

Response to the Department for Work and Pensions Consultation on the Work Capability Assessment: Activities and Descriptors

October 2023

1 Introduction

- 1.1 The Equality Commission for Northern Ireland (ECNI) welcomes the opportunity to respond to the consultation by the Department for Work and Pensions on the 'Work Capability Assessment: Activities and Descriptors'.¹
- 1.2 In making our response, the Commission provides feedback on equality aspects associated with:
 - the proposed changes;
 - the application of Section 75 of the Northern Ireland Act 1998 to promote equality of opportunity and good relations within any new planning framework; and
 - consideration of international human rights obligations such as the UN Convention on the Rights of Persons with Disabilities (UNCPRD).
- 1.3 This response draws on our policy and advice work across a range of equality grounds, including Section 75, and in our role as the 'independent mechanism' in Northern Ireland under the UNCPRD.
- 1.4 The Equality Commission has called on both the Northern Ireland Executive and the Department of Work and Pensions to identify and commit to specific measures which will mitigate the adverse impact of welfare reform on the promotion of equality of opportunity, or any alternate policies which might better promote equality of opportunity.²

¹ Department of Work and Pensions (2023): [Work Capability Assessment - Activities and Descriptors](#)

² [ECNI - Welfare Reform policy recommendations - Addressing Inequality, Equality Commission NI](#)

- 1.5 As the jointly designated UNCRPD Independent Mechanism for Northern Ireland (IMNI)³, The Equality Commission and The Northern Ireland Human Rights Commission have highlighted a series of concerns regarding aspects of welfare reform which we consider have had an adverse impact on the rights of disabled people in NI to independent living, employment and adequate standard of living and social protection.⁴
- 1.6 We note that the present consultation proposes changes to four activities considered in the assessment: mobilising, continence, social engagement, and getting about.
- 1.7 Consideration is being given to either removing these from the WCA entirely or reducing the number of points awarded for them as well as to changes to the rule whereby claimants who do not satisfy the usual criteria for LCWRA can nevertheless be treated as having LCWRA, where there would otherwise be a 'substantial risk' to their health, or to the health of another person.

2. Section 75 Obligations

- 2.1 The UK Government is responsible for policies on employment support and social security in England and Wales and shares that responsibility in Scotland with the Scottish Government. In Northern Ireland, these areas are the responsibility of the Northern Ireland Executive. However, the Department for Communities in Northern Ireland and the Department for Work and Pensions in Great Britain seek to maintain similar social security systems.
- 2.2 The Equality Commission for Northern Ireland understands that any changes to the WCA activities and descriptors will become a devolved matter and be progressed by the Department for Communities. As designated a Public Authority for the purposes of Section 75 of the Northern Ireland Act 1998, the Department for Communities will be required to screen any policies that are likely to have an impact on equality of opportunity.

³ The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission have been jointly designated as the Independent Mechanism for Northern Ireland, under Article 33.2 of the United Nations Convention on the Rights of Persons with Disabilities, to promote, protect and monitor the implementation of the Convention in Northern Ireland. Together with the Scottish Human Rights Commission and the Equality and Human Rights Commission we comprise the United Kingdom Independent Mechanism (UKIM).

⁴ IMNI (2023): [Jurisdictional 'Parallel' Report on the implementation, in Northern Ireland, of the recommendations by the Committee on the Rights of Persons with Disabilities in its 2016 report on an Inquiry carried out under Article 6 of the Optional Protocol, into the United Kingdom](#)

- 2.4 It is important that public authorities commit to screening at the start of the policy development process, rather than when the policy has been established. This helps to identify any policies that are likely to have major equality issues, and if so, they must be subject to a full equality impact assessment (EQIA).

3 UNCRPD Obligations

- 3.1 The Equality Commission for Northern Ireland, together with the Northern Ireland Human Rights Commission, has been designated as the Independent Mechanism for Northern Ireland (IMNI), under Article 33.2 of the United Nations Convention on the Rights of Persons with Disabilities to promote, protect and monitor the implementation of the Convention in the region. Together with the Equality and Human Rights Commission and the Scottish Human Rights Commission we form the United Kingdom Independent Mechanism.

