including improved health outcomes for claimants and therefore savings to health and social care and fewer resources spent by councils on temporary accommodation and homelessness prevention.³⁹ This will be explored further in a forthcoming report by the Administrative Justice Council and Pro Bono Economics Unit due to be published in September.

Health and disability assessments

- 2.4 For claimants with a disability or health condition, health and disability assessments are a fundamental part of the benefits application process. There are two types of assessments, PIP assessments and Work Capability Assessments (WCA). The former is used to determine eligibility for PIP and

³⁷ We have been told by some advisors that recently they have been seeing fewer health and disability benefits decisions that appear to be wrongly made. It is unclear why this is, although it may be due to the lower volume of decisions being made during the pandemic – there was a large drop in new PIP claims at the start of the pandemic, claimants have been given up to three months to complete their PIP forms rather than one month and there was also a suspension of award reviews and reassessments (DWP, ‘PIP Statistics to January 2021’ (see n. 2 above). There have also been considerably fewer ESA WCA assessments and reassessments (DWP, ‘[ESA: outcomes of Work Capability Assessments including mandatory reconsiderations and appeals: March 2021](#)’ (March 2021). As part of the implementation work for this report we will keep these changes under review. If it does indicate improvements to DWP decision-making, then we welcome the changes.

³⁸ In 2018/19 PIP mandatory reconsiderations and appeals cost the DWP £19.7m and £23.5m respectively in direct staff costs. ESA mandatory reconsiderations and appeals cost it £8.7m and £8.8m respectively in direct staff costs (Response to a Freedom of Information Act Request made by May Bulman to the DWP, received on 4 May 2020).

³⁹ The Low Commission, *Follow up report* (see n. 3 above) p.23; G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above). See also Administrative Justice Council, Health Innovation Ecosystem and University of Westminster, [Access to social welfare advice in a hospital setting: integration of services](#) (June 2021).

the latter for ESA and certain UC components. PIP is a benefit that is intended to help with additional costs of having a long-term health condition or disability. It is non-means tested and can be applied for on top of UC/ESA or other benefits. The PIP assessment is meant to assess how an individual's health condition or disability impacts their ability to carry out everyday tasks and ability to get around. The WCA is meant to assess whether someone's health condition or disability limits their ability to work. It is used to determine whether someone will be entitled to ESA and at which rate.⁴⁰ For UC it is used to determine what work-related activities, if any, a claimant will be required to undertake. Claimants without children who are found to have limited capability for work (LCW) are entitled to a work allowance and claimants found to have limited capability for work related activity (LCWRA) are entitled to an additional UC element.⁴¹

2.5 Health and disability assessments have been outsourced to three private companies. WCAs are carried out by the Health Assessment Advisory Service, run by the Centre for Health and Disability Assessments (CHDA), part of Maximus, in Great Britain. In Northern Ireland WCAs are carried out by the Independent Assessment Services, operated by Atos. In southern and northern England and Scotland PIP assessments are carried out by the

⁴⁰ New-style ESA is a non-means tested contributory benefit, which means individuals need to have been paid or been credited with National Insurance contributions for the previous two to three years. There are two old types which some people still receive – income-based ESA and contribution-based ESA. Income-based ESA is now being replaced by UC and new claims for it ceased from 27 January 2021. It is not possible to make a claim for contribution-based ESA because it has been replaced by New Style ESA. New-style ESA can be claimed alongside UC. Income-based ESA is now being replaced by UC and most people can no longer make a new claim for it.

⁴¹ Individuals on ESA will be placed into one of two groups. Those in the work-related activity group will receive a lower rate and whilst they will not be required to work, they will have to undertake activity that improves their chances of finding work, for example CV-building skills. Those in the support group will not be required to participate in any work-related activity.

For individuals on UC, the WCA is used to determine whether they are deemed fit for work, have limited capability for work (LCW) or have limited capability for work related activity (LCWRA). Claimants in the LCW group do not have to look for work but must undertake activities to prepare for work with the aim of working in the future. Previously those in LCW were also entitled to an additional UC element. However, the LCW element is not available to claimants who claimed UC on or after 3 April 2017 unless they were previously in receipt of a work-related activity component on ESA. Those with LCWRA are not expected to look, or prepare, for work and are normally entitled to an additional monthly payment – the LCWRA element.

Independent Assessment Services and in central England, Wales and Northern Ireland by Capita.

The assessment process is as follows:

- a) Claimants are sent a questionnaire in which they are asked to explain how their illness or disability impacts on their ability to work (in the case of ESA and UC) or carry out everyday tasks and their ability to get around (in the case of PIP).
- b) The questionnaire and any supporting evidence are sent to the assessment provider (WCA) or returned to the DWP/DfC who then pass them on to the relevant assessment provider.
- c) A healthcare professional ("HCP" or assessor) reviews the questionnaire and additional evidence. They may also request additional evidence, for example from a claimant's GP.
- d) The HCP assesses the claimant's ability to carry out a set of activities as measured against a standard list of statements describing what a claimant can or cannot do, called descriptors, each of which has a point weighting. The assessor can complete their assessment on the basis of the form and written evidence alone, however, prior to the pandemic, in the vast majority of cases, the claimant was required to attend a face-to-face assessment.⁴²
- e) The HCP sends a report to the DWP/DfC recommending the descriptors, and therefore points, that should be awarded. To qualify for PIP or ESA, or be placed in the LCW group for UC, claimants must score a minimum number of points.⁴³

⁴² Claimants who are terminally ill and could have six months or less to live can claim PIP, UC and ESA under the special rules for terminal illness. This means that claims will be fast tracked, and claimants will not normally have to attend a PIP assessment or WCA. All face-to-face assessments were suspended in March 2020 due to the pandemic (see paragraph 2.8 further below).

⁴³ For PIP between 8 and 11 points for the standard rate and at least 12 points for the enhanced rate for either component. For ESA and LCW 15 points. If any one of the limited capability for work related activity descriptors are met claimants will be placed in the support group for ESA or LCWRA group for UC. For WCAs even if a claimant does not receive 15 points on the assessment they can still be treated as having LCW and in some cases LCWRA in certain 'exceptional circumstances'. These circumstances are also known as Non Functional Descriptors. They are (a) a claimant is suffers from a life threatening disease for which there is medical evidence that it is uncontrollable or uncontrolled by a recognised therapeutic procedure (and in the latter case, there is a reasonable cause for this); or (b) a claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such

f) The DWP/DfC decision-maker makes the final decision on the claimant's entitlement and informs the claimant by way of a decision letter.

2.6 There is a severe lack of trust and confidence in the assessment process amongst claimants with health conditions and disabilities. This is driven by the poor quality of assessments and lack of transparency in decision making. This was highlighted by the Work and Pensions Select Committee in their 2018 reports on PIP and ESA,⁴⁴ and was a view we continued to hear expressed by those with experience of the assessment process and who provide advice and support to individuals going through it. These flaws in the process result in an incredibly stressful experience for claimants and can have severe impacts on their health. Studies have found a link between the introduction of WCA and increases in suicides, mental health issues and antidepressant prescribing.⁴⁵ Tragically, there have been at least 150 cases where people claiming benefits have died or come to serious harm,⁴⁶ including at least 69 suicides.⁴⁷

2.7 Scotland has recognised the detrimental effects of the assessment process. Section 14 of the Social Security (Scotland) Act 2018 states that it is implicit in the principle of respect for the dignity of individuals they should not be

disease or disablement, there would be a substantial risk to the mental or physical health of any person if they claimant were found not to have limited capability for work.

⁴⁴ Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) paras 8-12. See also P. Gray, *The Second Independent Review of the Personal Independence Payment Assessment* (see n. 14 above) Chapter 4; Dr P. Litchfield, *An Independent Review of the Work Capability Assessment – year five* (see n. 13 above) para 26.

⁴⁵ Barr et al, [‘First, do no harm’: are disability assessments associated with adverse trends in mental health? A longitudinal ecological study](#), *J Epidemiology and Community Health* 2016;70:339-345; M. Bulman [‘Attempted suicides by disability claimants more than double after introduction of fit-to-work assessment’](#) (*Independent*, 28 December 2017).

⁴⁶ A. Homer [‘Deaths of people on benefits prompt inquiry call’](#) (*BBC*, 10 May 2021).

⁴⁷ P. Butler [‘Inquest finds mother took overdose after removal of disability benefits’](#) (*The Guardian*, 27 January 2021); P. Butler [‘At least 69 suicides linked to DWP’s handling of benefit claims’](#) (*The Guardian*, 7 February 2020).

required to undergo an assessment, unless it is the only practicable way to obtain the information needed to determine eligibility.

Mode of assessment

- 2.8 Face-to-face assessments were suspended from 17 March 2020 due to the pandemic. Paper based assessment continued where possible and telephone assessments were introduced from May 2020. A trial of video assessments was also introduced for a small number of claimants. Face-to-face assessments resumed from 17 May 2021 for those unable to be assessed via other channels.⁴⁸ On 25 March 2021 regulations came into force expressly allowing for ESA, UC and PIP medical examinations to take place in person, by telephone or by video.⁴⁹
- 2.9 It is unclear what proportion of decisions have been made without requiring an assessment, and how this compares to the proportion decided without a face-to-face assessment pre-pandemic. We know that many claimants find the assessment process, whether conducted by telephone or face-to-face, stressful and anxiety inducing.⁵⁰ It would therefore be helpful to understand if the pandemic has demonstrated that the system can function effectively without the need to assess (via telephone or face-to-face) the vast majority of claimants. The DWP has stated that as part of its integrated health assessment pilot it will be trialling ways to “triage more effectively so that only those people who need a face-to-face assessment will have to undergo one”. The Minister for Disabilities has also mentioned the possibility of shorter, more targeted assessments focused only on any missing information.⁵¹ We welcome

⁴⁸ DWP, ‘[Question for the Department for Work and Pensions UIN 7143](#)’ (25 May 2021).

⁴⁹ The Social Security (Claims and Payments, Employment and Support Allowance, Personal Independence Payment and Universal Credit) (Telephone and Video Assessment) (Amendment) Regulations 2021.

⁵⁰ Research by the Money and Mental Health Policy Institute found that 93 per cent of survey participants said that their mental health deteriorated in anticipation of a medical assessment and 85 per cent said that their mental health deteriorated afterwards (N. Bond, R. Braverman and K. Evans, [The Benefits Assault Course](#) (The Money and Mental Health Policy Institute, 2019) p. 26.

⁵¹ Rather than assessors having to go through the full set of questions as is currently the case. See Justin Tomlinson MP, ‘Work and Pensions Committee Oral evidence: Disability employment gap’ (see n. 17 above) Q 274.

this and would like to see both the outcomes for claimants and the impact on claimants' experience of the process evaluated, and the results of that evaluation published.

2.10 We have had mixed feedback from claimants and advisors about the use of telephone assessments. For some claimants, telephone assessments are less stressful than appearing face-to-face, for example, because it means there is no need to travel to the assessment. However, for others they pose greater challenges. We were told that they can be particularly difficult for claimants whose first language is not English and who therefore find it more difficult to express themselves over the phone. This is exacerbated by the current technological limitations which mean only three-people can be on the assessment call – it means that claimants have to choose between having an interpreter or their support worker/adviser on the call. We also heard concerns about informal observations made by assessors, for example about the claimant being alert and having good focus, when this cannot reliably be known over the phone. We have not had specific feedback on video assessments. We can see how they may be preferable to telephone assessments in certain circumstances as they allow for the use of visual cues. However, for others, the experience of talking on camera may cause considerable anxiety and be detrimental to their mental health. In addition, video assessments will not be possible for claimants who are digitally excluded either because they do not have access to the necessary devices and internet, they have a certain impairment, or they lack the required digital skills.⁵²

2.11 The DWP has told us that they are “closely monitoring all new assessment processes, including telephone assessments.” **We echo the SSAC’s recommendation that the DWP and DfC should produce – and publish – a comparative analysis of case outcomes for telephone, paper-based and video assessments, including consideration of the protected**

⁵² See further **Chapter 4** in respect of digital exclusion.

characteristics of claimants.⁵³ In addition, they should evaluate the impact that the different modes of assessment have on claimants.

- 2.12** We are pleased to hear that DWP will retain multi-channel assessments post-pandemic⁵⁴ and recommend that, subject to the findings of the above evaluation, **where a health and disability assessment is required, wherever possible, claimants should be offered the choice of having this conducted via telephone, video or face-to-face. These options should be given in simple language in any correspondence from the DWP.** We note that in any event telephone assessments should already be available as a reasonable adjustment for those who require them due to their disability. DWP guidance and training should make this clear.⁵⁵

Quality and transparency of assessments

Assessor expertise

- 2.13** WCA and PIP assessments use a generalist assessor model. This means that they pay no regard to the specialist expertise of individual assessors in assigning cases.⁵⁶ Assessments are therefore often carried out by assessors with no expertise in a claimant's condition. There are particular concerns that many assessors do not have the appropriate training or expertise in mental health and fluctuating conditions.⁵⁷ The DWP state that due to the functional rather than clinical nature of the assessments, clinical expertise is not required. They note that all HCPs receive training including on how to assess claimants with intellectual, cognitive and mental health conditions and have

⁵³ SSAC, *A review of the Covid-19 temporary measures* (see n.12 above) p.23.

⁵⁴ Justin Tomlinson MP, 'Work and Pensions Committee Oral evidence: Disability employment gap' (see n. 17 above) Q 274.

⁵⁵ See recommendation at para 2.103 below regarding training on reasonable adjustments.

⁵⁶ Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) para 39.

⁵⁷ Respondents to a survey conducted by Z2K stated that assessors failed to understand their condition because of a lack of relevant expertise. Z2K, [*#PeopleBeforeProcess – The state of disability benefit assessments and the urgent need for reform*](#) (May 2021); N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p. 28.

access to “Mental Function Champions” who have specific mental health expertise.

- 2.14 However, there are numerous reports of claimants with rare or mental health conditions not being properly assessed and we heard various examples of this during our evidence gathering.⁵⁸ One medically qualified tribunal member we spoke to was so concerned about the poor quality of PIP assessments they were seeing, that they started to collect data to try and understand what was happening. They analysed 50 consecutive PIP appeals between November 2019 and April 2020 and found that of the group of assessments classified as ‘substandard’⁵⁹ 60 per cent involved a primary diagnosis of a mental health condition. The President of Appeal in Northern Ireland has also raised concerns about the expertise of health care professionals, in particular in respect of claimants with mental health conditions.⁶⁰
- 2.15 The Working Party is also concerned that, despite HCPs receiving training in the assessment of fluctuating conditions, assessors do not have sufficient knowledge of these conditions to assess them properly – giving undue focus to claimants’ abilities on the particular day of the assessment.⁶¹
- 2.16 A number of disability charities and activists have called for assessments to be performed by professionals with expertise in the disabilities in question.⁶²

⁵⁸ C. Hodgson, [“‘Cruel and humiliating’: why fit-for-work tests are failing people with disabilities”](#) (*The Guardian*, 22 May 2017); B. Geiger, [A better WCA is possible](#) (Demos, 2018), p. 40. We were told by an advisor that during one telephone assessment the assessor admitted to “just googling” the claimant’s condition.

⁵⁹ Defined as a difference of greater than 12 points between the assessor’s points and the Tribunal’s points.

⁶⁰ J. Duffy, [Report by the President of Appeal Tribunals on the Standards of Decision Making by the Department for Communities 2017/18](#) (May 2021).

⁶¹ Z2K survey respondents said that the assessment processes fails to understand fluctuating conditions, reducing how a condition affects someone to a snapshot on a particular day. Z2K “#PeopleBeforeProcess” (see n. 57 above); N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p. 28.

⁶² Work and Pensions Committee, [Employment Support Allowance and Work Capability Assessments](#), First Report of Session 2014-15 (HC 302, 2014), para 61; B. Geiger, *A Better WCA is possible* (see n. 58 above).

Others have argued that the solution is to have groups of ‘experts’ with different types of expertise.⁶³

- 2.17 We note that a number of other countries adopt some form of multidisciplinary approach to health and disability assessments, including Denmark,⁶⁴ Sweden,⁶⁵ Australia,⁶⁶ Finland,⁶⁷ Iceland⁶⁸ and France.⁶⁹
- 2.18 We understand that it would not necessarily be practicable for all claimants to be assessed by someone with specialist knowledge of their particular condition. However, **given the ongoing issues with assessment of those with mental ill-health, neurodivergent, co-morbid, complex, fluctuating or rare conditions, we recommend that these claimants should be assessed by HCPs with specialist knowledge of their conditions.**⁷⁰ While we appreciate that individuals often have more than one condition, we consider that it should in most cases be possible to identify who the most appropriately qualified assessor would be from the questionnaire and other evidence provided. We welcome the Minister for Disabilities’ recent statement that the

⁶³ B. Geiger et al. (2018) [Assessing work disability for social security benefits: international models for the direct assessment of work capacity](#), *Disability and Rehabilitation*, 40:24, 2962-2970, p. 2966.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ J. Sengers et al. (2020) [Work capacity assessments and efforts to achieve a job match for claimants in a social security setting: an international inventory](#), *Disability and Rehabilitation*, p.3.

⁶⁷ *Ibid.*, p.4.

⁶⁸ *Ibid.*, p.5.

⁶⁹ L. Bertrand et al. (2014) [Situating disability. The recognition of “disabled workers” in France](#) 8(4) *Disability and Employability* 296-281, p.270

⁷⁰ We note that in other contexts there has been a move towards specialist assessment of those with mental health conditions. In the criminal context JUSTICE has previously recommended that liaison and diversion practitioners should screen every suspect who comes into custody to ensure accurate identification of vulnerability and provide appropriate mental health support where necessary. The number of cases seen by liaison and diversion services has been steadily increasing (JUSTICE, [Mental Health and Fair Trial Implementation Report](#) (2021) para 2.16.

introduction of telephone and video assessments, means that DWP may be able to explore utilising specialist assessors.⁷¹

Obtaining additional evidence

- 2.19** A generalist assessor model relies on assessors having access to sufficient expert evidence. This can include reports from medical professionals as well as people who see claimants every day, such as carers and family members. Successive reviews of PIP and ESA have emphasised the importance of ensuring a good supply of appropriate expert evidence, however progress in achieving this has been slow.⁷²
- 2.20** The PIP and WCA questionnaires both ask claimants to provide medical and other information along with their questionnaire. Examples of the type of information that may be helpful to provide include reports from GPs, hospital doctors, social workers, community psychiatric nurses, physiotherapists, as well as results of tests and scans and prescription lists. The questionnaires also ask individuals to provide details of their GP and other healthcare professionals, carers, friends or relatives who know about their health condition or disability, who may “sometimes” be contacted for further information.⁷³
- 2.21** Claimants often have difficulty finding the right evidence to support their claims. The questionnaires stress that claimants should only send copies of information that they already have and UC50 form states that claimants should “not ask or pay for new information”. However, claimants can struggle to find the right evidence amongst information they already have.⁷⁴ We were also told that claimants often end up paying for reports from the GP. There is still significant confusion about whose responsibility it is to obtain the

⁷¹ See Justin Tomlinson MP, ‘Work and Pensions Committee Oral evidence: Disability employment gap’ (see n. 17 above) Q 274.

⁷² For example, see the five independent reviews of the WCA (n. 13 above) and Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) para 33.

⁷³ UC50, ESA50, PIP2.

⁷⁴ N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p.23

additional evidence. In particular, those with mental health or neurodivergent conditions may fail to understand the need for additional evidence because of cognitive difficulties, or because they do not understand that the professionals named in the questionnaire will not automatically be contacted in the assessment processes. Nevertheless, additional evidence is particularly important for claimants with mental health conditions because they may have difficulties self-reporting the way their disability affects them.⁷⁵

2.22 The third Independent Review of the WCA recommended that “Decision Makers should actively consider the need to seek further documentary evidence in every claimant’s case. The final decision must be justified where this is not sought”.⁷⁶ This was ‘provisionally accepted’ by the DWP. However, the WCA guidance for assessors states the opposite: that the reason for requesting further medical evidence must be clearly justified and documented, whilst it is *not* mandatory to provide justification if further evidence is not sought.⁷⁷ The decision-maker guidance states “it should be remembered that the onus is on the claimant to provide evidence in support of their claim”.⁷⁸

2.23 The State has a positive legal obligation to make correct decisions and the burden of proof does not fall solely on the claimant to provide evidence; if the decision-maker/assessor does not have sufficient evidence to make an assessment or decision, they should request it. Further, claimants are expressly told not to provide medical evidence they do not already have. We acknowledge that in the past some of the assessment providers have struggled

⁷⁵ *Ibid.* In *MM & DM v SSWP* [2013] EWCA Civ 1565, the Court of Appeal upheld a decision of the Upper Tribunal that claimants with mental health conditions are at a substantial disadvantage by the ESA assessment process because of the policy not to seek further medical evidence save in certain relatively limited circumstances. First, because there was a greater risk that the decision-maker would not read the right decision because the information available from the claimant himself or herself would often be insufficient to indicate the true nature and extent of the illness from which they were suffering. Second, the Tribunal concluded that the process itself imposes a greater stress and anxiety on this group than others (para 35).

⁷⁶ Professor M. Harrington *An Independent of the Work Capability Assessment – year 3* (see n. 13 above), p.22.

⁷⁷ Centre for Health and Disability Assessments, [WCA Filework Guidelines](#) (2019) p.23.

⁷⁸ DWP, [ADM AI: Principles of decision making and evidence](#) (A1524, June 2021).

to obtain additional evidence, even when it has been requested. However, it is clearly possible to obtain it. Maximus told the Work and Pensions Select Committee it receives 82 per cent of requests back within 20 days. Further, technological advances and the digitisation of NHS records should make it increasingly easy for assessors and decision-makers to obtain medical evidence from healthcare providers.⁷⁹ The DWP told us that in 2019 it conducted a proof of concept to test the electronic sharing of data, where the claimant had consented to do so, and that it intends to revisit this work, although it is not a priority.

2.24 We also note that in respect of the new Scottish Adult Disability Payment, the burden of collecting information will be on Social Security Scotland.⁸⁰

2.25 In light of the above, we recommend that **the assessor and decision-maker guidance and training is updated to:**

- a) **Make clear that HCPs/decision-makers must request additional evidence where this information is reasonably required to make an assessment. This should explicitly recognise that evidence may not have been provided because claimants may not have copies of it – rather than because it is not important or does not exist.**
- b) **Explicitly state that HCPs and decision-makers must request further evidence when this is required as a reasonable adjustment for claimants with mental health conditions.**

In addition, the application forms and guidance should explicitly state that if claimants do not have copies of medical information easily

⁷⁹ For example, during the pandemic the NHS app has been subject to considerable development. It may be that learning and technology used in this context could also be used in the health and disability assessment context.

⁸⁰ Scottish Government, ‘[Delivery of disability assistance to start in 2020](#)’ (February 2019). However, it may be that the Scottish Government are moving towards more of a shared responsibility approach. In respect of the regulations for Child Disability Payment, the Cabinet Secretary for Social Security and Older People stated “our focus will be to help applicants to collect supporting information so that we can make robust and fair decisions”. However, she also stated in relation to the Social Security Information-sharing (Scotland) Regulations, that “the Scottish Government is committed to supporting individuals who apply for benefits by gathering that information on their behalf, they so choose”. ([Official Report of the Social Security Committee](#), (March 2021)).

available, this will be requested directly from their healthcare professionals by the assessment providers where this is required for the assessment.

- 2.26** Going forward we recommend that **the DWP and NHS continue to work together to enable sharing of medical information between them (with the appropriate claimant consent and data protection in place). Once this is possible claimants should no longer be required to provide any medical information. This means they will only need to provide reports, statements or diaries from carers or family members.** This will provide clarity as to who is responsible for providing evidence and significantly reduce the burden and concomitant detrimental effects on claimants.

Assessing evidence

- 2.27** The Second Independent Review of PIP found that assessors tended to privilege medical evidence over evidence provided by carers, support workers and family members.⁸¹ Advice providers that we spoke to confirmed that this is still often the case. This is an issue for several reasons. First, advice provided by carers, support workers and family members often gives a better insight into the functional capacity of claimants than medical evidence.⁸² Second, claimants may not access formal treatment, either because they choose to manage their condition themselves, because they struggle to obtain referrals for treatment, or because their treatment is limited to a certain number of sessions. Advisers highlighted this as a particular issue for claimants with mental health conditions.
- 2.28** Medical evidence and evidence from carers/family and friends is important in light of the generalist assessor model and to provide a check on self-reporting. However, the best source of information about a claimant's condition and how it impacts their ability to carry out activities, in many cases, is the claimant themselves. They are the ones living with their condition and who deal with

⁸¹ P. Gray, *The Second Independent Review of the Personal Independence Payment Assessment* (see n. 14 above) para 17.

⁸² Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) para 57.

the difficulties it poses on a daily basis.⁸³ Medical evidence can only ever provide indirect evidence as to the impact of someone's impairment on their daily life. This is borne out by the fact that the most common reason that PIP decisions are overturned on appeal is oral evidence from the claimant.⁸⁴ The new proposed process for Adult Disability Payment in Scotland also reflects this – the Scottish government propose that only one piece of formal evidence will be required to determine, on the balance of probabilities, that the individual's condition is consistent with the needs detailed on their application.⁸⁵

2.29 However, claimants feel that their own account of their condition is often not believed or taken seriously by assessors. This may be a particular issue when claimants have non-standard presentations of health conditions, which do not fit with the medical 'norm'. It is also a particular issue for individuals with fluctuating and mental health conditions. Assessors use informal observations as part of their evidence base for their assessment,⁸⁶ for example, how people walked into the room and how long they were able to sit for, their mood or demeanour during the assessment and their attire and grooming. However, such observations belie the realities of many physical and mental health conditions which are episodic.⁸⁷ It also underscores a lack of understanding about mental health conditions amongst assessors. For example, when assessors assume that an individual does not have mental health conditions because they smile during the assessment or do not "appear" to be stressed or

⁸³ As noted in paragraph 2.21 above, for some claimants with mental health issues this may not always be the case, as their condition may limit their ability to accurately explain how it affects them and their ability to carry out activities.

⁸⁴ Figures are for year 2019/20. This was the most common reason for a decision being overturned (34 per cent of cases), closely followed by the Tribunal reaching a different conclusion on substantially the same facts (32 per cent) (DWP, 'Response to Freedom of Information Request FOI2021/38176' (8 June 2021)).

⁸⁵ Rather than requiring formal supporting information to evidence each and every difficulty that the claimant reports experiencing (Scottish Government, [Consultation on Adult Disability Payment](#) (December 2020) para 16).

