

**Work and Pensions Select Committee
Health Assessment for Benefits Inquiry**

JUSTICE's response to Call for Evidence

December 2021

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Contents

| | |
|---|----|
| Introduction..... | 4 |
| Summary..... | 4 |
| <i>Suitability of Assessments</i> | 5 |
| Question 1 - How could the DWP improve the quality of assessments for health-related benefits?..... | 5 |
| Question 1(a) - Have you seen any specific improvements in the process since the Committee last reported on PIP and ESA assessments, in 2018?..... | 11 |
| Question 2 - Are there any international examples of good practice that the Department could draw to improve the application and assessment processes for health-related benefits?..... | 13 |
| Question 6 - How practical would it be for DWP’s decision makers to rely on clinician input, without a separate assessment, to make decisions on benefit entitlement? What are the benefits and the drawbacks of such an approach?..... | 14 |
| Question 7 – Appeals data shows that, for some health-related benefits, up to 76% of Tribunals find in favour of the claimant. Why is that?..... | 15 |
| Question 7(a) - What could DWP change earlier in the process to ensure that fewer cases go to appeal?..... | 15 |
| Question 9 - What are your views on the Department’s “Health Transformation Programme”? What changes would you like to see under the programme?..... | 20 |
| Question 9(b) - What would be the benefits and drawbacks of DWP bringing assessments “in house” rather than contracting them to external organisations (Capita, Atos and Maximus? In particular, would this help to increase trust in the process?..... | 21 |
| <i>The impact of the pandemic</i> | 23 |
| Question 10 - What lessons should the Department learn from the way that it handled claims for health-related benefit claims during the pandemic: for example, relying to a greater extent on paper-based assessments or using remote/ telephone assessments? | 23 |
| Question 10(a) - Is there a case for making some of the changes permanent?..... | 25 |
| Question 12 - DWP believes that applications for some benefits dropped sharply at the start of the pandemic because claimants weren’t able to access support (for example, from third sector organisations) to complete their applications. What are the implications of this for how the Department ensures people are able to access health-related benefits consistently?..... | 25 |

| | |
|---|-----------|
| Question 12(a) - How can the Department best help the third sector to support claimants in their applications?..... | 26 |
| <i>The impact of assessment/ application on claimants.....</i> | <i>29</i> |
| Question 13 - DWP recently published research on the impact of applying for PIP or ESA on claimants' mental and physical health. What would be the best way of addressing this?..... | 29 |
| <i>Waits for assessments.....</i> | <i>30</i> |
| Question 14 - What could the Department do to shorten waits for health-related benefit assessments – especially for ESA/ UC?..... | 30 |
| <i>Health assessments in the devolved administrations.....</i> | <i>31</i> |
| Question 15 - The Scottish Government intends to introduce its own assessment process for the Adult Disability Payment, which will replace PIP in Scotland from 2022. What could DWP learn from the approach of the Scottish Government?..... | 31 |
| Question 15(a) - PIP started rolling out in Northern Ireland in 2016. Is there evidence that the Department learned from the experience of rolling out PIP in the rest of the UK?..... | 32 |
| <i>Policy development.....</i> | <i>33</i> |
| Question 16 - How effectively does the DWP work with stakeholders – including disabled people – to develop policy and monitor operational concerns about health-related benefits?..... | 33 |
| Question 16(a) - What steps could the Department take to improve its engagement with stakeholders?..... | 33 |

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 their Call for Evidence by the Work and Pensions Select Committee ("the **Committee**") inquiry into "Health Assessments for Benefits" ("the **Inquiry**").
3. In July 2021, JUSTICE and the Administrative Justice Council ("**AJC**") published a joint report: *Reforming Benefits Decision-Making* (the "**Report**").¹ 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 central government administered working-age benefits. The report's recommendations came from the work of a Working Party which consisted of experts from the judiciary, legal practice, academics, the advice sector and individuals with lived experience of the benefits system. The Working Party also took evidence from a range of other stakeholders. This response draws on the findings of that report and subsequent evidence provided by members of the AJC's Advice Sector Panel.²

Summary

4. Being denied benefits can have a devastating impact on individuals' and their families' lives. It can plunge people into debt, result in eviction and exacerbate or create health issues. It is therefore vital that there is a fair benefits system that is accessible and makes timely and accurate decisions, and that there is an effective means of reviewing decisions once made. JUSTICE and the AJC in our report have focused on how to improve the procedural and administrative elements of the benefits system, including initial decision-making and the current health assessment process.

¹ JUSTICE and the AJC, [Reforming Benefits Decision-Making](#) (July 2021)

² <https://ajc-justice.co.uk/advice-sector-panel/>

5. In this response, we have sought to set out how procedures and systems could be improved to alleviate what is already a very stressful process for claimants. We have emphasised that claimants should be listened to throughout and made practical recommendations on how to improve the assessment process. We would emphasise the importance of individual choice in the mode of assessment offered, ensuring that reasonable adjustments are made as required. An individual should always have the right to respond when their claim is not fully accepted, in an appropriate environment, before a decision is made. Recent changes in the Scottish devolved benefit system have been highlighted as worthy of consideration. We have emphasised the importance for everyone that better decisions are made at the initial stage.
6. Our response has also focussed on ensuring that individuals obtain the right support throughout their application (and any subsequent appeals or mandatory reconsideration). We have emphasised the importance of early advice through legal aid and advocacy support. We have set out changes to the appeal and mandatory reconsideration process which we hope will further limit the need for unnecessary appeal hearings.
7. We have also highlighted the need for greater transparency and accountability in how the Department for Work and Pensions ('DWP') makes its decisions and measures its performance. We have recommended the end of the outsourcing of health and disability assessments, that claimants be provided with copies of their assessment reports as standard and the audio recording of their assessment (unless the claimant declines this). Critically, we also recommend improved evaluation of performance measures and an independent regulator.
8. Our report and this response set out a benefit system that prioritises dignity and respect, placing the user at its heart: a procedurally fair, efficient, accessible and robust system that works well for everyone, regardless of their digital capability, health or disabilities, and which provides claimants with the support they need.

Suitability of Assessments

Question 1: How could the DWP improve the quality of assessments for health-related benefits?

9. As the Committee has highlighted in previous reports, there are serious concerns about how the present assessment process is working. We are particularly concerned that

claimants have a severe lack of trust in the assessment process, which is driven by poor quality assessments and a lack of transparency in decision-making. Studies have found a link between work capability assessments (“WCA”) and increases in suicide or other mental health problems.³ In our report, we have set out a number of practical and evidenced recommendations to improve the experience of those who are being assessed and to improve the end decision-making.

Data Collection

10. We want to stress that improving the quality of assessments and the experiences of those who are subject to those assessments requires an understanding of the needs of claimants with varying disabilities and health conditions. Whilst the DWP does collect some data on the disabilities and medical conditions of those in receipt of Employment Support Allowance (“ESA”), JobSeekers Allowance (“JSA”) 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.** Without this data, the DWP cannot understand the true effect its policies and practices have on people with protected characteristics and medical conditions or assess whether improvements have been made.

