



**Department for Work and Pensions
Shaping Future Support - The Health and Disability
Green Paper**

Consultation Response

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Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This response addresses the questions raised in the Department for Work and Pension's ("DWP's") "Shaping Future Support – The Health and Disability Green Paper" (the "Green Paper").
3. In July 2021, JUSTICE and the Administrative Justice Council ("AJC")¹ published a joint report: *Reforming Benefits Decision-Making* (the "Report").² It considered how to improve 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. This response draws on the findings of that report and further evidence provided by members of the AJC's Advice Sector Panel.³

Improving reasonable adjustments

Question 15 – What more could we do to improve reasonable adjustments to make sure that our services are accessible to disabled people?

Data collection

4. Improving service accessibility and the experience of users with disabilities and health conditions requires an understanding of the disabilities and health conditions of claimants. Whilst the DWP does collect some data on the disabilities and medical conditions of those in receipt of Employment Support Allowance, Job Seekers Allowance and Income Support, there is very little information collected in respect of Universal Credit ("UC") claimants' health conditions and disabilities. **The DWP should collect this data systematically across all benefits.** This will help the DWP comply with its public sector equality duty⁴

¹ The AJC is the only body with oversight of the whole of the administrative justice system in the UK. It advises government, including the devolved governments, and the judiciary on the development of that system.

² JUSTICE and the AJC, [Reforming Benefits Decision-Making](#) (July, 2021).

³ <https://ajc-justice.co.uk/advice-sector-panel/>

⁴ Equality Act, s.149.

and enable proper evaluation of service accessibility; without data, the DWP cannot understand the effect its policies and practices have on people with protected characteristics or assess whether improvements have been made.⁵

Training on reasonable adjustments

5. In order to improve reasonable adjustments, it is vital that that assessors, decision-makers and work coaches properly consider, and act on, their duties under the Equality Act to make reasonable adjustments. During evidence gathering for the Report, 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.⁶ Indeed, the Green Paper acknowledges that “the reasonable adjustments people ask for when using our service are not always provided”.⁷
6. There therefore needs to 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 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.**
7. The Green Paper states that the DWP is working on improving how it collects and records adjustments and alternative format requests so that people do not have to request an adaptation or change to their communications more than once.⁸ We welcome this. However, it is vital that adjustments are properly identified and provided in the first instance for this to be effective.

Digital exclusion / inaccessibility

8. All of the consultees we spoke to during the course of the Working Party raised serious concerns about the ‘digital by default’ nature of UC. Many claimants who cannot use or

⁵ JUSTICE and the AJC, *Reforming Benefits Decision-Making* (see n.2), para 2.57. See also National Audit Office, [Universal Credit: getting to first payment](#) (HC 376, 2020) para 26.

⁶ National Audit Office, [Supporting disabled people to work](#) (HC 1991, 2019), p. 63.

⁷ DWP, *Green Paper*, p.16.

⁸ *Ibid*, p. 17.

access the internet or internet-enabled devices, struggle to engage digitally with UC. Whilst this is not an issue that is exclusive to those with health conditions and disabilities, people with certain health conditions and disabilities find the digital system particularly inaccessible.

9. The Green Paper states that “most people feel it is easy to access and use [DWP’s] services”.⁹ However, the Universal Full Service Survey found that only half of UC claimants were able to complete their claim online without help¹⁰ and one third of people who start UC claims do not complete them.¹¹ In 2019, the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, expressed concern about “digital by default” policies, such as UC, which create “major disparities among different groups”.¹² As JUSTICE have previously highlighted, availability of non-digital methods of engagement is essential for a process to be accessible to all.¹³

10. 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 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 Jobcentre; 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. This adds to the stress and anxiety felt by claimants who are unable to engage with the digital system and often miss online notifications. It is also an inefficient system. Having to make regular calls to the Helpline to check progress or account notifications is a poor use of DWP resources.

11. In our view, in order to remove as many barriers as possible to individuals’ making and managing their UC claims and to ensure compliance with its duties to provide reasonable adjustments, **the DWP should adopt a ‘no wrong door’ approach to applying for and engaging with UC. This means that:**

⁹ *Ibid*, p.16.

¹⁰ Government Social Research and the DWP, [Universal Credit Full Service Survey](#) (2018), para 1.3.1.

¹¹ *GDC v SSWP (UC)* [2020] UKUT 108 (AAC), para 13.

¹² P. Alston, [‘Report of the Special Rapporteur on extreme poverty and human rights’](#) (11 October 2019), para 45.

¹³ JUSTICE, [Preventing Digital Exclusion from Online Justice](#) (2018).

- 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.¹⁴**
- 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.¹⁵**

Signposting and support to help people access benefits

Question 16 – What more information, advice or signposting is needed and how should this be provided?

Information provision

On what benefits are available and how to apply for them

12. The DWP does provide a large volume of information about eligibility and the application process online. 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. The Report recommended that **existing DWP guidance on benefits should be less fragmented and clearly signposted on all application forms, benefits webpages and correspondence.** We are therefore pleased that the DWP are looking at making it easier for people to find information on GOV.UK.¹⁶ One way of doing this could be to have one

¹⁴ 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.

¹⁵ JUSTICE and the AJC, [Reforming Benefits Decision-Making](#) (see n2), para 4.25.

¹⁶ DWP, *Green Paper*, para 84.

landing page for each benefit with links to all relevant guides. Duplication of information should also be avoided to minimise the volume of information that claimants are directed to read.

13. 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

14. The Report found there was a particular need for better provision of information in relation to conditionality and sanctions. A DWP Survey found that only half of claimants correctly identified all the common reasons that would cause their UC payments to be stopped or reduced.¹⁷ As discussed in paragraph 49 below, evidence also suggests that claimants aren't aware of the easements they may be entitled to. It is crucial that claimants are fully aware of what their obligations are and what actions may cause them to be sanctioned. Consultees to the Working Party raised concerns that claimants with learning disabilities and mental health conditions are not able to properly understand their claimant commitment, and therefore their obligations and the circumstances in which they may be sanctioned.
15. As explained in paragraphs 48 to 50 below, the Report recommended 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, this may not happen in all cases. Claimants should therefore be provided **with clear, accessible 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.