Key UNCRPD rights

- 3.2 Article 19⁵ of the United Nations Convention on the Rights of Persons with Disabilities requires State Parties to recognize that persons with disabilities have the right to live independently and be included in the community.
- 3.3 States Parties to the Convention must recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:
- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
 - b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

⁵ [Article 19 – Living independently and being included in the community | United Nations Enable](#)

- c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

3.4 Article 27⁶ of the United Nations Convention on the Rights of Persons with Disabilities requires State Parties to recognize that persons with disabilities have the right to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

3.5 States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

⁶ [Article 27 Work and employment](#)

- f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- g) Employ persons with disabilities in the public sector;
- h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
- k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

3.6 States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

3.7 Article 28⁷ requires State Parties to recognize that persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

3.8 States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

⁷ [Article 28 Adequate Standard of living and social protection](#)

- b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- d) To ensure access by persons with disabilities to public housing programmes;
- e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

4 Context

- 4.1 The Commission notes that concerns have been expressed about the Work Capability Assessment for some time.
- 4.2 In 2016 the UN Committee on the Rights of Persons with Disabilities published its report on the impact of welfare reform on the enjoyment of the rights by disabled people in the UK to independent living (Article 19 UNCRPD), employment (Article 27 UNCRPD) and adequate standard of living and social protection.
- 4.3 The Committee observed ‘the prevalence of the medical approach in assessment procedures for determining the eligibility of persons with disabilities to entitlements...The assessment failed to take in account the support persons with disabilities need to perform a job or the complex nature of some impairments and conditions, or reflect the human rights-based approach to disability...persons with disabilities who have undergone functional assessments aimed at determining their eligibility for social benefits felt that they were merely processed rather than being listened to or understood.’⁸

⁸ Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out under Article 6 of the Optional Protocol to the Convention - Report of the Committee](#) paragraph 89, p.16.

- 4.4 Furthermore, the Committee found that ‘...evidence collected from various sources indicates that the needs, views and personal history of persons with disabilities, and particularly those requiring high levels of support such as persons with intellectual and/or psychosocial disabilities, were not properly taken into account or given appropriate weight in the decisions affecting them’.⁹
- 4.5 The Committee also noted that ‘Despite the training delivered to assessors and decision makers, evidence indicates a persisting lack of awareness and limited knowledge of disability rights and the specific needs of persons with disabilities, particularly of persons with intellectual and/or psychosocial disabilities. The Committee also collected evidence of lack of reasonable accommodation and inaccessible information about the assessment process.’¹⁰
- 4.6 The Committee found that the core elements of the rights to independent living and being included in the community, an adequate standard of living and social protection and the right to employment have been affected: persons with disabilities affected by policy changes have had their freedom of choice and control over their daily activities restricted, the extra cost of disability has been set aside and income protection has been curtailed as a result of benefit cuts, while the expected policy goal of achieving decent and stable employment is far from being attained.¹¹
- 4.7 Subsequent research has continued to suggest the persistence of many of the issues highlighted in the Inquiry report. Independent research commissioned by ECNI found that: ‘Some participants described experiencing a mental health crisis as a result of engaging with the social security system...Participants highlighted having to choose between food and heating and relying on food banks. disabled people reported falling behind with their household bills, experiencing poor housing, and increasing costs. Participants referred to the work capability assessment as stressful, leading to anxiety and mental health challenges referred to as socially induced stress. Participants referred to the process of applying for benefits as exhausting.’¹²

⁹ Ibid, paragraph 90, p.16.

¹⁰ United Nations Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under Article 6 of the Optional Protocol to the Convention: Report of the Committee](#), paragraph 103, p. 18.

¹¹ UN Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 6 of the Optional Protocol](#) to the Convention, paragraph 113 (f), pages 18-19.