Assessor Expertise

11. We are concerned that 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.⁴ The DWP have said that, due to the functional rather than clinical nature of the assessments, clinical expertise is not required. They note that 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.
12. 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 the evidence

³ Barr et al, [‘First, do no harm’: are disability assessments associated with adverse trends in mental health? A longitudinal ecological study](#), J Epidemiology and Community Health 2016;70:339-345; M. Bulman [‘Attempted suicides by disability claimants more than double after introduction of fit-to-work assessment’](#) (Independent, 28 December 2017).

⁴ N. Bond et al., [The Benefits Assault Course](#), p. 28

gathering for our report.⁵ 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’⁶, 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 when assessing claimants with mental health conditions.⁷

13. 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.⁸
14. A number of disability charities and activists have called for assessments to be performed by professionals with expertise in the disabilities in question.⁹ Others have argued that the solution is to have groups of ‘experts’ with different types of expertise.¹⁰
15. We note that a number of other countries adopt some form of multidisciplinary approach to health and disability assessments, including Denmark¹¹, Sweden¹², Australia¹³, Finland¹⁴, Iceland¹⁵ and France.¹⁶

⁵ 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](#), p. 40. The Working Party were told by an advisor that during one telephone assessment the assessor admitted to “just googling” the claimant’s condition.

⁶ Defined as a difference of greater than 12 points between the assessor’s points and the Tribunal’s points.

⁷ J. Duffy, [Report by the President of Appeal Tribunals on the Standards of Decision Making by the Department for Communities 2017/18](#) (May 2021).

⁸ N. Bond et al., [The Benefits Assault Course](#), p. 28.

⁹ 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.4 above)

¹⁰ 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.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ 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.

¹⁴ *Ibid*, p.4

¹⁵ *Ibid*, p.5

¹⁶ L. Bertrand et al. (2014) [Situating disability. The recognition of “disabled workers” in France](#) 8(4) *Disability and Employability* 296-281, p.270.

16. We understand that it would not necessarily be practicable for all claimants to be assessed by someone with specialist knowledge of their 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.**¹⁷
17. 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 previous Minister for Disabilities' statement that the introduction of telephone and video assessments means that DWP may be able to explore utilising specialist assessors.¹⁸

Informal observations

18. 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.
19. We are particularly concerned about the use of informal observations as part of evidence gathering during an assessment¹⁹ for example, how people walked into the room, how long they were able to sit for, their mood or demeanour during the assessment and their presentation. Such observations do not reflect the realities of many physical and mental health conditions which are episodic.²⁰ It also underscores a concerning lack of understanding about mental health conditions amongst assessors. For example, your Committee has previously heard evidence of assessors assuming that an individual does

¹⁷ 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).

¹⁸ Justin Tomlinson MP, '[Work and Pensions Committee Oral evidence: Disability employment gap, HC 189](#)', May 2021, Q 274

¹⁹ 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

²⁰ B. Geiger, [A Better WCA is Possible](#) (see n.5), p.12.

not have mental health conditions because they smile during the assessment or do not “appear” to be stressed or anxious.²¹

20. 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 over the phone, such as the claimant being alert and having good focus. This is particularly concerning when the assessor is not in the same room and cannot even see the claimant.

21. The best source of information about a claimant’s condition and how it impacts them comes from the claimant themselves. They are the ones who have to live with their condition(s) and know the difficulties it poses them on a daily basis. Not recognising this undermines trust in the assessment process as claimants feel they are not being taken seriously. Our report recommends that claimants should always know when informal observations are being used as evidence in their assessment and be given a chance to respond. **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.**²² **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 in the assessment report.** This is not only a matter of basic procedural fairness but will also hopefully improve initial decision-making by limiting the unreasonable reliance upon informal observations.

Additional Evidence

22. Better assessments rely on better information being provided about the claimant which the assessor can take into account. Our report documents how claimants find it difficult to collect the right evidence to support their claim. The questionnaire claimants are given states that claimants should only send evidence they already have and the UC50 form states that claimants “should not ask or pay for new information”. However, claimants can often struggle to find the right evidence even amongst information which they already have.²³ This is more so the case in a context where there is difficulty accessing early legal advice and advocacy support, see paragraphs 73 - 74 below.

²¹ Work and Pensions Committee, [PIP and ESA assessments](#), para 16.

²² 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](#), p.42).

²³ N. Bond et al., [The Benefits Assault Course](#), p.23

23. The third Independent Review of the WCA recommended that “*Decision Makers should actively consider the need to seek further documentary evidence in every claimant’s case. The final decision must be justified where this is not sought*”.²⁴ This recommendation was provisionally accepted by the DWP. However, the WCA guidance for HCPs states that there must be justification for seeking further medical evidence and it is not mandatory to provide justification for why further evidence was not sought.²⁵ It is concerning that decision-makers and healthcare professionals appear to be given different guidance about further evidence. This is particularly problematic for those who have disabilities, such as mental health conditions, which may make it difficult to self-report. We would point out that the State has a legal obligation to make correct decisions and the burden of proof should not fall solely on the claimant.
24. Accordingly, our report recommends that **the assessor and decision-maker guidance and training should be updated to:**
- (a) Make clear that HCPs/ decision-makers must request additional evidence where this information is reasonably required to make an assessment. This should explicitly recognise that evidence may not have been provided because claimants may not have copies of it – rather than because it is not important or does not exist; and**
- (b) Explicitly state that HCPs and decision-makers must request further evidence when this is required as a reasonable adjustment for claimants with mental health conditions.**
25. In addition, **our report also recommends that 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.**
26. We would also highlight the importance of further information sharing between the NHS and the DWP. Our report states that **the DWP and NHS should continue to work together to enable the sharing of medical information between them (with the**

²⁴ Professor M. Harrington, [An Independent Review of the Work Capability Assessment – year 3](#), p.22.

²⁵ Centre for Health and Disability Assessments, [WCA Filework Guidelines \(2019\)](#), p.23.

appropriate claimant consent and data protections in place). Once this is possible, claimants should no longer be required to provide medical information as this information can be speedily obtained by the relevant decision-maker. This should mean that claimants will only then need to be able to provide evidence from family, friends and carers.

Reasonable Adjustments

27. The Working Party were particularly concerned about the training available for assessment providers. In particular, we found that assessors were not acting on their duties under the Equality Act to make reasonable adjustments. This concern is shared by other bodies, for example the National Audit Office has said that work coaches lack confidence making reasonable adjustments.²⁶ We are concerned about the training available for assessment providers.
28. **Our report recommends that there should be specific training for anyone who comes into contact with claimants (including on phone lines) on reasonable adjustments as well as a clear policy and guidelines on how to identify where a reasonable adjustment may be required and the types of reasonable adjustments that could be offered to claimants. Specific information on reasonable adjustments must be available at each stage of the process to claimants.**

Question 1(a) - Have you seen any improvements in the process since the Committee last reported on PIP and ESA assessments in 2018?