¹⁷ 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. G. McKeever, M. Simpson and C. Fitzpatrick, [Destitution and Paths to Justice](#) (The Legal Education Foundation and The Joseph Rowntree Foundation, 2018) – claimants in their sample did not understand why or when a sanction had resulted, p.44.

On how to challenge a decision

16. Claimants often have difficulty understanding that there is a two-stage process to challenge a benefits decision. This could be better explained by way of **an infographic or flow chart. This should be provided with all decision letters.**¹⁸

Use of video

17. As previous JUSTICE reports have noted, video is an effective means of conveying information to individuals who may have difficulties reading text, including those with health conditions and disabilities.¹⁹ There are already a number of videos produced by the DWP in respect of PIP²⁰ and UC.²¹ There is also a set of videos produced by the Centre for Health and Disability Assessments (“CHDA”).²² However, as with some of the guidance, they are not straightforward to find.²³

18. 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 video produced by the Department for Communities explaining what to expect at a PIP assessment is an example of a good explanatory video. Like the CHDA video, it shows real people – a claimant and their carer – attending an assessment but is much shorter at five minutes.²⁴ We are pleased that all the videos are subtitled and can be viewed in British Sign Language; however, it 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.

¹⁸ JUSTICE, *Reforming Benefits Decision-Making* (see n2), para 4.11.

¹⁹ 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.

²⁰ DWP, *Understanding PIP* (May 2021).

²¹ *Universal Credit in Action* (YouTube).

²² Health Assessment Advisory Service, *Videos* (2016).

²³ 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.

²⁴ nidirect, *PIP Assessment – what to expect* (YouTube, 2019).

19. **Videos that explain how to apply for benefits as well as how to prepare for and what to expect at health and disability assessments and the initial interview and provide 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 videos, and the subject matter they cover should be expanded. They should also be subtitled in different languages, be prominently displayed on relevant webpages and have links to them provided in DWP correspondence.**

Advice and support

20. We are pleased that the DWP recognises the need for advice in helping people understand their potential social security entitlements and to navigate the application process.

21. A lack of, or poor, advice at the application stage may result in people being incorrectly denied benefits they are entitled to, or delay in receiving them. Without advice people often feel forced to give up or make errors that lead to much slower resolution of their problems. Being incorrectly denied, or waiting for, 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. It can also exacerbate or create health issues.²⁵

22. Access to advice at an early stage should help to reduce the numbers of decisions that are incorrectly made in the first instance. It is therefore cost effective because it should reduce the number of decisions subsequently overturned at mandatory reconsideration or appeal.²⁶ Helping people access the benefits they are entitled to also prevents downstream issues that cost the state money.²⁷ The Pro Bono Economic Unit has estimated out of the claimants who successfully challenged a PIP decision in 2019/20:²⁸

²⁵ 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* (n.17), p. 51-52.

²⁶ The administrative costs to DWP of processing cases where initial PIP decisions were overturned at appeal in 2019/20 is estimated to be £23-29 million (E. Latimer et al, *The cost of not getting Personal Independence Payment decisions right first time* (Pro Bono Economics, October 2021), p.3).

²⁷ J. Organ and J. Sigafoos, '[The impact of LASPO on routes to justice](#)' *Equality and Human Rights Commission* (2018), p.50. A recent report estimates that the HM Treasury can expect to save £814 million per year for every 100,000 clients receiving free specialist legal advice (C. Leckie, R. Munro and M. Pragnell [Defending the public purse: The economic value of the free legal advice sector](#) (Cebr, Community Justice Fund, Pragmatix Advisory, September 2021), p.36.

²⁸ E. Latimer et al *The cost of not getting Personal Independence Payment decisions right* (see n.26), p.4.

- a) If 1 in 10 have to pay one additional visit to the GP, then it that would cost the NHS around £600,000 per annum.
- b) If 1 in 20 have to pay one more visit to A&E, it would cost around £1.1 million per annum.
- c) If 1 in every 100 required statutory homelessness support whilst they awaited the outcome of their MR or appeal, it could cost an additional £4.4m.
- d) If 1 in 200 of those who required social care in the interim, then it could cost an additional £15 million.

23. Advice is also crucial to help 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, tiring, stressful and detrimental to their health to go through alone. Advice at the mandatory reconsideration stage is often critical to a successful outcome. The Working Party were told by one adviser that his clients had been successful in all the 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.

Help to claim

24. 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 because claimants, especially those who are digitally excluded, require ongoing assistance to engage with UC. 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.²⁹

25. We support the Work and Pension Select Committee’s previous 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**

²⁹ Work and Pensions Committee, [Universal Credit: Wait for First Payment](#) (October 2020), para 124.

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.”³⁰

26. Working Party members also raised concerns that 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.³¹ 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 potential cultural barriers and prefer to use an organisation specifically aimed at supporting their community. We therefore recommend that **the DWP considers broadening the providers of Help to Claim beyond Citizens Advice.**³²

Co-location

27. 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.³³ 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.

³⁰ *Ibid*, para 132.

³¹ 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.

³² 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 (National Audit Office, *Universal Credit: getting to first payment* (see n.5), para 3.10-3.11). This would provide a good opportunity to broaden both the service provision and providers.

³³ C. Leckie, R. Munro and M. Pragnell, *Defending the public purse: The economic value of the free legal advice sector* (see n.27), p.22-23); 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).

28. Legal problems do not just cluster with other legal problems but also with ill health.³⁴ JUSTICE has previously highlighted the benefits of locating advice provision within primary healthcare settings.³⁵ Recent research by the AJC found that locating benefits advice within hospital settings had 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.³⁶
29. Broadening Help to Claim provision would also allow organisations other than Citizens Advice that may already operate within, or have links with, healthcare settings or other advice providers to receive funding to provide benefits advice in those settings.

