

Briefing from Z2K

Transforming Support: the Health and Disability White Paper

Health and disability benefits reform

Jamie Thunder, March 2023

About Z2K

1. Z2K's vision is that no-one in the UK should be living in poverty. We work with people in London to solve their social security and housing issues. Last year, we supported more than 1,000 people to access the support that they are entitled to, including more than £1.3m in financial benefit in 2022 alone. We believe that adequate income and secure housing are key to creating a fairer society where everyone has the chance to live with dignity.
2. This briefing is about the proposals in the March 2023 White Paper¹ to reform health and disability benefits. It's based on consultation with experts by experience, and insights from Z2K's track record of supporting disabled and seriously unwell people apply for and challenge decisions relating to Personal Independence Payment (PIP), and the health-related elements of ESA and Universal Credit.

Summary of this briefing

3. Disabled people are far more likely than the general population to be in poverty – which might be because they are not able to work, and/or because they face unavoidable higher costs because of their disability. Disability benefits are vital in alleviating this and allowing disabled people to live stable and dignified lives.
4. **The assessment systems for these benefits are badly broken.** In recent years DWP has lost or conceded 80% of appeals² to the Tribunal against PIP. Z2K's own success rate is consistently higher. Altogether, since PIP's introduction in 2013, close to 300,000 disabled and seriously unwell people have had to go through an unnecessarily, lengthy and stressful process to get what they're entitled to.
5. This incredibly high success rate means that there are undoubtedly countless others who do not challenge a decision but would have won if they had, so are simply denied their rights, often having to live in poverty off very low levels of basic benefits as a result.

¹ <https://www.gov.uk/government/publications/transforming-support-the-health-and-disability-white-paper>

² Personal Independence Payments to January 2023: <https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-january-2023>

6. The Health and Disability White Paper was an opportunity to set out an intention to overhaul the failing assessment and decision-making system. But Ministers have ignored the evidence. There are some minor improvements to PIP assessments proposed in the White Paper, and a welcome recognition that disabled people face too many assessments at present, but nothing that will address the systematic issues.
7. Instead, the White Paper proposes scrapping the Work Capability Assessment altogether, and introducing a Health Element of Universal Credit linked to receipt of Personal Independence Payment.
8. Some parts of the White Paper recognise genuine problems with the current system, like the number of assessments and the financial risk to a seriously unwell or disabled person entering work. **But the White Paper proposals pose real risks to disabled people's financial security:**
 - **An even more high-stakes PIP assessment:** The deeply flawed PIP assessment process will now also determine eligibility for financial support if you're not well enough to work.
 - **A devastating cut for people who can't get PIP:** The IFS estimates that 1m disabled or seriously unwell people who can't get PIP will lose out by £350 a month.
 - **A dangerous Work Coach lottery for sanctions:** The new system will in effect devolve assessments of someone's ability to work to tens of thousands of Jobcentre staff. Claimants could have no appeal rights against these decisions.
9. **Government should not continue with this high-risk reform.** The forthcoming legislation should have a dual focus: immediately improving the current system, and moving towards a co-produced disability benefit system that has disabled people themselves at the heart. We need government to commit to:
 - **A fairer process for disabled people**
 - **Better information about decision-making**
 - **Rebuilding trust and co-producing a better system**

If you'd like to discuss any of these issues in more detail, please don't hesitate to get in touch with Jamie Thunder, Policy and Public Affairs Officer on JamieThunder@z2k.org or 07394 573 351.

Background to the issue

10. There are two main types of disability benefit assessment for working-age people:

- The **Work Capability Assessment (WCA)** in Employment Support Allowance or Universal Credit. This assesses your ability to work. It determines whether you receive additional amounts of means-tested benefit³, and what (if any) steps you're expected to take to look for work.
- The **Personal Independence Payment (PIP) Assessment**. This assesses whether your disability or health conditions affects your day-to-day life. An award of PIP is not means-tested. It is intended to compensate someone for additional costs they incur due to their disability (such as travel, sanitary or medical items, or a need to use more energy).

11. The assessments are initially carried out by a contracted company, which provide a recommendation to DWP. DWP then takes the initial decision about entitlement.

12. Households that include someone with a disability are more likely to be in poverty than other households due to difficulties working, and disability-related costs⁴. The extra income and protection from benefit sanctions and the Benefit Cap that these assessments can lead to are vital for seriously ill or disabled people – but all too often, the process of accessing them is lengthy and distressing, and fails to deliver the right outcomes.

A failing system

13. Our clients and others' experience of these assessments and decisions is extremely negative. In a survey we carried out, 66% of people who had been through an assessment felt like the assessment report did not reflect what they'd told the assessor, and 70% felt that the assessor did not understand their condition⁵.

