



## **Marsha De Cordova's Westminster Hall Debate on Disability Benefit Assessments and the Health & Disability Green Paper (Tues 1<sup>st</sup> February)**

Zacchaeus 2000 Trust (Z2K) is welfare rights and anti-poverty charity providing [advice and support](#) for Londoners facing homelessness or poverty as a result of changes to Social Security benefits. Last year, we helped over 1,000 people with 1,500 cases helping them secure £3.5 million financial benefit. A key part of our work is supporting disabled and seriously unwell people to challenge DWP's decision to refuse them the health and disability benefits they are entitled to.

In 2019/20, we helped 453 people who had been refused Employment Support Allowance (ESA), Universal Credit Limited Capability for Work (UC-LCW) or Personal Independence Payment (PIP) appeal against DWP's decision. That year, 93 per cent of those clients who got a decision won their appeal. We have brought together evidence from those clients' experiences in research, including 2018 [Access Denied, #PeopleBeforeProcess](#) survey a [detailed response](#) to DWP's Health & Disability Green Paper and [written](#) and [oral](#) evidence to the Work & Pensions Select Committee's inquiry.

### **Key Facts**

- DWP statistics show that of the 1.5 million Incapacity benefit claimants who were assessed for ESA up until June 2019, 268,000 were found "Fit for Work" (18 per cent)
- Between Dec 2013 and Dec 2020, only 66,000 out of 400,000 ESA-WCA MRs resulted in a changed decision. (DWP doesn't publish the outcomes of the UC-WCA MRs.)
- In 2019/20, 75 per cent of ESA or UC-WCA appeals were won by the claimant.
- House of Commons Library statistics show that by October 2020, of 1.5 million disabled people who were previously in receipt of DLA who have been reassessed for PIP, nearly half (706,473) have seen their entitlement either reduced or disallowed completely.
- In total, of the nearly six million people who have applied for PIP, 2.7 million have been refused (46 per cent). DWP claims it is getting better, but the figures don't bear this out.
- For all time, 54 per cent of new PIP claims were refused (3,768,889 new PIP claims in total, 2,050,900 disallowed). For 2020, 58 per cent of new PIP claims were refused (499,761 new PIP claims in total, 290,670 disallowed). For Jan to July 2021, 57 per cent of new PIP claims were refused (300,993 new PIP claims in total, 170,326 disallowed).
- Of those going on to lodge a PIP appeal, in 2020/21 (31,720), DWP "lapsed" (conceded) 10,990 before they even went in front of the Tribunal and lost two-thirds of those that were decided there. In 2020/21 DWP lost or conceded 83 per cent of decisions appealed
- In early-2019, the-then Work & Pensions Secretary Amber Rudd, acknowledged the level of poor-quality decision-making by DWP was unacceptable and had caused a breakdown of trust between the department and many disabled people. She promised reform.
- DWP's Health & Disability Green Paper was finally published in July 2021. It includes some welcome operational steps to try to improve the quality of decision-making, but denies the need for fundamental reform of the assessments regime.

## Background

Following a decade-long debate in media and political circles on the supposed need for “welfare reform”, the Labour Government’s 2007 Welfare Reform Act included provisions to replace Incapacity Benefit which was available to disabled and seriously unwell people with a new benefit – Employment Support Allowance (ESA). Entitlement to ESA was to be usually determined by a Work Capability Assessment (WCA) carried out by a private company with expertise. After a relatively short pilot phase for new claimants, this system was rolled-out first to all new claimants and thereafter most of those in receipt of Incapacity Benefit were required to go through the WCA too.

In 2012, the Coalition Government’s Welfare Reform Act included provisions to replace the system of Disability Living Allowance (DLA), which had been created in 1992 to support people with the additional costs of their disability or condition, with a new Personal Independence Payment (PIP). Again, PIP was generally to be accessed via a functional assessment against a set of “descriptors” carried out by a private company to determine the applicant’s need for additional financial support, both in terms of their daily living and mobility. It is noteworthy that both children and pensioners were exempted from these provisions and could continue to receive DLA.

Controversy has raged about these assessments ever since they came into effect with disabled people reporting being asked to undertake inappropriate and even painful physical activities by their assessor, who often seems to have little or no real understanding of their disability or condition. Worse still, many people also reported an unwillingness on the assessor’s part to engage with the answers they were giving and many of those who eventually saw the reports written about them have been shocked at false recording of their answers or entirely subjective “informal observations” included without their knowledge.