¹² Toman, et al (2022): [Progress towards implementation of the UNCRPD in Northern Ireland](#), p. 109.

- 4.9 The Equality Commission notes that the Disability Strategy Expert Advisory Panel, appointed to advise the Department for Communities on a Disability Strategy for Northern Ireland, has recommended the repeal of the Work Capability legislation, including the associated assessment and the adoption of a human rights approach to supporting disabled people into employment that does not conflict with their right to an adequate standard of living and entitlement to social security.¹³
- 4.10 IMNI have also recommended that the Department for Communities examine the principles-based approach to social security implemented in Scotland, and further examines the case for adopting a similar approach in Northern Ireland.¹⁴
- 4.11 A report by the Work and Pensions Committee in 2018¹⁵ found that failings in the processes, including assessment, ‘had contributed to a lack of trust’.¹⁶
- 4.12 A 2023 report by the Work and Pensions Committee found that many of the issues highlighted in their earlier report remain¹⁷, despite some improvements ‘Important changes to improve trust and transparency have not been made, and the system continues to let down some of the often-vulnerable people who rely on it.’¹⁸
- 4.13 Furthermore, the Committee noted that whilst the Government has announced major reforms in its Health and Disability White Paper, including abolishing the Work Capability Assessment (WCA), this will take several years to implement. The Committee recommended that ‘Prior to any changes to the health assessment process, including the abolition of the WCA, an external assessment should be undertaken on the potential physical and mental health effects of these changes on affected claimants’.¹⁹

¹³ Department for Communities (2020): [Disability Strategy Expert Advisory Panel – Report and Recommendations](#), p. 46.

¹⁴ Independent Mechanism for Northern Ireland (2019): [Report on the Department for Communities response to the Independent Review of PIP process and compliance with the recommendations of the UN CRPD Committee](#)

¹⁵ Work and Pensions Committee (2018): [PIP and ESA assessments](#), summary.

¹⁶ See also Appendix 1.

¹⁷ See Appendix 2.

¹⁸ Work and Pensions Committee (2018): [PIP and ESA assessments](#), p.6.

¹⁹ Work and Pensions Committee (2023): [Health assessments for benefits](#), paragraph 28, p.25.

- 4.14 A report from the House of Commons Library (2023)²⁰ has highlighted that ‘Various think tanks and campaigning organisations have expressed concerns...that people who currently meet the threshold for an additional amount for ill health or disability following a WCA, but who do not currently receive any PIP, may be entitled to less financial support after the change.’
- 4.15 These concerns arise in a context where disabled people’s right to an adequate standard of living and social protection has been eroded as a result of the UK Government’s welfare reform agenda.²¹
- 4.16 A cumulative impact assessment of tax and social security reforms commissioned by the Northern Ireland Human Rights Commission found that families with at least one disabled child, have lost an average of £2,000 per year as a result of changes to related benefits²²
- 4.17 Independent research, commissioned by the Equality Commission, also highlights reductions in disability benefits since April 2017: ‘Disabled people claiming Employment Support Allowance and Universal Credit, assessed as being in the work-related activity group and in receipt of both benefits through the work capability assessment, have had their income reduced by £30 per week, losing their disability premiums within both benefits.’²³
- 4.18 Research by the Social Market Foundation (2021) has highlighted that:
- Nearly half of all people in poverty in the UK are either disabled themselves or live with someone who is disabled;
 - More in four in ten people (42%) living in families that rely on disability benefits are in poverty;

²⁰ House of Commons Library (2023): [Proposals to abolish the Work Capability Assessment](#)

²¹ United Nations Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out under Article 6 of the Optional Protocol to the Convention – Report of the Committee](#)

The Committee noted that ‘despite several adjustments made to the Work Capability Assessment, the assessment has continued to be focused on a functional evaluation of skills and capabilities, and puts aside personal circumstances and needs, and barriers faced by persons with disabilities to return to employment, particularly those of persons with intellectual and/or psychosocial disabilities.’, paragraph 102, p.18.