⁸⁶ DWP, [PIP Assessment guide part 1: the assessment process](#) (17 May 2021) para 1.6.31; Centre for Health and Disability Assessments, [Revised WCA Handbook](#) (October 2020) sections 2.7.2 and 3.1.11

⁸⁷ B. Geiger, *A Better WCA is Possible* (see n. 58 above), p.12.

anxious.⁸⁸ **If assessors intend to rely on informal observations, they should tell the claimants and give them an opportunity to explain why these may not necessarily be an accurate reflection of their condition.**⁸⁹

2.30 In order to address these evidential issues, we recommend that **assessment reports and decision letters should:**

- a) **Respond to all the evidence provided by the claimant or obtained by the HCP/decision-maker. This should include explaining why certain evidence is being given less weight or not being relied upon.**
- b) **Where a claimant's own account of their impairment is rejected, there should be a strong evidential basis for doing so which should be fully explained.**
- c) **Explicitly address conflicts between evidence.**

2.31 This will not only provide greater transparency for claimants, but it will also enhance the quality of decision making by requiring the HCP/decision-maker to turn their mind to all the evidence and give proper weight to the claimant's own account of their own condition and how it impacts their lives.

Inaccuracies in the assessment report

2.32 Currently claimants do not automatically receive a copy of the assessment report unless they appeal to the FTT (SCCS). A copy can be requested prior to appeal, but claimants do not often realise this.

2.33 We agree with Paul Gray (the Independent Reviewer of PIP assessments), the SSAC and the Work and Pensions Select committee that **a copy of the assessment report should automatically be provided to the claimant along with the decision.** This would improve transparency and make it clear to claimants the basis upon which their entitlement was decided. It would also

⁸⁸ Work and Pensions Committee, *PIP and ESA assessments: claimant experiences* (see n. 11 above) para 16; Z2K, *#PeopleBeforeProcess* (see n. 57 above) p. 3.

⁸⁹ This echoes Ben Geiger's recommendation that claimants should be able to see and comment on the first part of the assessment report, including any informal observations (B. Geiger, *A Better WCA is Possible* (see n. 58 above), p.42).

help claimants decide whether to challenge the decision and what further evidence would be required to do so.⁹⁰

2.34 The DWP has previously rejected this suggestion on the basis that it would be too challenging and costly.⁹¹ However, we are not convinced by this argument. First, as Paul Gray has pointed out, the costs of not providing it—in terms of claimant trust and transparency—are “very considerable”.⁹² Second, the DWP has just set up an advanced and complex digital benefits system in Universal Credit. It seems rather one-sided that the Department’s investment in technology does not also allow it to carry out what appear to be relatively simple automated tasks that would benefit claimants (this inequality in automation and digitisation is discussed further at paragraph 2.84 below).

2.35 When claimants do see their assessment report, they frequently find that it does not reflect what they told the assessor during the assessment. Reports have been found to contain fundamental factual errors, such as referring to the wrong claimant, the results of physical examination that never took place,⁹³ or stating things that happened during the assessment that did not happen. Conversely things that claimants mentioned during the assessment are often

⁹⁰ SSAC, *Decision making and mandatory reconsideration* (see n. 12 above) p.53-54; P. Gray, *The Second Independent Review of the Personal Independence Payment Assessment* (see n. 14 above) para 21; Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) para 55.

⁹¹ DWP, *Government’s response to the Second Independent Review of the Personal Independence Payment* (Cm 9540, 2017) pp.12–13.

⁹² P. Gray, ‘[Work and Pensions Committee Oral evidence: PIP and ESA assessments, HC 340](#)’ (2017), Q349

⁹³ Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) para 40; B. Geiger, *A Better WCA is possible* (see n. 58 above) p. 38; H. Kemp-Welch, ‘[The Right to Record](#)’ (2020); The MS Society asked people who saw the full report of their assessment whether they think it gave an accurate reflection of how their MS affects them. 61% answered with a resounding ‘no’ and 25% said it did, to some extent, meaning the report still had some inaccuracies or omissions. Only 12% said the report definitely gave an accurate reflection of how their MS affects them: R. Erez, [PIP fails: how the PIP process betrays people with MS](#) (MS Society, 2019). 66 per cent of respondents to Z2K’s ‘#PeopleBeforeProcess’ felt that the assessment report did not reflect what they had told the assessor in the assessment (see n. 57 above).

not included in the report.⁹⁴ Such fundamental errors and omissions result in individuals being denied benefits they are entitled to and means they are faced with a long fight to remedy the errors.

2.36 A solution to this issue that has been consistently proposed is to audio record all assessments so that there is an accurate record of what was said. This would both allow claimants to easily prove inaccuracies as well as encouraging assessors to be more accurate in their report. As a result, it would go some way to improving trust and confidence in the system. Crucially, it would also reduce the number of appeals. Claimants can request that their assessment be recorded, however this request must be made to the assessment provider in advance of the assessment. The CHDA states that it will accommodate requests where possible and provide equipment to record.⁹⁵ For PIP assessments, claimants must provide their own recording equipment. This must also meet certain specifications and more easily available recording equipment, including PCs, tablets, smart phones, MP3 players and smart watches, are prohibited.⁹⁶ We welcome the DWP's recent commitment to remove the requirement for claimants to bring their own devices in order for the assessment to be recorded when face-to-face assessments return.⁹⁷ We also understand that Atos has started to record telephone PIP assessments. However, there have been reports of assessments being cancelled because assessors did not wish to be recorded.⁹⁸

2.37 We are concerned that claimants may not be fully aware of the utility of a recording until they have undergone the assessment and seen their assessment report. Claimants may also not realise that they need to request a recording or request it in sufficient time. Therefore, the Working Party's view is that **all health and disability assessments should be audio recorded on an 'opt-out' basis. Decision letters should make clear that a copy of the recording**

⁹⁴ Work and Pensions Committee, *PIP and ESA assessments: claimant experiences* (see n 11 above) para 10.

⁹⁵ Health Assessment Advisory Service, '[How do I request an audio recorded assessment?](#)'

⁹⁶ DWP, *PIP Assessment Guide Part 1* (see n 86 above) p. 31.

⁹⁷ R. Watling, '[Letter to Ms Kemp-Welch TO2021/05481](#)' (11 February 2021).

⁹⁸ Benefits and Work, '[PIP assessments now being audio recorded](#)' (04 October 2020).

can be requested.⁹⁹ Of course, the DWP and assessment providers would need to update their Privacy Policy and ensure that they comply with other data protection requirements.¹⁰⁰ In that regard, we note that the DWP already collects and stores large volumes of sensitive personal data. Audio recording would simply collect the same information in a different format.

2.38 The Working Party discussed whether the recording should be provided automatically with the decision. However, on balance we decided against this. In many cases where the claimant has received the entitlement applied for or does not dispute the accuracy of the assessment it will not be necessary. Working Party members were also concerned about the potentially detrimental effect that listening back to a recording, possibly alone, may have on some claimants with mental health conditions.

2.39 **If an ‘opt-out’ basis is not possible, at a minimum the WCA and PIP forms should be updated so that they include a tick-box for claimants to indicate whether they want their assessment to be recorded, rather than having to make a request separately to the assessment provider.**

2.40 We also understand that trials of video-recording of assessments have begun. We were told that claimants often feel uncomfortable being video-recorded,

⁹⁹ Consideration should also be given on whether it would be possible to make transcriptions of the assessment available if this is preferred to an audio recording. There is now software available that provides automatic transcription and is designed to differentiate between different speakers. It could be configured specifically for assessments and ‘trained’ to recognise medical terms.

¹⁰⁰ Under the UK General Data Protection Regulation, data controllers must have a lawful basis for collecting and using personal data. According to the DWP [Privacy Policy](#), the lawful bases currently relied upon to collect and process personal data related to health and disability assessments are that it is required to by law (because it is the function of DWP to do so) or because it is in the public interest. For special categories of data (more sensitive categories of personal data which includes health data), which requires an additional lawful basis to process, most of DWP’s processing is “necessary for the purposes of ... employment, social security and social protection”. The use of automatic audio recording of health and disabilities would likely be covered by the same lawful bases. For special categories of data the DWP could also rely on processing being necessary for the establishment, exercise or defence of legal claims. Especially given that the quality and accuracy of assessments is often poor and therefore likely to lead to disputes/ legal claims (these include administrative out of court proceedings (see Recital 52, GDPR), and include prospective legal proceedings (see Paragraph 33(a), Part 3, Schedule 1 of the Data Protection Act 2018)).

as opposed to audio-recorded, and we would therefore not support an “opt-out” system for video recording.

Role of DWP decision-makers

- 2.41 Following assessment by the HCPs it still remains the responsibility of the DWP/DfC’s decision-makers to take the final decision on the entitlement. The DWP told us that decision-makers are encouraged to review and consider all the available evidence, proactively contact claimants to gather additional evidence and interrogate departmental IT systems to ensure all the claimant’s circumstances have been taken into account. In addition, we were told that cases can also be referred back to the assessment provider for advice or rework where a decision-maker is unsatisfied with the quality of the report.
- 2.42 However, benefits advisors we spoke to felt that there was an overreliance on the assessment report, regardless of its quality. This may be partly because decision-makers regard the HCPs as the ‘experts’ given their qualifications and the fact that they have directly observed the claimant.¹⁰¹ We also note that a third of PIP decisions that are overturned on appeal are overturned because the Tribunal reached a different conclusion on substantially the same facts. This indicates that evidence is not being properly interrogated at the initial decision-making stage.¹⁰²
- 2.43 Given the issues with the quality and accuracy of the assessments outlined in this Report, in addition to ensuring that the decision letters address the things set out at paragraph 2.29 above, **decision-makers should address contradictions between the HCP report and other evidence and not merely repeat extracts or summaries of the assessment report. They should express their own view, based on their own reasoning.**

¹⁰¹ This was flagged back in 2017 in the Second Independent Review of PIP – it continues to appear to be the case (P. Gray, *The Second Independent Review of the Personal Independence Payment Assessment* (see n. 14 above) para 19).

¹⁰² In 2019/20 in 32 per cent of successful PIP appeals, the primary reason given was that the Tribunal reached a different conclusion on substantially the same facts. (DWP, ‘Response to Freedom of Information Request FOI2021_38176’ (8 June 2021)).

Outsourcing of assessments

- 2.44 As explained above, health and disability assessments are outsourced to private companies. DWP told us that it views this as “the most effective way to obtain the best quality services to individuals, reduce costs to the department and deliver improvement in value for money”. It said that the “main driver [of outsourcing medical assessments] is the need to develop and maintain the quality of services delivered to the public, while simultaneously ensuring the best value of public funds”. However, the Working Party’s view is that these objectives are not being met. As outlined above, there continue to be numerous issues with the quality of assessments and repeated contract extensions have resulted in limited competition. Further, as set out below the outsourced providers continually fail to meet the quality targets within their contracts.
- 2.45 The contracts with the assessment providers specify certain standards that reports are required to meet and the DWP conducts audits on a random sample of reports of each contractor every month to see if they are meeting these standards.

Audit grades and targets

WCA the reports are graded either:

- **A** - key requirements are satisfied to the extent that the product fully conforms to agreed standards;
- **B** – key requirements are adequately satisfied. However, the auditor can specify elements that would quantifiably enhance the value of the product; or
- **C** – key requirements are not satisfied.

The audit target specified in the contract is 75 per cent of reports at grade A and 96 per cent of reports to be grades A or B.¹⁰³

¹⁰³ In the WP Select Committee report the WCA target is stated as 70 per cent of reports at grade A and 95 per cent at either A or B grade. However, those targets increased in year 3 of the contract to 75 per

The PIP reports are graded as follows:

- A - acceptable
- AF – acceptable: HP learning required
- AA – acceptable: report amendment required
- U – unacceptable

The audit target for the PIP contracts is three per cent or less ‘unacceptable’ reports and a minimum of 85% of reports ‘acceptable’ or ‘acceptable: HP learning required’.¹⁰⁴

2.46 Data submitted to the Work and Pensions Select committee showed that neither PIP contractor nor Maximus had met its targets in any rolling three-month period up to the end of 2017. More recent independent audit data show that this remained the case from 2017 through to the end of 2019.¹⁰⁵ This is despite the very low bar required to be met for reports to be considered ‘acceptable’. PIP reports will still be considered ‘acceptable’ where they contain “clinically improbable advice such that the choice of descriptor is highly unlikely”, justification which “fails to support the advice or the descriptor choice” or where important evidence has not been sought.¹⁰⁶

cent grade A and 96 per cent grade A and B. Since the contract available is the original contract which commenced in 2015, year 3 would be 2018. We assume that the contract extensions continued the year 3 targets DWP and Maximus Health and Human Services, [Health and Disability Assessment Services Contract](#), Schedule 2.2 Performance Levels, Annex 1 – Service Levels and Service Credits, Table 2 – Service Levels that attract Service Credits.

¹⁰⁴ DWP, [PIP Assessment Guide part 3: Health Professional Performance](#) (17 May 2021) para 3.4.9.

¹⁰⁵ DWP, [‘Response to Freedom of Information Request FOI2020/16390’](#) (21 September 2020).

¹⁰⁶ DWP, *PIP Assessment Guide Part 3* (see n. 104 above), para 3.5.5. We were not able to find the exact requirements for WCA reports. In written evidence to the Work and Pensions Select Committee’s inquiry into PIP and ESA Assessments Maximus stated that “[k]ey requirements include ensuring assessment reports are legible and in plain English; consistent, appropriate, and the advice provided is fully justified and medically logical.” (Maximus, [‘Written evidence from MAXIMUS CHDA’](#) (PEA0446) (2017)).

- 2.47 Nevertheless, the DWP has spent vast sums of money on the assessment provider contracts and they have been repeatedly extended. Up to March 2017, Maximus had been paid £291 million to carry out ESA assessments. Atos and Capita, had received a combined total of £678 million.¹⁰⁷ Maximus commenced its three-year contract in 2015 which has subsequently been extended three times.¹⁰⁸ The PIP contracts began in 2012, with service delivery commencing in 2013 and were also originally due to finish in 2018. They too have been extended three times.¹⁰⁹ The latest extension came in July last year, when it was announced that the contracts of all three providers of WCA and PIP assessments would be extended for up to two years as the pandemic meant that it would not be possible to launch a procurement process for new contracts from August 2021 as originally intended.¹¹⁰
- 2.48 During the Scottish Government’s consultations to inform the design of the devolved benefits system many individuals raised concerns about the compatibility of the profit motives of private companies with a rights-based social security system.¹¹¹ As a result, the Social Security (Scotland) Act 2018 prohibits assessments being carried out by individuals employed by private companies.¹¹² We agree.
- 2.49 Outsourcing reduces transparency. Private companies are not required to be transparent in the same way as public bodies. They are not subject to the Freedom of Information Act 2000 (FOIA) and the DWP can rely on the ‘commercial interests’ exemptions to avoid disclosing information about them

¹⁰⁷ Work and Pensions Committee, *PIP and ESA assessments: Seventh Report* (see n. 11 above) para 77.

¹⁰⁸ To early 2020 and then again to July 2021. *Ibid*, para 75.

¹⁰⁹ Gill Plimer, [‘Capita set to win contract extension running disability tests’](#) (*Financial Times*, 5 June 2018).

¹¹⁰ DWP [‘Health Transformation Programme update UIN HCWS353’](#) (9 July 2020).

¹¹¹ Scottish Parliament, [‘Meeting of the Parliament 7 September 2017’](#) (7 September 2017).

¹¹² Social Security (Scotland) Act, s.12.

and the contract contents.¹¹³ As noted by the Information Commissioner, effective access to information is key to ensuring that public services are accountable, however there is currently a ‘transparency gap’ in relation to outsourced public services. As a result, the Information Commissioner has recommended that contractors should be designated as public authorities for the purposes of FOIA in relation to their provision of public services.¹¹⁴

2.50 Further, the outsourcing of assessments means that claimants cannot complain directly to the DWP about the assessment process but must complain to the assessment provider, whereas if they want to complain about the decision, this must be raised with the DWP. We were told that this causes confusion for claimants who are seeking redress. Once claimants have exhausted the assessment provider’s complaints process, they can make a complaint about the assessment process to the Independent Case Examiner (ICE).¹¹⁵ However, the remit and powers of the ICE are limited, and it takes on average a year and half for cases to be resolved.¹¹⁶

2.51 We therefore recommend that **health and disability assessments should no longer be outsourced to private companies and should be conducted by HCPs employed directly by the DWP together with clear channels of accountability and grievance procedures.** This will be a significant step in restoring trust in the system and improving the quality of health and disability assessments, especially if combined with the introduction of an independent regulator/adjudicator as outlined in paragraph 2.100 below. We note that as part of the DWP’s health transformation programme pilot, health and disability assessments will be carried out by the DWP rather than an

¹¹³ Information is exempt from disclosure under the Freedom of Information Act if it constitutes a trade secret, or if its disclosure is, or would likely, prejudice the commercial interests of any person (FOIA, s.43).

¹¹⁴ Information Commissioner’s Office [*Outsourcing Oversight? The case for reforming access to information law*](#) (2019). FOIA, s.5 provides for the Secretary of State or Minister for the Cabinet Office to designate as a public authority for the purposes of FOIA any person either exercising functions of a public nature or providing under a contract with a public authority any service whose provision is a function of that authority.

¹¹⁵ DWP, [*Complaints procedure*](#).

¹¹⁶ DWP, [*‘Question for Department of Work and Pensions UIN 1734’*](#) (9 January 2020).

outsourced provider, although the intention is for assessments to continue to be carried out by contracted companies outside of the pilot.¹¹⁷ This pilot could be a welcome opportunity to assess the desirability and feasibility of bringing health and disability assessments back ‘in-house’ and to learn lessons as to the best way to carry out ‘in-house’ assessments.

Sanctions

- 2.52** The aim of conditionality and sanctions is to motivate claimants to engage with employment support and move into work.¹¹⁸ The Welfare Reform Act 2012 is the foundation of today’s conditionality and sanctions regime. It established the rules for UC and amended those for legacy benefits so that they were broadly aligned. In doing so, it increased the length and severity of sanctions and made them applicable to more claimants than ever before.¹¹⁹ By their nature sanctions threaten some level of hardship. At the highest level, UC claimants can be sanctioned for 13 weeks for a first higher-level sanction and 26 weeks for any further higher-level sanction in any 364-day period.¹²⁰ Sanctions can have severe impacts not only on the financial well-being of claimants but also on people’s mental and physical health.¹²¹
- 2.53** Conditionality and sanctions can apply to claimants of UC, ESA, Job Seeker’s Allowance and Income Support. The level and intensity of conditionality depends on the claimant’s circumstances. In UC, claimants are placed in one of four groups which define the level of support they can expect and what is

¹¹⁷ DWP, [‘Announcement on Health and Disability Assessment Services UIN HCWS138’](#) (2 March 2020).

¹¹⁸ DWP, [‘Written Evidence from the Department of Work and Pensions ANC0083’](#) (May 2018).

¹¹⁹ National Audit Office, [Benefit Sanctions](#) (HC 628, 2016).

¹²⁰ The maximum length of a fixed-term sanction was reduced in 2019 from three years to 26 weeks.

¹²¹ Welfare Conditionality, [Final findings report: Welfare Conditionality Project](#) (2018). In respect of the impact of sanction on mental health see P. Dwyer et al, [‘Work, welfare, and wellbeing: The impacts of welfare conditionality on people with mental health impairments in the UK’](#) *Soc Policy Admin.* 2020; 54: 311-326; E. Williams [‘Punitive welfare reform and claimant mental health: The impact of benefit sanctions on anxiety and depression’](#) *Soc Policy Admin.* 2021; 55: 157-172.

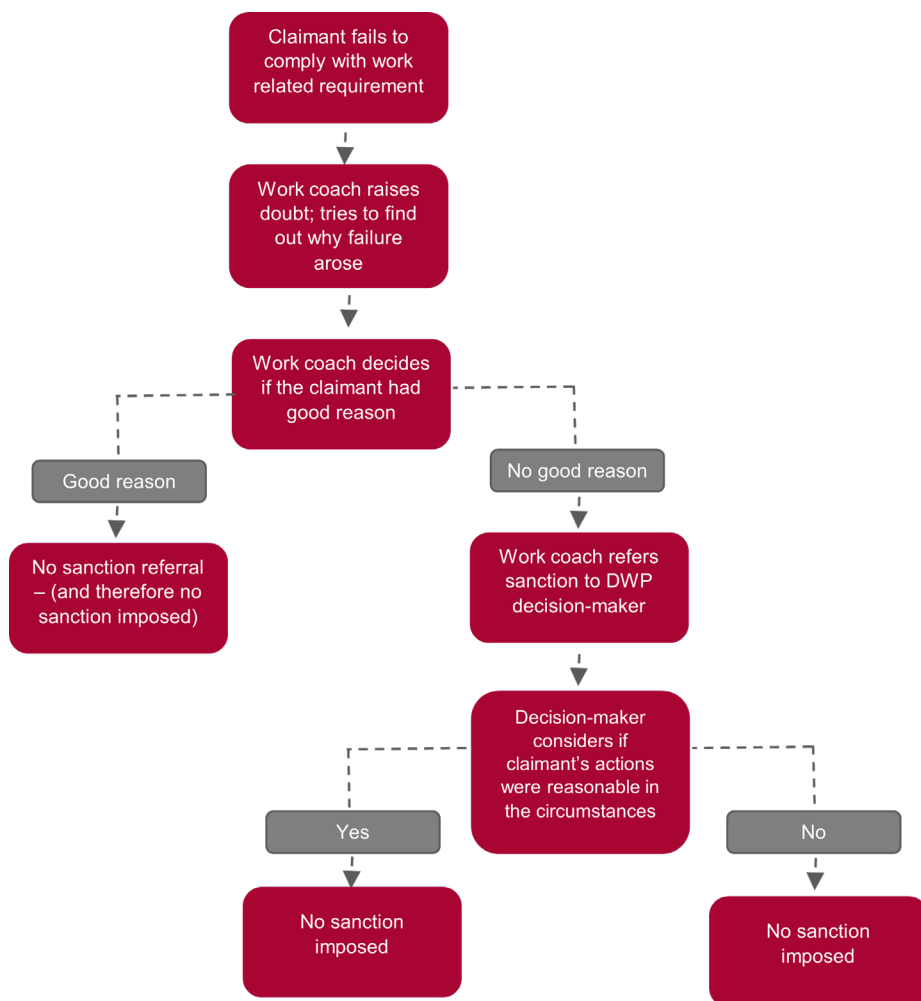
expected of them in terms of preparing for or finding work.¹²² For ESA, claimants who are placed in the Work Related Activity Group are expected to do things to prepare for work in the future.¹²³

- 2.54 Claimants agree work-related requirements with their work coach. These are recorded in the claimant commitment. The claimant commitment is a core part of the conditionality regime. It is meant to define a set of individually tailored requirements that must be met in return for payments.¹²⁴ If a claimant does not meet the requirements set out in their claimant commitment they can be sanctioned.

¹²² The groups are as follows: 1. **All work-related requirements.** This consists of two 'labour market regimes': (a) intensive work search regime for those on very low earnings, claimants with a health condition who have not completed a WCA and some self-employed claimants; and (b) light touch regime claimants on low earning between two thresholds. 2. **Work preparation** - claimants who are expected to work in the future but are currently not expected to look for work. Including those assessed as limited capability for work following a WCA. 3. **Work focused interview** - claimants who are expected to work in the future but not expected to look for work yet as they are currently lead carers. 4. **No work-related requirements.** This consists of two different types of claimants (a) those earning enough; and (b) those not expected to undertake work-related activity, including those assessed as having LCWRA following a WCA and those over state pensions age.

¹²³ Those in the Support Group cannot be sanctioned.

¹²⁴ DWP, 'Written Evidence ANC0083' (see n. 118 above).



2.55 In light of the pandemic the DWP and DfC suspended all mandatory work search and work availability requirements, meaning that there were no new sanctions imposed from March until 1 July 2020. From 1 July the DWP began to reintroduce new and updated claimant commitments for UC. Once an updated claimant commitment has been accepted, claimants can be sanctioned.¹²⁵ From April 2021 claimants can also be sanctioned if they fail to

¹²⁵ SSAC, *A review of the Covid-19 temporary measures* (see n.12 above) p.13.

attend their appointment to update their claimant commitment. However, up to January 2021, when the latest DWP statistics are available, there have been no new Job Seekers Allowance, ESA or Income Support sanctions. This is likely due to the migration of individuals to UC. There have also been very low numbers of UC sanctions since the suspension ended, although they are beginning to rise again (albeit remaining at historically low levels).¹²⁶ This is likely in part due to the time it is taking to update the claimant commitments and in part because of new procedures the DWP has put in place for making a sanction decision (which are discussed further below).¹²⁷

2.56 The sanctions regime requires work coaches and decision-makers to exercise their discretion and judgment on numerous occasions:

- a) Work coaches decide what requirements to put in the claimant commitment (which are then agreed and accepted by the claimant).
- b) Work coaches decide whether to apply easements – these reduce or switch off a claimant’s conditionality for a period of time. Whilst some easements are legal requirements, others are discretionary where it is unreasonable to expect a claimant to complete their requirements for a period of time.
- c) Work coaches consider whether a claimant has ‘good reason’ for failure to comply with the claimant commitment and decide whether to refer them to the decision-maker for a sanction decision.
- d) Decision-makers decide whether the claimant’s actions were reasonable and therefore whether to impose a sanction.

2.57 Although work coaches and decision-makers are provided with training and guidance which they are meant to follow when they make their decision, as we set out below, it appears that this discretion and judgment is not being applied consistently and is not always being applied fairly. However, currently the DWP does not collect data on the application of discretion in setting claimant commitments and applying sanctions. This means that DWP cannot fully understand how sanctions and easements are being used and ensure discretion is being applied fairly. Further, in order to fulfil its public

¹²⁶ DWP, ‘[Benefit sanctions statistics to January 2021 \(experimental\)](#)’ (May 2021).

¹²⁷ D. Webster, [Benefits Sanctions Statistics Briefing February 2021](#) (March 2021).

sector equality duty, the DWP must understand the impact their policies and practices have on people with protected characteristics. This is very difficult to do without collecting data.¹²⁸ The lack of systematic data collection also means that they cannot properly evaluate if changes they have already made to the sanctions process, or those that we suggest below, are effective. We therefore join the National Audit Office (NAO),¹²⁹ SSAC¹³⁰ and Work and Pensions Select Committee¹³¹ in calling for the **DWP to improve data collection and evaluation. Specifically, it should collect data on:**

- a) Protected characteristics of all claimants, in particular UC claimants, and claimants who are sanctioned.¹³² Data on disability should be disaggregated by impairment type. The DWP should explore ways to collect this data, including by learning from practice across other Government departments and through communicating the value and purpose of such data to claimants.**
- b) Setting of claimant commitments and the use of easements.**
- c) What happens following application of a sanction e.g., do people move off benefits entirely, are they sanctioned again, do they move into work?**

¹²⁸ Equality Act 2010, s.149 requires public authorities in the exercise of their public functions, to have due regard to the need to (i) eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act; (ii) advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and (iii) foster good relations between people who share a relevant protected characteristic and those who do not share it. Equality and Human Rights Commission (EHRC), [*Equality Information and the Equality Duty: A Guide for Public Authorities*](#) (2014).

¹²⁹ National Audit Office, [*Supporting disabled people to work*](#) (HC 1991, 2019) para 25; National Audit Office, [*Universal Credit: getting to first payment*](#) (HC 376, 2020) para 26.