29. We welcome the intention behind the Health and Disability Green Paper and hope that it will be used as an opportunity to implement at least some of the recommendations which we have set out in our report. We have made detailed submissions to the DWP as part of their Green Paper consultation which we hope are considered seriously. We are also encouraged by the development of the new assessment service under the Health Transformation Programme and, in particular, that assessments will be done 'in house' under the pilot²⁷ given our concerns about the use of private contractors (see paragraph 58 below).

²⁶ National Audit Office, [Supporting disabled people to work](#) (HC 1991, 2019), p. 63.

²⁷ Justin Tomlinson MP, *Statement to the House of Commons: Announcement [on Health and Disability Assessment Services](#)* (2 March 2020)

30. As set out in response to Question 10 below, we cautiously welcome the DWP's commitment to keep the variety of assessment processes used during the pandemic (such as telephone, video and paper assessments). We would though stress the importance of tailoring the assessment to the individual claimant's particular needs and that claimants should be offered a choice of mode of assessment wherever possible. We were particularly encouraged by the previous Disabilities Minister's statement to your Committee that the DWP were exploring the use of specialist assessors in telephone and video assessments.²⁸ This was a key recommendation in our report.
31. We are encouraged by the changes in DWP policy in relation to the recording of assessments, however these changes still do not go far enough. Claimants have the right to have their assessment recorded and the Department have recently agreed to remove the requirement that claimants bring their own devices for the recording of face-to-face assessments.²⁹ We also understand that Atos have started to record telephone PIP assessments. However, **we are calling for all health and disability assessments to be audio recorded on an 'opt-out' basis.** This is because claimants may not be fully aware of the utility of obtaining a recording until after their assessment or realise that they need to request a recording themselves. If opt-out recording is not possible, at the very least, requesting that an assessment be recorded should be made as straightforward as possible with **a clear tick-box on forms for claimants to indicate they want their assessment recorded.** We are of the view that this will encourage accuracy, assist with transparency and enable individuals to more effectively challenge incorrect decisions.
32. Whilst we have proposed changes to the mandatory reconsideration process (see paragraph 43), changes to mandatory reconsideration in 2019, including proactively contacting claimants to collect further evidence, have led to an improvement. For example, for ESA WCA, the percentage of awards changed from 23 per cent in January 2019 to 69 percent in January 2021 following mandatory reconsideration.³⁰ Similarly, for PIP, the proportion of awards changed after mandatory reconsideration rose from 23 percent in January 2019 to 52 percent in January 2021.³¹ This is welcome but

²⁸ See Justin Tomlinson MP, [Work and Pensions Committee Oral evidence: Disability employment gap](#), Q 274.

²⁹ R. Watling, ['Letter to Ms Kemp-Welch TO2021/05481'](#), (11 February 2021).

³⁰ DWP, [ESA: Outcomes of WCAs](#), (March 2021)

³¹ DWP, [PIP Statistics to January 2021](#), (March 2021)

appeal rights remain high so we consider there is further reforms which could be made, as set out below

33. We would also highlight the work which the DWP is doing to improve the accessibility of its information and guidance. For example, there are now a number of easy read leaflets on PIP and easy-read guides of certain key Universal Credit documents³². The DWP also entered into an agreement recently with the Equality and Human Rights Commission (“EHRC”) to improve support for hearing-impaired claimants’ access to telephone services.³³ However, we are calling for the Department to go further and to ensure that **all forms, key information and guidance and letters from the DWP should be: (i) in plain English, (ii) available to read, Braille, audio, large print and BSL if required; and (iii) should be available in the most prevalent languages of those applying.**³⁴

Question 2 – Are there any international examples of good practice that the Department could draw on to improve the application and assessment process for health-related benefits?

34. We are of the view that the Department should be looking to learn from any applicable examples of good practice when developing future policy in this area. For example, as set out at paragraph 10 above, there are a number of countries who have used a multi-disciplinary approach to health assessments in line with the approach we have proposed.
35. We are also of the view that the Scottish Government is taking a different approach in relation to health assessments which is worthy of close and detailed study by the Department. This approach is said to be based on claimant experience and human rights, focussing on the dignity of claimants and respect within the process (as set out in Section 1 of the Social Security (Scotland) Act 2018). For example, Section 14 of the Social Security (Scotland) Act 2018 makes clear that an assessment should only take place if it is the only practicable way to obtain the information needed to determine eligibility. We also note that the devolved Scottish Government has prohibited

³² DWP, [Easy read: universal credit](#) (February 2021).

³³ EHRC, [‘DWP enters legal agreement to improve services for deaf customers’](#) (August 2020).

³⁴ The Home Office rights and entitlement leaflet for the police station is available in easy read and over fifty languages, so this is entirely feasible: Home Office, [‘Notice of rights and entitlements: a person’s rights in police detention’](#) (2019).

assessments by private contractors and has increased legal representation for benefit appeals.³⁵

36. We are of the view that there is much that can be learnt from the approach of the Scottish Government, though it remains to be seen how it will operate in practice. It is submitted that, given Scotland had an identical benefits system to England, Wales and Northern Ireland until recently, this is an ideal opportunity for the DWP to monitor claimant satisfaction, initial decision-making and the potential impact of this new approach. We would urge the DWP to maintain strong communication channels with Social Security Scotland and to monitor closely the impact of the changes in approach they have made.

Question 6 – How practical would it be for the DWP’s decision makers to rely on clinical input, without a separate assessment, to make decisions on benefit entitlement? What are the benefits and drawbacks of such an approach?

37. As set out above, we are in favour of there being further information sharing between the NHS and the DWP. At present, we are concerned that too often it is the claimants who have the burden of providing medical information when this could be obtained directly from the NHS. This is why our report **calls for greater sharing of medical information (with the appropriate claimant consent and data protection in place). We would hope that the system could develop so that claimants would be no longer required to provide medical information since this had already been obtained.**
38. We would also acknowledge that there has been considerable evidence about the impact of the assessment process upon claimants. If there was a way of making positive decisions on benefit entitlement in certain cases without a formal assessment, then we can see the potential benefit of this. For example, this could involve a triage system for the most straightforward cases which could be granted fully on the papers. **The report recommends that the DWP publish a comparative analysis on all forms of assessment, including paper-based assessments, so we have a better understanding of the impact particularly on those who have protected characteristics.** It is critical that the correct data is being collected and monitored so that the DWP can assess the impact of all assessment processes, particularly on those with a protected characteristic.

³⁵ Scottish Tribunal judges in the Working Party and subgroups estimated around 80 per cent of appellants are represented in Scotland versus 30 per cent in England (JUSTICE and AJC Report, [Reforming Benefits Decision Making](#), p 120).