Signposting

30. 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.
31. The DWP already do some signposting, but it is limited and inconsistent. For example, there is no signposting during the online UC application process³⁷ and the GOV.UK PIP page eventually directs users to local council websites not specific to benefits advice.³⁸
32. Signposting in DWP decision letters and mandatory reconsideration notices is particularly inadequate, given the importance of advice at this stage of the process. The letters tell

³⁴ G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n.17), p.52.

³⁵ JUSTICE, [Innovations in personally-delivered advice: surveying the landscape](#) (2018).

³⁶ AJC, Health Innovation Ecosystem and University of Westminster, [Access to social welfare advice in a hospital setting: integration of services](#) (June 2021).

³⁷ 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](#) 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 CDHA 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.

³⁸ 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’ 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.

claimants they could “contact a local support organisation...for example, the Citizens Advice Bureau” and tell them they can “find details online, at your local library or in the telephone directory”.

33. 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.

34. By comparison, the Financial Conduct Authority requires all debt collection firms to signpost customers to the Money Advice Service.³⁹ 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.

35. 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. However, we think that more can and should be done. The Report therefore recommended **a single access ‘portal’ that provides information on organisations providing welfare benefits advice and is 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.**

36. Whilst there are some helpful advice amalgamator sites for benefits that already exist,⁴⁰ we think that more can be done to inform claimants of what advice and support is available, local and relevant. The advice portal we are recommending should:

³⁹ From June 2021 Money Advice Service, the Pensions Advisory Service and Pension Wise will be brought together and rebranded as MoneyHelper.

⁴⁰ Advicelocal’s [Your local guide to help with benefits, work, money, housing problems and more](#) 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. Turn2us’ [Find an Adviser](#) tool also allows people to search for local advice by

- a) **Be funded by DWP and the Ministry of Justice, as appropriate.**⁴¹
- 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.**⁴²
- c) **Be in plain English and accessible.**
- d) **Include 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.**⁴³
- e) **Be run by the 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 to be accredited.**⁴⁴

their postcode. The information includes a description about the clients the 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. 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.

⁴¹ Advice would cover both entitlements and managing a claim as well as challenging a decision.

⁴² AdviceNow, '[PIP Mandatory Reconsideration Request Letter Tool](#)'.

⁴³ 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](#)).

⁴⁴ 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 (JUSTICE, [Delivering Justice in the Age of Austerity](#) (2015) Chapter 3). 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 to a list of options for specialist advisors. 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. 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.

Advocacy support

Question 17 - Do you agree with the principles we have set out for advocacy support?

Question 18 - How might we identify people who would benefit from advocacy?

Question 19 - What kinds of support do you think people would want and expect from advocacy?

37. We would strongly welcome the introduction of advocacy support. The benefits system is complex. Many individuals are not aware of their potential eligibility.⁴⁵ Even for those that are, the process of claiming benefits is not straightforward and the application process is lengthy.⁴⁶ The criteria for entitlement are complicated and require claimants to gather a variety of pieces of evidence to prove their entitlement.⁴⁷ 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. Health conditions and disabilities will further exacerbate these issues for some claimants. Having support to navigate the benefits system will therefore be of great assistance to claimants who currently find it particularly difficult to do so.

38. The Green Paper states that the DWP wants to explore whether advocacy service “offers value for money”. The most important aim of an advocacy service should be to ensure that the benefits system is accessible to everyone, rather than save money. However, savings to both the DWP and the public sector more generally would likely be an additional benefit of an advocacy service, for the same reasons as those for access to early advice and support (see paragraphs 21 and 22).

39. Further detailed consultation should be carried out in respect of the nature and features of the proposed advocacy service. However, our initial views are as follows.

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.

⁴⁵ G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n.17), 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 had 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)).

⁴⁶ 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).

⁴⁷ A Citizens Advice survey found that 48 per cent of respondents found it difficult to provide evidence for health conditions; 40 percent found it difficult to provide evidence for housing; 35 per cent found it difficult to provide evidence for childcare. *Ibid.*

40. We agree that advocacy should help people find information, provide practical support and have their voice heard. It should also help people interpret and understand information. It would need to be made very clear what advocates are able to do and not do at the outset. This may be a particular issue in respect of line between advocacy support and welfare advice.⁴⁸ It will also be important to ensure people understand that the advocates are not work coaches or DWP decision-makers with powers to refuse applications, review awards or sanction claimants.

41. **It is absolutely essential that the advocacy service is completely independent of the DWP and the Government more broadly.** This means it must be provided by an independent organisation(s). DWP staff should be able to refer individuals to the service, however this should not be the only way in which individuals can access the advocacy service, given the issues DWP staff currently have with identifying and providing reasonable adjustments (see paragraphs 5 and 6 above). **Individuals should be able to self-refer and other organisations individuals may come into contact with, such as GPs and advice providers, should be able to refer as well.** This is because some people with mental health conditions and disabilities may not be able to ask for support themselves.

42. Under the Care Act 2014, local authorities are under a duty to arrange for an independent advocate for an individual where they have substantial difficulty participating in assessments and decisions about their care. This duty does not apply if there is an 'appropriate person' available – someone else who is able to support the person and facilitate their involvement in their care assessments/decisions. However, a person cannot be an "appropriate person" for the purposes of the Care Act without the individual who they would be supporting's consent. **This is a vital safeguard to respect the autonomy and dignity of the person requiring advocacy services and something that should also apply in the benefits context.**

⁴⁸ We have seen that this has been an issue in respect of the pilot of HMCTS's Digital Support service. That service is funded to provide digital assistance only, rather than legal or specialist welfare advice. As highlighted by the AJC and recognised by Good Things Foundation (HMCTS's delivery partner) itself in its evaluation of the pilot, users are likely to require a wider package of support than just Digital Support, including legal or specialist welfare advice (D. Sechi, [Digitisation and accessing justice in the community](#) (Administrative Justice Council, 2020) and Good Things Foundation and HMCTS, [HMCTS Digital Support Service: Implementation Review](#) (September 2020), p. 6). Knowing where the distinction between digital assistance and legal advice lies can be difficult and it may also mean appellants having to go to multiple organisations for assistance rather than one, risking referral fatigue (Citizens Advice, ['Written evidence from Citizens Advice \(CTS0016\)'](#) (2019)).