Unsurprisingly, hundreds of thousands of disabled people were denied ESA or PIP on the basis of these flawed assessment reports and the DWP decision-makers’ unwillingness to engage with medical evidence that offered a contrasting perspective. Many of those refused ESA or PIP went on to appeal against this decision to the First Tier Tribunal (Social Security & Child Support). In 2014, faced with public outcry and an unmanageable number of appeals, DWP introduced an internal review of decisions – Mandatory Reconsideration (MR). Frustratingly, however, only around 10-15 per cent of decisions were overturned at MR. Many disabled people felt it was a barrier to their right to pursue an appeal to the independent Tribunal.

## Z2K’s Tribunal Representation Service and Qualitative Research

Until 2011, Z2K only dealt with a handful of disability benefit cases each year. In the years that followed, however, we began to see more and more disabled people who had lost their previous entitlement to Incapacity Benefit or DLA as a result of one of these assessments. In 2014, we established a new Tribunal Representation Service working with *pro bono* partners in London’s legal community to help disabled people pursue an effective appeal against DWP’s decision. By 2019, this had grown to include a [dozen city law firms](#), as well as our own advice workers and volunteers and we helped 453 people lodge an appeal. Ninety-three per cent of those who got a decision back that year won their appeal. Other advice agencies achieve similar success rates. This is just one example:

### Case Study

Our client applied for Personal Independence Payment in 2019. DWP assessed them as ineligible and refused their application completely. The MR upheld that decision. With our support, they appealed it. The Tribunal not only found our client entitled to PIP but at the highest rates. Our client had been without this vital income for two years due to systemic failures of the assessment

process and the long wait for an appeal.

In 2018, Z2K published [Access Denied: barriers to justice in the disability benefits system](#) – qualitative research where some of those clients we had helped described their experiences of DWP’s ESA and PIP assessments and the impact losing their Social Security benefit had on them. Their heart-rending testimony of the ignorance and demeaning attitude of assessors, and unwillingness of DWP’s own staff to engage meaningfully with the evidence of the medical professionals actually involved in their care was stark. On the back of this, we called for a fundamental reappraisal of the need for these kind of assessments in a 21<sup>st</sup> Century Social Security system and immediate improvements to initial decision-making and the MR stage.

More recently, 1,420 disabled people responded to [our #PeopleBeforeProcess survey](#) of their experiences of disability benefit assessments – 1,220 had been assessed for PIP, 885 for ESA, and 166 for the Limited Capability for Work (LCW) elements of UC. Seventy per cent of respondents felt the assessor did not understand their condition, and 66 per cent felt the assessment report did not reflect what they had told the assessor in the assessment. Here is just a small sample of what people told us in this survey:

“I was restricted from giving full answers and forced to answer yes or no leading questions which restricted my answers. This opens the door to my answers being misinterpreted and used against me.”

“As noted, the assessors would ask you not to do anything that would result in injury or pain. They would then ask you to perform a physical action and if you were limited and could not perform that action due to pain, they would say you refused.”

“I repeated several times how much pain I was in, which was visible. They still asked me to do physical 'tests' leaving me in tears and in severe pain.”

“During my very first assessment, the assessor waved her hand at me when I tried to explain my mental health issues and said, "I'm not interested in that, I want to know if you can touch your toes". I received no points during that assessment. However, this was rectified at appeal.”

“Each time I've had an assessment for PIP, I have felt that the report following it has been talking about someone else and not me.”

“When I received the assessors report I cried, because it reflected a perfectly healthy person, not someone who cannot clean their house or hold down a full time job, or has to go for a lie down after dusting half a room exhausted and in pain, some days after work I cannot even cross a road safely, I am struggling yet all of this was ignored because I am fine apparently.”

“What I said and what they wrote were two different accounts. I feel they judged me based on their interpretation rather than understanding my day-to-day difficulties.”

“She noted in the report that I couldn't have mental health problems as I wasn't rocking back and forward.”

“I was asked when I last went to the cinema and I was so overjoyed to say I had been a few weeks prior as it was my birthday, and in fact the first and only outing for a number of months. The report stated, 'regularly socialises with friends'.”