39. However, it is imperative for a claimant who is seeking to challenge a decision that all evidence has been properly considered by the decision-maker and that the basis on which they are making that decision is clearly set out. It is also important that, where aspects of a claimant's account are not accepted, they can respond before a decision is made. We would be concerned if negative decisions about an individual's entitlements to benefits on medical grounds could be made without them having the opportunity to set out (in a sensitive and respectful environment) the full basis of their claim.

Question 7 – Appeal data shows that for some health-related benefits, up to 76% of Tribunals find in favour of the claimant. Why is that?

Question 7(a) - What could DWP change earlier in the process to ensure that fewer cases go to appeal?

Better decision-making

40. We are concerned about the quality of decision-making and consider that this is a key reason why there are so many decisions overturned on appeal. This benefits neither the claimants, who are forced to go through a further stressful process, nor the Department, who incur significant costs defending appeals unsuccessfully.

41. The Working Party heard evidence that there was an over-reliance by DWP decision-makers on the assessment report, irrespective of its quality, and are concerned that evidence is not being properly interrogated at the initial decision-making stage. Evidence suggests that around a third of PIP decisions, for example, are overturned based on substantially the same facts.³⁶ In our report, we recommend that **all assessment reports and decision letters should:**

(a) Respond to all the evidence provided by the claimant or obtained by the HCP/ decision-maker. This should include explaining why certain evidence is being given less weight or not being relied upon;

³⁶ 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)).

(b) Where a claimant’s own account of their impairment is rejected, there should be a strong evidential basis for doing so which should be fully explained; and

(c) Explicitly address conflicts between evidence.

42. Our report concluded that this would not only improve transparency but also enhance the quality of decision-making by requiring the HCP/ decision-maker to turn their minds to all the evidence and give proper weight to the claimant’s evidence. We also recommend that **decision-makers should address contradictions between the HCP report and other evidence and not merely repeat extracts or summaries of the assessment report. They should express their own view, based on their own reasoning.**

Inaccuracies in the assessment report

43. As you Committee has reported previously, our Working Party also found evidence that assessment reports often do not reflect what claimants have told the assessor during the assessment. There is evidence of reports containing fundamental factual errors, such as referring to the wrong claimant or the results of a physical examination that never took place.³⁷
44. We have concerns that assessment providers are set too low a bar for their reports to be considered acceptable (and they routinely do not meet these targets). PIP reports can be still considered ‘acceptable’ when they contain “clinically improbable advice such that the choice of descriptor is highly unlikely” or have justification which “fails to support the advice or descriptor choice”.³⁸ Private contractors do not even routinely meet these limited targets, see paragraph 60 below. However, even if they did, the low performance standards means that decision-makers would be still relying on low quality reports to

³⁷ Work and Pensions Committee, [PIP and ESA assessments: Seventh Report](#), (14 February 2018), para 40; B. Geiger, [A Better WCA is possible](#), p. 38; H. Kemp-Welch, [‘The Right to Record’](#) (2020); The MS Society asked people who saw the full report of their assessment whether they think it gave an accurate reflection of how their MS affects them. 61% answered with a resounding ‘no’ and 25% said it did, to some extent, meaning the report still had some inaccuracies or omissions. Only 12% said the report definitely gave an accurate reflection of how their MS affects them: R. Erez, [PIP fails: how the PIP process betrays people with MS](#) (MS Society, 2019).

³⁸ DWP, [PIP Assessment Guide Part 3](#), 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)).

make their decision. This shows the importance of suitable performance standards for assessments as well as the need for better monitoring of performance and external oversight (see paragraph 46 below).

45. We would recommend that **all claimants be given a copy of their assessment report automatically along with their decision**, as the Independent Reviewer of PIP assessments and your Committee have recommended previously.³⁹We remain unconvinced in relation to the Department's argument this is too expensive, since it should be a relatively simple automated task, and because such a step would help claimants understand the full basis on which decisions have been made. The Working Party also calls for assessment recording to be done on an 'opt-out' basis (see paragraph 26 above).

Mandatory reconsideration

46. Whilst we acknowledge that changes to mandatory reconsideration in 2019 has led to a greater increase of negative benefit award decisions for Employment Support Allowance and Personal Independence Payment⁴⁰ being changed without the need for an appeal, the success rate of appeals remains extremely high. However, for 2020/2021, 75% of PIP and ESA appeals and 61% of Universal Credit appeals were successful.⁴¹ Plainly therefore, despite the improvement, a large number of incorrect decisions are still being made at the initial stage despite the availability of mandatory reconsideration.
47. Despite the improvements since 2019, there are still issues with the mandatory reconsideration process. The Working Party was given concerning evidence that claimants were having their request for mandatory reconsideration refused for not following the 'correct' process. This is despite there being no specified form/ method for submitting a request for mandatory reconsideration. The Working Party heard evidence that some had been refused because they had made their request via the UC online journal (despite this being permitted by the DWP) and others told they could not do so over the phone.⁴² In addition, Child Poverty Action Group have noted difficulties

³⁹ P. Gray, [The Second Independent Review of the Personal Independence Payment Assessment](#) (March 2017), para 21; Work and Pensions Committee, [PIP and ESA assessments: Seventh Report of Session 2017 - 2019](#), (14 February 2018), para 55.

⁴⁰ The DWP does not publish data on UC mandatory reconsideration

⁴¹ Ministry of Justice, [Tribunal Statistics Quarterly: January to March 2021](#), (10 June 2021), Main Tables SSCS_3

⁴² B. Stacey, [Blunt, bureaucratic and broken: How Universal Credit is failing people in vulnerable situations](#) (Z2K, November 2020) pp. 18-19.

accessing online accounts, DWP officials dissuading claimants from making mandatory reconsideration requests and claimants being told incorrectly they need to submit further evidence or a change of circumstances application.⁴³ Whilst the DWP told us none of these problems should be happening, the practical reality suggested a worrying disconnect with the official policy.

48. The Working Party found that the current mandatory reconsideration system is unnecessarily confusing and causes 'claimant fatigue', where claimants do not think there is any point appealing because they have received two negative decisions. Our report therefore recommends 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 the DWP.** Crucially however, if that review did not result in the claimant receiving the benefits they thought they were entitled to, the appeal would proceed without the claimant having to make another application.
49. This change should also reduce the resource demand on the DWP. At present, a claimant can request mandatory reconsideration but, if they then lodge an appeal to the First tier Tribunal, this triggers a further internal review by the DWP.⁴⁴ We would hope that this new system would allow for a better quality review which would reduce the number of unnecessary appeals proceeding to an appeal hearing. If the review outcome is not in the claimant's favour, then the appeal should proceed without the need for further action by the claimant. **If an appeal relates to PIP or WCA, the reviewer should be required to listen to the audio recording of the assessment.**
50. We believe this new system should improve initial decision-making and reduce the unnecessary stress for claimants of the current confusing and bureaucratic mandatory reconsideration system.