¹³⁰ SSAC, *The effectiveness of the claimant commitment in Universal Credit* (see n. 12 above) p. 34 (Recommendation 4).

¹³¹ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) para 52.

¹³² The DWP does collect some data on protected characteristics of certain claimants. For ESA there are data available on claimants' age, gender, ethnicity and medical condition, there are also data on the age, gender, ethnicity and whether someone has a disability of ESA, JSA and IS claimants who are sanctioned (as well as the medical condition of ESA claimants who are sanctioned). However, there is very little information available on the protected characteristics UC claimants– only their age and gender – for both those on UC and those who are sanction. See [Stat-Explore](#)

2.58 We are pleased to hear that the DWP is working on ways to aggregate data on claimant vulnerabilities and support needs,¹³³ and has assured the SSAC that action on its 2019 recommendation to prioritise data collection and analysis on the application of discretion (and easements) is being undertaken.¹³⁴

Claimant commitments and easements

2.59 As sanctions are imposed for failing to comply with the claimant commitment, without good reason, the setting of the claimant commitment is an integral part of the sanctions regime. The claimant commitment is meant to be tailored to individuals' circumstances. Under the Equality Act 2010, work coaches are also under an obligation to make reasonable adjustments for those with disabilities.¹³⁵ However, the DWP's UC Full Service Survey found that only 54 per cent of UC claimants believed that their claimant commitment took their personal circumstances into account and only 63 per cent felt it was achievable.¹³⁶ This is echoed by the SSAC which found that some coaches are not applying discretion fairly and systematically, leading to commitments that are not truly tailored to a claimant's needs and circumstances. These findings are underlined by the Work and Pensions Select Committee which has found that claimant commitments result in unachievable commitments, in particular for vulnerable groups with complex circumstances, such as those who are homeless, single parents and suffering from health conditions.¹³⁷ This also indicates that work coaches are not always complying with their positive duties under the Equality Act to make reasonable adjustments for those with disabilities.¹³⁸ Further, under UC, receipt of first payment is conditional upon

¹³³ P. Schofield, '[Work and Pensions Committee Oral evidence: DWP's response to the coronavirus outbreak, HC 178](#)' (February 2021), Q430.

¹³⁴ SSAC, *A review of the Covid-19 temporary measures* (see n.12 above) p.15.

¹³⁵ The Equality Act 2010 does not apply in Northern Ireland, however, the duty to make reasonable adjustments exists under the Disability Discrimination Act 1995.

¹³⁶ Government Social Research and the DWP, *Universal Credit Full Service Survey* (see n. 8 above) p.40.

¹³⁷ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) pp. 43-44.

¹³⁸ This is echoed by the NAO which found that work coaches lack confidence applying processes flexibly and making reasonable adjustments NAO, *Supporting disabled people to work* (see n. 129 above) p.63.

accepting the claimant commitment. We were told that claimants often feel pressured into accepting it as a result, whether or not they feel the requirements are manageable in their circumstances.¹³⁹

2.60 The setting of accurate and realistic claimant commitments relies on work coaches making a judgment based on detailed knowledge of claimants' circumstances. They must therefore either rely on claimants disclosing relevant information or must ask the right questions to illicit it. Whilst the DWP announced in July 2020 that it was recruiting 13,500 new work coaches¹⁴⁰ as the SSAC has pointed out, this increase is not nearly as large as the increase in numbers of UC claimants. As a result of Covid-19, the DWP has also stated that the initial claimant interview with a work coach to agree the claimant commitment will be reduced from 50 to 30 minutes.¹⁴¹ We are concerned that reductions in the time available for the initial interview will unduly limit the already inadequate or poorly utilised amount of time work coaches have to understand an individual's particular circumstances and tailor claimant commitments accordingly.

2.61 Work coaches can use easements to reduce or switch off a claimant's conditionality for a period of time if their circumstances mean it would be unrealistic for them to comply. Some easements are a legal requirement for example, when someone is a victim of domestic abuse¹⁴² and others are at a work coach's discretion, for example when someone is experiencing a domestic emergency or in response to situations arising due to the pandemic.¹⁴³ There is evidence suggesting that these are used insufficiently and inconsistently.¹⁴⁴ Claimants do not always share relevant information, either because they don't feel comfortable doing so or aren't aware of the

¹³⁹ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) para 90.

¹⁴⁰ DWP and T. Coffey, '[It's key for job centres to help people back to their feet](#)' (7 July 2020).

¹⁴¹ SSAC, *A review of the Covid-19 temporary measures* (see n.12 above) p.16.

¹⁴² 13 weeks only UC Regs, reg 98(1)(a); 2 reg 98(1)(b).

¹⁴³ Universal Credit Regulations 2013, regs 95- 99.

¹⁴⁴ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) para 92; Welfare Conditionality, *Final findings report: Welfare Conditionality Project* (see n. 121 above) p.24.

easements they may be entitled to.¹⁴⁵ Work coaches should therefore ensure that they ask the relevant questions to identify whether an easement may be applicable. Evidence suggests that they are not doing this, partly because they do not know how someone's requirements might need to be adjusted in response.¹⁴⁶

2.62 In *MM & DM v DWP*,¹⁴⁷ the Court of Appeal upheld a finding of the Upper Tribunal that the ESA application process substantially disadvantaged claimants with mental health conditions. The Upper Tribunal had found that there was a risk that information provided by the claimant may not indicate the true nature and extent of their mental health condition. This is because people who suffer from mental health conditions may be unable to describe properly its effects or may lack insight into their condition. They may also be less willing to self-report because of shame or fear of discrimination. It also found that the process of applying for benefits causes greater stress and anxiety to this group than others.¹⁴⁸ The same reasoning also applies to the process for setting claimant commitments and applying easements. This is why input from specialists is crucial. However, we were told by consultees that work coaches often don't appear to have sufficient knowledge of mental health conditions and how they impact someone's ability to work. This is likely to be an even greater issue given the detrimental impact that the pandemic has had on people's mental health. We therefore welcome the DWP's announcement of an additional 315 Disability Employment Advisers in jobcentres across the UK.¹⁴⁹

2.63 To help ensure that claimant commitments are properly tailored to individual claimants, reasonable adjustments are made where required and easements are applied where appropriate, we recommend that:

¹⁴⁵ N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p.31.

¹⁴⁶ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) para 93.

¹⁴⁷ [2013] EWCA Civ 1565.

¹⁴⁸ *Ibid*, paras 31 and 59 to 69.

¹⁴⁹ DWP and J. Tomlinson, '[Government unveils new support for disabled jobseekers](#)' (7 April 2021).

- a) **Initial interview times for individuals with complex needs, neuro-diverse conditions, fluctuating conditions, mental health conditions and/or those who need an interpreter should be lengthened to ensure there is sufficient time for work coaches to properly understand an individual's circumstances, tailor their claimant commitment accordingly and ensure that it is understood by the claimant.**
- b) **Work coaches should have a standard set of topics to cover with claimants to help elicit information required and set appropriate and tailored claimant commitments (in addition to any other questions which are appropriate). Where appropriate, work coaches should seek specialist advice, from a disability employment advisor where a claimant indicates they have a health condition or disability that affects their ability to work, and/or from appropriate external specialist organisations. However, there should not be any delay to receiving the first payment due to time that might be spent waiting for specialist advice.**
- c) **The mandatory easements should be expanded, for example to include circumstances relating to homelessness and temporary childcare, accompanied by guidance on their application. The ability to apply a discretionary easement should remain for any other circumstances not covered by the specific regulations.**

In addition, the training regarding reasonable adjustments that we recommend at paragraph 2.103 below should better enable work coaches to identify and implement the reasonable adjustments that they are required to make.

2.64 We recognise that there is a potential conflict between ensuring fairness and consistency through stricter rules on the one hand and having greater flexibility to take into account individual circumstances on the other. However, given the evidence that exists, work coaches do not appear to have sufficient expertise and/or training to apply easements and tailor claimant commitments properly and consistently. We therefore prefer to support their decision-making by increasing the rules or structure within which they operate. We suggest that discretion can be afforded by allowing work coaches to ask any additional appropriate questions and retaining their discretion to apply easements in circumstances that fall outside of the mandatory easements.

Sanction decisions

- 2.65 Consultees we spoke to were concerned that sanctions decisions are not being applied fairly. They told us that claimants are not being provided with sufficient opportunity to explain their reasons for non-compliance, or worse, that sanctions are being imposed despite there being a good reason for non-compliance. For example, letters informing claimants of appointments not being received prior to the date of the appointment,¹⁵⁰ missing online instructions or appointments due to an inability to access the online journal,¹⁵¹ health reasons, including hospital visits.¹⁵²
- 2.66 The latest data on sanctions decisions which are available show that between August 2015 and January 2019, 82 per cent of UC live service sanctions decisions that were appealed were overturned.¹⁵³ Even where sanctions decisions are subsequently reversed, claimants will have already had their benefit withdrawn and already suffered the often severe adverse consequences that result.¹⁵⁴ In addition, given the barriers to mandatory reconsideration and claimant attrition through the two stage appeals process outlined in **Chapter 3** below, it is likely that there are additional incorrect sanctions decisions not being appealed.

¹⁵⁰ G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) p.32.

¹⁵¹ See further **Chapter 4** below regarding digital by default system.

¹⁵² See also Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) p.47 at Box 5, ‘Luke’s Story’ – Luke was sanctioned for failure to attend a work-focused interview despite providing evidence he had been hospitalised three days before his appointment due to multiple seizures.

¹⁵³ DWP, ‘[Data tables: benefit sanctions statistics to January 2019](#)’ (27 February 2020) table 3_6. UC Live Service was the original UC service that was built. It has subsequently been replaced with the Full Service and claimants have been now transferred from the Live Service to the Full Service.

¹⁵⁴ Although a successful challenge should result in a refund, this can take weeks or months, by which time the adverse impact of the sanctions decision has already been felt. Around half of those who interviewed for a report on destitution in the UK who had received a benefit sanction linked its application to being unable to afford basic essentials (S. Fitzpatrick et al, *Destitution in the UK* (Joseph Rowntree Foundation (2016)). Sanctions and delays become more difficult to manage when benefit income is too low to enable claimants to protect against future income shocks. For a single person who is out-of-work, social security only provides for a third of income needs and barely scrapes over the Joseph Rowntree Foundation destitution threshold (G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) p. 39).

2.67 In 2018 the Work and Pensions Select Committee recommended that the DWP introduce regulations on what constitutes ‘good reason’ for non-compliance with the claimant commitment. We agree with this recommendation. The DWP’s response to this recommendation was that it was unnecessary as there is detailed guidance for decision-makers on what constitutes good reason. Further, they were concerned that a statutory list would reduce flexibility and become a checklist, disadvantaging claimants whose reasons are not prescribed.¹⁵⁵ Whilst we appreciate the need for flexibility, clearly the guidance is not being sufficiently taken into consideration and acted upon when making sanctions decisions. In our view the list of good reasons provided in the guidance would have greater force if it was put on a statutory footing (along with any other appropriate good reasons). We do not think it is necessarily a bad thing for decision-makers and work coaches to have a check list of reasons that they must go through before referring or imposing a sanction. Including a discretionary category of any other situation the work coach/decision-maker considers reasonable would provide sufficient flexibility so as not to prejudice individuals whose reason did not fall within the list.

2.68 Reasonableness is a term that is well defined in case law. The ‘Good Reason’ guidance for decision-makers explains that decision-makers “*should consider what a reasonable person with the same characteristics as the claimant, (for example: the same age and experience), would have done in the same circumstances in consideration of all the facts and circumstances of the case*”.¹⁵⁶ Despite this, it does not appear that decision-makers are properly considering all the circumstances.

2.69 The DWP has implemented a new Sanctions Assurance Framework. This explicitly states that the work coach must have a discussion with the claimant to identify and understand any barriers or circumstances that may have had an impact on their work-related activities. It also states that they must gather evidence and review any changes in the claimant’s circumstances taking into

¹⁵⁵ Work and Pensions Committee, [*Benefits sanctions: Government Response to the Committee’s Nineteenth Report of Session 2017-19*](#) (HC 1949, 2019) paras 66, 68-69.

¹⁵⁶ DWP, [*ADM K2: Good Reason*](#) (K2022, June 2021).

account complex needs, vulnerabilities, health conditions and the pandemic. The Framework does not specify who or where they should gather evidence from. We recommend that **as part of their evidence gathering, work coaches should contact and take into account information from relevant individuals, such as a claimant's carer, who the claimant consents for them to contact.** This is particularly important for claimants with mental health conditions who can find it difficult to explain their reasons for non-compliance due to a lack of self-confidence or problem-solving capabilities.¹⁵⁷

- 2.70 Another positive development from the Sanctions Assurance Framework is the requirement for work coaches to have a case conference with their team leader before making a referral to a decision-maker. If it cannot be confirmed that a pre-referral team leader case conference has been undertaken, the decision-maker must cancel and return the referral. If the decision-maker decides a sanction is appropriate, they too must also hold a case conference with their team leader to confirm that in the particular circumstances of the case this is the correct course of action.
- 2.71 We welcome the additional guidance and procedures put in place by the Sanctions Assurance Framework, however it will be necessary to monitor its implementation and impact (for which better data collection is required (see paragraph 2.57 above)). If it is successful, we would like to see the requirements placed on a statutory footing, to give them greater force and more permanency.

Opportunities to avoid sanction

- 2.72 In addition to the above changes, **we agree with the Work and Pensions Select Committee and others that a warning or 'yellow card' should be issued for a first failure to comply with the claimant commitment. The warning should be clearly communicated to the claimant via their preferred method of communication. It should be used only in cases where the claimant would otherwise be sanctioned i.e. they do not have a good reason for failure to comply, and not as a substitute for the proper**

¹⁵⁷ N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p. 31.

application of the good reason test. In our view, a warning is more likely to increase subsequent compliance. Studies have shown that sanctions can be counterproductive in terms of future compliance¹⁵⁸ and a warning would provide an opportunity to ensure that claimants understand their commitments and are not being sanctioned due to a lack of understanding. Further, we think this is fair given the serious consequences of non-compliance. We understand that the DWP was trialling this in a series of small-scale proof of concept pilots for failure to attend a Work-Search Review, but these were put on hold due to the pandemic. We hope that these are picked back up as soon as possible and, if successful, applied more widely to any sanctionable failure.

- 2.73 The Work and Pensions Select Committee also recommended that once a sanctions decision is referred to the decision-maker there should be an additional stage where the decision-maker would make a “provisional decision.” This would be communicated to the claimant, together with the evidence on which it was based. The claimant would then have 30 days to challenge this evidence or actively opt not to provide further evidence.¹⁵⁹
- 2.74 This system is not dissimilar from a trial ‘early warning system’ that was tested by the DWP in 2016. Under this trial if, at the end of the normal decision-making process, the decision-maker would have normally sanctioned a claimant, instead a Sanctions Warning Letter would be sent to the claimant giving them 14 days to provide extra evidence. The decision-maker would decide whether to apply the sanction at the end of those 14 days, taking any additional evidence provided into account. Only 13 per cent of claimants took advantage of the extra time to provide evidence and in half the cases in which the evidence was provided the sanction was imposed. The evaluation also found that the trial did not impact on the quality of evidence provided by claimants.¹⁶⁰ Based on the findings of this trial the DWP stated that it would

¹⁵⁸ Welfare Conditionality, *Final findings report: Welfare Conditionality Project* (see n. 121 above) p. 4.

¹⁵⁹ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) para 125.

¹⁶⁰ Government Social Research and the DWP, [*Jobseeker's Allowance: Sanctions Early Warning Trial*](#) (2018).

not implement the changes proposed by the Select Committee.¹⁶¹ However, it is important to note that:

- a) The trial did have an impact on the quality of evidence initially provided by work coaches and the evaluation recommended reviewing the procedures for referral of sanction decisions from the work coach to the decision-maker.
- b) There was variability in the role of work coaches and the extent to which they supported claimants in gathering evidence as well as variability in the extent to which decision-makers engaged with claimants (for example via verbally gathering evidence).
- c) Staff felt that they could have benefited from more time to prepare and more resources to deliver the trial.
- d) Some claimants felt that the 14 days might not be sufficient to provide some forms of evidence, for example, from GPs, hospitals or former employers.
- e) Claimants were not aware of the range of good reasons against a sanction, were not always aware of how to provide evidence and said they had little understanding of their claimant commitment. Claimants with medium or high support needs would have been unlikely to be able to provide compelling evidence without assistance.

2.75 Given the severe impact that sanctions can have on claimants' lives, we agree that there is value in providing claimants with an additional opportunity to explain their reason for noncompliance. We therefore recommend that **a further pilot and evaluation of an 'early warning system' should be carried out. This time, claimants should be provided with more than 14 days to provide further evidence, claimants should be made aware of what a 'good reason' might be and what appropriate evidence might look like, and the DWP should ensure that communication with the claimant is appropriate for that particular claimant in terms of language and any disability or vulnerability.**

¹⁶¹ Work and Pensions Committee, *Benefits sanctions: Government Response* (see n. 155 above) para 89.

Automation

- 2.76** The DWP is increasingly using automation in its decision-making processes. UC is the first major governmental service to be digital by default. Sitting behind it is a complex set of computer systems developed specifically for the delivery of Universal Credit, which work alongside numerous other IT systems, both pre-existing DWP systems and those of other Government departments.¹⁶² As the UN Special Rapporteur on extreme poverty and human rights has pointed out, it is in fact a major automation project.¹⁶³ In 2017, the DWP also created the ‘Intelligent Automation Garage’ with the aim of deploying digital technology to automate routine tasks, increase productivity and improve decision-making.¹⁶⁴ It spends around £8 million per year on this.¹⁶⁵ The DWP told us it is also looking at how to use artificial intelligence, such as machine learning to improve its capability to detect and prevent fraud.
- 2.77** The DWP has stressed that it does not make automated decisions. It uses automation to replace rules-based processing steps. These do not take the place of social security decisions, which are required to be made by the Secretary of State. However, it is clear that use of automation is, in many cases, leading to significant errors in decision making. Conversely, it also appears that there are a number of processes which are not currently automated that it would be beneficial to claimants to automate. One of the key issues is a lack of transparency around the use of algorithms which makes it difficult to understand why incorrect decisions are being made and the parameters of the computer systems capabilities.

Automated errors and selective automation

- 2.78** The DWP started work on Universal Credit in 2010 with an original completion date of October 2017. However, the Department struggled with

¹⁶² R. Pope, [Universal Credit: Digital Welfare](#) (April 2020) Annex 5.

¹⁶³ P. Alston, ‘Statement on Visit to the United Kingdom’ (see n. 1 above) p.9.

¹⁶⁴ UiPath, ‘[The UK’s Largest Government Department Transforms Business Processes with RPA](#)’.

¹⁶⁵ R. Booth, ‘[Benefits system automation could plunge claimants deeper into poverty](#)’, *The Guardian*, (14 October 2019).

early development of the system due to issues with governance, their contractors and a lack of a detailed ‘blueprint’ or targeted operating model. This led to a ‘reset’ in 2013. It involved a new digital ‘Full Service’ being designed in-house using agile development practices.¹⁶⁶ This involves testing and iterating services quickly using feedback from users. The NAO has found that the DWP follows good agile development practice, and it has “allowed the Department to adjust its plans based on what it learns about what does and does not work, and to reprioritise activities to incorporate policy and other necessary changes as it develops the system.”¹⁶⁷

2.79 However, despite this agile development capability, automation has resulted in errors in decision making and the DWP seems unable, or reluctant, to make the necessary changes to the computer systems to fix these. This has been a particular issue in respect of pay dates and assessment periods. The UC system calculates payments by reference to a calendar month assessment period. This can cause issues where:

- a) Claimants receive their wages towards the end of the month on a variable day, for example, the ‘last banking day’, last working day or last Friday of the month, and the assessment period date also falls towards the end of the month. This can result in two sets of wages being paid in one UC assessment period; and
- b) Claimants are paid on a weekly basis. Claimants who are paid every four weeks will get two payments of earnings within a single UC assessment period once a year, claimants who are paid every two weeks will sometimes get three (instead of two) payments of earnings within a single UC assessment period and claimants who are paid weekly will sometimes get five (instead of four) payments of earnings within a single UC assessment period.

2.80 This can cause significant variation in UC awards and may mean that claimants fail to qualify for UC at all in the month they receive multiple payments. In *Johnson*, a case relating to the circumstances set out in a) above,

¹⁶⁶ R. Pope, *Universal Credit: Digital Welfare* (see n. 56 above) pp. 28-30; NAO, [Rolling out Universal Credit](#) (HC 1123, 2018) para 1.11.

¹⁶⁷ NAO, *Rolling Out Universal Credit* (see n. 166 above) para 1.12

the Court of Appeal held that the Secretary of State's failure to resolve the issue was irrational.¹⁶⁸ During the case, the Secretary of State emphasised that the UC awards made each month are not calculated manually but are automated. She argued that amending the assessment periods would require a complete rebuild to the UC computer system resulting in substantial delays to the roll-out and costs to the taxpayer.¹⁶⁹ However, Rose LJ (as she then was) did not accept this, stating that:

Devising a computer programme capable of recognising and responding to the huge number of factors covering every aspect of a claimant's family and financial circumstances....must be an exercise of mind-boggling complexity....I cannot accept that the programme cannot be modified to ensure that the computer can recognise that the end date of a particular claimant's assessment period coincides with their salary pay date so that if the latter date falls on a non-banking day the receipt of two roughly equal payments is likely to be the result of a salary payment being made a day early and the second payment should be moved into the next assessment period.¹⁷⁰

She also noted that the UC system had already been refined numerous times and these had been accommodated "without fatally upsetting the computer." She pointed out that the roll out of universal credit involves the implementation of a managed migration pilot. It is the nature of a pilot scheme that it is intended to throw up problems so that they can be sorted out before the new scheme is implemented across the whole of the country and the computer programme must be sophisticated enough to enable that to happen.¹⁷¹

2.81 Since losing the *Johnson* case DWP has subsequently made changes to the regulations so that cases such as Johnson's are corrected where reported to

¹⁶⁸ *SSWP v Johnson* [2020] EWCA Civ 7781.

¹⁶⁹ *Ibid*, para 81.

¹⁷⁰ *Ibid*, para 82.

¹⁷¹ *Ibid*, para 83.

it.¹⁷² DWP told us that they are about to release functionality which should automatically detect such cases. This begs the question of why the DWP maintained that it was not technically possible to deal with this issue and did not fix it sooner.

2.82 Being paid on a weekly cycle may also mean that claimants are subject to the benefit cap even though they are working and earning enough to meet the exemption.¹⁷³ For example, a year has 13 four-week periods in it, but 12 monthly assessment periods. Therefore, claimants paid on a 4-weekly cycle will, each year, have eleven UC assessment periods in which they receive one thirteenth of their annual salary, and one assessment period in which they receive two thirteenths of their salary. For the assessment periods when they are receiving one thirteenth of their annual salary they may be treated as if they have earned or worked less than the earnings exemption amount.

2.83 In *Pantellerisco v Secretary of State for Work and Pensions*,¹⁷⁴ a mother challenged the application of the benefit cap to her UC award. The benefit cap was applied despite the fact that she met the exemption by working the 16 hours per week at national minimum wage. The issue was, as described in paragraph 2.80 above, she was paid four-weekly rather than monthly. The Court found that although introducing a solution for this problem might be technically complicated, it would be manageable – some, at least, of the necessary computer software is in place and can readily be utilised and the

¹⁷² The Universal Credit (Earned Income) Amendment Regulations 2020 (2020/1138) came into force on 16 November 2020. The amending regulations make changes to regulation 61 of the Universal Credit Regulations 2013, which govern how the Secretary of State calculates earned income. The Johnson issue is addressed by creating a power for the Secretary of State to treat one of two wage payments received/reported in the same assessment period as earnings in respect of a different assessment period (regulation 61(6)). This only applies to claimants who are paid on a regular monthly basis.

¹⁷³ The benefits cap limits the total amount of income a household can receive. There is an exemption for claimants who are in work and, between them and their partner are earning the equivalent of 16 hours per week on national minimum wage if receiving Universal Credit.

¹⁷⁴ [2020] EWHC 1944 (Admin).

DWP could, if it wanted to, access pay frequency data from Her Majesty's Revenue and Customs (HMRC).¹⁷⁵

2.84 Whilst the DWP has automated many of its process and has made UC a 'digital by default' system, there are also elements of the benefits process that we consider it would be helpful to claimants to automate but which have so far not been:

- a) Direct payment of rent to landlord. Under UC housing payments are now normally paid to tenants who then must pay their landlord, rather than being made directly to landlords as they were under Housing Benefit.¹⁷⁶ However, some claimants struggle to budget and plan and this can leave them in rent arrears.¹⁷⁷ Claimants can ask their work coach for the housing element to be paid directly to their landlord, but to do so, must be made aware that this is an option available to them. However, claimants in Scotland are prompted to make this choice via an item in their "to-do list".¹⁷⁸ during their second monthly assessment cycle.¹⁷⁹
- b) The option for alternative payment period.¹⁸⁰
- c) The option to apply for an advance payment, whilst waiting five weeks for the first monthly payment. This currently appears on the homepage

¹⁷⁵ In order to calculate a claimant's earned income in each assessment period, the DWP pulls data on claimants' earnings from HMRC's Real Time Information (RTI) system. The RTI system collects earnings information from employers for the calculation of PAYE tax. This paragraph is accurate at the time of drafting, however, we are aware that *Pantellerisco* has been appealed by the Secretary of State and to the Court of Appeal. The case was recently heard, but no judgement has been handed down at the time of drafting.

¹⁷⁶ In Northern Ireland the default position is that the housing element of UC is paid to the claimant's landlord each month.

¹⁷⁷ N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p.31; P. Hunter, [*Falling behind: the impact of Universal Credit on rent arrears for council tenants in London*](#) (The Smith Institute, 2020)

¹⁷⁸ The to-do list is an area within the UC online account where tasks are listed, for example the things that claimants need to do to complete their claim or that are agreed as part of the claimant commitment.

¹⁷⁹ Scottish Government, [*Universal Credit Scottish choices: evaluation*](#) (March 2021). In Northern Ireland, the housing cost element of UC is paid directly to landlords as the default option for rented properties. Claimants are able to opt out of this and have the housing cost amount paid to them if they meet certain criteria.

¹⁸⁰ In Scotland, claimants can request twice-monthly payments (Social Security Directorate, [*Universal Credit: new choices for people living in Scotland*](#) (2018)).

only *after* the claim has been submitted. It should be made a part of the application process or added to the to-do list as an explicit choice.¹⁸¹

- d) When claimants appeal a decision related to a health and disability assessment to the FTT (SCCS), the Tribunal will often recommend that the appellant should not be reassessed for a certain number of years. We were told that claimants are currently being called for reassessment prior to this time because the system sends out automated notifications that do not take into account the Tribunal decision. These are not checked by someone within DWP until the last minute, by which time the claimant has already suffered significant stress and anxiety at the prospect of being reassessed. The system should automatically update after the Tribunal decision is made so that claimants aren't called unnecessarily for reassessments.¹⁸²

Transparency

2.85 One of the biggest issues with the use of automation and artificial intelligence by the DWP is the lack of transparency. The UN Special Rapporteur on extreme poverty and human rights found that “the existence, purpose and basic function of these automated government systems remains a mystery in many cases fuelling misconceptions and anxiety about them”.¹⁸³

2.86 Automation does not inherently threaten human rights or the rule of law, but without more transparency about the development and use of automated systems it is impossible to assess its impact.¹⁸⁴ Computers make errors¹⁸⁵ and,

¹⁸¹ R. Pope, *Universal Credit: Digital Welfare* (see n. 56 above), p. 53.