43. The service should be **commissioned on a national basis to ensure consistency of provisions and standards. There should be advocacy standards and requirements for training to ensure the quality of the support.**
44. Given the difficulties experienced by claimants throughout the system, **the advocacy service should be available throughout the process, including for individuals who have not yet applied for benefits but need assistance doing so as well as those who require assistance managing their claims and challenging DWP decisions, both at mandatory reconsideration and at the Social Security Tribunal.**
45. There **would also be benefits of advocacy doing more than just helping people access and use the benefits system.** As explained in paragraphs 27 and 28 above, people's issues often cluster together – particularly those relating to benefits, debt, housing and health. Taking a holistic approach to advocacy could therefore be beneficial. We also note that advocacy is already provided in other contexts, including some circumstances where there is a statutory entitlement to advocacy.⁴⁹ Care should be taken that benefits advocacy complements and works with other forms of advocacy.
46. In Scotland an independent social security advocacy service is already being introduced. It is commissioned by the Scottish Government but will be delivered independently by the established advocacy service Voiceability.⁵⁰ The DWP should look to Scotland for best practice and lessons learnt.

⁴⁹ Where councils are making decision about someone's care and support (Care Act 2014); Independent Mental Capacity Advocacy for people who lack capacity to make decisions (Mental Capacity Act 2005); Independent Mental Health Advocates for people experience issues relating to their mental healthcare and treatment (Mental Health Act 1983); to individuals making a complaint about NHS treatment (Health and Social Care Act 2021).

⁵⁰ Social Security (Scotland) Act, s.10 provides for a right to advocacy. See Social Security Directorate, [Social Security Advocacy Service Standards](#). On appointment of Voiceability see <https://www.gov.scot/news/independent-advocacy-support-for-disabled-people/>

Providing extra support for our staff

Question 23 - What further support or information would help work coaches to have more effective conversations with disabled people and people with health conditions?

Data collection

47. The conditionality and sanctions regime requires work coaches and decision-makers to exercise their discretion and judgment on numerous occasions.⁵¹ In theory this should make it easier for work coaches and decision-makers to take into account individuals' health conditions and disabilities and the impact those have on their ability to look for or carry out work and to make reasonable adjustments. In practice, consultees and Working Party members were concerned that this was not happening. However, it is difficult to understand exactly how discretion is being applied and the impact that it is having on people with health conditions and disabilities as the DWP does not collect the necessary data. As stated in paragraph 4 above, **the DWP must improve its data collection in respect of health conditions and disabilities, including in relation to the setting of claimant commitments and use of easements and sanctions.**

Claimant commitments and easements

48. Claimant commitments are often not being properly tailored to meet claimants' needs and circumstances, indicating that work coaches are not complying with their duty to make reasonable adjustments.⁵² The Working Party was told that claimants can feel pressured into accepting claimant commitments whether or not they feel that the requirements are manageable in their circumstances, because receipt of first payment for UC is conditional on accepting the claimant commitment.⁵³

49. The setting of accurate and realistic claimant commitments relies on work coaches making a judgment based on detailed knowledge of claimants' circumstances. They must

⁵¹ In deciding what requirements to put in the claimant commitment; whether to apply discretionary easements; whether a claimant had 'good reason' for failure to comply with the claimant commitment and therefore whether they should be referred to a decision-maker for a sanction decision; and whether the claimant's actions were reasonable and therefore whether a sanction should be imposed.

⁵² The DWP's Full-Service Survey found that only 54 per cent of UC claimants believed their claimant commitment took their personal circumstances into account, and only 63 per cent felt it was achievable (Government Social Research and the DWP, *Universal Credit Full Service Survey* (see n.10), p.40). The Work and Pensions committee has also found that claimant commitments result in unachievable commitments in particular for vulnerable groups including those suffering from health conditions (House of Commons Work and Pensions Committee, [Benefits Sanctions](#), Nineteenth Report of Session 2017-2019 (2018), pp. 43-44).

⁵³ JUSTICE and the AJC, *Reforming Benefits Decision Making* (see n.2), para 2.59.

therefore either rely on claimants' disclosing relevant information or must ask the right questions to elicit it. Likewise, the use of easements to reduce or switch off a claimant's conditionality for a period of time also relies on work coaches' having the necessary information to identify where an easement may be required or appropriate. In particular, claimants with mental health conditions may not always indicate the true extent of their condition, for example, because they are 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.⁵⁴

50. To help ensure that claimant commitments are properly tailored to individual claimants, reasonable adjustments are made where required and easements are applied where appropriate, the Working Party recommended that:

- 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 to set appropriate and tailored claimant commitments (in addition to any other questions which are appropriate). Where a claimant indicates they have a health condition or disability that affects their ability to work, work coaches should seek specialist advice, from a Disability Employment Adviser 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, with the ability to apply a discretionary easement retained for any other circumstances not covered by the specific regulations.⁵⁵**

51. In order to properly tailor claimant commitments, it is also vital that work coaches have access to people with specialist knowledge of how health conditions and disabilities can

⁵⁴ *MM & DM v Secretary of State for Work and Pensions* [2013] EWCA Civ 1565, paras 31 and 59 to 69.

⁵⁵ JUSTICE and the AJC *Reforming Benefits Decision Making* (see n.2), para 2.59 - 2.64.

impact someone's ability to work. We therefore welcome the DWP's commitment to increase the number of Disability Employment Advisers across Great Britain.⁵⁶

Sanctions

52. We are also concerned that discretion in relation to sanctions decisions is not being applied fairly. Claimants told us that they 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, where claimants have not received letters informing them of appointments prior to the date of the appointment⁵⁷ or have missed online instructions or appointments due to an inability to access the online journal or for health reasons, including hospital visits.⁵⁸

53. We welcome the introduction of the Sanctions Assurance Framework, which 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 account complex needs, vulnerabilities, health conditions and the pandemic. We recommend that **as part of their evidence gathering, work coaches should contact relevant individuals, such as a claimant's carer, whom the claimant consents for the work coaches to contact and take into account information provided by them.** 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.⁵⁹

54. 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 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

⁵⁶ DWP, *Green Paper*, para 132.