## ESA/UC - Work Capability Assessment Statistics

DWP's statistics for outcomes of initial assessments 2008-2018 (Source: [House of Commons Library](#))

	Initial WCAs	Support Group	% Support Group	WRAG	% WRAG	Fit For Work	% FFW
<b>England</b>	3,219,493	1,104,404	34.3%	658,844	20.5%	1,456,240	45.2%
<b>Scotland</b>	438,694	149,437	34.1%	81,717	18.6%	207,541	47.3%
<b>Wales</b>	259,307	83,878	32.3%	56,885	21.9%	118,547	47.7%
<b>Great Britain</b>	3,921,090	1,338,375	34.1%	798,251	20.4%	1,784,457	45.5%

Outcomes for repeat assessments 2008-2018 (Source: [House of Commons Library](#))

	Initial WCAs	Support Group	% Support Group	WRAG	% WRAG	Fit For Work	% FFW
<b>England</b>	2,417,706	1,321,458	54.7%	609,026	25.2%	487,219	20.2%
<b>Scotland</b>	301,981	163,670	54.2%	72,186	23.9%	66,123	21.9%
<b>Wales</b>	180,382	90,003	49.9%	53,320	29.6%	37,059	20.5%
<b>Great Britain</b>	2,901,433	1,575,661	54.3%	734,953	25.3%	590,820	20.4%

WCA Appeals (ESA only) – Source: HMCTS Quarterly Statistics

	Appeals Lodged	DWP Decision Upheld	DWP Decision Overturned	% Decision Upheld	% Decision Overturned
<b>2009/10</b>	50,845	31,545	18,989	62%	38%
<b>2010/11</b>	127,155	78,442	47,562	62%	38%
<b>2011/12</b>	168,051	101,664	65,409	60%	40%
<b>2012/13</b>	224,418	127,999	95,552	57%	43%
<b>2013/14</b>	308,050	170,239	136,547	55%	45%
<b>2014/15</b>	60,325	27,215	32,810	45%	54%
<b>2015/16</b>	49,970	20,786	28,949	42%	58%
<b>2016/17</b>	65,723	22,586	42,927	34%	65%
<b>2017/18</b>	69,874	21,786	47,788	31%	68%
<b>2018/19</b>	55,705	14,815	40,600	27%	73%
<b>2019/20</b>	32,289	7,183	25,022	22%	77%
<b>2020/21</b>	7,455	1,797	5,641	24%	76%

## Personal Independence Payment Statistics

The table below shows the total number of outcomes for PIP decisions for those disabled people who were previously in receipt of DLA by nation/region. It illustrates a significant number have seen their award increase following this assessment, most likely because of a previous award of a lower rate of the Care Component of DLA being uprated to the Standard Rate of Daily Living under PIP. However, it also shows that a quarter of all those previously in receipt of DLA lost their benefit entirely following the move to PIP and a further 21 per cent ended up with a reduced award.

	Increased	Unchanged	Decreased	Disallowed	Total	% Decreased	% Disallowed
East of England	44,051	16,150	22,348	27,239	110,636	20%	25%
East Midlands	51,893	18,474	21,797	31,887	125,097	17%	25%
London	47,482	16,829	34,357	39,143	138,859	25%	28%
North East	36,351	13,901	21,172	20,767	92,841	23%	22%
North West	83,736	33,022	55,413	52,155	225,907	25%	23%
South East	53,544	19,263	29,829	35,361	139,052	21%	25%
South West	48,059	17,522	25,839	29,427	121,752	21%	24%
West Midlands	66,587	24,277	30,096	44,865	167,179	18%	27%
Yorkshire & Humber	55,140	19,414	31,647	36,019	143,261	22%	25%
Scotland	64,128	20,943	31,001	31,603	148,890	21%	21%
Wales	49,167	18,872	24,029	30,290	123,339	19%	25%
Great Britain	600,452	218,794	327,552	378,921	1,537,435	21%	25%

The table below shows the total number of initial decision reached on PIP applications, and the proportion of those that resulted in an award or were disallowed. It also shows the numbers of requests for Mandatory Reconsideration that were received and the numbers that resulted in a change of award or the initial decision being upheld. This illustrates DWP's improvement at MR stage in 2019/20 and especially during the pandemic (2020/21).