¹⁸² P. Booth, ‘[Work and Pensions Committee Oral evidence: Universal Credit: the wait for first payment, HC 204](#)’, July 2020, Q 198.

¹⁸³ P. Alston, ‘Statement on Visit to the United Kingdom’ (see n. 1 above) p. 11.

¹⁸⁴ *Ibid.*

¹⁸⁵ As demonstrated by the recent Post Office Horizon scandal. Between 2000 and 2014 736 sub-postmasters and sub-postmistresses were prosecuted for theft, fraud and false accounting on the basis of information from the Horizon IT system - an electronic point of sale and accounting system used in post office branches. Some went to prison, and many were financially ruined. In December 2019 the High Court found that the Horizon system contained numerous bugs, errors and defects and that there was a ‘material risk’ that the shortfalls in branch accounts were caused by the IT system (*Bates v Post Office Limited* [2019] EWHC 3408 (QB)) In April 2021 the Court of Appeal quashed the convictions of 39 sub-postmasters, clearing the way for many of the others to challenge their convictions (*Hamilton*

as the above shows, automated systems do not always produce fair or reasonable outcomes, particularly where they encounter situations which have not been thought about in their programming. Automated systems can also contain inbuilt direct and indirect discrimination within their programming.¹⁸⁶ Without transparency regarding the development and operation of automated systems accountability and remedy for these errors and discrimination is not possible.

- 2.87** As Richard Pope has pointed out, currently, the UC system is very one sided—it collects large amounts of personal data and has a detailed, real-time view of how the public are using the service. However, those wishing to hold the government to account for its actions have little information to go on. Being transparent about how DWP’s systems work and how they change will enable effective scrutiny of UC, which will help contribute to public support and confidence in the system.¹⁸⁷
- 2.88** A number of consultees we spoke to raised questions or concerns about what the Intelligent Automation Garage is doing. There is very little information about it in the public domain. The DWP told us that to date it has built and deployed 50 automations. These are applied to mundane processes and

v Post Office Limited [2021] EWCA Crim 577 (see also K. Peachy ‘[Post Office scandal: What the Horizon saga is all about](#)’ (BBC, 23 April 2021). More than 20,000 parents were falsely accused of child benefit fraud by an automated fraud detection system in the Netherlands (‘[A benefits scandal sinks the Dutch government](#)’ (The Economist, 21 January 2021). In Ontario, Canada a predictive analytics programme which supplemented case workers’ assessments of eligibility and benefits level, was found to have had at the time of its launch 2,400 serious defects, which impacted clients’ eligibility for benefits and the payments they received. Ministry of Community and Social Science, ‘[SAMS – Social Assistance Management System](#)’ in *2015 Annual Report of the Office of the Auditor General of Ontario* (2015).

¹⁸⁶ For example, the risk factors that the algorithm used in the benefits-fraud detection system in the Netherlands, included parents with dual-nationality as a fraud risk, which amounted to ethnic profiling. See Dutch Parliamentary Inquiry Committee, *Unprecedented Injustice* (December 2020). The data used to train an AI system may lead to implicit biases, or the parameters which have limited adaptability to individual situations can result in indirect discrimination. This concern was raised in relation to an authentication algorithm piloted in California, since the questions risked creating additional obstacles for marginalised and migrant populations, for example by assuming established residential ties. See Coalition of California Welfare Rights Organisations, Inc., ‘[Advocate Response to DSS Options for Replacing the Statewide Fingerprint Imaging System \(SFIS\)](#)’ (2017).

¹⁸⁷ R. Pope, *Universal Credit: Digital Welfare* (see n. 56 above) p. 100-101.

replace rules-based processing steps. However, this could cover a whole range of processes, many of which may be important to decision making.¹⁸⁸

- 2.89 One of the issues in the *Johnson* and *Pantellerisco* cases was a lack of transparency about what the actual constraints of the UC system and other computer systems it interfaces with are, and the ability to adapt the UC system to deal with unforeseen issues caused by the automation.
- 2.90 There is legitimate concern amongst claimants and civil society organisations regarding the use of automation and artificial intelligence in fraud detection and prevention. Privacy International sent a series of FOIA requests to the DWP asking for further information about the use of artificial intelligence for fraud prevention referenced in the DWP's annual report. The DWP refused to provide information on the criteria or indicators used by the system to flag someone as likely to be committing fraud, or the code of the algorithm being used. They relied on FOIA exemption that release would prejudice the prevention and detection of fraud and crime.¹⁸⁹

SyRI

The SyRI scandal in the Netherlands demonstrates the dangers of automated fraud detection for individual rights and the need for transparency. A fraud-detection system (named SyRI) was suspended in 2020 after having falsely accused more than 20,000 parents of child benefit fraud. Parents who were identified as having committed fraud had their benefits cut and were told to repay everything they had ever received. Those who did not repay sufficiently quickly were required to also pay fines.¹⁹⁰ Many of those affected were from an immigrant background and the errors forced hundreds into severe financial difficulty.¹⁹¹

¹⁸⁸ The only processes that we are aware that have been automated are pensions claims. See Convedo, '[How Intelligent Automation is improving public services](#)'.

¹⁸⁹ Privacy International, '[Shedding light on the DWP Part 2 – A Long Day's Journey Towards Transparency](#)' (February 2021).

¹⁹⁰ The Economist, 'A benefits scandal sinks the Dutch Government' (see n. 185 above).

¹⁹¹ BBC, '[Dutch Rutte government resigns over child welfare fraud scandal](#)' (January 2021).

Algorithms identified parents with dual nationality as fraud risks,¹⁹² and parents were identified as having committed fraud for minor errors such as missing signatures on paperwork.¹⁹³ The legislation implementing SyRI was found to breach Article 8 (the right to private life) of the European Convention on Human Rights. The court held it contained insufficient safeguards against invasions of privacy by SyRI, including a serious lack of transparency about its functioning. In the absence of more information about how SyRI works, the court warn that the system may discriminate on the basis of socio-economic or migrant status.¹⁹⁴ A parliamentary inquiry criticised the lack of transparency and information – parents often did not know why their benefits had been stopped and¹⁹⁵ the tax authorities also refused to provide evidence or reasoning for the decisions so parents could not appeal.

2.91 The DWP has told us that it is committed to meeting its transparency obligations under data protection legislation and to following guidance from the Information Commissioner’s Office. It works with legal and data protection colleagues to ensure that it does. Whilst we are pleased to see this commitment, these requirements relate largely to informing individuals about the collection and use of their personal data. This includes things such as the purpose for which data is being processed, retention periods and who it will be shared with. However, data protection law does not require the provision of systematic information about how the automated system operates. Further, although there are enhanced data protection requirements for automated decision making under Article 22 of the UK General Data Protection Regulation these only apply to “solely automated decision making”, i.e. without human involvement, something that the DWP does not currently do.

2.92 We recommend that the **DWP should publish information on how and when automation is used in the benefits decision-making processes and how it feeds into the final decision made by the decision-maker, including**

¹⁹² The Economist, ‘A benefits scandal sinks the Dutch Government’ (see n. 185 above).

¹⁹³ E. Schaart, ‘[Dutch Labor leader quits over false benefit fraud scandal](#)’ (*Politico*, January 2021).

¹⁹⁴ De Rechtspraak, ‘[SyRI legislation in breach of European Convention on Human Rights](#)’ (February 2020).

¹⁹⁵ Rijksoverheid, ‘[Kabinetsreactie op het rapport ‘Ongekend onrecht](#)’ (January 2021).

in relation to fraud detection and prevention. The DWP should disclose the data inputs and parameters of the system, and where possible, the algorithms themselves, but at a minimum the criteria or indicators used by the system. The DWP should also be clear about the constraints of automated systems and what is, and is not, technologically possible. The DWP should work with civil society organisations in order to establish the most useful way to publish and present this information.¹⁹⁶

Standards, quality control, training and oversight

2.93 Throughout our research and consultations with users of the system and their advisers and with the DWP themselves, it became apparent that in relation to many issues that we identified there is a significant disconnect between what DWP policy or ‘best practice’ is on the one hand and claimants’ experience of benefits decision-making, on the other. In addition, there does not appear to be a process or system in place to understand why decisions are frequently being overturned on appeal and to implement changes as a result of lessons learned.

Quality control, standards and oversight

2.94 The DWP has a Quality Assurance Framework which is a three-tier system – the first two tiers report internally and the third to the NAO. It states that the framework ensures that decisions made are legal, payments made are accurate and claimants are notified of their entitlements and responsibilities and their appeal rights. Tier 1 seeks to identify errors in individual decisions, tier 2 evaluates the effectiveness of processes and tier 3 evaluates whether processes have resulted in reductions to levels of loss in DWP benefits through official

¹⁹⁶ In this context the DWP should have regard to the Information Commissioner’s Guidance on automated decision-making. Although the guidance applies to decision-making by automated means without any human involvement, which is not something the DWP currently does, the principles and practices in the guidance may be helpful in addressing this recommendation. For example using visuals to explain what information is collected and why it is relevant to the process and having a set of ethical principles to help build trust in the process (Information Commissioner’s Office, [‘Rights related to automated decision making including profiling’](#), *Guide to the General Data Protection Regulation (GDPR)*)

error.¹⁹⁷ We were also told that DWP staff are provided with training relating to many of the issues we have identified, and that ‘coaching’ was part of the Quality Assurance Framework.

2.95 However, in light of the ongoing systemic issues with decision-making, we are clear that this framework and the current training and coaching programme cannot be functioning effectively. For example, we were told that part of the quality assurance standards for PIP, ESA and UC decisions include ensuring that all evidence is considered. However, during our evidence gathering we heard numerous examples where this had simply not happened. We also asked the DWP about a number of issues with mandatory reconsideration identified by CPAG’s early warning system (see **Chapter 3** for further consideration of mandatory reconsideration).¹⁹⁸ The DWP’s response was that none of the examples should be happening. Whilst they volunteered to look into any specific examples, there was no acknowledgement that these are recurring and therefore systemic issues that are not being picked up by DWP’s current monitoring and quality assurance processes.

2.96 Robust quality control and oversight systems that are able to identify systemic issues, understand why they are occurring and provide the insight required to fix them are crucial to improving DWP decision-making, as is training to ensure that decision-makers are aware of their legal obligations, guidance and best practice. In order for quality control systems to be robust there needs to be a clear and measurable set of performance standards, which, as the Equality and Human Rights Commission (EHRC) has pointed out, are currently lacking.¹⁹⁹ Such standards should be published so that claimants

¹⁹⁷ Plans are also in place to measure customer error and fraud in PIP and UC in 2021/22.

¹⁹⁸ For example, claimants being required to follow a specific process for requesting a mandatory reconsideration, contrary to DWP policy; claimants being dissuaded from making a mandatory reconsideration request; DWP refusing to process mandatory reconsideration requests unless claimants provide further evidence relating their claim; and claimants being advised to submit a ‘change of circumstances’ rather than a mandatory reconsideration request as a ‘work around’ to the system (S. Howes and K. Jones, *Computer Says ‘No!’ Stage 2: challenging decisions* (Child Poverty Action Group, 2019))

¹⁹⁹ EHRC, *‘Briefing note for the Work and Pensions Select Committee: Using service standards to improve the social security system’* (WSN0124, 2019).

know what they can expect from the DWP and it can be subject to external scrutiny.

- 2.97 We agree with the Select Committee, EHRC and others that the DWP should establish and implement suitable performance measures which should be made publicly available and accompanied by clear targets to help ensure that the welfare system is transparent and accountable. The DWP should also commission an independent evaluation of its current monitoring and quality assurance systems and processes and adopt any recommendations made for improvement in order to ensure that such performance measures and targets are met (or indeed that current policy and guidance is being properly followed).**

Independent regulator

- 2.98** Performance indicators alone are, however, insufficient. In our view there is also a need for formal independent oversight of DWP decision-making. It is the biggest Government department in terms of staff and expenditure,²⁰⁰ yet it is currently not subject to any external oversight, other than the National Audit Office, whose remit is spending and value for money.²⁰¹ Although there is the SSAC, it is an advisory committee. Its main role is scrutinising proposed regulations. It also comments on wider issues through its independent work programme, but the Government has no obligation to act on this. Other major Government departments and public bodies are subject to independent oversight: Ofsted monitors the Department for Education's services, the Care Quality Commission and NHS Improvement monitor the Department for Health and Social Care, whilst the Home Office is subject to

²⁰⁰ B. Guerin, '[Civil service staff numbers](#)' (Institute for Government, May 2021); Institute for Government, '[Departmental budgets](#)' (March 2020).

²⁰¹ As noted above there was previously independent reviewers for WCAs and PIP assessments. However, these were time limited roles (the last WCA review was in 2014 and the last PIP assessment review was in 2017) and confined only to health and disability assessments (see n. 13 and n.14 above). In Northern Ireland there have also been two independent reviews into the PIP assessment process in Northern Ireland, as required by the Welfare Reform (Northern Ireland) Order 2015, however again these are limited in scope and no further reviews are required by the Order (see n. 15 above).

scrutiny from the Independent Chief Inspector of Borders and Immigration and Her Majesty's Inspectorate of Prisons.

2.99 An independent reviewer or regulator would help ensure that the DWP was meeting the performance measures discussed above. Someone external to, and independent of, the system would be better equipped to identify systemic issues and ensure that changes are made in order to rectify these. It would have more 'teeth' than internal monitoring and be much more transparent. Having an independent body would also help restore trust and confidence in the benefits system.

2.100 We therefore recommend that **a permanent independent reviewer or regulator for welfare benefits should be established. This should be a statutory role with responsibility for assessing and reporting on standards of decision-making in relation to benefits. Their functions should also include monitoring the use of automated decision-making.**

Training - reasonable adjustments

2.101 It is crucial that DWP staff are given appropriate training so that they understand their legal obligations, policy and guidance and administrative processes. We understand that assessors, work coaches and decision-makers all receive training and are provided with guidance relevant to their roles. However, given the gap that exists between policy and practice, we think that this training should be looked at again in light of some of the recurring issues identified. Identifying specific training needs is something that an independent reviewer or regulator would be able to do. However, we consider that there has been a failure to train in an area where this would be particularly beneficial.

2.102 A concern that appeared to us at every stage of the decision-making process was that assessors, decision-makers and work coaches are not properly considering, and acting on, their duties under the Equality Act to make reasonable adjustments. These might include, for example, (pre-pandemic) conducting a health and disability assessment by telephone rather than face-to-face, considering whether to obtain further medical evidence in respect of claimants with mental health conditions, and setting appropriate claimant commitments, easements and sanctions. Consultees stated that there was a

lack of awareness among DWP staff and contractors about what reasonable adjustments may be offered or available for people with different impairments. The NAO has also stated that work coaches lack confidence making reasonable adjustments.²⁰²

- 2.103** We therefore recommend that **there should be specific training for assessment providers, work coaches and anyone who comes into contact with claimants (including on phone lines) on reasonable adjustments as well as a clear policy and guidelines on how to identify where a reasonable adjustment may be required and the types of reasonable adjustments that could be offered to claimants. Similarly, specific information on reasonable adjustments that may be available at each stage of the process should be provided to claimants.**

Feedback from tribunal decisions

- 2.104** Even without an independent regulator, there is already an independent body which is routinely identifying issues with DWP decision-making – the FFT (SCCS). As set out in paragraph 2.2 above the success rates on appeal to the Tribunal for PIP, ESA and UC remain high. This suggests that the same failures in decision-making recur without sufficient steps being taken to prevent them. This is unacceptable, both for the detrimental impact on claimants’ lives and for the resources expended on the appeal system. Understanding why appeals are so often successful and what recurring issues there are would assist the DWP in improving its decision-making.
- 2.105** The Tribunal issues a decision notice which states the outcome of the appeal and provides a brief summary of the reasons. If either party to the appeal wants fuller reasons, they can request a statement of reasons. We were told by the DWP that the decision notices often lack sufficient information for them to understand why an appeal was successful and therefore they cannot currently collect any meaningful feedback from them. Whilst decision notices do vary in terms of the level of detail they contain, we consider that they provide valuable information that, when analysed and collated could provide a

²⁰² National Audit Office, *Supporting disabled people to work* (see n. 129 above) p. 63.

rich source of feedback for the DWP. The summary of reasons was added to decision notices in 2013 with the express aim of enabling the DWP to assess areas that may require further improvement.²⁰³ For appeals relating to PIP assessments or WCAs the decision notice will state the points awarded by the Tribunal and for which activities and descriptors. As the DWP has access to the details of each case including the points awarded, and who carried out the assessment, this therefore provides a variety of potential data points. For example, it should be possible to identify particular activities that are more likely to be awarded higher points on appeal, whether claimants with particular health conditions are more likely to be successful on appeal and whether particular assessment providers or assessors are being successfully appealed more frequently than others.

2.106 We appreciate that doing this would involve an investment of time and resources by the DWP. However, in our view, it is vital to improve first instance decision-making and the resulting improvements will, in the long run, lead to significant savings in mandatory reconsideration and appeals costs. Further, the DWP does already collate statistics on the primary reason that PIP appeals are successful.²⁰⁴ If it can be done for PIP appeals, it is unclear why it cannot be done in respect of others. Given the level of spending on automation by the DWP it is perhaps surprising that a way cannot be found to automatically extract and analyse the relevant information from decision notices. It may be that HMCTS could facilitate this, for example by providing decision notices in a searchable format. In addition, the DWP sometimes sends Presenting Officers to the hearing, who should report back on the evidence given and the reasons for the decision.

2.107 Given the valuable feedback that can be gleaned from tribunal decision notices and the volume of successful appeals, we recommend that **the DWP urgently analyses tribunal decision notices and collects data on the reason(s) for all successful appeals in order to identify recurring issues**

²⁰³ DWP, [*Mandatory consideration of revision before appeal: Government response to public consultation*](#) (2012) p. 6.

²⁰⁴ DWP, 'Response to Freedom of Information Request FOI2019/12127' (see n. 84 above)

with initial decision-making. The DWP must then use this information to make improvements in areas identified as being problematic.

III. ROUTES OF REDRESS

“When claimants contest assessments that they consider to be wrong, there is a clear sense that the Orwellian named anonymous ‘decision-maker’ rarely varies the approach. Similarly the requirement that before appealing a disability assessment to a tribunal a phase of mandatory reconsideration must take place is considered by many observers to be little more than a delaying tactic.”²⁰⁵

“Didn’t have the strength or energy to face appeal. The whole application and assessment is stressful making my symptoms worse and me more unwell. I couldn’t put my body through any further stress.”²⁰⁶

- 3.1 In **Chapter 2** we outlined our concerns with a number of aspects of DWP/DfC first instance decision-making. It is important that claimants who do not consider that they received the correct decision first time round are able to effectively challenge those decisions through a system of redress that is accessible, fair and efficient.
- 3.2 Currently, if a claimant disagrees with a decision about their benefits, they must go through a two-stage process to challenge it. First, they have to ask the DWP or DfC to look at the decision again in a process called mandatory reconsideration. This involves the decision being looked at by a different decision-maker within the DWP or DfC to the one who originally considered it. The decision-maker can decide to change the original decision, which may or may not result in a change to the claimant’s benefits entitlement. For example, the decision-maker may change the points awarded on a PIP assessment, but the claimant may still not score enough to qualify for the mobility and/or daily living component.
- 3.3 If a claimant disagrees with the outcome of the mandatory reconsideration, they can appeal the decision to the independent FTT (SSCS) in Great Britain or Appeals Service in Northern Ireland. Claimants **must** go through the

²⁰⁵ P. Alston, ‘Statement on Visit to the United Kingdom’ (see n. 1 above) p.6.

²⁰⁶ Z2K “#PeopleBeforeProcess” (see n. 57 above) p.4.

mandatory reconsideration process before they can appeal to the independent tribunal.²⁰⁷ On appeal, the claimant must complete an appeal form (either online or on paper) and submit it to Her Majesty's Courts and Tribunals Service (HMCTS).²⁰⁸ This involves explaining their reasons for challenging the decision, as well as providing their evidence, for a second time.

3.4 This two-stage appeals structure is confusing and time consuming for claimants who struggle to understand the process and often find it extremely stressful. We are concerned that these difficulties are causing claimants to drop out of the appeals process even when they have a meritorious claim. Between April 2013 and September 2020, 780,000 PIP awards were unchanged following mandatory reconsideration. Of those, only 360,000 (46 per cent) of claimants went on to lodge an appeal. This is despite the fact that 67 per cent of appeals that proceeded to a hearing were successful. Another 13 per cent of appeals lodged were lapsed, meaning that the DWP changed its decision in the appellant's favour before the appeal was heard by the Tribunal.²⁰⁹ This suggests that there are more claimants who have a wrong decision but do not go on to appeal it.

3.5 This chapter looks at how the mandatory reconsideration and appeals processes are currently functioning and what improvements could make them more effective and easier for claimants to challenge incorrect decisions.

Mandatory reconsideration

3.6 Mandatory reconsideration was introduced in 2013. Prior to this, claimants could either ask the decision-maker to look at the decision again (a revision)

²⁰⁷ With the exception of ESA claimants who would be eligible for ESA payment pending appeal. In the recent case of *R (Connor) v Secretary of State 1* [2020] EWHC 1999 (Admin), the Court held at para 34 that for these claimants' mandatory reconsideration was an unjustified impediment to the right of access to the court guaranteed by Article 6 ECHR, as there was no good reason for not applying the 'ESA pending appeal' rule during the mandatory reconsideration period. ESA is the only benefit with a payment pending appeal and is being phased out as it is replaced by UC.

²⁰⁸ In Northern Ireland appeal forms cannot be completed online. An NOA1 form must be downloaded, completed and either posted or emailed to the Appeals Service.

²⁰⁹ DWP, PIP Statistics to January 2021 (see n. 2 above).

or appeal straight to the Tribunal i.e. without having to go through a reconsideration or revision first. However, appeals were not lodged directly at the Tribunal, they were sent to the DWP. On receipt of an appeal, the decision-maker would reconsider the original decision. There was no legal requirement for them to do so but this was DWP guidance. If the decision was revised to the claimant's advantage the appeal would 'lapse' i.e. not proceed any further. If it was not revised the case progressed to an appeal without the claimant having to take any further action.

3.7 The stated reasons for the introduction of mandatory reconsideration were as follows:²¹⁰

- a) To resolve disputes as early as possible.
- b) To reduce unnecessary demand on HMCTS by resolving more disputes internally.
- c) To consider revising a decision where appropriate.
- d) To provide a full explanation of the decision.
- e) To encourage claimants to identify and provide any additional evidence that may affect the decision, so that they receive a correct decision at the earliest opportunity.

3.8 The DWP does not publish data on UC mandatory reconsiderations. However, it does in respect of PIP and ESA WCAs.²¹¹ These show that when mandatory reconsideration was first introduced, the proportion of decisions that were being revised in favour of the claimant was incredibly low – between 2015 and 2017 it rarely rose over 15 per cent for ESA WCAs, whilst for PIP it hovered around the high teens, early twenties until mid-2018. However, this has gradually increased. The DWP introduced a new operational approach to mandatory reconsideration in 2019, proactively contacting claimants to collect further oral or written evidence.²¹²

²¹⁰ DWP, [*Appeals Reform: An introduction*](#) (2013) p. 4.

²¹¹ There is also some mandatory reconsideration data available in respect of ESA and UC live service sanctions decision on Stat-Xplore.

²¹² DWP, 'PIP Statistics to January 2021' (see n. 2 above).

- 3.9 The percentage of awards changed²¹³ for ESA WCA rose from 23 per cent in January 2019 to 51 per cent in December 2019. In April 2020, the proportion of ESA awards changed soared to 82 per cent. It has since fallen but has remained higher than pre-pandemic levels, with the most recent statistics for January 2021 showing 69% of awards changed.²¹⁴ However, in addition to the new operational approaches outlined above, the DWP has stated that this needs to be viewed in the context of the significant drop in the numbers of ESA WCA mandatory reconsiderations²¹⁵ and the changing composition of WCA decisions caused by a number of factors including, the pandemic and the introduction of UC, which has replaced most income-related new claims to ESA.²¹⁶
- 3.10 For PIP, the proportion of awards changed rose from 23 per cent to 40 per cent between January and December 2019. The proportion of PIP awards changed also peaked in April 2020, at 57 per cent. From May 2020 the proportion of changed awards resumed pre-pandemic patterns (at around 37-39 per cent), although it again increased to 52 per cent in January 2021.²¹⁷ The number of PIP mandatory reconsiderations has seen some drop-off since the start of the pandemic but not as significantly as with ESA WCA mandatory reconsiderations.²¹⁸
- 3.11 We appreciate that, clearly, there has been an improvement in the conduct of mandatory reconsiderations and it can no longer be considered the ‘rubber stamping exercise’ it once was, at least for PIP and ESA WCAs, which we have the data for. In comparison, the proportion of awards changed by the

²¹³ Either to award an entirely disallowed claim or increase the level of entitlement.

²¹⁴ DWP, ‘ESA: outcomes of WCAs’ (see n. 37 above).

²¹⁵ Between April 2020 and January 2021 the average number of ESA WCA registrations per month was 299, compared with an average for the year April 2019 to March 2020 of 3,730 per month (DWP, [Stat-Xplore: ESA Work Capability Assessments](#), Mandatory Reconsiderations – Registrations).

²¹⁶ DWP, ‘ESA: outcomes of WCAs’ (see n. 37 above).

²¹⁷ DWP, ‘PIP Statistics to January 2021’ (see n. 2 above); DWP, [Stat-Xplore: Personal Independence Payment](#), PIP MR Clearances.

²¹⁸ DWP, [Stat-Xplore: Personal Independence Payment](#), PIP MR Registrations.

DfC at the mandatory reconsideration stage remains significantly lower than the DWP figures, with only around 30 per cent of PIP awards changed.²¹⁹

3.12 Moreover, as set out in **Chapter 2**, the latest figures show that success rates on appeal remain extremely high – 75 per cent for PIP and ESA and 61 per cent for UC for 2020/21.²²⁰ This means that despite the higher proportion of decisions that are being changed at mandatory reconsideration stage, there is still a large proportion of inaccurate awards being missed.

3.13 There are also several recurring issues faced by claimants trying to challenge a decision, particularly about their UC award. These place barriers in the way of claimants receiving a mandatory reconsideration decision (positive or negative) and therefore prevent them from accessing their appeal rights.