⁵⁷ G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n.17), p.32.

⁵⁸ See also Work and Pensions Committee, *Benefits Sanctions* (see n.52 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.

⁵⁹ N. Bond, R. Braverman and K. Evans, [*The Benefits Assault Course*](#) (The Money and Mental Health Policy Institute, 2019), p.31.

conference with their team leader to confirm that in the particular circumstances of the case this is the correct course of action.

55. 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 0 above)).

56. **If sufficient improvements in sanctions decision-making are not seen then we would support the introduction of a statutory list of ‘good reasons’ for non-compliance with claimant commitments**, as previously recommended by the Work and Pensions Select Committee.⁶⁰ Although guidance currently exists as to what constitutes good reason, this is not always being followed, and putting the list of good reasons on a statutory footing would give it greater force. 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.

Opportunities to avoid sanctions

57. Claimants should be given more opportunities to avoid sanction. **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.** A warning would provide an opportunity to ensure that claimants understand their commitments and are not being sanctioned due to a lack of understanding.

58. We also agree with the Work and Pensions Select Committee 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 a time period in which to challenge this evidence or actively opt not to provide further evidence.**⁶¹

⁶⁰ Work and Pensions Committee, *Benefits Sanctions* (see n.52 above), para 111.

⁶¹ *Ibid*, para 125. We appreciate that this is similar to a trial ‘early warning system’ tested by DWP in 2016. The evaluation of that found that a small proportion of claimants (13%) took advantage of the

Exploring different ways to conduct assessments

Question 31 – During the coronavirus pandemic we introduced assessments by telephone and video call as a temporary measure. In your view, in future, what mixture of methods should we use to conduct assessments?

Paper based assessments

59. We know that many claimants find the assessment process, however it is conducted, stressful and anxiety inducing.⁶² We therefore welcome the DWP's aim of exploring whether more decisions can be made on the papers without a need for an assessment. We also welcome the exploration of gathering specific pieces of missing evidence only, instead of conducting full assessments. The outcomes for claimants and the impact on claimants' experience of the process as a result of these changes should be evaluated, and the results of that evaluation published.

Telephone and video assessments

60. The Working Party received 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 and some claimants do not feel that an accurate assessment is possible without the assessor being able to see them face to face. We did not receive any 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.

extra time and in half the cases in which the evidence was provided the sanction was imposed. However, the Working Party had concerns about the way in which the trial was delivered, the time period given to claimants to provide additional evidence and the information provided to claimants. We would therefore like to see another trial conducted with these issues remedied. JUSTICE and the AJC *Reforming Benefits Decision-Making* (see n.2), paras 2.72 - 2.75.

⁶² 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 et al, *The Benefits Assault Course* (see n.59) p. 26.

61. We echo the Social Security Advisory Committee's ("SSAC's") recommendation that the DWP 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.⁶³ It should also evaluate the impact that the different modes of assessment have on claimants.

62. Subject to the findings of that evaluation, **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.⁶⁴

Question 32 – How could we improve telephone and video assessments, making sure they are as accurate as possible?

63. This question asks specifically about telephone and video assessments. However, our responses below apply equally to face-to-face assessments.

Reports and recordings

64. 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. **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 help claimants decide whether to challenge the decision and what further evidence would be required to do so.⁶⁵

65. The DWP has previously rejected this suggestion on the basis that it would be too challenging and costly.⁶⁶ 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

⁶³ SSAC, [A review of the Covid-19 temporary measures: Occasional Paper 24](#) (November 2020), p.23.

⁶⁴ See paras 5 and 6 regarding training on reasonable adjustments.

⁶⁵ SSAC, [Decision making and mandatory reconsideration: Occasional Paper 18](#) (2016), p.53-54; P. Gray, [An Independent Review of the Personal Independence Payment Assessment](#) (2014), para 21; Work and Pensions Committee, [PIP and ESA assessments, Seventh Report of Session 2017-2019](#) (HC 829, 2018), para 55.

⁶⁶ DWP, [Government's response to the Second Independent Review of the Personal Independence Payment](#) (Cm 9540, 2017) pp.12–13.

transparency – are “very considerable”.⁶⁷ 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.

66. When claimants do see their assessment report, they frequently find that it does not reflect what they told the assessor during the assessment. They often contain fundamental factual error,⁶⁸ state things that happened during the assessment that did not happen or do not include things that claimants have mentioned during the assessment.⁶⁹

67. 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 and 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.⁷⁰ 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.⁷¹ 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.⁷² We also understand that Atos has

⁶⁷ P. Gray, [‘Work and Pensions Committee Oral evidence: PIP and ESA assessments, HC 340’](#) (2017), Q349

⁶⁸ For example, referring to the wrong claimant or the results of physical examination that never took place (Work and Pensions Committee, *PIP and ESA assessments* (see n.65) para 40; B. Geiger, [A better WCA is possible](#) (Demos, 2018), 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 per cent answered with a resounding ‘no’ and 25 per cent said it did, to some extent, meaning the report still had some inaccuracies or omissions. Only 12 per cent 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 (Z2K, [#PeopleBeforeProcess – The state of disability benefit assessments and the urgent need for reform](#) (May 2021)).

⁶⁹ Work and Pensions Committee, *PIP and ESA assessments: claimant experiences* (see n.65 above) para 10.

⁷⁰ Health Assessment Advisory Service, [‘How do I request an audio recorded assessment?’](#)

⁷¹ DWP, [PIP Assessment guide part 1: the assessment process](#) (17 May 2021), p. 31.