	PIP Initial Decisions	PIP Awarded	PIP Disallowed	MRs registered	Award Changed	MR - Award Unchanged	% MR Changed	% MR Unchanged
2013/14	67,270	74%	26%	9,330	2,170	7,110	23%	77%
2014/15	516,120	70%	30%	89,550	17,390	71,850	19%	81%
2015/16	564,230	66%	34%	131,030	18,320	112,210	14%	86%
2016/17	827,140	72%	28%	192,540	28,560	163,400	15%	85%
2017/18	716,060	67%	33%	168,460	22,270	145,540	13%	87%
2018/19	630,270	65%	35%	156,840	27,440	128,950	18%	82%
2019/20	607,700	63%	37%	156,430	45,190	110,800	29%	71%
2020/21	505,290	54%	46%	121,070	44,990	72,460	38%	62%

The table below illustrates the numbers of people who have gone on to appeal a DWP decision to either disallow them PIP or award a lower rate. In total, 395,450 disabled people have been forced to appeal in an effort to obtain the PIP they believe they are entitled to. It shows the proportion of applicants who see the decision overturned at the Tribunal increased significantly up to 2019/20. DWP has suggested the increased proportion that were upheld in 2020/21 is indicative of improved performance. However, it fails to acknowledge that it “lapsed” or conceded nearly as many appeals before the Tribunal hearing as the total number that went on to be heard (highlighted in yellow). In total, DWP conceded or lost 83 per cent of PIP appeals that resulted in a decision in 2020/21.

	Appeals Lodged	Withdrawn	Lapsed	Decision Overturned	Decision Upheld	% Overturned	% Upheld
2013/14	2,690	130	380	950	1,120	46%	54%
2014/15	30,490	1,310	2,650	15,390	10,710	59%	41%
2015/16	52,630	2,230	2,270	30,350	17,160	64%	36%
2016/17	81,790	3,560	4,170	48,130	24,990	66%	34%
2017/18	74,900	2,830	6,100	45,090	19,760	70%	30%
2018/19	65,640	1,900	12,080	35,980	14,040	72%	28%
2019/20	55,590	1,140	16,600	25,500	9,410	73%	27%
2020/21	31,720	480	10,990	7,870	3,900	67%	33%

#### Case Study

Carlo has long-term mental health problems linked to a traumatic past and was in receipt of the standard rate of PIP for Daily Living and Mobility. He was prompted to make a new claim when his award came to an end. His health has deteriorated since his last award and he now has a number of physical health problems in addition to poor mental health. His award was reduced to nothing following a reassessment. His mental health needs weren’t considered at all and he also lost his Severe Disability Premium for the ESA. Z2K completed a very detailed MR for him pointing to the medical evidence of mental health professional involved in his care and his GP. His MR came back unchanged and so Z2K submitted an appeal based on exactly the same information. The appeal was “lapsed” by DWP after just two weeks. If Carlo hadn’t appealed, he would have got nothing.

#### DWP’s Health & Disability Green Paper

Under pressure as a result of the growing proportion of appeals DWP was losing at the Tribunal and the experiences of disabled constituents, ministers began to think again. In a [speech to Scope](#), the then Work & Pensions Secretary, Amber Rudd, acknowledged the scale of poor decisions was unacceptable and that real change was needed for its own sake and to restore trust between disabled people and her department. In the months that followed, DWP committed to a Green Paper setting its plans for reform and finally began to engage more directly with disability charities and advice agencies about the changes it had in mind.

The change of Secretary of State in September 2019 and the General Election in December that year delayed publication of the Green Paper. The Covid-19 pandemic then delayed it further, but DWP did at least [suspend](#) all disability benefit reassessments and face-to-face assessments for new claims at the height of the pandemic. Thousands of new claims were determined on the application papers

and medical evidence alone, demonstrating the possibilities of such an approach and relieving those disabled people involved of the stress and fear of an in-person assessment.

The [Green Paper](#) was finally published in July 2021. It acknowledges that there are real problems with the current system of assessments for disability benefits, and that this causes distrust of DWP amongst disabled people. It goes on to seek views on proposals to improve operational aspects of DWP's work in this area, including the assessments regime and initial decision-making, but also some longer-term more fundamental changes. When publishing this Green Paper, DWP advised for the first time of its intention that the responses to it will result in a White Paper in mid-2022 detailing which changes would be taken forward and how this would be done.

We would characterise the Green Paper as being better than we feared but not as good as we had hoped for. For example, it finally accepts the need for audio recording of assessments by default as the most effective way of ensuring that what disabled people actually tell their assessor is what is included in the report. This is something many representing disabled people have argued for ever since the assessments were first introduced. However, it still doesn't commit DWP to a timeline by which this will be implemented by its assessor companies. Neither does it offer any easier access to those written reports, which is what many people think is needed to improve their accuracy.