Delay

3.14 There are no time limits within which the DWP or DfC must make a mandatory reconsideration decision and Working Party members and consultees told us that delay or a lack of response is common in the process. Some claimants have repeatedly made mandatory reconsideration requests, only receiving a response upon lodging an official complaint. In other cases, delay has been caused by the DWP losing mandatory reconsideration requests, with reports that it can take up to six months for mandatory reconsiderations to be processed for Universal Credit claims.²²¹ In January 2021 the median clearance time for PIP mandatory reconsiderations was 39 days and it was three days for ESA WCAs. However, the ESA clearance times are measured from the date when the Benefit Centre has decided that the mandatory reconsideration is valid, having considered whether they can initially change the decision in the light of any new information. This is different from the way in which PIP clearance times are measured, which is

²¹⁹ Percentage of awards changed excludes mandatory reconsiderations that were withdrawn or cancelled. DfC, '[Personal Independence Payment Statistics Supplementary Tables – February 2021](#)' (26 May 2021), Table 15b.

²²⁰ Ministry of Justice, 'Tribunal Statistics Quarterly' (see n. 33 above)

²²¹ S. Howes and K. Jones, *Computer Says 'No!': Stage 2: challenging decisions* (see n. 198 above) p. 24.

from the point of registration. Further the ESA clearance times have to be viewed in light of the very small number of ESA mandatory reconsiderations.²²²

- 3.15 Although no statistics are currently published on UC mandatory reconsideration clearance times, data provided in response to a Parliamentary question showed that the median clearance time from registration for UC mandatory reconsiderations was 38 days in May 2020 (the most recent data provided). The upper quartile value for the same month was 79 days. This means that for a quarter of all UC mandatory reconsiderations it was taking 79 days or more for the DWP to make a decision (down from a peak of 158 in January 2020).²²³ In the case of *R (Connor) v Secretary of State for Work and Pensions* the High Court acknowledged that even a normal delay caused by mandatory reconsideration of 7 to 10 working days, “may be very significant to those who receive the benefit”.²²⁴
- 3.16 We were told that some claimants are having their request for mandatory reconsideration refused on the basis that they are not following the correct process. This is despite the fact that the law does not specify a form or method by which a mandatory reconsideration request must be made. The gov.uk webpage on mandatory reconsideration states that a request can be made by phone, letter or filling in a form (CRM1).²²⁵ However, the DWP has accepted that all mandatory reconsideration request methods are lawful, including writing a message in the UC online journal.²²⁶ Nevertheless, CPAG reports that some mandatory reconsideration requests are being refused where they have been made via the journal,²²⁷ whilst others who try to request a

²²² There were just 281 ESA mandatory reconsiderations in January 2021 compared to 22,063 PIP mandatory reconsiderations in the same month.

²²³ DWP, ‘[Question for Department for Work and Pensions UIN HL 5780](#)’ (June 2020).

²²⁴ para32. This was in the context of ESA claimants who would be entitled to ESA payment pending appeal but did not receive this whilst going through the mandatory reconsideration stage. ESA is the only DWP benefit paid pending appeal - there is no equivalent rule for UC or PIP cases.

²²⁵ DWP, [Challenge a benefit decision \(mandatory reconsideration\)](#).

²²⁶ DWP, ‘[Response to Freedom of Information Request FOI2017/09848](#)’ (2018).

²²⁷ S. Howes and K. Jones, *Computer Says ‘No!’ Stage 2: challenging decisions* (see n. 198 above) p.10

mandatory reconsideration over the phone are being told they have to do so in writing.²²⁸ We have also been told by advisers that requests made in writing by post often never appear on the claimant's UC account.

- 3.17 Advisors told us that they can often experience problems when trying to submit mandatory reconsiderations on behalf of their clients because they are told that they do not have the necessary consent, even when authorisation has been provided by their client.

Procedural barriers

- 3.18 In addition, CPAG has flagged the following issues, identified from their 'early warning system':²²⁹

- a) Some claimants have had difficulties accessing their previous online accounts when a claim is refused before their first benefits payment. To dispute the refusal, they must start a new claim before sending an online message.
- b) Some claimants are being dissuaded by DWP officials from requesting mandatory reconsideration, for example they are told that the request is unlikely to be successful, the decision is not appealable, or are encouraged to have a journal chat with their work coach.
- c) Mandatory reconsiderations have been refused because advisers have unlawfully told claimants that further evidence is required. Often claimants will not be able to provide this evidence and will abandon their claim.
- d) Mandatory reconsideration requests are sometimes refused and claimants are told to submit a change of circumstances instead. However, a change of circumstances only changes an award going forward. Claimants will therefore lose out on back payments they are entitled to.

²²⁸ B. Stacey, *Blunt, bureaucratic and broken: How Universal Credit is failing people in vulnerable situations* (Z2K, November 2020) pp. 18-19.

²²⁹ Child Poverty Action Group, 'Early Warning System E-Bulletin – February 2020' (March 2020). CPAG's early warning system collates case studies and evidence to demonstrate the impact of changes in the social security system on the wellbeing of children their families and the communities and services that support them. See S. Howes and K. Jones, *Computer Says 'No!' Stage 2: challenging decisions* (see n. 198 above).

- e) The DWP makes some claimants go through a ‘problem-solving’ stage before they can submit a request for mandatory reconsideration. Whilst the aim of this is well intentioned – to reduce a backlog of mandatory reconsideration requests - it creates a two-tier system that is not set out in law and can result in further delays to the appeals process.

3.19 The DWP told us that none of these problems should be happening. However, this serves to further highlight the issue discussed in **Chapter 2** – the disconnect between policy and practice and demonstrates the need for more robust monitoring and quality assurance processes.

3.20 For those wishing to dispute a calculation of earnings, which are provided to DWP by HMRC’s ‘real time information’ (RTI) system, there is a further stage in the redress process. A change to a claimant’s UC award resulting from a change of RTI information does not constitute a decision of the Secretary of State.²³⁰ In order to obtain a decision, which can then be challenged by way of mandatory reconsideration and appeal, the claimant must first dispute the employed earnings figure and request the Secretary of State to give a decision in relation to the amount of UC payable.²³¹ As with mandatory reconsideration, there are examples of claimants disputes not being progressed because they are not in the ‘correct’ format. Further, the DWP’s guidance on RTI disputes suggests that where the earnings are correct no dispute should be raised.²³² However, the regulations provide a clear right to a decision, which is technically required before a mandatory reconsideration can be requested.

3.21 Further, the additional administrative hurdle of mandatory reconsideration can cause claimant confusion. Working Party members and consultees told us that claimants often do not understand that there is a two-stage process to challenge a decision. We were also told it causes claimant fatigue; claimants

²³⁰ s.159D(1)(b)(vi) and (2) Social Security Administration Act 1992; Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013/381, reg 41(1).

²³¹ The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013/381, reg 41(3).

²³² DWP, ‘[Real Time Information](#)’ *Universal Credit Guidance*, (October 2020).

who have had two negative decisions do not think there is any point in going on to appeal, despite the high success rates at the Tribunal.²³³ We were told that when claimant benefits have been stopped or refused, individuals often put their energy into applying for other benefits instead of pursuing an appeal. This confusion and fatigue is a particular issue for claimants with mental health conditions or learning disabilities who find it hardest to understand the processes, manage conversations with decision-makers and engage effectively without extensive support and advocacy.²³⁴

Direct appeal

- 3.22** In light of these ongoing issues with mandatory reconsideration we **recommend that claimants should be able to appeal a benefits decision directly to the Tribunal without first having to go through mandatory reconsideration. However, the filing of an appeal should automatically trigger an internal review of the decision by DWP. If the outcome of that review is not in the claimant's favour their appeal will proceed without them needing to take further action.** In our view this would shorten the overall appeal process and prevent attrition of claimants with meritorious appeals.
- 3.23** This would be similar to the system that was in place prior to the introduction of mandatory reconsideration, except that appeals would not be submitted to the DWP but made directly to HMCTS.²³⁵ HMCTS's case management system notifies the DWP when an appeal has been made; this would be the trigger for the DWP to conduct an internal review. The precise details of how this would function would need to be piloted and evaluated, however, we

²³³ See G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) p.43; Z2K, *#PeopleBeforeProcess* (see n. 57 above) p. 5.

²³⁴ E. Mountbatten, '[The revolving doors of mandatory reconsideration](#)' (*Adviser*, May/June 2015).

²³⁵ We note that under the devolved benefits system in Scotland appeals have to be made to the Agency, who passes them on to the First-tier Tribunal for Scotland (Social Security Chamber). We have been told that there are issues with this including instances of the Agency failing to seek the appellant's approval before submitting the form, where they have assisted the claimant in completing it. The Agency's role in submitting appeals also causes some confusion as to the independence of the Tribunal from the Agency. This reinforces the need for appeals to go directly to the Tribunal.

envisage a system that would be similar to the one the First-tier Tribunal (Immigration and Asylum Chamber) has been piloting as part of its online appeals process. Under this system, the Home Office has 14 days to conduct an internal review. If the Home Office requires additional time, it must apply for this in advance of the time limit expiry. Tribunal caseworkers actively manage the case, so if no review is conducted, they could, for example, list a case management hearing and, if necessary, the Tribunal could issue an “unless order” – an order with a consequence for non-compliance, which could include the appeal being allowed.²³⁶

- 3.24 The DWP already has the power to revise a decision which is subject to an appeal and they already currently conduct another review when appeals are lodged.²³⁷ In 2019/20, 29 per cent of PIP appeals were lapsed.²³⁸ Our proposed system would therefore reduce the resource demand on DWP as it would only require them to undertake one, rather than two internal reviews. We expect the learning from the improved mandatory reconsideration process would be applied to the review. We would therefore expect to see at least the same proportion of decisions changed in favour of the claimant under our proposed system as under the current mandatory reconsideration process.²³⁹ However, crucially, the appeal would be able to continue where no revision is made without the claimant having to do anything. **Where the appeal relates to PIP or a WCA the reviewer will also have the benefit of the audio**

²³⁶ Under Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules, the Tribunal may bar the respondent from taking further part in proceedings and, if barred, may summarily determine any or all issues against the respondent.

²³⁷ Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, reg. 11(1). Advice for Decision Makers: A5, para A5159 - A5179.

²³⁸ DWP, PIP Statistics to January 2021 (see n. 2 above) Table 5B: PIP experimental statistics by period of initial decision, initial decisions following a PIP assessment, MRs and appeals. There are no similar statistics are available for ESA and UC.

²³⁹ One of the criticisms of the old system was the very low proportion of decisions being changed prior to an appeal by the DWP (DWP, [*Mandatory consideration of revision before appeal: Government response to public consultation*](#) (2012)). However, given the improvements in the mandatory reconsideration process since then we would expect to see a much higher proportion of decisions being changed in favour of the claimant than under the pre-2013 system.

recording of the assessment, and it should be a requirement that they listen to it at this point.

Take it or leave it offers

- 3.25** Welfare rights advisors from a number of organisations, including CPAG, Law for Life and the Law Centres Network have reported that the DWP is contacting appellants appealing PIP decisions by phone prior to providing its response to the Tribunal and making them a revised benefits offer to the decision under appeal. Members of our working party stated that the same thing was happening with their clients. These offers are often for an award that is more than the appellant was originally told they were entitled to, but less than the appellant is arguing that they should receive on appeal.
- 3.26** The DWP has said that it wants to make sure claimants get the right outcome and it is right that appeals should be looked at again if there is additional evidence, rather than waiting for the appeal to be heard. However, the Guardian has reported that in many cases claimants were given an hour or less to decide, which is clearly insufficient time to seek advice, particularly for appellants who require additional support because of mental health conditions or vulnerabilities. It also reported that in many cases appellants were not informed of their right to appeal against the revised decision and that offers were not recorded until after the appellant agreed to the deal. In addition, claimants were being contacted directly rather than their appointees.²⁴⁰ Claimants who spoke to the Guardian said they felt pressured to make an on-the-spot decision and were worried that they would receive less if they went to the Tribunal.²⁴¹
- 3.27** It is DWP policy that where a revision would not give the appellant everything they are asking for and the appellant chooses to continue the appeal, the decision will not be revised. The rationale for this is that the

²⁴⁰ Someone appointed to deal with a claimant's benefits because the claimant is unable to manage their own affairs due to ill-health or disability.

²⁴¹ F. Ryan, '[DWP accused of offering disabled people 'take it or leave it' benefits](#)' (*The Guardian*, 2 March 2020). The Public Law Project and Advicenow have brought a judicial review challenge to DWP's 'offers policy', which is due to be heard next month.

appeal would lapse²⁴² and a fresh appeal would be required. CPAG has argued that it is unlawful for DWP to withdraw the revised decision because the claimant has indicated that they will appeal the amount awarded. In its view it will be almost always in the claimant's best interests for the decision to be revised, even if the claimant goes on to appeal the revised decision. Whilst it would cause some additional delay, in the meantime the claimant would at least be paid the arrears flowing from the revision and therefore get some of the additional benefit whilst appealing.

3.28 Our recommendation above to require the DWP/DfC to conduct a review once an appeal has been lodged will formalise this revision process and ensure that where the DWP is willing to revise its decision, this revision is made, rather than “offered”. In circumstances where the revised decision gave the claimant some, but not all, of what they were requesting, the appeal should not lapse and the claimant should be able to continue the appeal against the revised decision. There should also be a specified time for the appellant to decide whether to continue the appeal, which would allow sufficient time for the appellant to seek advice. The decision letter should signpost appellants to where they can obtain advice.²⁴³

3.29 We recognise that this will result in an increased workload for the Tribunal, at least at the initial stage, as it can be expected that a similar volume of claimants who currently request mandatory reconsideration would seek to appeal. However, in our view, currently many claimants who would be successful on appeal are not appealing. The very purpose of this recommendation is to increase the number of claimants who appeal, to ensure that they receive the benefits that they are entitled to. Although the Tribunal will have to determine the validity of appeals before the DWP reviews the decision, we also expect that a significant number of appeals will not progress to a hearing as they will lapse following the DWP review. Greater use of tribunal caseworkers and digital technologies may also alleviate some of the additional work. Further, if the recommendations in **Chapter 2** are implemented, we would hope to see improvements in first

²⁴² DWP, *ADM A1* (see n. 78 above) at A5159 to A5161

²⁴³ See further **Chapter 3**.

instance decision-making leading to a reduction in the number of decisions that need to be challenged.²⁴⁴

- 3.30 We appreciate that the clearance times for appeals are significantly longer than those for mandatory reconsideration.²⁴⁵ However, we believe that this recommendation still enables disputes to be resolved as early as possible due to the automatic internal review which we propose would continue to take place. This means that disputes that would have been resolved at the mandatory reconsideration stage should still be resolved without having to wait for a Tribunal hearing. However, crucially, it has the advantage that claimants will not be deterred from seeking redress by having to make a second application for an appeal. It will allow the Tribunal to actively case manage and therefore reduce delays in internal reviews taking place. It will also circumvent the current barriers that claimants are facing when requesting a mandatory reconsideration as it will be a step required by the Tribunal.

Appeals

Making an appeal

Time limits

- 3.31 Claimants have one month in which to appeal a mandatory reconsideration decision, however if there is a good reason for missing the one-month deadline the Tribunal can still accept an appeal for up to 13 months after the decision. Mandatory reconsideration notices currently state that claimants need to appeal within one month of the date of the letter. We were told by a number of advisers that, as a result, claimants are unaware of the 13 month ‘longstop’ and wrongly assume that if they have missed the one-month

²⁴⁴ We note that prior to the introduction of mandatory reconsideration, the FTT (SSCS) dealt with a much higher volume of appeals than it currently does. In 2012/13 the volume of appeals peaked at 500,000, compared to around 160,000 in 2019/20. We appreciate that the volume of appeals was one of the reasons that mandatory reconsideration was introduced, however, it has resulted in significant difficulties for claimants seeking to challenge incorrect decisions.

²⁴⁵ The median clearance time for SSCS appeals in 2020/21 was 26 weeks. See Ministry of Justice, ‘Tribunal Statistics Quarterly’ (see n. 33 above) Main Tables, Table T_1.

deadline they are not able to appeal. Under our proposed reforms, there would no longer be a mandatory reconsideration notice, however, we recommend that **the wording of decision letters (and mandatory reconsideration notices whilst they are retained) should make claimants aware that if they miss the one-month deadline, they may still be able to appeal if there is a good reason for the delay.** The exact wording will need to be carefully considered and subject to user testing so as to ensure that claimants do not delay appealing yet understand they are entitled to appeal outside the standard deadline.

Appeal form

- 3.32** Since 2016 HMCTS has been undertaking a court and Tribunal reform programme which seeks to modernise the UK justice system through the use of digital technologies.²⁴⁶ As part of this programme appellants in England, Wales and Scotland can now make PIP, UC and ESA appeals online. If they are using the online system, they do not need to upload or submit a copy of their mandatory reconsideration notice. Alternatively, appellants can fill in a paper version of the appeals form and return it by post with a copy of their mandatory reconsideration notice. The same appeals form is used for UC, PIP and ESA appeals.²⁴⁷
- 3.33** Although this report focuses on the benefits for which the online appeals form is currently available, for other benefits there is currently no online appeals process. This is also the case in Northern Ireland where appeal forms must still be downloaded and completed (and then can either be posted or scanned in and served by email).²⁴⁸ The Working Party would like to see an online application process developed for all appealable benefits decisions, in both Great Britain and Northern Ireland so that appellants can choose the most appropriate method of making an appeal for them. We note that the lack of an

²⁴⁶ HMCTS, [*Guidance: The HMCTS reform programme*](#) (May 2021).

²⁴⁷ HMCTS and Social Security and Child Support Tribunal, [SSCS1 PIP/ESA/UC Benefit appeal form](#).

²⁴⁸ Benefits appeals in Northern Ireland are made to the Appeals Service Northern Ireland, which is still under the administration of the DfC.

online application process has been a particular issue during the pandemic due to problems viewing and printing paperwork.²⁴⁹

- 3.34 The appeal form asks appellants to fill in their personal details: name; address; date of birth; national insurance number; which benefit they are appealing; and details of their representative if they have one. There is then a ‘grounds of appeal section’, which asks appellants to provide their reasons for appeal – what they disagree with from the mandatory reconsideration notice and why. The online version asks the appellant if they want to upload any evidence to support their appeal. Both the online and paper-based version state that evidence “is any information that supports your appeal such as a letter, written statement or medical report. Useful evidence helps the Tribunal understand the facts of your appeal. For example, a letter from your doctor, carer or someone who knows about your condition.”
- 3.35 Currently the appeal application process involves a significant amount of re-entry, or ‘re-keying’ of information that claimants have already previously provided to the DWP, including their personal details. The online application process may also result in appellants uploading evidence that they have already provided to the DWP at either the initial, or mandatory reconsideration, stage. Given the automation and digitisation programmes that the DWP and HMCTS have embarked upon we believe that these technologies could be harnessed to make it easier for claimants to appeal benefits decisions.
- 3.36 The Traffic Penalty Tribunal has already had great success working with local authorities across England and Wales in developing digital case files and digital pins. When a motorist challenges a local authority issued traffic penalty notice, something akin to an internal review is offered by the local authority. Should the charging authority reject the person’s representations, they issue a Notice of Rejection of Representations, which features a weblink and digital pin code to the Traffic Penalty Tribunal’s digital appeal system.²⁵⁰

²⁴⁹ Administrative Justice Council and JUSTICE, [Welfare benefit advice provision during the pandemic](#) (March 2020), p.10; Child Poverty Action Group, ‘[Coronavirus and tribunals for benefit and tax credit appeals](#)’ (July 2020).

²⁵⁰ Traffic Penalty Tribunal, [Accessibility Statement](#) (2020).

When an appellant enters the digital pin code the appeal is already populated with all the appellant's information and the evidence that has been provided and is available for the appellant (and local authority) to see.

- 3.37** It might be possible to use a similar system of digital pins for benefits appeals. The extent of what is possible will depend on DWP's and HMCTS's digital capabilities and how their systems are able to 'speak' to each other. **DWP and HMCTS should work together to consider ways in which technology can be used to streamline the process for making an appeal, in particular by reducing the re-keying of information by appellants and the provision of information already held by the DWP. Thought should also be given to how those using the paper-based route can benefit from a similar streamlined process.**

Tribunal caseworkers

- 3.38** Another aspect of HMCTS's reform programme is the greater use of tribunal caseworkers.²⁵¹ Tribunal caseworkers exercise case management functions and assist with the progress of cases through the system. The idea is that they relieve judges of the tasks of handling routine matters, so that their efforts can be directed to hearing and deciding cases.
- 3.39** In the Social Entitlement Chamber, where the FTT (SSCS) sits, the Senior President of Tribunals has authorised tribunal caseworkers to make any decision a judge of the FTT (SSCS) may make, except those which are substantive final decisions.²⁵² The actual decisions that individual tribunal caseworkers are allowed to make are authorised on a case-by-case basis by the regional tribunal judges, depending on the individual caseworker's expertise and experience. A party may apply for any decision of a tribunal caseworker to be considered afresh by a judge within 14 days.²⁵³ In the Social Entitlement

²⁵¹ Lord Chancellor, Lord Chief Justice and the Senior President of Tribunals, [*Transforming our justice system*](#) (2016) Chapter 2.

²⁵² E. Ryder, '[Practice Statement authorising Tribunal Caseworkers First-tier Tribunal \(Social Entitlement Chamber\) to carry out functions of a judicial nature](#)' (2018) para 2.

²⁵³ *Ibid*, para 4.

Chamber, tribunal caseworkers each have a judicial mentor and are co-located with judges wherever possible.

- 3.40 The tribunal casework structure has recently been updated and formalised with the creation of opportunities for career progression. Previously tribunal caseworkers sat within the administration structure of HMCTS. However, they have recently moved into the Legal Operations side. This means that tribunal caseworkers report to senior caseworkers who are allocated to a region and manage caseworkers for all jurisdictions (not just social security) within the region. The senior caseworkers are managed by legal team managers, who are solicitors or barristers.²⁵⁴ A new Senior Legal Manager position sits above the legal team managers. This means that there is always legal oversight of the work of tribunal caseworkers.
- 3.41 Tribunal caseworkers already perform a variety of important tasks in the FTT (SSCS). This varies between regions and depends on the experience of individual caseworkers but includes dealing with requests for postponements and extensions of time, checking the validity of appeals, contacting parties where there is no response and issuing listing and case management directions. However, we believe that greater use could be made of tribunal caseworkers, in particular with the goal of reducing postponements and adjournments.²⁵⁵
- 3.42 The FTT (SSCS) has a large number of adjournments. In 2020/21 it had 33,325 adjournments, accounting for 27 per cent of its listed hearings.²⁵⁶ Our judicial working party members and other judges told us that adjournments could happen for a variety of reasons including the appellant requiring more time, practical reasons such as the appellant having a doctor's appointment or wanting to get advice. However, many are also caused by missing information, for example medical evidence or a health and disability

²⁵⁴ Tribunal caseworkers do not need to be legally qualified.

²⁵⁵ Regulation 51(3) and (4) Social Security (Decisions & Appeals) Regulations 1999 distinguishes between postponements which are made any time before the beginning of the hearing and adjournments which are made once a hearing has started.

²⁵⁶ Ministry of Justice, 'Tribunal Statistics Quarterly' (see n. 33 above), Table APJ_1.

assessment where the appellant is already in receipt of another benefit. The Working Party thinks that if tribunal caseworkers were to review bundles and direct parties to provide missing documents and information then this could reduce the number of postponements and adjournments.

3.43 We were told that in some cases the tribunal caseworkers already inform appellants that they should obtain further medical evidence. However, this is reactive and only happens where the caseworker has some other reason for looking at the file, for example, a postponement has already been requested. It would be more helpful if tribunal caseworkers were to systematically review all case files to identify missing information. The volume of appeals makes this currently prohibitive. In 2019/20 160,423 appeals were lodged in the FTT (SSCS).²⁵⁷ In order for tribunal caseworkers to systematically review every bundle, there would have to be a very large increase in their number.

3.44 We recommend that **HMCTS introduce a small-scale pilot with the aim of reducing adjournments. The pilot should involve caseworkers reviewing bundles and where appropriate directing parties to provide additional medical evidence and missing documents. Data from the pilot should be collected and evaluated to see if improvements are achieved.** One of the aims of the pilot would be to understand how much tribunal caseworker resource is required to review the bundles and how this compares to the judicial and tribunal time and resources wasted in postponed and adjourned appeals. The pilot would also seek to determine whether particular types of appeals are more likely to be missing evidence and documents than others, and whether, as the chamber digitises, technology could be used to flag these cases to tribunal caseworkers.²⁵⁸

²⁵⁷ By comparison the next largest jurisdiction is the Immigration and Asylum Chamber in which 41,895 appeals were lodged in 2019/20.

²⁵⁸ The Appeals Service Northern Ireland currently has no tribunal caseworkers. The introduction of tribunal caseworkers could also be piloted here with the aims of relieving judges of the tasks of handling routine matters and reducing adjournments.

Determination of an appeal

Triage

- 3.45** Due to the pandemic, there have been changes to the way in which benefits appeals are being determined and a ‘triage’ system has been put in place.
- 3.46** It remains the case that if all parties have consented to a paper-based determination and the judge considers that the appeal can be decided without a hearing, it will be decided ‘on the papers’- that is on the basis of the information provided to the Tribunal by the appellant and the DWP, without a hearing of any kind.
- 3.47** Prior to the pandemic, if either party requested an oral hearing, then one would be held, almost always in person. Under the new rules,²⁵⁹ practice directions²⁶⁰ and guidance,²⁶¹ where parties have not consented to a paper-based determination, but the Tribunal considers that a successful (or partly successful) outcome for the appellant is highly likely without requiring an oral hearing, then the Tribunal can decide the case on the papers and issue the parties with a provisional decision. The provisional decision will specify a time frame within which the parties must accept or reject it. If the parties accept the provisional decision, then a final decision will be issued. If either the appellant or DWP do not accept the provisional decision, the Tribunal will arrange for a hearing (for most of the pandemic this has been held via telephone, see further paragraph 3.49 below).
- 3.48** The Working Party discussed whether it would be helpful to retain this triage system post-pandemic. The argument for doing so is that it allows cases in which the appellant is very likely to be successful to be resolved quickly without taking up unnecessarily both the Tribunal’s and appellant’s time and

²⁵⁹ The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020, rule 4, inserting a new Rule 5A into the The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

²⁶⁰ E. Ryder, ‘[Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and Upper Tribunal](#)’ (March 2020); K. Lindblom, ‘[Amended Pilot Practice Direction: Panel Composition in the First-Tier Tribunal and the Upper Tribunal](#)’ (September 2020).

²⁶¹ Tribunals Judiciary, ‘[Social Entitlement Chamber – Frequently Asked Questions](#)’ (June 2020).

resources. However, the Working Party was concerned about cases where the claimant might be offered part of what they think they are entitled to, but not the maximum. For example, where someone is assessed as having Limited Capability for Work but not Limited Capability for Work Related Activity. The Working Party felt it would be difficult for appellants, particularly those without representation or support, to know whether to accept such a provisional decision or proceed to a hearing. They might not be aware that they are not receiving the maximum or feel like it is better than nothing and that they would not want to risk getting less at a hearing.²⁶² The Working Party's view was therefore that the paper-based triage process should not be retained after the pandemic.