²² Reed, H. and [Portes, R. (2019): [Cumulative impact of tax and social security reforms in Northern Ireland](#), p. 56 (Northern Ireland Human Rights Commission)

²³ UK Parliament (2019): [Ten Years of the Work Capability Assessment](#).

- There are 1.8 million more people in poverty whom live in a family that includes a disabled person that there were fifteen years ago;
- Close to four million disabled people in the UK were living in poverty in 2018/19 (the most recent available figures) against nearly three million in 2003/04.²⁴

4.19 A survey conducted on behalf of the Cabinet Office's Disability Unit (June 2021) found that:

- 4% of disabled people, 4% of carers, and 6% of general public respondents 'agree' or 'strongly agree' that disabled people have sufficient financial support to meet their needs;
- 5% of disabled people, 6% of carers, and 9% of general public respondents 'agree' or 'strongly agree' that in general, the government provides a good level of support to disabled people.²⁵

4.21 Research by Ipsos Mori and the Trussell Trust (2023) found that nearly two thirds of people referred to food banks in the Trussell Trust network are disabled.²⁶ The research also highlighted that, for most people referred food banks in the Trussell Trust network, the design and delivery of the social security system are major contributors to their inability to afford the essentials.²⁷

4.22 The Trussell Trust have also highlighted how households affected by disability were on average in greater levels of debt than other households referred to food banks.

4.23 Furthermore, 23% of households with a disability were losing more than a quarter of their income on repaying debt or loans, compared to 14% among households not affected by disability whilst 41% of disabled people were in debt to the DWP. Households affected by disability are more likely than other households arriving at food banks to be in debt, to have accrued multiple debts, and for a higher proportion of their income to be swallowed up repaying these debts.²⁸

²⁴ Oakley, M (2021): [Time to think again - Disability benefits and support after Covid-19](#) (Social Market Foundation).

²⁵ Cabinet Office Disability Unit (June 2021): [UK Disability Survey Research Report](#), Q110 (d) and Q 110 (e).

²⁶ Ipsos and the Trussell Trust (2023): [Hunger in Northern Ireland](#), p. 13.

²⁷ Ipsos and the Trussell Trust (2023): [Hunger in Northern Ireland](#), p. 41.

²⁸ The Trussell Trust (2021): [The State of Hunger - The debt crisis facing households at food banks](#)

5 Impacts of proposed changes

- 5.1 The changes proposed by DWP, if implemented, will have the effect of reducing the threshold required for someone to be judged as able to prepare for work (and therefore not LCWRA).
- 5.2 The Institute for Fiscal Studies has advised that ‘The impact of the (proposed) reform on those individuals who will no longer qualify for the LCWRA group is significant. Not only will they lose out on the additional income (typically almost £400 per month) that LCWRA claimants are entitled to, they will also be required either to prepare for work or to search for a job in order to keep receiving benefits’.²⁹
- 5.3 The Commission notes that the Resolution Foundation has also concluded that ‘the suggested changes to the Work Capability Assessment would make it less likely that claimants with certain conditions will qualify for the Limited Capability for Work Related Activity (LCWRA) element of Universal Credit, currently worth £390.06 a month’.³⁰
- 5.4 The Foundation highlights that ‘...changes affect those who are in receipt of means-tested benefits, it is predominantly lower-income adults who are at risk of losing support: three-quarters of those in receipt of means-tested health-related benefits are in the bottom half of the income distribution...and a third (34 per cent) of disabled people were materially deprived in 2020-21 – almost three-times the share among the non-disabled population (13 per cent)’.³¹
- 5.5 Furthermore, the Foundation advises that as ‘the majority (87 per cent) of adults in receipt of means-tested health-related benefits have problems with their mobility or mental health or have social or behavioural problems...they are at risk of being affected by changes to the four functional activities and descriptors included in the consultation’.³²

²⁹ Institute for Fiscal Studies (2023): [IFS responds to changes to DWP Work Capability Assessments](#)

³⁰ Resolution Foundation (September 2023): [Re-assessing the Work Capability Assessment - What might the proposed changes to the Work Capability Assessment mean for low-to-middle income families?](#)

³¹ Ibid.