Similarly, the Green Paper finally acknowledges that these repeated assessments are sometimes unnecessary, especially for those whose disability or condition won't improve. However, its proposed solution of a "Severe Disability Group" which isn't subject to reassessment will be helpful to those who will fall within its scope, but potentially leaves hundreds of thousands of others subject to the same grueling regime for years to come. Neither does it address the concern of those like Z2K who feel the independent Tribunal's judgment on entitlement should be binding on DWP for longer.

Worryingly, it also resurrects the discredited idea of a single assessment for both ESA / UC-LCW and PIP. This doesn't address the fundamental flaws of the assessment process. Many disabled people would still have to go through a grueling process, which could leave them at risk of losing both benefits. This is the wrong solution to the problem of reassessments taking place far too frequently. Many disabled feel it is simply a cost-saving measure, rather than one designed to ensure everyone who should be entitled to ESA, UC-LAW or PIP are actually awarded it.

Another positive step is the recognition of the value of advocacy in supporting people to apply or if they are called for reassessment. We assume that this will be independent advocacy, because the level of mistrust of DWP amongst many disabled people is too great for it to be otherwise. However, it also needs to be extended to those who are pursuing an MR or appeal as well. In that respect, the Green Paper's failure to acknowledge that as a result of the withdrawal of Legal Aid from almost all Social Security work, disabled people are pursuing tens of thousands of MRs and appeals at the moment without any support from the State to do so. Advocacy is needed here too.

Perhaps even more frustrating than its content, however, is the manner of DWP's engagement with disabled people themselves in the run-up to publication and the three-month consultation on it. Despite having been criticised by its own Social Security Advisory Committee (SSAC) earlier in 2021 and having received a series of recommendations how disabled people they should be more involved in the development and evaluation of policies that affect them, DWP [refused requests to extend](#) the consultation period or [proactively contact](#) disabled people who had been through an assessment. Unsurprisingly, despite millions of people having gone through a WCA or PIP assessment, DWP only received 4,500 responses to the consultation.

## What needs to change

For years disabled people and those with long-term health issues have been subjected to a benefits system they have described as ‘degrading’, ‘hostile’ and ‘discriminatory’. The fundamental reform of health and disability benefits that is required will clearly take time, yet change is needed urgently. That is why we are calling on DWP to make the following more immediate changes that would go some way to improving our Social Security system:

1. **Reducing the frequency at which people’s entitlement to health and disability benefits are assessed.** Z2K believes:
  - people whose conditions sadly won’t improve should not be reassessed at all.
  - people whose conditions might improve should be assessed less often as this is taking a huge toll on their physical and mental health, and in some instances hindering recovery.
2. **Improving the decision-making process for the initial assessment, ensuring more people get the income they’re entitled to without having to challenge it.** Z2K believes:
  - all assessors should have to clearly explain why their judgement of a person’s capability diverges from the evidence provided and an individual’s account of their capability.
  - all assessments should be audio-recorded as default (with an ‘opt out’ option), and a copy provided to the individual as well as DWP.
  - if an assessor does not have specialist knowledge of the condition they are assessing, it must be a requirement that they consult with experts who do when making their decision.
3. **Further embedding virtual forms of health and disability benefit assessments adopted during the pandemic.** Z2K believes:
  - Every applicant should be able to choose which method by which they are assessed by – be that paper-based, face-to-face, telephone or video.
4. **Implement a framework of support for disabled people to apply for Social Security benefits and challenge decisions.** Z2K believes:
  - Quickly roll-out a financial package of locally-based independent advocacy for those applying or submitting an MR.
  - Reinstate Legal Aid for disabled people appealing against a DWP decision to refuse or disallow entitlement for ESA, UC-LCW or PIP.
5. **Committing to more direct and meaningful engagement with disabled people themselves and Deaf & Disabled People-led Organisations (DDPOs).** Z2K believes:
  - DWP must learn the lessons of the inadequacies of the Green Paper consultation and the National Disability Strategy, which by putting together a consultation plan for the White Paper which adheres to SSAC’s recommended approach.

In the long-term, Z2K wants to see the introduction of an alternative Social Security system, that is based on the social model of disability and guided by the following overarching principles:

- Co-produced with the people who access it.
- Providing people with an adequate and stable income.
- Creating equality and offering people more independence, choice and control.
- Our Social Security system must treat those accessing it with dignity, fairness, and respect.