Type of hearing

3.49 Another big change caused by the pandemic has been how hearings are conducted. Whilst previously most hearings would be conducted face-to-face, at the start of the pandemic the majority were conducted by phone. However, more recently video hearings using the Cloud Video Platform have started to be utilised²⁶³ and some face-to-face hearings have resumed. We were told by tribunal judges and medically qualified tribunal members that telephone hearings had generally been successful and that they had received positive feedback from appellants. The judges felt that it often was not necessary to see someone to know if they were being truthful; what mattered was the content of what they were saying. One medically qualified tribunal member noted that he had already done a lot of telephone work as a GP and therefore felt comfortable assessing appellants over the phone. However, advisers have also reported that they felt hearings were unfair without the Tribunal being able to see the appellant, or that the appellant was not well understood on the

²⁶² Prior to the pandemic (and the rule change and practice direction) the Upper Tribunal held that a decision on the papers, in circumstances where the claimant had requested a hearing, breached rule 27 of the Tribunal rules. The FTT had held that the claimant should be placed in the Limited Capability for Work ESA but not Limited Capability for Work-Related Activities ESA group. The UT stressed that this was not a “complete win” for the claimant and that she was deprived of her right to be heard by the Tribunal which reached that decision. *LM v SSWP (ESA)* [2020] UKUT 41

²⁶³ Ministry of Justice, ‘[Question for the Ministry of Justice UIN 62390](#)’ (25 June 2020).

phone.²⁶⁴ Some appellants have also found it difficult to find a quiet space where they will not be interrupted.²⁶⁵

3.50 For some appellants with disabilities and mental health conditions the thought or process of travelling to a hearing may be physically difficult or stressful and anxiety inducing. Some appellants may also be more comfortable in their own space than at a hearing centre. For these appellants remote hearings are likely to be preferable. However, all consultees recognised that this would not be the case for all appellants. Some appellants will find it much more difficult to engage remotely (either by phone or video) and attempting to do so may be detrimental to some appellants' health. Complex cases will also be better suited to face-to-face hearings. Some consultees felt that cases where an interpreter was required were also better suited to face-to-face hearings, although others felt that having an interpreter on the phone had worked fine. We note that the Cloud Video Platform now has the ability to facilitate simultaneous translation.²⁶⁶

3.51 A number of consultees raised concerns about technical issues that they had faced with remote hearings. For example, at the start of the pandemic telephone hearings having a maximum of five users which meant that an appellant's representative was not able to attend where there are three panel members, the clerk and the appellant. However, a new telephone system has subsequently been put in place which allows for a greater number of participants. Consultees also reported instances of appellants not being notified that their hearing is running late, of not being provided with a hearing time, or being provided with the wrong hearing time. In respect of video hearings, there have been issues with internet connectivity and a lot of technical and administrative support required to ensure that they function smoothly. Working Party members and consultees also raised concerns that appellants would not have the necessary equipment or internet access required

²⁶⁴ K. McKechnie, [*Impact of Covid 19 on People with Disabilities and their Carers*](#) (Child Poverty Action Group, July 2020).

²⁶⁵ *Ibid.*

²⁶⁶ This is done by placing the interpreter and the appellant in a separate virtual room whilst still in the hearing, where the interpreter can translate without being heard by anyone other than the person they are translating for.

to participate. To that end we are pleased to hear that the Tribunal is inviting appellants into hearing centres to use IT equipment and internet there, if they do not have access to their own. In addition, the Tribunal has technical staff who provide technical support for appellants prior to and during the hearing and a digital support officer to assist tribunal members.

3.52 HMCTS conducted an implementation review of remote hearings during the early stages of the pandemic to quickly develop and improve key audio-video processes that were put in place. We understand that HMCTS is conducting an in-depth evaluation of the use of remote hearings during the pandemic. The evaluation is focussing on user experiences and perceptions. We welcome this evaluation, and the results should be used to inform the use of remote hearings post-pandemic. However, it is important that any evaluation also includes data on outcomes of different types of hearings.

3.53 Given the varying suitability of different hearing types for appellants, depending on their individual needs, both medical and in terms of access to space and technology, we believe that appellants should be given a choice about the type of hearing they have. To that end we welcome the changes to the appeal form for PIP, ESA and UC, which now asks appellants to select the types of hearing that are suitable for them, with options for telephone, video and face-to-face. The form also briefly sets out the requirements for each type of hearing i.e. for telephone – “you’ll need somewhere quiet and private to speak”, video - “you’ll need access to a computer or mobile device with a good internet speed and somewhere quiet and private to speak” or face-to-face – “you will need to travel to the hearing in person”. The form could also be updated to include the possibility of going to a hearing centre to use the IT equipment there for a remote hearing. We also welcome the toolkits being developed by HMCTS to help staff and the judiciary better understand the circumstances in which remote hearings may not be appropriate.

IV. CLAIMANT SUPPORT

*"I had to get someone to help me and do my mandatory reconsideration for me. I tried to do it myself but couldn't...I was left without money for around 12 weeks, which made me very ill, and [I] considered taking my life many times."*²⁶⁷

*"Not been well enough or had enough concentration to understand what I am entitled to [or] how to apply for benefits."*²⁶⁸

4.1 The benefits system is complex. Many individuals are not aware of their potential eligibility.²⁶⁹ Even for those that are, the process of claiming benefits is not straightforward and the application process is lengthy.²⁷⁰ The criteria for entitlement are complicated and require claimants to gather a variety of pieces of evidence to prove their entitlement.²⁷¹

4.2 Given the issues with DWP decision-making outlined in **Chapter 2** we know that many claimants are not receiving the benefits they are entitled to in the first instance. However, challenging an incorrect decision requires claimants to be aware of their rights and entitlements, as well as the process for doing so. When claimants do embark upon such a challenge, the process can be daunting and difficult to navigate.

²⁶⁷ N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p. 35.

²⁶⁸ *Ibid.*, p.19.

²⁶⁹ G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) p.7 and 40. A recent report has estimated that there are around half a million people who were eligible for UC during the start of the Covid-19 pandemic but not claimed it (B. Geiger et al, [Non-take-up of benefits at the start of the COVID-19 pandemic](#) (The Health Foundation, April 2021)).

²⁷⁰ For example there are ten stages to making a UC claim, many of which are time sensitive. See Citizens Advice, '[Universal Credit claims falter due to complicated application process and lack of support](#)' (2018).

²⁷¹ See **Chapter 2** with respect to difficulties obtaining evidence for disability assessments. A Citizens Advice survey found that 48% of respondents found it difficult to provide evidence for health conditions; 40% found it difficult to provide evidence for housing; 35% found it difficult to provide evidence for childcare. See Citizens Advice, 'Universal credit claims falter due to complicated application process and lack of support' (see n. 270 above).

- 4.3 Many individuals applying for, or in receipt of, benefits have additional needs that further exacerbate these issues. Claimants with health conditions and vulnerabilities, who do not have English as a first language and those who are digitally excluded, either through digital illiteracy or lack of access to IT equipment and internet, face additional challenges engaging with the system.
- 4.4 Access to clear information and advice and support is therefore vital to ensuring that individuals receive the benefits they are entitled to. In this chapter we consider that information provision, advice and support and make suggestions that place the user at the heart of the system.

Applying for, managing and challenging a benefits decision

Information provision

On the application process

- 4.5 The provision of clear information on what benefits are available, the entitlement criteria for each, the supporting evidence required and the process for applying for them is crucial to enable claimants to understand their benefit entitlement and successfully navigate the application process.
- 4.6 DWP does provide a large volume of information about eligibility and the application process online.

Information on the application process available online

For each of UC, PIP and ESA there is a set of gov.uk webpages which contain the following sections (i) an overview of the benefit, (ii) the eligibility criteria; (iii) the amount of money you will receive; and (iv) how to claim. There are also additional sections depending on the benefit. For example, the UC pages have a section on “your responsibilities” and how to get an advance payment, whilst the PIP pages have a section on PIP reviews.²⁷²

²⁷² DWP, [Universal Credit](#); DWP, [Personal Independence Payment \(PIP\)](#); DWP, [Employment and Support Allowance \(ESA\)](#).

- a) The UC webpages are part of a How to claim Universal Credit: step by step guide,²⁷³ which also links to additional information on “What to do if you have a health condition or disability”²⁷⁴ and “What to do if you disagree with the decision”.²⁷⁵
- b) In addition to the UC step by step guide there are a whole variety of other guides, including: a Universal Credit: Health conditions and disability guide;²⁷⁶ a Universal Credit: childcare guide;²⁷⁷ as well as guides for people in particular circumstances such as prison leavers, students and homeless people. There are also a range of guides for landlords and for those supporting claimants.²⁷⁸ There is a “Universal Credit and you guide” intended to be for people already claiming UC which includes information on sanctions, how and when UC is paid and help with childcare and housing costs.²⁷⁹
- c) In addition, the DWP has a website “understanding universal credit” which is separate from the normal gov.uk DWP pages. It provides an array of information on UC,²⁸⁰ including information on eligibility, conditionality and sanctions, what to do if you have a health condition or disability that prevents or limits the work that you can do,²⁸¹ making a claim²⁸² and managing a claim.²⁸³ There is also a section for people who are assisting someone else to claim.²⁸⁴

²⁷³ The webpage has a timeline of five steps with links to information about each step. The steps are 1. Check if you’re eligible, 2. Create an account and make a claim and find out how your claim is assessed (links to what to do if you have a health condition or disability), 3. Apply for an advance on your first payment, 4. Get your first payment (links to information on what to do if you disagree with the decision) 5. Report any change of circumstances. See DWP, [How to claim universal credit: step by step](#).

²⁷⁴ DWP, [Health conditions, disability and Universal Credit](#).

²⁷⁵ DWP, *Challenge a benefit decision (mandatory reconsideration)* (see n. 225 above).

²⁷⁶ DWP, [Universal Credit: Health conditions and disability guide](#) (July 2020).

²⁷⁷ DWP, [Universal Credit: childcare guide](#) (July 2020).

²⁷⁸ An overview of all of the different guidance available for UC can be found here: Understanding Universal Credit, [Universal Credit: Detailed Guidance](#) (February 2020).

²⁷⁹ DWP, [Universal Credit and you](#) (April 2021).

²⁸⁰ Understanding Universal Credit, [What is universal credit?](#).

²⁸¹ Understanding Universal Credit, [New to Universal Credit](#).

²⁸² Understanding Universal Credit, [Making a claim](#).

- d) For PIP there is the PIP handbook (although this is not linked from the gov.uk/pip page). It is aimed at people who may be entitled to PIP and provides information on entitlement, assessment criteria and how to make a claim.²⁸⁵
- e) There is another set of guidance for New Style ESA, which provides additional detail to the gov.uk/employment-support-allowance page, although it is not linked from this page.

4.7 We commend the DWP for providing detailed guidance and information on how to claim and manage benefits, which, on the whole, is clearly explained, set out and presented. However, it is incredibly fragmented. It is difficult to know what guidance is available and where to find it. The DWP has put together a helpful guide on where to find detailed guidance on UC, however this in itself is difficult to find.²⁸⁶ We recommend that **existing DWP guidance on benefits should be less fragmented and clearly signposted to on all application forms, benefits webpages and correspondence.** One way of doing this could be to have one landing page for each benefit with links to the available guides. Duplication of information should be avoided where possible to minimise the volume of information that claimants are directed to read.

4.8 Of course, information provided online is only ever useful to those who are able to access and navigate the internet. **Hardcopies of the guidance should therefore also be provided to those who are digitally excluded.**

On conditionality and sanctions

4.9 One particular area where there needs to be better provision of information is on conditionality and sanctions. A DWP Survey found that only half of claimants correctly identified all the common reasons that would cause their

²⁸³ Understanding Universal Credit, [Already claimed](#).

²⁸⁴ Understanding Universal Credit, [Helping someone claim](#).

²⁸⁵ DWP, [PIP Handbook](#) (2018).

²⁸⁶ Understanding Universal Credit, *Detailed Guidance* (see n. 278 above).

UC payments to be stopped or reduced.²⁸⁷ As discussed in **Chapter 2**, evidence also suggests that claimants aren't aware of the easements they may be entitled to.²⁸⁸ It is crucial that claimants are fully aware of what their obligations are and what actions may cause them to be sanctioned. Consultees raised concerns that claimants who do not speak good English or are illiterate, are not able to properly understand their claimant commitment and therefore their obligations and the circumstances in which they may be sanctioned. The same is also true of some claimants with learning disabilities²⁸⁹ and mental health conditions.²⁹⁰

- 4.10 We recommended in **Chapter 2** that work coaches should do more to understand claimants' circumstances and apply appropriate easements. Whilst it should be the work coaches' responsibility to proactively seek to understand claimants' circumstances and apply any easements that may be applicable, we understand that this may not happen in all cases. **Claimants should be provided with information on the different types of easements that are available.** This will enable claimants to understand that an easement may be available and enable them to ask for it to be applied where their work coach does not do so.

On how to challenge a decision

- 4.11 As discussed in **Chapter 3**, claimants often have difficulty understanding that there is a two-stage process to challenge a benefits decision. This is one of the reasons we have recommended the removal of the mandatory reconsideration stage of the process. However, whilst it remains in place, **the current two stage process for challenging benefits decisions should be better explained**

²⁸⁷ Government Social Research and the DWP, *Universal Credit Full Service Omnibus Survey: Findings from two waves of tracking research with recent Universal Credit full service claimants* (2019) p.26. See also G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) - claimants in their sample did not understand why or when a sanction had resulted, p.44

²⁸⁸ Work and Pensions Committee, *Benefits Sanctions* (see n. 11 above) para 93; SSAC, *The effectiveness of the claimant commitment in Universal Credit* (see n. 12 above) p.30.

²⁸⁹ SSAC, *The effectiveness of the claimant commitment in Universal Credit* (see n. 12 above) p.30.

²⁹⁰ N. Bond et al., *The Benefits Assault Course* (see n. 50 above) p.30.

by way of an infographic or flow chart. This should be provided with all decision letters.

Use of video

4.12 As previous JUSTICE reports have noted, video is an effective means of conveying information, in particular to individuals that may for a variety of reasons have difficulties reading text.²⁹¹ There are already a number of videos produced by the DWP in respect of PIP²⁹² and UC.²⁹³ There is also a set of videos produced by the Centre for Health and Disability Assessments (CHDA) which carries out WCAs.²⁹⁴ However, as with some of the guidance, they are not straightforward to find.²⁹⁵ There is a link to a video on the Independent Assessment Services (which provides PIP assessments), but the video is ‘unavailable’ when you click on it.²⁹⁶ The Working Party also had concerns about how engaging and relatable the videos were. The DWP videos do not feature any people and just display text, icons or screenshots of online forms. The CHDA ones are more engaging as they show real people preparing for and attending a WCA. However, the main “What to Expect at Your Health Assessment” is overly long, at almost 15 minutes. The DfC have produced a good video explaining what to expect at a PIP assessment. Like the CHDA video it shows real people – a claimant and their carer – attending an assessment but is much shorter at five minutes.²⁹⁷ We are pleased that all the videos are subtitled and can be viewed in British Sign Language, however it

²⁹¹ JUSTICE, *Immigration and Asylum: a Fresh Look* (2018), para 4.14, JUSTICE Scotland, *Legal Assistance in the Police Station* (2018), paras 3.27-3.29; JUSTICE, *Understanding Courts* (2019) paras 2.4, 2.12 and 2.32 – 2.37.

²⁹² DWP, *Understanding PIP* (May 2021).

²⁹³ *Universal Credit in Action* (YouTube)

²⁹⁴ Health Assessment Advisory Service, *Videos* (2016).

²⁹⁵ There is a link to the PIP video guides at the bottom of DWP, *Personal Independence Payment (PIP)* page but it is small and easily missed. The DWP, *Universal Credit* page does not link to the videos and you have to go through CHDA’s own website (not the gov.uk pages) to find the WCA videos.

²⁹⁶ Independent Assessment Services, *At your PIP consultation*

²⁹⁷ nidirect, *PIP Assessment – what to expect* (YouTube, 2019)

would also be helpful to make the videos available in a range of different key languages, or at least subtitle them in a range of languages.

- 4.13 Videos explaining the processes for applying for benefits, how to prepare for, and what to expect at health and disability assessments and the initial interview and providing information on sanctions, would help people better understand these processes. Whilst some videos already exist, further research should be conducted into the most engaging and comprehensible format and length for these and the subject matter they cover should be expanded. They should also be subtitled in a number of different languages, be prominently displayed on relevant webpages and links to them provided in DWP correspondence.**

Accessibility of information

- 4.14** As of August 2020, there were four million people in receipt of PIP or its predecessor Disability Living Allowance, 1.9 million people in receipt of ESA²⁹⁸ and just under one million people on UC with no work requirements, meaning health or caring responsibilities prevent them from working.²⁹⁹ This means that there are significant numbers of claimants who have health conditions or disabilities. It is therefore crucial that information on benefits is accessible and capable of being read and understood by these claimants.
- 4.15** DWP has created a set of easy read³⁰⁰ standards and are developing easy read products.³⁰¹ There are a number of easy read leaflets on PIP covering: (i) an

²⁹⁸ DWP, '[DWP benefits statistics: February 2021](#)' (February 2021).

²⁹⁹ DWP, [Stat-Xplore: People on Universal Credit](#), Table 1 – Conditionality. Some people in receipt of ESA and with no work requirements on UC will also be in receipt of PIP therefore it is not possible to determine the total number of claimants with health conditions or disabilities.

³⁰⁰ The concept of “easy read” is an approach to writing and drafting developed to help people with language difficulties understand information more easily, using short, simple sentences and pictures. See for example the organisation Change, which develops easy read documents for a variety of situations, <https://www.changepeople.org/>

³⁰¹ B. Railton, '[How DWP used the easy read format to make its content more accessible](#)' (11 October 2019).

overview of what PIP is and who can claim it (ii) how to claim PIP; and (iii) the types of supporting information that might be helpful to support a claim. There is also an Introduction to Universal Credit easy read guide and ‘Who can claim Universal Credit’.³⁰² There is, however, no easy read version of the Universal Credit: Health conditions and disability guide.

- 4.16 DWP recently entered into a legal agreement with the EHRC to improve support for hearing-impaired claimants’ access to its services by telephone. This was a result of complaints that DWP staff did not know how to arrange a British Sign Language interpreting service for a number of hearing-impaired claimants who needed to use the telephone service. DWP agreed to provide a Video Relay Service across its telephony services for all benefits and services. This enables hearing-impaired users to contact DWP using an interpreter. The agreement also commits the DWP to make a number of other changes that will have an impact on all claimants who require information in different formats. These are: ensuring claimants can easily locate what they need in order to request information in alternative accessible formats; recording and sharing internally disabled people’s communication needs; and improving the use of Equality Analysis in the design and delivery of all changes.³⁰³
- 4.17 Consultees and working party members also expressed concern about the lack of information available in languages other than English.
- 4.18 We welcome the work that the DWP is currently doing to improve the accessibility of its information and guidance. However, to better understand claimants’ accessibility needs, and therefore what information it should provide, as recommended in **Chapter 2**, the DWP needs to collect data on the protected characteristics of claimants. Further we recommend that **all forms, key information and guidance and letters from the DWP should be (i) in plain English; (ii) available in easy read, Braille, audio, large print and**

³⁰² DWP, [Easy read: universal credit](#) (February 2021).

³⁰³ EHRC, [‘DWP enters legal agreement to improve services for deaf customers’](#) (August 2020).

BSL if required; and (iii) should be available in the most prevalent languages of those applying.³⁰⁴

Digital by default

- 4.19 UC is the first ‘digital by default’ Government service. This means that claimants are expected to make their applications online, manage any subsequent changes online and all relevant contact between the DWP and the claimant will be done through the internet.³⁰⁵
- 4.20 In 2019, the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, wrote of “the grave risk of stumbling, zombie-like, into a digital welfare dystopia”.³⁰⁶ The “relative deprivation and powerlessness”³⁰⁷ of many welfare recipients meant that they were likely to be “severely disadvantaged” by issues such as digital illiteracy and lack of access to reliable equipment.³⁰⁸ Alston was critical of “digital by default” policies – such as Universal Credit – which he argued create “major disparities among different groups”.³⁰⁹
- 4.21 The Universal Full Service Survey³¹⁰ found that only half of UC claimants were able to complete their claim online without help. A third of people who completed the process online found it difficult or very difficult. The greatest difficulties people said they faced were gathering the necessary information

³⁰⁴ The Home Office rights and entitlement leaflet for the police station is available in easy read and over fifty languages, so this is entirely feasible: Home Office, ‘[Notice of rights and entitlements: a person's rights in police detention](#)’ (2019).

³⁰⁵ G. Hitchcock, ‘[Universal credit to be first service 'digital by default'](#)’ (*The Guardian*, 3 February 2012); DWP, *Digital Strategy* (2012).

³⁰⁶ P. Alston, ‘[Report of the Special Rapporteur on extreme poverty and human rights](#)’ (11 October 2019), para 77.

³⁰⁷ *Ibid*, para 6.

³⁰⁸ *Ibid*, para 45. In the UK, 11.9 million people (22% of the population) do not have essential digital skills for day-to-day life, para 47.

³⁰⁹ *Ibid*, para 45.

³¹⁰ Government Social Research and the DWP, *Universal Credit Full Service Survey* (see n. 8 above).

and documents, inputting housing costs and calculating income and expenses, as well as navigating the application process itself. One third of people who start UC claims do not go on to complete them.³¹¹

4.22 The 2018 JUSTICE Working Party report, *Preventing Digital Exclusion from Online Justice*, made several recommendations for online justice services to be assistive, accessible and affordable to users. These principles apply equally to the processes for claiming and managing benefits. The availability of non-digital methods was found by the Working Party to be essential for a process to be accessible to all.³¹²

4.23 All of the consultees we spoke to who either have experience of the benefits system themselves or are benefits advisers raised serious concerns about the ‘digital by default’ nature of UC. It is incredibly difficult for claimants who are not computer literate or do not have access to the equipment or data necessary to use the online application process. However, it is not just the application process that causes difficulties. Once claimants have successfully made an application, there are still ongoing issues with the digital by default nature of the system. We were told that claimants often miss things, for example, interviews, because they are unable to access their online account in time. Claimants also receive text messages saying that there has been an update to their online journal without any further details of what the update relates to. This causes some claimants without readily available access to the internet or a digital device considerable anxiety as they do not know whether it is something minor where no action is required on their behalf or whether it is informing them of something that they could be sanctioned for if they are unable to do it.

4.24 We acknowledge that the DWP does in theory provide alternative means of engaging with UC, however this is largely through the UC Helpline. We were told that this has incredibly long wait times and that it is an onerous process to

³¹¹ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), para 13.

³¹² The importance of user-centric design is recognised in the [Government Design Principles](#) which guide the development of digital processes. Principle 6, for example, states that: “[w]e’re designing for the whole country, not just the ones who are used to using the web. The people who most need our services are often the people who find them hardest to use”.

have to call up and wait in the queue every time a claimant needs to do anything in relation to their UC. Some claimants do get in-person assistance at a Job Centre, however, again, we were told that to do so they would have had to try to submit their claim online or have gone through the UC Helpline first. Another issue flagged by advisors was if a claimant chooses to engage via the telephone, then they are not able to access their journal at all. This means that those claimants' advisors also have to wait on the UC helpline to find out what a note in the claimant's journal says, even though they would be able to access the journal on behalf of the claimant.

4.25 All these obstacles lead to an inefficient system which unnecessarily frustrates users and advisers and causes unacceptable stress and anxiety. In order to remove as many barriers as possible to individuals getting the assistance they need to make and manage their UC claims, and to ensure compliance with its Equality Act duties to provide reasonable adjustments, **the DWP should adopt a 'no wrong door' approach to applying for and engaging with UC. This means that:**

- a) It should be made clear to people what the UC Helpline can and cannot assist with before they call.**
- b) People should be able to go, without an appointment, to their local Jobcentre, which should have a helpdesk staffed by someone who will be able to assist them with the application process, including explaining the documents and information they need.³¹³**
- c) Independent advisers should be located at Jobcentres to provide advice on the impact of claiming UC on legacy benefits and overall entitlement.**
- d) If someone is not able to engage with the system digitally, there should be the option of a fully paper-based or telephone-based system, including the application process and a paper and telephone alternative to the online journal for ongoing engagement with work coaches. Ongoing telephone engagement should be directly with the claimant's work coach, or at a minimum, their Jobcentre, rather than through the UC Helpline.**

³¹³ We note that the nidirect [Help with your Universal Credit claim](#) page directs claimants to their local Jobs & Benefits office to get help, advice and support with their UC claim.

4.26 In addition, if the DWP wants to encourage claimants to use the online system, then **consideration should be given to making it easier for a UC claimant to secure their date of claim, in advance of completing all sections of the online form.** The current position is that a claim is not made until all the information is submitted. This means claimants who struggle to gather this information quickly are waiting longer to receive their first payment (on top of a five-week wait once the claim is made). There is precedent for not requiring all the information before securing a ‘date of claim’, for example a Disability Living Allowance³¹⁴ claim form can be requested by telephone, securing the date of claim as long as the form is returned within six weeks.

Advice

4.27 Many claimants may require advice and assistance to complete the application as well as understand the evidence that they need to provide to support their application. The need for advice and support is particularly acute for those with certain health conditions and disabilities which may make understanding and completing the forms particularly challenging.³¹⁵ Advice and support is also crucial for claimants who have poor literacy rates and/or are non-English speakers³¹⁶ and, in light of the digital by default nature of UC, those who are digitally excluded.

4.28 However, a lack of, or poor, advice at the application stage may result in delay and/or loss of income. For example, furloughed workers who applied for UC without seeking advice on how it would impact their existing tax credits, lost their existing tax credits and ended up worse off.³¹⁷ Without

³¹⁴ Disability Living Allowance is the legacy benefit being replaced by PIP.

³¹⁵ J. Organ and J. Sigafoos, *The impact of LASPO on routes to justice* (EHRC, 2018) p. 36; G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above); National Audit Office, *Universal Credit: getting to first payment* (see n. 129 above) p. 12.

³¹⁶ Literacy rates are particularly low amongst the Gypsy, Roma and Traveller (GRT) community. One advice organisation who provides support to the GRT community told us that individuals would simply be unable to apply for benefits or manage their claims without their advice and support.