Lack of formal oversight of Department

⁴³ Child Poverty Action Group, [Early Warning System E-Bulletin – February 2020](#) (March 2020). CPAG's early warning system collates case studies and evidence to demonstrate the impact of changes in the social security system on the wellbeing of children their families and the communities and services that support them. See S. Howes and K. Jones, [Computer Says 'No!' Stage 2: challenging decisions](#) (July 2019)

⁴⁴ DWP, [Advice for Decision Makers](#): A5, para A5159 - A5179.

51. Your Committee, as well as other organisations such as the EHRC, have previously called for the Department to **establish and implement suitable performance measures which are publicly available and accompanied by clear targets**. We agree with this recommendation and that it would help the Department be more transparent and accountable. Our Report also calls **for independent evaluation of DWP's monitoring to ensure that performance targets are being met and proper guidance is being followed**.
52. However, the Working Party found that performance indicators by themselves would be insufficient and calls for a more fundamental overhaul of the oversight of the Department.
53. The DWP is not subject to any external oversight⁴⁵, of the equivalence of other major Government departments (for example, Ofsted for the Department for Education and the Independent Chief Inspectors of Borders and Immigration for the Home Office). This is despite it being one of the biggest Government departments in terms of staffing and expenditure.⁴⁶ The most important thing about such oversight is the Department would have an obligation to act and have more 'teeth' than independent bodies. We believe this would help restore trust and confidence in the benefits process but also ensure that better decision-making was made.
54. Our Report therefore recommends 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**.

Need to urgently analyse Tribunal decisions

55. We are concerned that repeated lessons from Tribunal decisions are not being learnt by the Department, which is leading to the same faulty decision-making process being repeated. The high appeal rates suggest that there are repeat failures in decision-making, causing unnecessary detriment for the claimants involved and the expense of unnecessary appeals.

⁴⁵ Other than the National Audit Office, whose remit is solely spending and value for money

⁴⁶ B. Guerin, [Civil service staff numbers](#) (Institute for Government, May 2021); Institute for Government, [Departmental budgets](#) (March 2020).

56. In 2013, a summary of reasons was added to decision notices with the express aim of enabling the DWP to assess areas that may require further improvement.⁴⁷ Whilst decision notices can vary in terms of the level of detail, our Working Party considers that they provide valuable information which, when analysed and collated, could provide very useful feedback for the Department. The report also notes that, for appeals in relation to PIP assessments and WCAs, the decision notice will state the points which are awarded and for which activities or descriptors. It should therefore be possible for the Department to identify particular activities which are more likely to be awarded higher points on appeal. The Department should also have data as to which health conditions are more likely to be successful and which assessment providers are more successfully appealed.
57. Whilst our report notes that this would involve investment of time and resources by the DWP, it is our view that this would improve first instance decision-making and, in the long run, lead to significant savings from the cost of mandatory reconsideration and the appeal process. Statistics on why PIP appeals are successful are already being collated⁴⁸ so it is unclear why this cannot be done for other appeals. Automation should also help gather this much-needed information.
58. We therefore recommend that **the DWP should urgently analyse Tribunal decision notices and collect data on the reasons(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.**

Improvements to the assessment stage and better decision-making

59. We would also highlight the improvements to the assessment process we have recommended above [see paragraph 1 onwards] which should mean that DWP has access to better information following the assessment stage. Please also see our suggestions at paragraph 35 above in relation to how to improve decision-making within the Department.

Question 9 – What are your views on the Departments “Health Transformation Programme”?
What changes would you like to see under the programme?

⁴⁷ DWP, [Mandatory consideration of revision before appeal: Government response to public consultation \(2012\)](#), p. 6.

⁴⁸DWP, *Response to Freedom of Information Request FOI2021_38176*, (8 June 2021)

60. We welcome the overall intention of the DWP’s “Health Transformation Programme” to improve the current system and to make it easier for claimants to navigate the health assessment process.⁴⁹ We also support the stated objectives of improving the claimant experience, ensuring there is trust in the assessment process and providing better transparency.⁵⁰ We have made detailed submissions to the DWP as part of the consultation for their Health and Disability Green Paper.
61. In our report, we have made detailed and evidenced recommendations as to how the assessment process could be improved. We view this as an ideal opportunity, in conjunction with the Health and Disability Green Paper, for the DWP to reflect on the issues raised in our report and to implement the changes recommended. We have made detailed submissions to the DWP as part of the consultation for the Health and Disability Green Paper and a copy of our submissions are attached.
62. We also note with interest that, as part of the Health Transformation Programme pilot, health and disability assessments will be carried out by the DWP rather than an outsourced provider. Whilst it remains the DWP’s intention for assessments to continue by contracted pilots outside the pilot, we view this as a welcome opportunity to assess the desirability and feasibility of bringing health and disability assessments “in house” (see more detailed answer on this in the below answer to Question 9b).

Question 9(b) - What would be the benefits and drawbacks of DWP bringing assessments “in house” rather than contracting them to external organisations (Capita, Atos and Maximus)? In particular, would this help to increase trust in the process?

63. We have significant concerns about the quality of the health and disability assessments which are presently being outsourced to private companies by the DWP.
64. The DWP told us that it was their view that such outsourced assessments were “the most effective way to obtain the best quality services to individuals, reduce costs to the department and deliver improvement in value for money”.⁵¹ It said that the “main driver [of outsourcing medical assessments] is the need to develop and maintain the quality of services delivered to the public, whilst simultaneously ensuring the best value of public

⁴⁹ DWP, [Outcome Delivery Plan: 2021 to 2022](#) (15 July 2021)

⁵⁰ Justin Tomlinson MP, [Written Statement to Parliament: Health Transformation Programme update](#) (9 July 2020)

⁵¹ Justice and AJC Report, [Reforming benefits decision making](#), para 2.44

funds⁵². Our report concluded that these objectives were not being met; there are numerous issues with the quality of the assessments being provided and the outsourced providers are continually failing to meet the quality targets set out in their contract.

65. As data to your Committee has shown, neither PIP contractor nor Maximus met its targets in any rolling three-month period up until the end of 2017. More recent audit data show that this remained the case until the end of 2019.⁵³ This is despite the very low bar required to be met for reports to be considered 'acceptable'. PIP reports, for example, will still be considered 'acceptable' where they contain 'clinically improbable advice such that the choice of descriptor is highly unlikely' or where important evidence is not sought.⁵⁴
66. The DWP has spent vast sums of money on the assessment provider contracts, which have been repeatedly extended. Up to March 2017, Maximus was paid £291 million to carry out ESA assessments. Atos and Capita has received a combined total of £678 million.⁵⁵ It is understood these contracts have been extended again.⁵⁶
67. We are of the view that the outsourcing of health assessments to private contractors has reduced transparency and accountability. The private contractors are not subject to the Freedom of Information Act 2000 (FOIA) and the DWP can rely on the 'commercial interests' exemption to avoid disclosing information about them and their contracts.⁵⁷ The Information Commissioner has recommended that contractors should be designated as public authorities for the purpose of FOIA in relation to their provision of public services.⁵⁸

⁵² *Ibid.*

⁵³ DWP, [Response to Freedom of Information Request FOI2020/16390](#) (21 September 2020)

⁵⁴ DWP, [PIP Assessment Guide Part 3](#) (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)).