⁷² R. Watling, [‘Letter to Ms Kemp-Welch TO2021/05481’](#) (11 February 2021).

started to record telephone PIP assessments. However, there have been reports of assessments being cancelled because assessors did not wish to be recorded.⁷³

68. 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 was 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 can be requested.**⁷⁴ Of course, the DWP and assessment providers would need to update their Privacy Policy and ensure that they comply with other data protection requirements.⁷⁵ 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.

69. **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.**

⁷³ Benefits and Work, ['PIP assessments now being audio recorded'](#) (04 October 2020).

⁷⁴ 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.

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.

⁷⁵ 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)).

70. We also understand that trials of video recording of assessments have begun. The Working Party was told that claimants often feel uncomfortable being video-recorded, as opposed to audio-recorded, and we would therefore not support an “opt-out” system for video recording.

Outsourcing

71. Neither PIP contractor nor Maximus had met its targets in any rolling three-month period up to the end of 2019.⁷⁶ This is despite the very low bar required for reports to be considered ‘acceptable’ under the contracts. PIP reports will still be considered ‘acceptable’ even 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.⁷⁷

72. The private providers lack accountability – claimants can only complain about the assessment to the provider itself and once they have exhausted the provider’s complaint process to the Independent Case Examiner (ICE).⁷⁸ However, the remit and powers of the ICE are limited, and it takes on average a year and half for cases to be resolved.⁷⁹

73. One way to improve the accuracy of assessments would be to raise the standards that are required to be met by the private assessment providers and use contractual levers to seek to ensure that these are met. However, the Working Party had concerns about the ability of private companies to provide consistently good quality and accurate assessments given the current providers’ record. The Report therefore recommended 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.**⁸⁰

⁷⁶ Work and Pensions Committee, *PIP and ESA assessments* (see n.65), paras 85 and 86; DWP, [‘Response to Freedom of Information Request FOI2020/16390’](#) (21 September 2020).

⁷⁷ DWP, [‘PIP Assessment guide part 1: the assessment process’](#) (17 May 2021), 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)).

⁷⁸ DWP, [‘Complaints procedure’](#).

⁷⁹ DWP, [‘Question for Department of Work and Pensions UIN 1734’](#) (9 January 2020).

⁸⁰ JUSTICE and the AJC, *Reforming Benefits Decision-Making* (see n.2), paras 2.44-2.51.

Reducing repeat assessments

Question 33 – What more could we do to reduce repeat assessments, where the impact of a person’s health condition is unlikely to change significantly?

74. We welcome the steps towards reducing repeat assessments that the DWP has made with severe conditions criteria. Repeat assessments are costly and cause claimants unnecessary stress which exacerbates their health conditions. However, the AJC Advice Sector Panel continues to report large numbers of unnecessary reassessments of claimants with disabilities and long-term health conditions that are not going to improve.

75. A better understanding of claimants’ conditions and the likelihood of improvement would enable assessors to recommend more appropriate advice regarding reassessment periods. Having assessors with specialist knowledge and expertise in claimants’ conditions would assist greatly with this (see paragraphs 104104 to 109109), as would requesting appropriate medical evidence regarding the prospects of improvement/recovery (see paragraphs 98 to 103).

76. In addition, the Tribunal will often recommend that an appellant should not be reassessed for a certain number of years. Despite DWP policy not to reassess claimants prior to the expiry of this time limit unless “there is strong justification”, the Working Party was 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.**⁸¹

Improving Decision-Making

Question 34 – Decisions can be changed after an appeal has been lodged but before a tribunal hearing takes place. How can we improve the way we communicate a new decision in this situation?

77. See paragraph 96 below.

⁸¹ P. Booth, ‘[Work and Pensions Committee Oral evidence: Universal Credit: the wait for first payment, HC 204](#)’, July 2020, Q 198.

Question 35 – What other changes could we make to improve decision-making?

Making clear when a decision has been made

78. AJC Advice Sector panel members stated that decisions are often communicated via a journal entry, which is an informal chat. Clients therefore find it hard to identify when a decision has actually been made. It is therefore hard for them to know whether the decision was correct or not, assess the implications, identify that it is appealable, and appeal within the limited time frame given. To make the system clearer and fairer, **a formal written decision should be given for every determination or finding made.**

Assessing evidence

79. Assessors and decision-makers tend to privilege medical evidence over evidence provided by carers, support workers and family members.⁸² 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.⁸³ 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. The Working Party therefore recommended that assessment reports and decisions letters **should 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.**

80. Working Party consultees felt that there was an overreliance on the assessment report, regardless of its quality.⁸⁴ 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.⁸⁵ **Decision-makers should address contradictions**

⁸² JUSTICE & AJC *Reforming Benefits Decision-Making* (see n.1), para 2.27; P. Gray, [The Second Independent Review of the Personal Independence Payment Assessment](#), (2017), para 17.

⁸³ Work and Pensions Committee, *PIP and ESA assessments* (see n.65), para 57.

⁸⁴ 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.82), para 19).

⁸⁵ 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)).

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.

Standards, quality control and oversight

81. Throughout the course of the Working Party, it became apparent that there is a significant disconnect between DWP policy or 'best practice' on the one hand and claimants' experience of benefits decision-making, on the other. In addition, there does not appear to be adequate processes or systems in place to understand why decisions are frequently being overturned on appeal and to implement changes as a result of lessons learned.

Quality control and standards

82. We understand that the DWP has a Quality Assurance Framework in place, 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.⁸⁶ 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.

83. Robust quality control and oversight systems that can 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

⁸⁶ 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))

lacking.⁸⁷ Such standards should be published so that claimants know what they can expect from the DWP and it can be subject to external scrutiny.

84. We agree with the EHRC 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

85. Performance indicators alone are, however, insufficient. 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,⁸⁸ yet it is currently not subject to any external oversight, other than the National Audit Office, whose remit is spending and value for money.⁸⁹ 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 scrutiny from the Independent Chief Inspector of Borders and Immigration and Her Majesty's Inspectorate of Prisons.

86. 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

⁸⁷ EHRC, '[Briefing note for the Work and Pensions Select Committee: Using service standards to improve the social security system](#)' (WSN0124, 2019).