³² Ibid.

- 5.6 The reduction of points associated with the Mobilising, Contingence, Social Engagement and Getting About functional activities and descriptors will ultimately lead to reduced income for many disabled people,
- 5.7 In light of the concerns already expressed by the United Nations Committee on the Rights of Persons with Disabilities (as well as numerous domestic stakeholders) concerning the shortfalls in realisation of rights to adequate standard of living, social protection and independent living, as highlighted above, any further reduction in income is likely to lead to further regressions of these rights.
- 5.8 Furthermore this may have the effect of coercing many disabled people to seek work in workplaces which are often insufficiently prepared or lacking sufficient knowledge regarding reasonable adjustments.
- 5.9 The UN Committee on the Rights of Persons with Disabilities expressed concern about insufficient measures of affirmative actions and provision of reasonable accommodation improving the possibility of employment for persons with disabilities on the open labour market in the UK³³, recommending that Government ensure that ‘reasonable accommodation is provided to all persons with disabilities who require it in the workplace, that regular training on reasonable accommodation is available to employers and employees without disabilities, and that dissuasive and effective sanctions are in place in cases of denial of reasonable accommodation’.³⁴
- 5.10 The Commission notes that Disability Rights UK (DRUK) have expressed concern that the Health and Disability Green Paper’s employment related suggestions (from which the current consultation proposals derive) are concentrated around the Disabled person, rather than changing the attitude of employers and the nature of work and the workplace.³⁵

³³ United Nations Committee on the Rights of Persons with Disabilities (2017): [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), paragraph 56 (b), p.12.

³⁴ Ibid, paragraph 57 (b), p.13

³⁵ Disability Rights UK (September 2021): [Health and Disability Green Paper - A cause for concern](#)

- 5.11 The Resolution Foundation has commented that ‘...if the Government’s sole aim was to boost back-to-work support for people with disabilities, then it could have done so without announcing cuts to level of benefits paid to some claimants... tweaking benefit entitlement alone is unlikely to be an adequate or effective solution: the Government must also focus on improving healthcare provision to prevent people getting ill in the first place and provide better support to help those claimants who are able to work, to help them find good-quality, sustained employment’.³⁶
- 5.12 While the Department for Communities provides a number of programmes to support persons with disabilities in Northern Ireland into employment such as Access to Work NI, evidence provided to IMNI from the disability sector indicates that these programmes have not effectively supported people with more complex disabilities³⁷.
- 5.13 This includes people requiring a high level of personalised and ongoing support to access and retain employment.
- 5.14 In evidence (28 August 2023) to the United Nations Committee on the Rights Persons with Disabilities, Northern Ireland-based business owner Michael Holden MBE, described how ‘targeted cuts to Access to Work programmes have seen waiting times increase and as applications may only be made after employment is secured, this leads to delays before employers see the benefits of offering employment. Alongside this, the cuts have also curtailed the number of applicants admitted to the programmes and reduced the level of support being offered to employers which really magnifies the risk to employers’.³⁸
- 5.15 The Commission recommends that greater consideration is given by the Department for Communities and Department for Work and Pensions to improved resourcing of programmes to support employers engaging disabled people, recognising that this is essential to closing the disability employment gap.

³⁶ Resolution Foundation (September 2023): [Re-assessing the Work Capability Assessment - What might the proposed changes to the Work Capability Assessment mean for low-to-middle income families?](#)

³⁷ Independent Mechanism for Northern Ireland (2017): [UNCRPD - Jurisdictional Parallel Report on implementation in Northern Ireland](#), page 68

³⁸ See: [UNCRDP update: UK evidence session seven years on from 2016 report - YouTube](#)