⁵⁵ Work and Pensions Committee, *PIP and ESA assessments: Seventh Report of Session 2017 - 2019* (14 February 2018), para 77.

⁵⁶ Justin Tomlinson MP, *Health Transformation Programme update*, (9 July 2020), Written Statement to House of Commons

⁵⁷ Information is exempt from disclosure under the Freedom of Information Act if it constitutes a trade secret, or if its disclosure is, or would likely, prejudice the commercial interests of any person (FOIA, s.43).

⁵⁸ Information Commissioner's Office, [Outsourcing Oversight? The case for reforming access to information law](#) (2019). S5 Freedom of Information Act ('FOIA') 2000 provides for the Secretary of State or Minister for the Cabinet Office to designate as a public authority for the purposes of FOIA any

68. The outsourcing of assessments has also meant that claimants cannot complain directly to the DWP about the assessment process but must complain to the assessment provider, whilst requesting a mandatory reconsideration from the DWP if they are unhappy with the outcome of the decision. We have been told this causes confusion for claimants who are seeking redress. Once claimants have exhausted the private contractors' complaints procedure, they can make a complaint about the assessment process to the Independent Case Examiner (ICE). However, the remit and powers of the ICE are limited and it takes on average a year and a half for cases to be resolved.⁵⁹
69. 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.** This would be a significant step in restoring trust in the system and improving the quality of health and disability assessments.
70. We note with interest that the Scottish Government has prohibited assessments being carried out by individuals employed by private companies.⁶⁰ The DWP should, at the very least, pay attention to how this affects the quality of health assessments and claimant satisfaction with the assessment process. We also note that, as part of the DWP's health transformation programme pilot, health and disability assessments will be carried out by the DWP rather than an outsourced provider. This pilot is a welcome opportunity for the DWP to assess the desirability and feasibility of bringing health and disability assessments back "in house".

The impact of the pandemic

Question 10 – What lessons should the Department learn from the way it handled claims for health-related benefits during the pandemic: for example, relying to a greater extent on paper-based assessments or using remote/ telephone assessments?

71. The pandemic allowed the Department to introduce telephone assessments and video assessments and we are pleased that the DWP is going to retain multi-channel

person either exercising functions of a public nature or providing under a contract with a public authority any service whose provision is a function of that authority.

⁵⁹ DWP, [Question for Department of Work and Pensions UIN 1734](#) (9 January 2020)

⁶⁰ Social Security (Scotland) Act 2018, [s12](#).

assessments post-pandemic.⁶¹ This is an improvement on the situation before the pandemic when, in the vast majority of cases, the claimant was required to attend a face-to-face assessment. However, we wish to emphasise that each claimant is an individual and will have different preferences about how they are assessed. It is therefore very important that the Department focusses on providing claimants with choice rather than being too prescriptive about how assessments are undertaken.

Paper-based assessments

72. 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. We have set out our position on data sharing in our response to Question 6 above.

Telephone and video assessments

73. 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.

⁶¹ Justin Tomlinson MP, [Work and Pensions Committee Oral evidence: Disability employment gap](#), (May 2021) Q 274

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](#), (March 2019) p. 26.

74. **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.**

Question 10(a) - Is there a case for making some of the changes permanent?

75. As set out above, we think there is a need to produce a comparative analysis of case outcomes for telephone, paper-based and video assessments, including consideration of the protected characteristics of claimants. This will enable the DWP to have the best available information about the impact of different assessment methods.

76. Subject to the findings of that analysis, **wherever possible, claimants should be offered the choice of having their assessment 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.

Question 12 – DWP believes that applications for some benefits dropped sharply at the start of the pandemic because claimants weren’t able to access support (for example, from third sector organisations) to complete their applications. What are the implications of this for how the Department ensures people are able to access health-related benefits consistently?

77. It is incredibly concerning that individuals were not able to access the benefits system and support to which they were entitled, especially during a global health pandemic. As we have set out below, it is our position that the advice sector was hugely affected by the reduction in legal aid funding by the removal of social welfare law from the scope of legal aid. We believe that a combination of reinstating legal aid funding for early benefits advice and a new advocacy service would mean that the sector was better able to support people going forward. We would also encourage the co-location of different

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

types of advice together, such as welfare, housing, health and debt issues which are commonly associated.⁶⁴

Question 12(a) - How can the Department best help the third sector to support claimants in their applications?

Legal Aid

78. We would first highlight the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (“LASPO”) which removed social welfare law from within the scope of legal aid. It is our position that this significantly affected the advice sector in a way that it has never recovered from. The pandemic, as with other areas, highlighted the weaknesses that were already present within society and exacerbated the problems that had been there for some time.
79. The impact of LASPO has been substantial and caused a huge decline in the number of not-for-profit legal advice centres⁶⁵. It also meant that even those legal advice centres which did survive often had insufficient capacity to help those who were requiring assistance.⁶⁶
80. In light of this, our report has **called for legal aid funding to be reinstated for early benefits advice**. We noted that the MoJ’s Legal Support Action Plan that accompanied the LASPO Post Implementation Review agreed that support at an early stage can help

⁶⁴ JUSTICE and the AJC, [Reforming Benefits Decision making](#), see para 4.38 - 4.40 for examples of co-location advice centres

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

⁶⁶ More than half of the 700 people who responded to the Ministry of Justice consultation reported that they had client groups who they were unable to help due to lack of resources, expertise, or because the issue fell outside of their organisation’s remit. See A. Ames et al., [Survey of Not for Profit Legal Advice Providers in England and Wales](#) (Ministry of Justice, 2015). Of Citizens Advice who previously held legal aid contracts for specialist welfare benefits advice, 85 per cent reported a reduction in capacity to provide specialist services. See Citizens Advice, [Submission to the Justice Select Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (2014) p. 5. Reductions in the scope of legal aid have not been as severe in Scotland and Northern Ireland, where LASPO does not apply. However, there have been reductions to areas of assistance and a narrowing of eligibility criteria, as well as rising thresholds for financial contributions by individuals, alongside the removal of funding contracts for specialised areas of work. G McKeever, M. Simpson and C. Fitzpatrick, [Destitution and Paths to Justice](#), (The Legal Education Foundation and the Joseph Rowntree Foundation, 2018), p.47

people resolve their problems more effectively and efficiently. We would endorse this conclusion. The review also committed to “test the impact of early legal advice in promoting early resolution, we will pilot face-to-face early legal advice in a specific area of social welfare law and we will evaluate this against technological solutions, bearing in mind costs”.⁶⁷

81. This pilot was delayed by the pandemic, but we understand that it will commence next year. We welcome the pilot and urge the Government to progress it as quickly as possible. We would urge the DWP to fully engage with this pilot and to carefully monitor its impact.