³¹⁷ In some cases the advice was provided by DWP staff at a Jobcentre, see Child Poverty Action Group, *Mind the gaps: Reporting on Families' incomes during the pandemic* (August 2020) p. 2.

advice, people often feel forced to give up, or make errors leading to much slower resolution of their problems.³¹⁸

- 4.29 Evidence demonstrates that access to early advice leads to more effective resolution of individuals' problems. Research by Ipsos MORI on behalf of the Law Society found that those "who did *not* receive early advice were, on average, 20% less likely to have resolved their issue at a particular point in time (compared to those who did receive early advice)."³¹⁹ Given that people often experience 'clusters' of interrelated legal and non-legal issues particularly around social welfare, debt, housing and health,³²⁰ early legal advice also has economic benefits of reducing downstream costs for other public services.³²¹
- 4.30 There is therefore a clear role for expert advice in helping people understand their potential social security entitlements and to navigate the application process.
- 4.31 Advice is also crucial for helping people understand whether the decision they have received is correct and therefore whether they should challenge it. Advice is also needed so that claimants understand *how* to go about challenging a decision. This is even more the case with the current two stage appeals process, which we were told many claimants find confusing and too tiring, stressful and detrimental to their health to go through alone. Advice at the mandatory reconsideration stage is often critical to a successful outcome. We were told by one adviser that his clients had been successful in all the

³¹⁸ *Ibid.* p. 39. See also G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) p. 38 where interviewees struggled to identify what benefits might lift them out of poverty.

³¹⁹ Ipsos MORI, '[Analysis of the potential effects of early advice/intervention using data from the Survey of Legal Needs](#)', (November 2017) p. 6.

³²⁰ The Low Commission, *Follow up report* (see n. 3 above); G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) pp. 51-52

³²¹ Research suggests that a typical young person with a civil legal problem will cost local health, housing and social services around £13,000 if they cannot access early advice, Balmer, N.J. and Pleasence, P., [The Legal Problems and Mental Health Needs of Youth Advice Service Users](#) (Youth Access, 2012).

mandatory reconsiderations he had requested on their behalf. He had not provided the DWP with any new information and merely restated what the claimant had already told the DWP in a more assertive way or using better articulated representations.

- 4.32 However, any consideration of advice provision must be done against the backdrop of the current legal advice landscape. The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) removed from the scope of legal aid most cases involving welfare, housing, debt, employment and immigration. The knock-on impacts of LASPO have been substantial, with a huge decline in the number of not-for-profit legal advice centres³²² and those surviving having insufficient capacity to assist all those requiring help.³²³ Given the acute need that many claimants have for benefits advice, we recommend that **legal aid funding be reinstated for early benefits advice**. We note that the Legal Support Action Plan that accompanied the LASPO Post Implementation Review agreed that support at an early stage may help people resolve problems more efficiently and effectively and committed “to test the impact of early legal advice in promoting early resolution, we will pilot face-to-face early legal advice in a specific area of social welfare law and we will evaluate this against technological solutions, bearing in mind

³²² From 3,226 in 2005 to 1,462 in 2015. See A. Ames et al., [Survey of Not for Profit Legal Advice Providers in England and Wales](#) (Ministry of Justice, 2015). In 2012, 24% of recent users of legal services surveyed by the Legal Services Consumer Panel accessed them at no cost. In 2018, that figure dropped below 15%, Legal Services Consumer Panel, [Tracker Survey 2018 – Briefing note: ohw consumers are choosing legal services](#) (2018).

³²³ More than half of the 700 people who responded to the Ministry of Justice consultation reported that they had client groups who they were unable to help due to lack of resources, expertise, or because the issue fell outside of their organisation’s remit. See A. Ames et al., [Survey of Not for Profit Legal Advice Providers in England and Wales](#) (see n. 322 above). Of Citizens Advice Bureaux who previously held legal aid contracts for specialist welfare benefits advice, 85 per cent reported a reduction in capacity to provide specialist services. See Citizens Advice, [Submission to the Justice Select Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (2014) p. 5. Reductions in the scope of legal aid have not been as severe in Scotland and Northern Ireland, where LASPO does not apply. However, there have been reductions to areas of assistance and a narrowing of eligibility criteria, as well as rising thresholds for financial contributions by individuals, alongside the removal of funding contracts for specialised areas of work. G. McKeever, M. Simpson and C. Fitzpatrick, [Destitution and Paths to Justice](#) (see n. 3 above) p. 47.

costs.”³²⁴ We understand from the Ministry of Justice that work on the pilot was paused for most of 2020 due to the pandemic but the pilot should commence at the beginning of 2022. The current proposal is to pilot the provision of rolled up legal advice in welfare benefits, debt and housing in two geographic areas. We welcome the pilot and urge the Government to progress it as quickly as possible.

Help to Claim

4.33 The DWP invested £39 million in Help to Claim, a service provided by Citizens Advice and Citizens Advice Scotland to assist claimants in applying for UC.³²⁵ The assistance is offered across varying channels, including face-to-face, over the phone and online and through webchat. The service comprises technical assistance and substantive welfare advice.³²⁶

4.34 We welcome the provision of advice and support for people making UC applications. However, the service is focused on the initial application and is provided only up to the point at which a claimant receives their first payment. We were told that this is insufficient as claimants require ongoing assistance to engage with UC, in particular, those who are digitally excluded. As discussed further below, legal problems often cluster together, such as those relating to debt, benefits and housing. The predecessor to Help to Claim, Universal Support, was envisaged as a ‘wrap around’ service that would include additional assistance, for example for those struggling to manage their money.³²⁷

³²⁴ See n. 14 above, Ministry of Justice, [*Legal Support: The Way Ahead. An Action plan to deliver better support to people experiencing legal problems*](#) (CP 40, 2019) p. 7.

³²⁵ Universal Credit, [‘Citizens Advice launch new services for people applying for Universal Credit’](#) (April 2019). The service was previously called Universal Support.

³²⁶ Help to Claim is run in Northern Ireland, however the DfC has provides / funds other support services. The DfC run an expanding advice section called Make the Call. It initially provided checks for benefits eligibility for those who called but we were told that they are now moving into providing further services such as form filling (nidirect, [Make the Call Service](#)). The DfC also fund a single point of contact telephone number for benefit advice relating to welfare reform – the Welfare Changes Helpline, which is operated by Advice NI (nidirect, [Welfare changes helpline](#)).

³²⁷ Work and Pensions Committee, [Universal Credit: Wait for First Payment](#) (October 2020) para 124.

- 4.35 We support the Work and Pension Select Committee’s recommendation that **“the Department invests in expanding and developing Help to Claim so that the service can provide support to people beyond the application process. This should include debt advice, support for people who are struggling with Advance repayments, and tailored support for people with complex needs who need additional support throughout their claim. The service should also offer digital support—for example, supporting people to make use of the online journal to maintain their claim.”**³²⁸
- 4.36 Working Party members also raised concerns that by providing Help to Claim through one single organisation – Citizens Advice – may limit its geographical reach. Although Citizens Advice is a national organisation its geographical scope still has limitations and there are some areas which do not have a local branch.³²⁹ Further, individuals may already know and trust other advice providers and they would prefer to go to them for assistance. For example, one organisation providing benefits advice told us that their clients, who are largely Asian women, do not use Help to Claim because they worry about engaging with Citizens Advice due to potential cultural barriers and prefer to use an organisation specifically aimed at supporting their community. The Working Party therefore recommends that **the DWP considers broadening the providers of Help to Claim beyond Citizens Advice.**
- 4.37 We note that the current contract with Citizens Advice was awarded as a ‘direct grant’ award and that the DWP is considering running a competitive tendering exercise once the current arrangements are due to end this year.³³⁰ This would provide a good opportunity to broaden both the service provision and providers.

³²⁸ *Ibid*, para 132.

³²⁹ For example, in North Ayrshire in Scotland. The Orpington branch closed in 2012 and those seeking advice from a Citizens Advice Bureau must now travel to Bromley.

³³⁰ National Audit Office, *Universal Credit: getting to first payment* (see n. 129 above) para 3.10-3.11.

Co-location

- 4.38 Individuals' problems with benefits often go hand-in-hand with other legal problems. In particular, housing, benefits and debt issues are commonly associated: the inability to work leads to a loss of income, which can lead to non-payment of rent and eviction.³³¹ In light of this there is clear benefit of co-locating different types of advice together. One successful example of this that was happening prior to the pandemic was the Westminster Citizens Advice "Advice Shop". Advice Shop sessions are run three times a week across Westminster and bring together a range of organisations providing advice across benefits, debt, housing, health and community care, employment, immigration, consumer issues and crime. Clients are triaged to understand what issue(s) they are facing and then directed to relevant organisations that they can see all in the same place on the same day.
- 4.39 Legal problems do not just cluster with other legal problems but also with ill-health.³³² JUSTICE has previously highlighted the benefits of locating advice provision within primary healthcare settings.³³³ Recent research by the Administrative Justice Council found that locating benefits advice within hospital settings had a number of advantages for both the hospital trusts and the claimants. This included being better able to assist claimants gather medical evidence needed to support their benefits claims.³³⁴
- 4.40 Co-location can also assist in ensuring that those who need advice are able to access it, by situating advice provision in places or services that vulnerable or hard to reach groups already use for other purposes. For example, in Northern Ireland the Community Advice Centre outreach advisers used to situate

³³¹ R. Moorhead and M. Robinson, *A trouble shared – legal problems clusters in solicitors' and advice agencies* (Government Social Research and Department for Constitutional Affairs, 2006); P. Pleasance, N. Balmer and C. Denvir, *How people understand and interact with the law* (Legal Education Foundation, 2015).

³³² G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n. 3 above) p.52.

³³³ JUSTICE, *Innovations in personally-delivered advice: surveying the landscape* (2018).

³³⁴ Administrative Justice Council, Health Innovation Ecosystem and University of Westminster, *Access to social welfare advice in a hospital setting: integration of services* (see n. 39 above).

themselves in rural community centres, some housing associations have in-house benefits advice, advice providers located in foodbanks,³³⁵ and benefits advice provided by women's centres.

- 4.41** In light of this we welcome the Government's commitment in the Legal Support Action plan to "work collaboratively with the sector to pilot, test and evaluate the provision of holistic legal support hubs to more effectively support earlier resolution of a person's legal problems". We recommend that **this should take the form of both co-location of advice providers covering different areas of law as well as co-location of legal advice with other services used by people who may be experiencing issues related to benefits. It should be driven by the advice sector³³⁶ and build on existing models and initiatives that are working successfully.**

The pandemic

- 4.42** The pandemic has also had a big impact on advice delivery. The measures brought in by the Government and the societal responses have forced organisations and individuals to adopt alternative working methods. As unemployment has risen and personal finances have been squeezed, the demand for social welfare assistance has grown.³³⁷ The Administrative Justice Council and JUSTICE carried out a survey of advice providers to understand how they have responded to these unusual circumstances and what the effects have been for providers and clients following the switch to remote advice provision.³³⁸ Drawing on responses to that survey as well as the experience of Working Party members and consultees, it is clear that:

³³⁵ Eastbourne Foodbank, '[Get Help, More than Food](#)'.

³³⁶ One of the issues with previous attempts at colocation - Community Legal Advice Centres and Community Legal Advice Networks was that these were not driven by the advice sector.

³³⁷ Citizens Advice, '[Life Through Lockdown](#)' (March 2021) p.17

³³⁸ Administrative Justice Council and JUSTICE, Welfare benefit advice provision during the pandemic (see n. 249 above).

- a) Those worst hit by the pandemic have been those who were already struggling to access advice.³³⁹
- b) The switch to remote advice delivery posed similar challenges to those experienced in the context of UC's digital by default system – remote services delivery proved challenging for some clients particularly those who have difficulty with technology.³⁴⁰ Face-to-face advice cannot be replaced for some clients. The most vulnerable clients still need holistic face-to-face advice services, however a hybrid model of advice using a mix of face-to-face, telephone and video at the preference of the client will be likely to be the most effective way to deliver advice going forward.
- c) Telephone was the method of remote advice delivery most frequently used by providers during the pandemic. The majority of respondents to the survey felt that the delivery of remote advice was effective. However, this could indicate respondents' views of the mechanics of the technology rather than the effectiveness of advice delivery.³⁴¹ In so far as telephone was the preferred method of advice delivery, this is likely because advice providers were insufficiently prepared for providing online services, rather than because it necessarily works better. Research into the relative benefits of video and telephone advice would be of assistance in shaping advice delivery models of the future.
- d) For hard-to-reach clients it is important to understand the different modes of communication in communities and what services people already come into contact with, in order to use these as channels to provide information and advice.³⁴²
- e) Active referrals, where clients are asked for their consent to pass their details on to another organisation so that that organisation can contact them directly, work much better than signposting and organisations should try to do this wherever possible.

³³⁹ N. Creutzfeld and D. Sechi, '[Social Welfare \[law\] advice provision during the pandemic in England and Wales: a conceptual framework](#)', *Journal of Social Welfare and Family Law*, Volume 43, 2021 – Issue 2, p.156

³⁴⁰ *Ibid*, p.163.

³⁴¹ *Ibid*, p.161

³⁴² As explained in paragraph 4.40 above.

Signposting

- 4.43 Good signposting by the DWP at the start of, and during, the benefits application process is an important opportunity to provide claimants with information on what advice and support is available and how they can access it.
- 4.44 The DWP already do some signposting, but it is limited and inconsistent. Online the UC webpages only signpost to Help to Claim or the UC helpline and there is no signposting during the online UC application process.³⁴³ The gov.uk/pip page directs claimants to either Citizens Advice or a ‘local support organisation’. The latter link takes you through to a Government ‘find a community support group or organisation page’³⁴⁴ which asks you to enter your postcode and then directs you to your local council’s website. However, often the page it directs you to is “page is not found” and even where the link does work it was difficult to find any specific benefits related advice on the council’s website.
- 4.45 Consultees and Working Party members, thought that the current signposting in DWP decision letters and mandatory reconsideration notices was particularly inadequate, given the importance of advice at this stage of the process. Currently DWP letters contain the following by way of signposting:

³⁴³ The UC “how to claim” webpage, includes signposting to Help to Claim and the Universal Credit helpline. The “apply for universal credit” webpage only signposts to the UC Helpline. There is signposting to Help to Claim and the UC helpline on the [understandinguniversalcredit.gov.uk](https://www.understandinguniversalcredit.gov.uk) pages however these are not linked to from the gov.uk UC pages. The Universal Credit: Health conditions and disability guide contains a section ‘Get help to make your Universal Credit Claim’, which signposts to Help to Claim. The guide states that if you need help completing the UC50 questionnaire to ask a friend, relative, carer or support worker and if you still need help or have not one to support then to contact the Centre for Health and Disability Assessments (CHDA) with a link to their website. The CHDA provides a helpline to call “if you need help filling in the form”. The UC50 form states that if you need help filing in the questionnaire you can call the Universal Credit Helpline.

³⁴⁴ Gov.uk, [‘Find a community support group or organisation’](#).

Support and advice

If you need help or advice to decide what to do, you can talk to your carer, family or friends.

You could also contact a local support organisation who can provide independent help and support – for example, the Citizens Advice Bureau. You can find details online, at your local library or in the telephone directory.

If you need help managing your money please contact the Money Advice Service....

- 4.46 Whilst Citizens Advice provides an excellent service and is a great source of advice and support, as discussed above, it will not be the best place for all claimants to access advice and support and there are numerous other organisations that offer benefits advice. It also does not have the capacity to provide benefits advice to all claimants. Further, even though it is signposted to, no contact details or information about how to get in touch with local bureaux are provided.
- 4.47 By comparison the Financial Conduct Authority requires all debt collection firms to signpost customers to the Money Advice Service.³⁴⁵ The Money Advice Service provides its own guides and information on managing money and has its own tools such as the “Money Manager” for people on Universal Credit, it also has a debt advice locator tool, which provides information on where people can get debt advice either online, over the phone or in-person. The in-person section allows individuals to search for local services using their postcode or current location.
- 4.48 We recognise that the big question in relation to improving signposting is who do you signpost to? We understand why DWP currently signposts to Help to Claim, which they fund, and Citizens Advice more generally which provides a national network of advice centres and is well known and established.

³⁴⁵ From June 2021 Money Advice Service, the Pensions Advisory Service and Pension Wise will be brought together and rebranded as MoneyHelper.

However, we think that more can and should be done. We therefore recommend that **there should be a single access ‘portal’ which provides information on organisations providing welfare benefits advice and which should be clearly signposted to on all webpages that provide information on benefits, throughout the UC online application process, on paper-based forms and in all decision letters and mandatory reconsideration notices.**

4.49 There are a couple of advice amalgamator sites for benefits that already exist.³⁴⁶ AdviceLocal allows users to select an advice topic, one option is welfare benefits. Users can then enter their postcode and find local welfare benefits advice organisations (as well as information on entitlements and how to challenge a decision).³⁴⁷ Turn2us has ‘Find an Adviser’ which also allows people to search for local advice by their postcode. The information provided on Turn2us’s ‘Find an Adviser’ is more detailed. It includes a description about the clients advice providers serve, opening hours, languages spoken and contact details including phone numbers and email addresses, rather than just a link to the organisation’s website. Whilst the Turn2us ‘Find an Adviser’ is a helpful tool, we think that more can be done to inform claimants of what advice and support is available.

4.50 The new advice portal we are recommending should:

- a) **Be funded by DWP and the Ministry of Justice, as appropriate.**³⁴⁸
- b) **Include a website that provides people with a comprehensive list of where they can obtain welfare benefits advice and support. It should make clear what clients the organisations serve, what stage of the application and/or appeals process organisations can help with and whether the advice can be provided over the phone, online and/or**

³⁴⁶ There are also more general advisor locators, for example, Advice NI has a zoomable map of all its members (Advice NI, [members](#)), some of whom provide benefits advice and Advice UK allows users to search for advice providers in their area (advice UK, [Find Advice](#)). However, they are not benefits specific or do not let users filter for welfare benefits advice providers only.

³⁴⁷ AdviceLocal, ‘[Your local guide to help with benefits, work, money, housing problems and more](#)’.

³⁴⁸ Advice would cover both entitlements and managing a claim as well as challenging a decision.

face-to-face. It should also include links to self-help tools such as Advicenow's PIP Mandatory Reconsideration Request Letter tool.³⁴⁹

- c) The website must be in plain English and accessible. There should be a phone number for people to call where they can be provided with details of the relevant advice organisations and where appropriate can be referred directly to an organisation that can provide support.³⁵⁰
- d) It could be run by DWP (or Ministry of Justice) itself, or its operation could be put out to tender to other organisations. However, the website should always maintain the same look and feel to the public regardless of who is running it.
- e) Have some form of quality control of the organisations on the portal, for example by requiring organisations to be accredited.

4.51 We acknowledge that the advice sector is already functioning at capacity and that for any signposting initiative to be effective it needs to be accompanied by increased funding to deal with the additional demand. The reintroduction of legal aid for early benefits advice recommended above should assist in this regard.

4.52 JUSTICE has previously recommended and has been developing similar ideas outside of the benefits context. In its report *Delivering Justice in the Age of Austerity* it advocated for the development of an integrated online and telephone service, providing effective access to information, advice and assistance.³⁵¹ In developing this idea JUSTICE has more recently been working with the advice sector on a proposal for an Online Advice Platform which would both signpost to advice provision and facilitate remote advice where necessary. The Online Advice Platform is envisaged as commencing with a form of "triage" – users would be able to select from a drop down "menu" of legal problems. The platform would then match a user's problem

³⁴⁹ AdviceNow, '[PIP Mandatory Reconsideration Request Letter Tool](#)'.

³⁵⁰ See para 4.71 below for details of HMCTS's signposting project as an example. In Northern Ireland there is single point of contact telephone number for benefit advice relating to welfare reform – the Welfare Changes Helpline, which is operated by Advice NI (nidirect, *Welfare changes helpline* (see n. 326 above).

³⁵¹ JUSTICE, [*Delivering Justice in the Age of Austerity*](#) (2015) Chapter 3.

to a list of options for specialist advisors.³⁵² The list would include local, in-person advice providers, as well as services delivered remotely. For remotely delivered advice, users would be able to contact specialist legal advisors directly through a video chat function built into the platform. Remotely delivered advice would be augmented by client sided assistance providing practical, technical and emotional support.³⁵³

- 4.53 The advice portal recommended above would not (at least initially) have all of the features of the Online Advice Platform and would be focused specifically on benefits advice provision. However, we hope that, if successful the advice portal would provide a model for the development of a broader service with the additional features described above.

Appealing a decision

Completing the application

- 4.54 As explained in **Chapter 3**, for UC, PIP and ESA, appellants are able to either appeal by post or through an online application process. The online application process is part of the broader HMCTS Reform Programme that is currently ongoing. Although HMCTS has made clear that appellants will continue to be able to appeal through a paper-based channel, it is expected that across the court and tribunal system, the vast majority of cases will be resolved online. The pandemic has accelerated many aspects of the Reform Programme.

³⁵² Possibly using similar technology to Victoria Legal Aid's ORBIT. See R. Smith, '[ORBIT: not just a chewing gum](#)' (Law Technology and Access to Justice, 2018).

³⁵³ See, for example L. Ho and A. Fife, *Pro bono legal services via video conferencing: Opportunities and Challenges* (Australian Pro Bono Centre, July 2015), pp. 3, 13 and 16. Roger Smith and Alan Paterson also refer to a study carried out in 1996 and funded by the Nuffield Foundation, which found that self-help kiosks set up in courts "worked best when fed, watered and tendered by living people rather than just dumped and left in dark courthouse corners". The report had found that the best kiosk was one which was set up in a law library and supervised by staff. See Roger Smith and Alan Paterson, *Face to Face Legal Services and their Alternatives: Global Lessons from the Digital Revolution* (2014) p. 55-56.

- 4.55 A survey conducted by the Administrative Justice Council found a high level of need for digital assistance and support to access online justice systems.³⁵⁴ Recognising that not everybody can engage online, HMCTS has been piloting a ‘Digital Support’ service.³⁵⁵ Digital Support provides telephone, face-to-face and remote (due to the pandemic) assistance for users of specific HMCTS online services but who do not have the skills, ability or access to do so on their own.³⁵⁶ Social Security and Child Support appeals is one of the services Digital Support assists with and the vast majority (68 per cent) of appointments have been in relation to this.³⁵⁷
- 4.56 The telephone element is provided by HMCTS’ Courts and Tribunals Service Centres. The face-to-face element of the pilot has been delivered by the digital exclusion charity Good Things Foundation and is run through participating centres which are primarily public libraries, Citizens Advice bureaux, community centres and law centres. We are pleased that centres are now able to type on behalf of the Digital Support user and that in response to Covid-19 centres have been able to provide the service remotely over the phone or call video via web-based software.³⁵⁸ This includes being able to complete forms by proxy provided that the user understands the service is being completed online and can check what is entered into the form.
- 4.57 The Digital Support service is funded to provide digital assistance, rather than legal advice or other support. However, as highlighted by the Administrative Justice Council,³⁵⁹ and recognised by Good Things Foundation itself in its

³⁵⁴ Findings from 346 respondent organisations were that between 35 and 50 per cent of their service users would require digital assistance and support to access a digital justice system. D. Sechi, [Digitisation and accessing justice in the community](#) (Administrative Justice Council, April 2020).

³⁵⁵ Previously known as Assisted Digital.

³⁵⁶ HMCTS, [HMCTS Services: Digital Support](#) (May 2021).

³⁵⁷ Other services are Help With Fees, Civil Money Claims, Divorce, Single Justice System and Probate, which combined accounted for the other 32 per cent of appointments. Good Things Foundation and HMCTS, [HMCTS Digital Support Service: Implementation Review](#) (September 2020) p. 5.

³⁵⁸ Remote form filling on behalf of the client was previously recommended by JUSTICE in its [Preventing Digital Exclusion](#) (2018) report, para 1.25

³⁵⁹ D. Sechi, [Digitisation and accessing justice in the community](#) (see n. 354 above).

evaluation of the pilot,³⁶⁰ users can face numerous barriers to accessing HMCTS services online and are likely to require a wider package of support than just Digital Support, including legal or specialist welfare advice. Initially centres were not allowed to deliver advice in the same session as providing digital support, however for Phase 4 of the pilot, this is possible in the few centres which are accredited legal advice providers (although they are only funded for the digital assistance element and not the advice element). However, those centres that do not provide legal or specialist welfare advice, must know where the distinction between digital assistance and legal advice lies and be careful not to cross this. It may also mean appellants having to go to multiple organisations for assistance rather than one, risking referral fatigue.³⁶¹

4.58 In addition, JUSTICE has previously highlighted the need to ensure that Digital Support is available to those most in need of it, and has sufficient geographic coverage, including in areas where internet access is still difficult.³⁶² In a recent review of Digital Support, PLP raised concerns about both of these issues as well as the sustainability of the current funding model. They also highlighted the need for empirical research in relation to these issues.³⁶³

4.59 A procurement process has been commenced to find a provider or providers to deliver the national service, starting from August 2021.³⁶⁴ We were unable to access the full tender documentation however we have been told that the tender is for digital assistance only and whilst provider(s) may provide other types of support, including legal advice, this will have to be funded separately. We are disappointed with the continued separation of digital assistance and legal/specialist advice funding. In light of this HMCTS should

³⁶⁰ Good Things Foundation and HMCTS, *HMCTS Digital Support Service: Implementation Review* (see n. 357 above) p. 6.

³⁶¹ Citizens Advice, '[Written evidence from Citizens Advice \(CTS0016\)](#)' (2019).

³⁶² JUSTICE, *Preventing Digital Exclusion* (see n. 358 above).

³⁶³ J. Hynes, *Digital Support for HMCTS Reformed Services: What we know and what we need to know* (Public Law Project, May 2021).

³⁶⁴ Ministry of Justice, [HMCTS Digital Support – Contract Notice](#), (May 2021).

work closely with the Ministry of Justice to coordinate digital assistance provision with the Legal Support Action Plan, in particular the possible return of legal aid for early legal advice.

Understanding the process

What to expect

- 4.60 JUSTICE's report *Understanding Courts* found that lay users often go to a court or tribunal without sufficient understanding of what they should expect from the process and what the process expects from them. Such uncertainty and lack of clarity can inhibit the effective participation of the lay user and alienate them.³⁶⁵ Consultees told us that appellants often did not know what to expect at the Tribunal, this was frequently to do with confusion around the two-stage appeals process. Simplifying the appeals process as we recommend in **Chapter 3** should therefore assist in this regard. However, it is also important that whatever the process, appellants are provided with clear, accessible and easy to understand information on what to expect at a hearing to help mitigate any anxiety they may be experiencing about the appeal.
- 4.61 In response to JUSTICE recommendations, there is already a range of information available online for appellants about what to expect at their appeal, in particular:
- a) '*What to expect coming to a court or tribunal*' guide – this is a non-jurisdiction specific guide for all courts and tribunals. It provides helpful general information, for example, on when to arrive, who can come with the appellant, what will happen when they enter the building (security checks), making sure to silence phones during the hearing, reminding people they can ask to take a break. It has also been updated to cover Covid-19 related matters.³⁶⁶
 - b) '*What to expect when joining a telephone or video hearing*' guide – again this is cross-jurisdictional. It provides practical information on how to join telephone or video hearings, how to prepare for the hearing, for

³⁶⁵ JUSTICE, *Understanding Courts* (see n. 291 above).