- 5.16 The Commission is concerned about proposed changes to the rule whereby claimants who do not satisfy the usual criteria for LCWRA can nevertheless be treated as having LCWRA, where there would otherwise be a ‘substantial risk’ to their health, or to the health of another.
- 5.17 The Commission notes that the mental health Charity MIND has highlighted that statistics show that the current conditionality system isn’t working effectively for people with mental health problems.³⁹ Nearly 70% of the 60,000 sanction threats for people with mental health problems in the Employment and Support Allowance Work Related Activity Group in 2014-15 were later cancelled or reversed.⁴⁰
- 5.18 MIND maintain that these threats, whether they resulted in a sanction or not, have a detrimental impact on the mental health of people with mental health problems and propose that before introducing new forms of conditionality or requirements, the Department should review its current use of the policy to understand where improvements need to be made.
- 5.19 Mental health problems include symptoms that can be exacerbated by the environment created by conditionality or by placing requirements on people. If exacerbated, it is likely that the person experiencing them will be pushed further away from work⁴¹.
- 5.20 MIND have made a number of recommendations including that The Department for Work and Pensions should redesign and improve training in mental health for Work Coaches, including introducing assessments and audits of knowledge and skills⁴².
- 5.21 In relation to job seeking and employment support for people with mental health problems, MIND recommend that it should be tailored and personalised, ensuring progression is achieved at the claimant’s own pace. MIND advise that pushing someone with a mental health problem too quickly into something they are unable to achieve or feel unready to undertake, could have a detrimental impact on their health⁴³.

³⁹ See also: Royal Psychological Society et al (2019): [A consensus statement on the use of sanctions in the benefits system and entitlement to personalised support.pdf](#); Wright, S. (2020): [Mental health, welfare conditionality and employment support \(University of Glasgow\)](#); National Audit Office (2016): [Benefit Sanctions](#).

⁴⁰ [Written evidence - Mind; https://www.mind.org.uk/media-a/4279/32341.pdf](https://www.mind.org.uk/media-a/4279/32341.pdf)

⁴¹ Ibid.

⁴² Ibid, page 3.

⁴³ Ibid.

- 5.22 Finally, MIND emphasise that to allow for progression, reasonable adjustments are made by both the employer and Work Coaches (as required under the Equality Act 2010), to ensure that someone with a mental health problem is not at a disadvantage⁴⁴.
- 5.23 The Independent Mechanism for Northern Ireland has recommended that the Department for Communities examine the approach adopted in the social security system in Scotland - namely the introduction of a principles-based approach to social security, as enshrined in a social security charter – as a case of good practice particularly for the protection of the dignity and rights of people with disabilities and with regard to the possibility of the future implementation of a similar principles-based approach in Northern Ireland.
- 5.24 The principles identified in the Social Security (Scotland) Act 2018, Part 1, section 1. are: (a) social security is an investment in the people of Scotland; (b) social security is itself a human right and essential to the realisation of other human rights; (c) the delivery of social security is a public service, (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system; (e) the Scottish social security system is to contribute to reducing poverty in Scotland; (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence; (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which— i) put the needs of those who require assistance first, and ii) advance equality and non-discrimination; and (h) the Scottish social security system is to be efficient and deliver value for money.
- 5.25 The 2018 Act provided for the preparation and publication of a Scottish Social Security Charter, with the preparation requiring Scottish Ministers to consult persons with a physical and/or mental impairment, and in receipt of social security payments. The Act provides for reporting requirements on Scottish Ministers and for the establishment of a Scottish Commission on Social Security in order to periodically assess the extent to which the expectations set out in the Social Security Charter are being fulfilled.

⁴⁴ Ibid.

5.26 The Social Security Charter, published in 2019, outlines what can be expected of Social Security Scotland, the Scottish Government, and of customers. These expectations include: a commitment from the Scottish Government to develop policy that seeks to advance the human right to social security, as well as equality, non-discrimination as defined in laws, treaties and guidance and to publicly challenge the myths and stereotypes about social security so as to reduce stigma and negativity; to respect the dignity of people using the service; and to generally promote a more positive view of social security.