Advocacy

82. **We would also strongly welcome the introduction of advocacy support.** The benefits system is complex. Many individuals are not aware of their potential eligibility.⁶⁸ Even for those that are, the process of claiming benefits is not straightforward and the application process is lengthy.⁶⁹ The criteria for entitlement are complicated and require claimants to gather a variety of pieces of evidence to prove their entitlement.⁷⁰ 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.
83. The DWP stated in its Health and Disability Green Paper that it wants to explore whether an 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

⁶⁷ Ministry of Justice, [Legal Support: The Way Ahead. An Action plan to deliver better support to people experiencing legal problems](#) (CP 40, February 2019) p. 7.

⁶⁸ G. McKeever, M. Simpson and C. Fitzpatrick, [Destitution and Paths to Justice](#) (June 2018), 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)).

⁶⁹ 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).

⁷⁰ 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.](#)

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. These savings would include the costs of unnecessary appeals, mandatory reconsideration and the potential wider costs to the public sector of an incorrect decision, such as an individual requiring increased housing and healthcare support.

84. As we have set out in our Green Paper Consultation response, **further detailed consultation should be carried out in respect of the nature and features of the proposed advocacy service**. However, we would state that the following principles should be followed when developing an advocacy service:

- a. It should help people find practical information and support whilst making clear the role of advocates within the system;
- b. It should be completely independent of Government with referrals being able to be made into the service from organisations other than just the DWP, such as GPs and advice providers;
- c. Claimants should be able to access the advocacy service even if there is someone who could in theory support them but the claimant does not want them to do so. This is a vital safeguard to respect the autonomy and dignity of the person requiring advocacy services;
- d. The advocacy service should be available throughout the process, from the initial application to any subsequent Tribunal appeal;
- e. The service should be commissioned on a national basis, to ensure consistency of standards and training; and
- f. The service should have a holistic approach which is not solely focussed on benefits, especially as an individual's problems can overlap into areas of housing, debt and health.

85. 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.⁷¹ The DWP should look to Scotland for best practice and lessons which can be learnt.

The impact of assessment/ applications on claimants

Question 13 – DWP recently published research on the impact of applying for PIP and ESA on claimants’ mental and physical health. What would be the best way of addressing this?

86. First, we should emphasise that it is encouraging that the DWP is commissioning research to analyse the impact of its policies on claimants’ mental and physical health. As we have set out above, see paragraph 5, we have been concerned that insufficient data collection has prevented the DWP from fully understanding the scale of the issues for disabled claimants within the application and assessment process.
87. The results of the DWP research are similar to what the Working Party heard during evidence-gathering for their report. Claimants felt the PIP assessment was degrading, there was a sense of distrust in the DWP and a lack of confidence in the medical expertise of the assessors.⁷² This confirms the need, as set out in our response to Question 1 above, for the reforms to the assessment process which the Working Party recommended in their report, including more specialist assessors, better use of additional information and improved training on reasonable adjustments.
88. We would also highlight the particular concerns around mental health in the research results, including that the questionnaire for claimants with mental health conditions did not adequately reflect the experience of those suffering with mental ill-health. This reflects the finding of court cases that those with significant mental ill-health can be substantially disadvantaged by the DWP⁷³. It also shows the importance of reasonable adjustments throughout the process and of those with mental ill-health being assessed by a specialist HCP (see paragraphs 6 and 19 above).

⁷¹ Social Security (Scotland) Act, s.10 provides for a right to advocacy. See Social Security Directorate, **Error! Hyperlink reference not valid..** On appointment of Voiceability, see <https://www.gov.scot/news/independent-advocacy-support-for-disabled-people/>

⁷² DWP, *Claimant views on ways to improve PIP and ESA questionnaires*, (20 July 2021)

⁷³ See *The Secretary of State for Work and Pensions v MM & DM [2013] EWCA Civ 1565* in relation to the Work Capability Assessment for ESA

89. In July 2021, the Department published further information on the impact of telephone-based health assessments⁷⁴. This found that, for PIP telephone assessments, a majority had no difficulties on the call, 76% said they were able to explain how their condition affected their daily life and 45% preferred the telephone assessment. However, it also noted that 15% had problems with the handset/ loudspeaker, 45% said they felt the assessor was not listening and 42% still preferred a face-to-face assessment. In particular, discussing mental and physical health was said to be the most commonly reported difficult topics by claimants. Similarly, for work capability telephone assessments, whilst 94% were said to be satisfied by the process, 23% would have preferred a face-to-face assessment and only 72% of those with mental health conditions were comfortable with the process (compared to 79% for all interviewed).
90. The results emphasise the need, as set out at paragraph 71 above, for claimants to be offered the choice of a telephone, video or face-to-face assessment. It also showed the importance of the Department producing and publishing a comparative analysis of case outcomes for telephone, paper-based and video assessments, including consideration of those with protected characteristics.

Waits for assessments

Question 14 – What could the Department do to shorten waits for health-related benefit assessments – especially for ESA/UC?

91. Whilst we acknowledge that assessments will be required for certain individuals who have applied for a health-related benefit, we are interested in whether fully positive decisions could be made in certain strong cases without the need for a formal assessment (see above, paragraphs 32 and 33). This should ultimately reduce the need for assessments, freeing up capacity where they are necessary. This would also greatly assist those claimants, with strong claims, but who find the assessment process stressful and anxiety inducing. We think that the DWP should obtain and publish data about what proportion of decisions are being made for health-related benefits at present without a formal assessment.
92. We note that the DWP has said that as part of its integrated health assessment pilot it will be trialling ways to “triage more effectively so that only those people who need a

⁷⁴ DWP, [Claimant experience of telephone-based health assessments for PIP, ESA and UC](#), (July 2021)

face-to-face assessment will have to undergo one". The previous Minister for Disabilities has also mentioned the possibility of shorter, more targeted assessments focused only on missing information.⁷⁵ This is a position also reflected in the consultation response to the Scottish Government Adult Disability Payment process (see below).

93. We would welcome such an approach and would like to see both the outcomes for claimants and the impact on claimants' experiences of the process properly evaluated and the results of that evaluation published. However, we would also repeat the concerns we raise at paragraph 34 above regarding the need for an individual to be able to challenge aspects of his account which are not accepted before a decision is made.

Health assessments in the devolved administrations

Question 15 – The Scottish Government intends to introduce its own assessment process for the Adult Disability Payment, which will replace PIP in Scotland from 2022. What could DWP learn from the approach of the Scottish Government?