³⁶⁶ HMCTS, '[What to expect coming to a court or tribunal](#)' (June 2021)

example, choosing an appropriate place to be for the hearing and ensuring devices are charged and what will happen during the hearing including video call etiquette, for example remaining on mute when not speaking. The page also contains a video guide on ‘Preparing for your video hearing’.³⁶⁷

- c) *‘HMCTS who’s who: Social Security and Child Support Tribunal’* – this contains an explanation of the people who may be present in a benefits appeal. It provides helpful, clear and concise explanations.³⁶⁸
- d) *Coming to a social security and child support tribunal video* – this is a video of a poster showing where everyone in the room will sit (with illustrations of people) and the text explaining what each person does.³⁶⁹ We could not find a still image of the poster online.
- e) *‘How to appeal against a decision by the Department for Work and Pensions on PIP, ESA or UC’ (SSCS1A)*.³⁷⁰ This contains a lot of helpful information about completing the online application process or appeal form and what happens after it is submitted, how to prepare for the hearing and what will happen at the hearing. We are pleased that it has recently been updated and now includes information on remote hearings, including how appellants should prepare for video hearings.

4.62 Although there is good, clear information on appealing a benefits decision already available, it is not always easy to find and is fragmented across many webpages. In addition, the jurisdiction specific guide on how to appeal a PIP, ESA or UC decision is very dense, and at 28 pages long, some appellants may struggle to read and digest it.

4.63 *Understanding Courts* recommended the establishment of a ‘HMCTS Online’ site that provides comprehensive, simple, accessible and jurisdiction specific information on the process of going to a court or tribunal, as well as curated links to independent advice providers for

³⁶⁷ HMCTS, [‘What to expect when joining a telephone or video hearing’](#) (March 2021).

³⁶⁸ HMCTS, [‘HMCTS who's who: Social Security and Child Support Tribunal’](#) (June 2020).

³⁶⁹ HMCTSGovuk, [‘Coming to a social security and child support tribunal’](#) (2018)

³⁷⁰ HMCTS, [‘How to appeal against a decision by the Department for Work and Pensions on PIP, ESA or UC’](#) (SSCS1A PIP/ESA/UC, 2020).

each jurisdiction.³⁷¹ The Working Party endorses this recommendation. It would be helpful to bring together all the available information in one place, with jurisdiction specific subpages/sections. A link to the advice portal recommended above should also be included in the Social Security and Child Support section/page.

- 4.64 In addition, an easy read version of the SSCS1A guide should be produced and included on the Social Security and Child Support section of HMCTS Online. It will likely be difficult to present all the information contained in the SSCS1A in easy read format, but it should cover the key points. Further, HMCTS should produce an engaging, clear and high-quality production video specific to the FTT (SSCS) with tribunal professionals explaining their roles and giving a realistic overview of what a video, telephone and face-to-face hearing is like. The First-tier Tribunal (Special Educational Needs and Disability) videos provide a good example.³⁷² This is preferable to the video of the poster described at paragraph 4.61(d) above, which does not give a realistic impression of what appellants can expect and does not include any audio. The video should also be subtitled in a variety of core languages.

Decision and direction notices

- 4.65 HMCTS recently conducted a small piece of research on FTT (SSCS) decision notices and direction notices (instructions from the Tribunal to the parties in relation to the case), asking for feedback from advice providers. The feedback, which was also reflected in feedback from subgroup and Working Party members, included:
- a) Appellants can think a direction notice means the hearing has taken place without them.
 - b) Appellants can be unsure what direction notices mean and whether it is they who have to do something or the DWP.

³⁷¹ JUSTICE, *Understanding Courts* (see n. 291 above)

³⁷² HMCTS, '[Special Educational Needs and Disability Tribunal \(Welcome Chapter 1\)](#)' (2017) (Although they now need updating to reflect the fact that hearings may be held remotely)

- c) Some appellants need help understanding decision notices, including whether they have won or lost..
- d) The terminology in decision and direction notices can be confusing – appellants do not always know that they are the appellant and the DWP the defendant, or what ‘your appeal is upheld’ means.

4.66 It is clearly crucial that appellants understand what the Tribunal is asking them to do via a direction notice, and even more importantly, what the outcome of the hearing is. We recommend that **all decision and direction notices are written as clearly as possible in plain English. Direction notices, particularly those issuing directions to multiple parties, should make clear what the appellant is required to do and what is the responsibility of DWP (or HMCTS).**

4.67 However, no matter how clear direction and decision notices are, there are still likely to be some claimants who struggle to understand exactly what they mean. This underscores the importance of access to independent advice, which is discussed below.

Advice and support

4.68 In England and Wales, the vast majority of appellants are unrepresented at the FTT (SSCS).³⁷³ Despite this, as previously discussed appellants are highly likely to be successful in their appeal. However, evidence suggests that appellants who are represented before social security tribunals, or at least have access to expert advice prior to the hearing, are likely to have a greater level of success than those who are not. A FOIA request showed that in 2012/13 the overall success rate for appellants in the FTT (SSCS) was 47% and the success rate for those with representation was 63%. There were bigger differentials in outcomes for those with and without representation at individual hearing centres – at Sutton the success rate for represented appellants was 74% compared to an overall rate of 55%.³⁷⁴ Moreover, the

³⁷³ We understand that representation in Scotland is much higher. Scottish tribunal judges on our Working Party and subgroups estimate around 80 per cent of appellants are represented in Scotland versus 30 per cent in England.

³⁷⁴ Ministry of Justice, ‘[Social Security appeal tribunals and representation statistics \(FOI/80708\)](#)’ (2013).

Low Commission asked advisors what factors made the most difference to an appellant's chances of success on appeal. Obtaining supporting evidence from a health/social care professional scored the highest. This is often the staple work of welfare rights agencies who understand the statutory descriptors and evidential requirements.³⁷⁵ Being accompanied or represented by an adviser also scored highly (67%). Although being represented by a lawyer did not (17%).³⁷⁶ The report therefore found that whilst legal representation at the Tribunal was unnecessary, the role of trained and highly specialist welfare rights advisers, especially when present at the Tribunal and looking out for the appellant's interests, is helpful and often essential.³⁷⁷

- 4.69 Research conducted by the EHRC in 2018 found that participants who had tried to represent themselves at tribunal hearings for welfare benefits issues largely found the process complex and intimidating, particularly as many were unwell at the time. Even if they were successful in their appeals, they did not feel that it was a quick or straightforward process to navigate.³⁷⁸
- 4.70 These findings were reflected in the views of Working Party members and consultees, who felt that although having legal representation at a benefits appeal was not necessary, having someone with knowledge of the benefits and appeals system was preferable, and sometimes essential, especially for vulnerable clients for whom the process can be particularly stressful and intimidating. As discussed in **Chapter 2** some appellants with mental health conditions may also have difficulties self-reporting the way their disability affects their fitness to work. Having a representative is therefore important to ensuring a claim is effectively articulated.
- 4.71 Our recommendation above supporting the establishment of an advice portal will make it easier for HMCTS to signpost appellants to benefits advice. We

³⁷⁵ The Low Commission, *Follow up report* (see n. 3 above) p. 41.

³⁷⁶ Much of the advice sectors' representational and advice work in social security tribunals pre-LASPO, although delivered under legal aid contracts, was provided by specialist advisers rather than qualified lawyers.

³⁷⁷ The Low Commission, *Follow up report* (see n. 3 above) p.41.

³⁷⁸ J. Organ and J. Sigafos, *The impact of LASPO on routes to justice* (see n. 315 above).

also understand that HMCTS is currently working on a signposting project to improve signposting to external organisations by HMCTS staff in Court and Tribunal Service Centres (who provide the telephone element of Digital Support). The project aims to work with third party organisations to understand the scope of their services and their capacity, have a verified list of signposting options which have met diligence and quality checks, train HMCTS staff to identify the callers' needs and signpost them to suitable services that can meet these needs. We welcome this ambitious project and if done right,³⁷⁹ this will be an important service for all tribunal and court users, including FTT (SSCS) appellants. However, as explained in paragraph 4.51 above, signposting alone is not enough whilst the advice sector has insufficient resources to take on more work. HMCTS must therefore ensure that the signposting project is done in conjunction with the early legal support and advice work outlined in the Legal Support Action Plan.

³⁷⁹ In particular HMCTS must ensure that signposting is meaningful to prevent referral fatigue.

V. CONCLUSION AND RECOMMENDATIONS

- 5.1 This Report follows a number of previous reports raising concerns with the benefits system and putting forward proposals and recommendations for change. However, despite these prior efforts, it is clear that there remain ongoing issues with benefits decision-making and barriers to effectively challenging those decisions when they have been wrongly made. Getting benefits decisions wrong can have a devastating impact on individuals' lives. This has been tragically evidenced by significant numbers of people claiming benefits who have died, including by suicide, or come to serious harm.³⁸⁰
- 5.2 This Working Party took place against the backdrop of the Covid-19 pandemic. The impact of the pandemic on people's mental, physical and economic wellbeing cannot be overstated and has resulted in a significant increase in people requiring support from the benefits system. The need for a welfare system that is accessible and makes accurate decisions is greater than ever. The pandemic has also forced the DWP and DfC, the FTT (SSCS) and advisers into using new methods of working. The impact of these changes needs to be properly evaluated; however, we believe that there are valuable lessons that can be learnt from this unprecedented time and hope that positive changes will be retained following a return to 'normal'.
- 5.3 The Working Party also took place in the context of devolution of significant new social security powers to the Scottish Government. We applaud the Scottish Government's aim to create a social security system grounded in the principles of dignity and respect. Its desire to learn from the experiences of claimants under the reserved system has resulted in a number of measures which have been enshrined in primary legislation, or are being consulted on, which should help realise this aim. In our view there is much that the DWP and DfC could learn from the Scottish system. However, how these measures operate in practice remains to be seen and is something that we will monitor during the implementation phase of this work.

³⁸⁰ See NAO, [*Information held by the Department for Work & Pensions on deaths by suicide of benefit claimants*](#) (HC 79, 2020).

- 5.4 The findings of this Report demonstrate that the benefits system is not working as well as it should for those with health conditions and disabilities, in particular those with mental health conditions and fluctuating conditions. We are aware that the DWP's long awaited health and disability green paper is expected shortly after the publication of this Report. We hope that this will provide an opportunity for DWP to take on board the recommendations made in this Report and improve the benefits system for those with health conditions and disabilities. In particular, we have highlighted the problems with health and disability assessments being conducted by under qualified, outsourced providers. The Working Party's view is that these would be significantly improved if conducted by relevant public sector professionals and the Health Transformation Programme pilot provides an opportunity to assess the desirability and feasibility of this.
- 5.5 Throughout the course of the Working Party it was made clear to us that there is often a significant gap between what DWP policy says is meant to be happening on the one hand and claimants' and advisers' experience of the benefits system on the other. We know that DWP has a quality assurance process in place and provides staff with training. However, this is clearly inadequate given the gap between policy and practice. DWP is the largest Government department, and we acknowledge that monitoring and quality control at that scale is difficult. Nevertheless, it is essential to prevent repeated errors that cause immense hardship to people's lives. That is why the Working Party views the introduction of an independent regulator or inspector as vital. A body external to, and independent of, the system would be better equipped to identify systemic issues and ensure that changes are made to rectify these.
- 5.6 It is important that claimants who do not consider that they received the correct decision first time are able to raise an effective challenge through a system of redress that is accessible, fair and efficient. Despite improvements to the mandatory reconsideration stage, the success rate on appeal remains extremely high, indicating a continued failure to revise at the mandatory reconsideration stage in numerous decisions. This problem is compounded by the high attrition of claimants following the mandatory reconsideration stage, the barriers that exist to obtaining a mandatory reconsideration decision, and the overall length of time the process takes. On the other hand, we recognise the value in having the DWP look again at decisions prior to the Tribunal

where this can avoid claimants having to go through an appeal. The Working Party's proposed solution provides a direct right of appeal to the Tribunal whilst requiring that the DWP review its decision before the appeal progresses. In this way, where the DWP does not change the decision following its review, the appeal may proceed without claimants having to make another application.

- 5.7 The Working Party has highlighted both the opportunities presented by technology and the barriers that it can cause. When used well, digitisation can enable more streamlined processes, increase accessibility, for example, by broadening access to services for those who may find it difficult to attend assessments and hearings in person, and prevent claimants having to repeatedly provide the same information in different contexts. However, such developments require transparency around what is and is not being automated and digitised, how this is being done, and the technological capability of the systems. It also requires Government departments to work together in a joined-up way. Crucially, DWP and HMCTS must remain aware of the difficulties that digitisation poses for those who are digitally excluded and provide meaningful alternative routes of engagement for them. This is a particular issue for UC, where proper alternative channels for making and managing a claim are urgently required to ensure UC works for everyone.
- 5.8 Finally, the benefits system is complex. Understanding entitlements, managing claims and appealing incorrect decisions can be overwhelming and stressful and have detrimental impacts on individuals' health. Access to information, advice and support is therefore crucial to ensuring individuals receive the benefits that they are entitled to. An absence of these key mechanisms not only comes at a significant cost to the individual, but also to Government more widely given the knock-on effects on debt, homelessness, and health-care services. We therefore recommend improvements to information provision, signposting to advice and the use of technology to deliver that advice where appropriate. However, we recognise the challenges of providing sufficient levels of advice and support in the post-LASPO funding landscape and very much hope that funding for early legal advice will be reinstated.

Recommendations

Health and disability assessments

Mode of assessment

1. We echo the SSAC's recommendation that the DWP and DfC should produce – and publish – a comparative analysis of case outcomes for telephone, paper-based and video assessments, including consideration of the protected characteristics of claimants. In addition, they should evaluate the impact that the different modes of assessment have on claimants (**para 2.11**).
2. Where a health and disability assessment is required, wherever possible, claimants should be offered the choice of having this conducted via telephone, video or face-to-face. These options should be given in simple language in any correspondence from the DWP (**para 2.12**).

Quality and transparency of assessments

3. Claimants with mental ill-health, neurodivergent, co-morbid, complex, fluctuating or rare conditions should be assessed by HCPs with specialist knowledge of their conditions (**para 2.18**).
4. The assessor and decision-maker guidance and training should be updated to:
 - a) Make clear that HCPs/decision-makers must request additional evidence where this information is reasonably required to make an assessment. This should explicitly recognise that evidence may not have been provided because claimants may not have copies of it – rather than because it is not important or does not exist; and
 - b) Explicitly state that HCPs and decision-makers must request further evidence when this is required as a reasonable adjustment for claimants with mental health conditions.

In addition, the application forms and guidance should explicitly state that if claimants do not have copies of medical information easily available, this will be requested directly from their healthcare professionals by the assessment providers where this is required for the assessment (**para 2.25**).

5. Going forward the DWP and NHS should continue to work together to enable sharing of medical information between them (with the appropriate claimant consent and data protection in place). Once this is possible claimants should no longer be required to provide any medical information. This means they will only need to provide reports, statements or diaries from carers or family members **(para 2.26)**.
6. If assessors intend to rely on informal observations, they should tell the claimants and give them an opportunity to explain why these may not necessarily be an accurate reflection of their condition **(para 2.29)**.
7. Assessment reports and decision letters should:
 - a) Respond to all the evidence provided by the claimant or obtained by the HCP/decision-maker. This should include explaining why certain evidence is being given less weight or not being relied upon.
 - b) Where a claimant's own account of their impairment is rejected, there should be a strong evidential basis for doing so which should be fully explained.
 - c) Explicitly address conflicts between evidence **(para 2.30)**.
8. A copy of the assessment report should automatically be provided to the claimant along with the decision **(para 2.33)**.
9. All health and disability assessments should be audio recorded on an 'opt-out' basis. Decision letters should make clear that a copy of the recording can be requested. If an 'opt-out' basis is not possible, at a minimum the WCA and PIP forms updated so that they include a tick-box for claimants to indicate whether they want their assessment to be recorded, rather than having to make a request separately to the assessment provider **(paras 2.37 and 2.39)**.
10. Decision-makers should address contradictions between the HCP report and other evidence and not merely repeat extracts or summaries of the assessment report. They should express their own view, based on their own reasoning **(para 2.43)**.

Outsourcing of assessments

11. Health and disability assessments should no longer be outsourced to private companies and should be conducted by HCPs employed directly by the DWP together with clear channels of accountability and grievance procedures (**para 2.51**).

Sanctions

Claimant commitment and easements

12. The DWP should improve data collection and evaluation. It should collect data on:
 - a) Protected characteristics of all claimants, in particular UC claimants, and claimants who are sanctioned. The data on disability should be further disaggregated by impairment type. The DWP should explore ways to collect this data, including by learning from practice across other Government departments and through communicating the value and purpose of such data to claimants.
 - b) Setting of claimant commitments and the use of easements.
 - c) What happens following application of a sanction e.g., do people move off benefits entirely, are they sanctioned again, do they move into work? (**para 2.57**)
13. To help ensure that claimant commitments are properly tailored to individual claimants, reasonable adjustments are made where required and easements are applied where appropriate:
 - a) Initial interview times for individuals with complex needs, neuro-diverse conditions, fluctuating conditions, mental health conditions and/or those who need an interpreter should be lengthened to ensure there is sufficient time for work coaches to properly understand an individual's circumstances, tailor their claimant commitment accordingly and ensure that it is understood by the claimant.
 - b) Work coaches should have a standard set of topics to cover with claimants to help elicit information required and set appropriate and tailored claimant commitments (in addition to any other questions which are appropriate). Where appropriate, work coaches should seek specialist

advice, from a disability employment advisor where a claimant indicates they have a health condition or disability that affects their ability to work, and/or from appropriate external specialist organisations. However, there should not be any delay to receiving the first payment due to time that might be spent waiting for specialist advice.

- c) The mandatory easements should be expanded, for example to include circumstances relating to homelessness and temporary childcare, accompanied by guidance on their application. The ability to apply a discretionary easement should remain for any other circumstances not covered by the specific regulations (**para 2.63**).

Sanction decisions

- 14. In 2018 the Work and Pensions Select Committee recommended that the DWP introduce regulations on what constitutes ‘good reason’ for non-compliance with the claimant commitment. We agree with this recommendation (**para 2.67**).
- 15. As part of their evidence gathering, work coaches should contact and take into account information from relevant individuals, such as a claimant’s carer, who the claimant consents for them to contact (**para 2.69**).
- 16. We agree with the Work and Pensions Select Committee and others that a warning or ‘yellow card’ should be issued for a first failure to comply with the claimant commitment. The warning should be clearly communicated to the claimant via their preferred method of communication. It should be used only in cases where the claimant would otherwise be sanctioned i.e. they do not have a good reason for failure to comply, and not as a substitute for the proper application of the good reason test (**para 2.72**).
- 17. A further pilot and evaluation of an ‘early warning system’ should be carried out. This time, claimants should be provided with more than 14 days to provide further evidence, claimants should be made aware of what a ‘good reason’ might be and what appropriate evidence might look like, and the DWP should ensure that communication with the claimant is appropriate for that particular claimant in terms of language and any disability or vulnerability (**para 2.75**).

Automation

18. Whilst the DWP has automated many of its process and has made UC a ‘digital by default’ system, there are also elements of the benefits process that we consider it would be helpful to claimants to automate but which have so far not been, including those set out at **paragraph 2.84**.
19. DWP should publish information on how and when automation is used in the benefits decision-making processes and how it feeds into the final decision made by the decision-maker, including in relation to fraud detection and prevention. The DWP should disclose the data inputs and parameters of the system, and where possible, the algorithms themselves, but at a minimum the criteria or indicators used by the system. The DWP should also be clear about the constraints of automated systems and what is, and is not, technologically possible. The DWP should work with civil society organisations in order to establish the most useful way to publish and present this information (**para 2.92**).

Standard, quality control, training and oversight

Quality control, standards and oversight

20. We agree with the Select Committee, EHRC and others that the DWP should establish and implement suitable performance measures which should be made publicly available and accompanied by clear targets to help ensure that the welfare system is transparent and accountable. The DWP should also commission an independent evaluation of its current monitoring and quality assurance systems and processes and adopt any recommendations made for improvement in order to ensure that such performance measures and targets are met (or indeed that current policy and guidance is being properly followed) (**para 2.97**).
21. A permanent independent reviewer or regulator for welfare benefits should be established. This should be a statutory role with responsibility for assessing and reporting on standards of decision-making in relation to benefits. Their functions should also include monitoring the use of automated decision-making (**para 2.100**).

Training – reasonable adjustments

22. There should be specific training for assessment providers, work coaches and anyone who comes into contact with claimants (including on phone lines) on reasonable adjustments as well as a clear policy and guidelines on how to identify where a reasonable adjustment may be required and the types of reasonable adjustments that could be offered to claimants. Similarly, specific information on reasonable adjustments that may be available at each stage of the process should be provided to claimants (**para 2.103**).

Feedback from tribunal decisions

23. The DWP should urgently analyse Tribunal decision notices and collect data on the reason(s) for all successful appeals in order to identify recurring issues with initial decision-making. The DWP must then use this information to make improvements in areas identified as being problematic (**para 2.107**).

Routes of redress

Mandatory reconsideration

24. Claimants should be able to appeal a benefits decision directly to the Tribunal without first having to go through mandatory reconsideration. However, the filing of an appeal should automatically trigger an internal review of the decision by DWP. If the outcome of that review is not in the claimant's favour their appeal will proceed without them needing to take further action (**para 3.22**).
25. Where the appeal relates to PIP or a WCA the reviewer will also have the benefit of the audio recording of the assessment, and it should be a requirement that they listen to it at this point (**para 3.24**).

Appeals

26. The wording of decision letters (and mandatory reconsideration notices whilst they are retained) should make claimants aware that if they miss the one-month deadline, they may still be able to appeal if there is a good reason for the delay (**para 3.31**).

27. DWP and HMCTS should work together to consider ways in which technology can be used to streamline the process for making an appeal, in particular by reducing the re-keying of information by appellants and the provision of information already held by the DWP. Thought should also be given to how those using the paper-based route can benefit from a similar streamlined process (**para 3.37**).
28. HMCTS introduce a small-scale pilot with the aim of reducing adjournments. The pilot should involve caseworkers reviewing bundles and where appropriate directing parties to provide additional medical evidence and missing documents. Data from the pilot should be collected and evaluated to see if improvements are achieved (**para 3.44**).

Claimant support

Applying for, managing and challenging a decision

29. Existing DWP guidance on benefits should be less fragmented and clearly signposted to on all application forms, benefits webpages and correspondence. Hardcopies of the guides should be provided to those who are digitally excluded (**paras 4.7 and 4.8**).
30. Claimants should be provided with information on the different types of easements that are available (**para 4.10**).
31. The current two stage process for challenging benefits decisions should be better explained by way of an infographic or flow chart. This should be provided with all decision letters (**para 4.11**).
32. Videos explaining the processes for applying for benefits, how to prepare for, and what to expect at health and disability assessments and the initial interview and providing information on sanctions, would help people better understand these processes. Whilst some videos already exist, further research should be conducted into the most engaging and comprehensible format and length for these and the subject matter they cover should be expanded. They should also be subtitled in a number of different languages, be prominently displayed on relevant webpages and links to them provided in DWP correspondence (**para 4.13**).

33. All forms, key information and guidance and letters from the DWP should be (i) in plain English; (ii) available in easy read, Braille, audio, large print and BSL if required; and (iii) should be available in the most prevalent languages of those applying (**para 4.18**).
34. The DWP should adopt a ‘no wrong door’ approach to applying for and engaging with UC. This means that:
- a) It should be made clear to people what the UC Helpline can and cannot assist with before they call.
 - b) People should be able to go, without an appointment, to their local Jobcentre, which should have a helpdesk staffed by someone who will be able to assist them with the application process, including explaining the documents and information they need.
 - c) Independent advisers should be located at Jobcentres to provide advice on the impact of claiming UC on legacy benefits and overall entitlement.
 - d) If someone is not able to engage with the system digitally, there should be the option of a fully paper-based or telephone-based system, including the application process and a paper and telephone alternative to the online journal for ongoing engagement with work coaches. Ongoing telephone engagement should be directly with the claimant’s work coach, or at a minimum, their Jobcentre, rather than through the UC Helpline (**para 4.25**).
35. Consideration should be given to making it easier for a UC claimant to secure their date of claim, in advance of completing all sections of the online form (**para 4.26**).
36. Legal aid funding be reinstated for early benefits advice (**para 4.32**).
37. We support the Work and Pension Select Committee’s recommendation that “the Department invests in expanding and developing Help to Claim so that the service can provide support to people beyond the application process. This should include debt advice, support for people who are struggling with Advance repayments, and tailored support for people with complex needs who need additional support throughout their claim. The service should also offer digital support—for example, supporting people to make use of the online journal to maintain their claim” (**para 4.35**).

38. The DWP should consider broadening the providers of Help to Claim beyond Citizens Advice (**para 4.36**).
39. We welcome the Government's commitment in the Legal Support Action plan to "work collaboratively with the sector to pilot, test and evaluate the provision of holistic legal support hubs to more effectively support earlier resolution of a person's legal problems". This should take the form of both co-location of advice providers covering different areas of law as well as co-location of legal advice with other services used by people who may be experiencing issues related to benefits. It should be driven by the advice sector and build on existing models and initiatives that are working successfully (**para 4.41**).
40. There should be a single access 'portal' which provides information on organisations providing welfare benefits advice and which should be clearly signposted to on all webpages that provide information on benefits, throughout the UC online application process, on paper-based forms and in all decision letters and mandatory reconsideration notices. It should:
- a) Be funded by DWP and the Ministry of Justice, as appropriate.
 - b) Include a website that provides people with a comprehensive list of where they can obtain welfare benefits advice and support. It should make clear what clients the organisations serve, what stage of the application and/or appeals process organisations can help with and whether the advice can be provided over the phone, online and/or face-to-face. It should also include links to self-help tools such as Advicenow's PIP Mandatory Reconsideration Request Letter tool.
 - c) The website must be in plain English and accessible.
 - d) There should be a phone number for people to call where they can be provided with details of the relevant advice organisations and where appropriate can be referred directly to an organisation who can provide support.
 - e) It could be run by DWP (or Ministry of Justice) itself, or its operation could be put out to tender to other organisations. However, the website should always maintain the same look and feel to the public regardless of who is running it.
 - f) Have some form of quality control of the organisations on the portal, for example by requiring organisations on the portal to be accredited under

an accreditation scheme and be regularly kept up to date as organisations' advice provision changes (**paras 4.48 and 4.50**).

Appealing a decision

41. The Working Party endorses the establishment of a 'HMCTS Online' site that provides comprehensive, simple, accessible and jurisdiction specific information on the process of going to a court or tribunal, as well as curated links to independent advice providers for each jurisdiction. A link to the advice portal recommended above should also be included in the Social Security and Child Support section/page (**para 4.63**).
42. An easy read version of the SSCS1A guide should be produced and included on the Social Security and Child Support section of HMCTS Online (**para 4.64**).
43. HMCTS should produce an engaging, clear and high-quality production video specific to the FTT (SSCS) with tribunal professionals explaining their roles and giving a realistic overview of what a video, telephone and face-to-face hearing is like (**para 4.64**).
44. All decision and direction notices are written as clearly as possible in plain English. Direction notices, particularly those issuing directions to multiple parties, should make clear what the appellant is required to do and what is the responsibility of DWP (or HMCTS) (**para 4.66**).

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