6 Recommendations

6.1 The Equality Commission for Northern Ireland recommends that:

- the Department for Work and Pensions and the Department for Communities protect the most vulnerable from the adverse impact of welfare reform, particularly mindful of impact on people with disabilities and women, and the barriers experienced by minority ethnic communities (including asylum seekers and refugees);
- the Department for Work and Pensions and the Department for Communities identify and commit to specific measures which will mitigate the adverse impact of welfare reform on the promotion of equality of opportunity, or any alternate policies which might better promote equality of opportunity;
- greater consideration is given to by the Department for Work and Pensions and the Department for Communities and to improved resourcing of programmes to support employers engaging disabled people;
- that the Department for Communities examine the approach adopted in the social security system in Scotland and consider the possibility of the future implementation of a similar principles-based approach in Northern Ireland.

Public Policy and Strategic Engagement Team

October 2023

Appendix 1

2018 Work and Pensions Committee Inquiry⁴⁵

In evidence to Committee, claimants, disability bodies, welfare rights groups, and others identified the following issues with the Work Capability Assessment:

- The activities and descriptors used in the WCA and in the PIP assessment were not “fit for purpose”, being weighted towards physical health conditions and disabilities, and discriminating against those with mental health conditions.
- The structure and content of assessments (both written and face-to-face) did not always allow claimants to express accurately the impact their condition had on them.
- Neither assessment appropriately captured fluctuating conditions. • Some people found the whole claims, assessment, and appeals process difficult, stressful, confusing and/or threatening, with in some cases detrimental effects on their health.
- There were instances where it was claimed the assessment process had led to people being hospitalised, having their medication increased, or attempting to take their own lives.
- Claimants reported that their concerns were not taken seriously by assessors, or that their statements were ignored.
- There were concerns that assessors often did not have sufficient knowledge or expertise to assess the impact of certain conditions, such as mental health problems.
- Written reports did not always accurately reflect the claimant’s recollection of what happened at the assessment.
- There was dissatisfaction with the Mandatory Reconsideration process, which many claimants viewed as a tool to dissuade people from going to appeal.
- Some claimants did not challenge a decision through appeal because of the distress the process had already caused them up to that point, and/or because they were overwhelmed at the thought of going through the appeals process.

⁴⁵ Work and Pensions Committee, [PIP and ESA assessments](#), HC 829 2017-19, 14 February 2018; Work and Pensions Committee, [PIP and ESA assessments: claimant experiences](#), HC 355 2017-19, 9 February 2018

- Although some people expressed dissatisfaction with the appeals process, the most common view was that the appeals stage was the first time when the full range of information presented as part of the assessment process had been properly considered.

The Committee said that failings in the assessment and decision-making processes for both ESA and PIP had resulted in the “pervasive lack of trust” that risked undermining the entire operation of both benefits.⁴⁶

⁴⁶ House of Commons Library (29 September 2023): [Proposals to abolish the Work Capability Assessment](#), p. 29.

Appendix 2

2023 Work and Pensions Committee report⁴⁷

Key themes emerging from more than 8,500 responses to the survey included:

- Factual errors in reports;
- Difficulty completing forms, in particular the stress and anxiety caused;
- Lack of knowledge of conditions from assessors;
- The effectiveness and impact on claimant of the Mandatory Reconsideration and appeal processes;
- Inconsistent support and access arrangements at all stages;
- Poor communication from DWP at all stages, including issuing communications in formats which people cannot use;
- Delays and consequent financial and health impacts; and
- Over-frequent requirements to re-apply, particularly in circumstances where no improvement in the claimant's condition may reasonably be expected.

The Committee also recommended that, before making any long-term changes to the assessment process, including abolishing the WCA, there should be an external assessment of the potential physical and mental health effects of these changes on claimants.⁴⁸

⁴⁷ Work and Pensions Committee (2023): [Health assessments for benefits](#), HC 128 2022-23.

⁴⁸ House of Commons Library (29 September 2023): [Proposals to abolish the Work Capability Assessment](#), p. 29-30.