⁸⁸ B. Guerin, '[Civil service staff numbers](#)' (Institute for Government, May 2021); Institute for Government, '[Departmental budgets](#)' (March 2020).

⁸⁹ 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.

much more transparent. Having an independent body would also help restore trust and confidence in the benefits system.

87. 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.**

Feedback from tribunal decisions

88. There already exists an independent body which is routinely identifying issues with DWP decision-making – the FFT (SCCS). The success rates on appeal to the Tribunal for PIP, ESA and UC remain high.⁹⁰ This suggests that the same failures in decision-making recur without sufficient steps being taken to prevent them. This is unacceptable, both in respect of the detrimental impact on claimants' lives and 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.

89. The Working Party was 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 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.⁹¹ 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 initially 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.

⁹⁰ 76 per cent for PIP and ESA and 61 per cent for UC for 2020/21 (Ministry of Justice, 'Main Tables (April to June 2021)', [Tribunal Statistics Quarterly, April to June 2021](#), SSCS_3).

⁹¹ DWP, [Mandatory consideration of revision before appeal: Government response to public consultation](#) (2012), p. 6.

90. 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.⁹² 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.

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

Mandatory reconsideration

92. We acknowledge that since the introduction of holistic decision-making the success rate at mandatory reconsideration stage has substantially improved for the benefits for which data is available – PIP and ESA.

93. However, the latest figures show that success rates on appeal remain extremely high – 76 per cent for PIP and ESA and 61 per cent for UC for 2020/21.⁹³ 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 decisions being made.

94. 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 and therefore prevent them from accessing their appeal rights. These include:

⁹² DWP, 'Response to Freedom of Information Request FOI2021/38176' (8 June 2021)).

⁹³ Ministry of Justice, 'Main Tables (April to June 2021)', *Tribunal Statistics Quarterly, April to June 2021* (see n.90), SCS_3.

- a) Delays – there is no set time period within which the DWP must provide a mandatory reconsideration decision.⁹⁴
- b) Refusal of mandatory reconsideration request made via the journal⁹⁵ or by phone.⁹⁶
- c) Difficulties accessing previous online accounts when a claim is refused before their first benefits payment. To dispute the refusal, claimants must start a new claim before sending an online message.
- d) Claimants being dissuaded by DWP officials from requesting mandatory reconsideration; for example, claimants are told that the request is unlikely to be successful or the decision is not appealable, or they are encouraged to have a journal chat with their work coach.
- e) Mandatory reconsiderations have been refused because advisors have unlawfully told claimants that further evidence is required. Often claimants will not be able to provide this evidence and will abandon their claim.
- f) 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.
- g) 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.

95. The additional administrative hurdle of mandatory reconsideration is often confusing and stressful for claimants and can contribute to further deterioration in their health. Claimants do not understand often do not understand that there is a two-stage process to challenge a decision. Claimants who have already had two negative decisions do not think there is

⁹⁴ 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) DWP, ‘[Question for Department for Work and Pensions UIN HL 5780](#)’ (June 2020). the case of *R (Connor) v Secretary of State for Work and Pensions* [2020] EWHC 1999 (Admin) 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” (para 32).

⁹⁵ S. Howes and K. Jones, *Computer Says ‘No!’ Stage 2: challenging decisions* (see n.86) p.10.

⁹⁶ B. Stacey, [Blunt, bureaucratic and broken: How Universal Credit is failing people in vulnerable situations](#) (Z2K, November 2020) pp. 18-19.

any point in going on to appeal, despite the high success rates at the Tribunal.⁹⁷ These issues are particularly acute 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.⁹⁸

96. In light of these ongoing issues with mandatory reconsideration the Working Party recommended **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 the claimant needing to take further action.** This would shorten the overall appeal process and prevent attrition of claimants with meritorious appeals.⁹⁹ The decision-maker conducting the internal review **should be required to listen to the audio recording of the health and disability assessment.**

97. In our proposed system, if the DWP decided to change the decision following the internal review, the decision would be revised rather than “offered”. In circumstances where the revised decision gives the claimant some, but not all, of what they were requesting, the claimant would be able to continue the appeal against the revised decision. There would be a specified time period for the appellant to decide whether to continue the appeal against the revised decision, which would allow sufficient time for the appellant to seek advice, with clear signposting to where they can obtain that advice.

⁹⁷ See G. McKeever, M. Simpson and C. Fitzpatrick, *Destitution and Paths to Justice* (see n.17), p.43; Z2K, *#PeopleBeforeProcess* (see n.68) p. 5.

⁹⁸ E. Mountbatten, [‘The revolving doors of mandatory reconsideration’](#) (*Adviser*, May/June 2015).

⁹⁹ JUSTICE and the AJC *Reforming Benefits Decision Making* (see n.2), para 3.22.

Supporting evidence for assessments

Question 39 – Should we seek evidence from other people, such as other health professionals or support organisations?

Question 40 – What type of evidence would be most useful for making decisions following a WCA or PIP assessment, and should there be a standard way to collect it?

Question 41 – How could we make sure the evidence we collect before a WCA or PIP assessment directly relates to a person’s ability to do certain things?

98. The DWP should seek evidence from other people, such as health professionals and support organisations (see paragraph 79 regarding the importance of non-medical evidence). However, there is confusion as to whose responsibility it is to provide evidence, and claimants often have difficulty finding the right evidence to support their claims.

99. The PIP and WCA questionnaires stress that claimants should only send copies of information that they already have, and the 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 have¹⁰⁰ and, as the case study in the Green Paper highlights,¹⁰¹ can also struggle to access evidence they do not. This is also due to some GPs charging for reports.

100. In *MM & DM v Secretary of State for Work and Pensions*,¹⁰² the Court of Appeal upheld a decision of the Upper Tribunal that claimants with mental health conditions are at put a substantial disadvantage by the ESA assessment process because of the DWP’s policy not to seek further medical evidence save in certain relatively limited circumstances. There was a greater risk that the decision-maker would not reach 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.¹⁰³

101. The third Independent Review of the WCA recommended that “Decision Makers should actively consider the need to seek further documentary evidence in every

¹⁰⁰ N. Bond et al., *The Benefits Assault Course* (see n.59) p.23

¹⁰¹ DWP, Case study: the challenges of accessing medical evidence, *Green Paper*.