94. The new Scottish Government Adult Disability Payment process proposes that only one piece of formal evidence will be required to determine, on the balance of probabilities, that an individual's condition is consistent with the needs which they have set out on their application.⁷⁶ The Consultation sets out how they will aim to obtain one piece of supporting evidence from a formal source, such as a medical diagnosis or letter from a support worker. They also note the importance of information from informal support networks – such as family and friends – and that they will give equal consideration to all sources of information.⁷⁷
95. We have set out in our report that the best source of information about a claimant's condition, and how it affects their day-to-day activities, often comes from the person themselves. They are the person who is living with the condition and will have the best understanding of the difficulties it poses to their daily lives.⁷⁸ Medical evidence, whilst

⁷⁵ Rather than assessors having to go through the full set of questions as is currently the case. See Justin Tomlinson MP, [Work and Pensions Committee Oral evidence: Disability employment gap](#) (19 May 2021) Q 274.

⁷⁶ 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).

⁷⁷ Scottish Government, [Consultation on Adult Disability Payment](#) (December 2020), para 17.

⁷⁸ Though we note here that 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 this affects them and their ability to carry out activities.

important, can only ever provide indirect evidence of the impact on someone's daily life of their impairment. This is reflected in the fact that the most common reason that PIP decisions are overturned on appeal is because of oral evidence from the claimant.⁷⁹ We are therefore supportive of the approach set out by the Scottish Government on the requirements of formal evidence.

96. We would also note that the Scottish Government, following their consultation, have also agreed to take several steps which are recommended within our report and which should be considered by the DWP. Consultations will only be carried out by those who are 'suitably qualified' and are directly employed by Social Security Scotland. In response to concerns raised during the consultation, practitioners will now be required to have at least two years' post-qualification experience before they can carry out assessments.⁸⁰ If a claimant has a mental health condition or a learning disability, any consultation must be carried out by a practitioner with relevant experience.⁸¹
97. Furthermore, a client must be informed if a practitioner intends to make an informal observation during an assessment and the client must be given the chance to respond to such an observation.⁸² This reflects the conclusions in our report, set out at paragraph 16 above.
98. We would therefore be of the view that the DWP should carefully monitor any improvements in the application process for claimants in light of these changes by Social Security Scotland and incorporate any learnings into the DWP's practices and guidance. The DWP should use the upcoming Health and Disability Green Paper as an opportunity to consider similar changes to the reserved benefits system.

Question 15(a) - PIP started rolling out in Northern Ireland in 2016. Is there evidence that the Department learned from the experience of rolling out PIP in the rest of the UK?

99. We remain concerned that the DWP has not over the years adequately reflected upon the number of reports and inquiries which the Department has received that have made

⁷⁹ 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)).

⁸⁰ Scottish Government, [Response to a Consultation on Adult Disability Payment](#) (June 2021), p 15

⁸¹ Scottish Government, [Response to a Consultation on Adult Disability Payment](#) (June 2021), p 26

⁸² Scottish Government, [Response to a Consultation on Adult Disability Payment](#) (June 2021), p 24

recommendations for improvement. These are not limited to the work of your Committee but also the Social Security Advisory Committee, various other independent reviews and the work of expert non-governmental organisations.

100. As you correctly observe, PIP started rolling out in Northern Ireland in 2016 and yet many of the same problems were raised in the Independent Reviews of the Personal Independent Payment assessment process in Northern Ireland. The President of Appeal in Northern Ireland has raised concerns about the expertise of health care professionals, in particular those with mental health conditions.⁸³ We are concerned that, like with the DWP, the Department for Communities has not learnt the lessons it could have from these reports.

101. Whilst the Health and Disability Green Paper is welcome, we are of the view that more could have been done before now to improve the experience of the benefits system for those with disabilities and health conditions. The DWP is one of the biggest Government departments in terms of staff and expenditure⁸⁴ and yet is currently subject to no external oversight⁸⁵ apart from the National Audit Office (which has a narrow remit to focus on spending and value for money). Our report calls for the establishment of **a permanent independent reviewer or regulator for welfare benefits. We have said this should be a statutory role with responsibility for assessing and reporting on standards of decision-making in relation to benefits.**

Policy development

Question 16 – How effectively does the DWP engage with stakeholders – including disabled people – to develop policy and monitor operational concerns about health-related benefits?

⁸³ J. Duffy, [Report by the President of Appeal Tribunals on the Standards of Decision Making by the Department for Communities 2017/18](#) (May 2021).

⁸⁴ B. Guerin, [Civil service staff numbers](#) (Institute for Government, May 2021); Institute for Government, [Departmental budgets](#) (March 2020).

⁸⁵ There were previously independent reviewers for WCAs and PIP assessments. However, these were time limited roles (the last WCA review was in 2014 and the last PIP assessment review was in 2017) and confined only to health and disability assessments (see reviews of Professor Malcolm Harrington (2010, 2011 and 2012) and Dr Paul Litchfield (2013 and 2014) on WCA and Paul Gray on PIP (2014 and 2017)). In Northern Ireland there have also been two independent reviews into the PIP assessment process in Northern Ireland, as required by the Welfare Reform (Northern Ireland) Order 2015, however again these are limited in scope and no further reviews are required by the Order (see reviews of Walter Rader (2018) and Marie Cavanagh (2020) on PIP).

102. The Social Security Advisory Committee ('SSAC') prepared an independent report earlier this year on the Department's engagement with disabled people'.⁸⁶ The DWP official's own view when giving evidence for this report was that trust of the DWP was an issue amongst disabled people, coming from claimant's personal experiences of PIP, WCA, Universal Credit and publicised issues surrounding this process. This was shared by many of the organisations and individuals who responded to SSAC's consultation.

103. The DWP told SSAC that they wanted to eliminate the breakdown between the DWP and disabled people which they admitted was 'hindering DWP's ability to improve its services or to meet its policy objectives'⁸⁷. The Department stated that they want to deliver a 'compassionate and effective welfare system for disabled people, providing a supportive environment – e.g., for people with mental health conditions – rather than a system which appears to be solely predicated on fitness for work judgements'⁸⁸. The Department also told SSAC they want a more joined up approach to services and to engage with more disabled people when developing policy. We welcome both the acknowledgment of a problem and the commitments made to improve their services.

Question 16(a) - What steps could the Department take to improve its engagement with stakeholders?

104. We would again emphasise the SSAC report. In that report, there were a number of themes that were highlighted by organisations and individuals including:

- a. That disabled people lacked trust in the DWP;
- b. That levels of engagement were inconsistent across the DWP;
- c. Many participants expressed frustration about the DWP's feedback and that there were areas on which the Department was unwilling to open a dialogue, such as clinical assessment partners; and
- d. That meetings were often organised at too short notice and that challenging deadlines were set for a response to consultations (making it harder for grass roots organisations with limited resources)⁸⁹.

⁸⁶ Social Security Advisory Committee, [How DWP involves disabled people when developing or evaluating programmes that affect them: occasional paper 25](#), (1 March 2021)

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

105. We are encouraged that the SSAC concluded that the DWP's intention to change its culture is genuine. However, we also agree that the new Health and Disability Green Paper is a litmus test for how much the Department has changed. We would endorse the recommendations made by the SSAC in their report to ensure more comprehensive and sensitive engagement particularly with disabled persons.

JUSTICE

17 December 2021