¹⁰² [2013] EWCA Civ 1565.

¹⁰³ Para 35.

claimant's case. The final decision must be justified where this is not sought".¹⁰⁴ 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.¹⁰⁵ The decision-maker guidance states, "it should be remembered that the onus is on the claimant to provide evidence in support of their claim".¹⁰⁶

102. 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 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 that it receives 82 per cent of requests back within 20 days.¹⁰⁷ 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.¹⁰⁸ We understand that in 2019 the DWP 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. We also note that in respect of the new Scottish Adult Disability Payment, the burden of collecting information will be on Social Security Scotland.¹⁰⁹

¹⁰⁴ Professor M. Harrington, [An Independent Review of the Work Capability Assessment – year three](#) (2012), p.22.

¹⁰⁵ Centre for Health and Disability Assessments, [WCA Filework Guidelines](#) (2019) p.23.

¹⁰⁶ DWP, [ADM A1: Principles of decision making and evidence](#) (A1524, June 2021).

¹⁰⁷ Work and Pensions Committee, *PIP and ESA assessments* (see n.65), para 36.

¹⁰⁸ For example, during the pandemic the NHS app has been subject to considerable development. It may be that development and technology used in this context could also be used in the health and disability assessment context.

¹⁰⁹ 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)).

103. 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. This should include requesting information from sources other than healthcare providers.**
- 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.**
- c) **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.**
- d) **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.** In the example provided in the Green Paper, it would not be the responsibility of Eldon to provide his assessment by the complex needs team, but the onus would be on the DWP to obtain it. This will provide clarity as to who is responsible for providing evidence and significantly reduce the burden and concomitant detrimental effects on claimants. However, claimants should not be adversely impacted if they do not provide consent for the DWP to access their medical records.

The role of assessors in the process to decide financial support

Question 42 – How could we improve assessments or the specialist support available to assessors and decision-makers to better understand the impact of a person's condition on their ability to work or live independently?

Assessor expertise

104. Due to the use of a generalist assessor model, assessments are often carried out by assessors with no expertise in a claimant's condition. We are concerned that many assessors do not have the appropriate training or expertise in mental health and fluctuating

conditions.¹¹⁰ The DWP state that due to the functional rather than clinical nature of the assessments, clinical expertise is not required. It notes all Healthcare Professionals (“HCPs”) receive training including on how to assess claimants with intellectual, cognitive and mental health conditions and have access to “Mental Function Champions” who have specific mental health expertise.

105. 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.¹¹¹ 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’¹¹² 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 healthcare professionals, in particular in respect of claimants with mental health conditions.¹¹³

106. The Working Party was also concerned that, despite HCPs’ receipt of 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.¹¹⁴

¹¹⁰ 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.59) p. 28.

¹¹¹ 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](#) (see n.68), p. 40. We were told by an advisor that during one telephone assessment the assessor admitted to “just googling” the claimant’s condition.

¹¹² Defined as a difference of greater than 12 points between the assessor’s points and the Tribunal’s points.

¹¹³ J. Duffy, [Report by the President of Appeal Tribunals on the Standards of Decision Making by the Department for Communities 2017/18](#) (May 2021).

¹¹⁴ Z2K survey respondents said that the assessment processes fail to understand fluctuating conditions, reducing how a condition affects someone to a snapshot on a particular day. Z2K ‘#PeopleBeforeProcess’ (see n. 110 above); N. Bond et al., *The Benefits Assault Course* (see n.59 above) p. 28.

107. A number of disability charities and activists have called for assessments to be performed by professionals with expertise in the disabilities in question.¹¹⁵ Others have argued that the solution is to have groups of ‘experts’ with different types of expertise.¹¹⁶

108. We note that a number of other countries adopt some form of multidisciplinary approach to health and disability assessments, including Denmark,¹¹⁷ Sweden,¹¹⁸ Australia,¹¹⁹ Finland,¹²⁰ Iceland¹²¹ and France.¹²²

109. 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 claimants with mental ill health, neurodivergence or co-morbid, complex, fluctuating or rare conditions, we recommend that these claimants should be assessed by HCPs with specialist knowledge of their conditions.**¹²³ 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’ statement that the introduction of telephone and video assessments, means that DWP may be able to explore utilising specialist assessors.¹²⁴

¹¹⁵ 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.68 above).

¹¹⁶ 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.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ 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.

¹²⁰ *Ibid*, p.4.

¹²¹ *Ibid*, p.5.

¹²² L. Bertrand et al. (2014) [Situating disability. The recognition of “disabled workers” in France](#) 8(4) *Disability and Employability* 296-281, p.270.

¹²³ 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.

¹²⁴ Justin Tomlinson MP, [‘Work and Pensions Committee Oral evidence: Disability employment gap, HC 189’](#), May 2021, Q 274.

Claimants as experts

110. 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 the difficulties it poses on a daily basis.¹²⁵ 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.¹²⁶ 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.¹²⁷

111. Claimants currently 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,¹²⁸ 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.¹²⁹ 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 anxious.¹³⁰

¹²⁵ 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.

¹²⁶ 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)).

¹²⁷ 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).

¹²⁸ 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

¹²⁹ B. Geiger, *A Better WCA is Possible* (see n.68), p.12.

¹³⁰ Work and Pensions Committee, *PIP and ESA assessments* (see n.65), para 16; Z2K, [#PeopleBeforeProcess](#) (see n.68), p. 3.

112. The use of informal observations is even more problematic when the assessment is conducted by phone. The Working Party heard concerns about informal “observations” being made on the phone, which could not reliably be known without seeing someone. For example, the claimant being alert and having good focus.

113. **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.**¹³¹ In addition, **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.**

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¹³¹ 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.68 above), p.42).