14. In short, the criteria do not properly reflect the impact of someone's health conditions or disability on their daily life or ability to work, the assessments themselves are often demeaning and inappropriate, and the decisions are often deeply flawed. As one of our survey respondents put it:

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.
Z2K survey respondent

³ The WCA also affects entitlement to contribution-based (New Style) ESA, which is not means-tested

⁴ <https://www.jrf.org.uk/report/going-without-deepening-poverty-uk>

⁵ People Before Process: <https://z2k.org/wp-content/uploads/2021/05/PeopleBeforeProcess.pdf>

15. There are many reasons why someone who believes a decision is wrong might not challenge an initial decision or internal DWP review (called a Mandatory Reconsideration). For example, they might not realise they can appeal or know how to, they might lack access to representation and advocacy, or they might have no faith in the process or be too exhausted to continue to fight.
16. This means **a lack of challenge does not imply an accurate decision**. Where people do challenge, the Mandatory Reconsideration is often pointless: the vast majority simply confirm the initial decision. It is usually only at the independent Tribunal that our clients get a fair hearing.
17. The Department's own statistics show **DWP loses or concedes 80% of PIP appeals lodged at the Tribunal**⁶. DWP could get these right earlier. **Just 2% of decisions overturned by the Tribunal are based on new written evidence** – the Tribunal routinely overturns DWP decisions based on the same evidence DWP already had, or because of new oral evidence that could have been gathered by a better assessment⁷. If you're found to be entitled, you only get back the payments you were due, even if you've been denied that entitlement for months.
18. This clearly shows **a failing system that forces disabled people to endure a lengthy legal challenge**, during which they cannot access their legal entitlements. And neither we, nor DWP, know how many disabled people do not challenge a decision, but would have won if they had done. These are the hidden victims of DWP's failures, who are left in often extreme poverty.

Proposals in the Health and Disability White Paper

19. The Health and Disability White Paper was a major opportunity to address this scandal. But assessment and decision-making quality barely gets a mention. There are a few useful operational changes to PIP assessments proposed, but these are minor, and mostly only trials. There is **no recognition of the scale of the failures in decision-making – instead, it proposes making PIP assessments even higher stakes**.
20. The biggest announcement is the end of the Work Capability Assessment⁸. DWP proposes replacing this with a Health Element of Universal Credit. To get this, someone will have to receive both of:
 - The Standard Allowance of Universal Credit
 - Personal Independence Payment

⁶ Personal Independence Payments to January 2023: <https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-january-2023>

⁷ Parliamentary Written Answer 42121: <https://questions-statements.parliament.uk/written-questions/detail/2022-07-21/42121>

⁸ Page 33 of the White Paper

21. We have deep concerns about the impact of this reform on our clients and disabled and seriously unwell people.

An even more high-stakes PIP assessment

22. The new Health Element of Universal Credit requires someone to receive Personal Independence Payment. But as set out above, this is deeply unreliable and challenging for many claimants. Our client Carlo is just one of the disabled and seriously unwell people who would have been badly affected under these proposals:

Carlo's story

Carlo had long-term mental health problems linked to a traumatic past, and was in receipt of standard rates of PIP until 2020, as well as Employment Support Allowance. He was prompted to make a new PIP claim when his award came to an end. His health had deteriorated since his last award and he now had a number of physical health problems in addition to poor mental health.

His PIP award was reduced to nothing following a reassessment. As a result, he also lost his 'Severe Disability Premium' - an additional payment within his Employment and Support Allowance award.

Z2K asked the Department for Work and Pensions to review Carlo's decision, pointing to medical evidence submitted from the mental health professionals supporting him, as well as from his GP. His decision came back unchanged, so Z2K lodged an appeal in the courts. The Department conceded the appeal after just two weeks, using exactly the same evidence as they had at review. Carlo was awarded the higher rates of PIP for an ongoing period.

Under the White Paper proposals, Carlo would have been left even worse off while he challenged his PIP decision, putting him even further into poverty and risking greatly worsening his mental health.

23. PIP assessments and decision-making are simply not good enough to take on this even greater importance.

A devastating cut for people who can't get PIP

24. The rules around PIP eligibility also exclude people with shorter-term conditions, and can be very difficult for people with fluctuating conditions, including mental health conditions, to meet or evidence. The White Paper proposes very narrow groups who could receive the Health Element without receiving PIP⁹, but the intention seems to be that only these narrow groups will receive Health Element without PIP. Inevitably many more will lose out. **The Institute for Fiscal Studies estimates that up to 1m low-income disabled people could be worse off under these proposals¹⁰.**

⁹ Paragraph 153 on page 33 of the White Paper

¹⁰ <https://ifs.org.uk/articles/spring-budget-2023-response>

25. For people who are receiving the LCWRA element of Universal Credit but not PIP when this system is introduced, DWP says it will provide 'Transitional Protection'. This means on day one their Universal Credit will be topped up, but over time this protection will reduce as someone's Universal Credit increases (whether by uprating or other reasons, such as having a second child¹¹). **In the longer term, 'Transitional Protection' simply means seriously ill and disabled people will be worse off.**
26. Not receiving the Health Element would mean someone is more than £350 a month worse off. **It could also mean they are affected by the Benefit Cap.** The Benefit Cap sets the maximum amount of benefits a household can receive: if they would ordinarily be entitled to more, they don't receive the full amount unless an exemption applies. Currently, 112,000 households are affected by the Cap, losing an average of £50 a week. A majority of these are single-parent families.
27. At the moment, someone is exempt from the Benefit Cap if they receive PIP, or are classed as not well enough to work or move towards work after a Work Capability Assessment¹². This recognises that disabled people who face additional costs or barriers to work due to their health should not have their benefits capped.
28. If the Work Capability Assessment is scrapped, PIP becomes the main disability-related 'gateway' to this exemption. That means people who are not well enough to work, and who have an underlying entitlement to benefits that is higher than the Benefit Cap, and can't receive PIP or have to challenge an incorrect decision not to award it, could see their benefits reduced even further.

A dangerous Work Coach lottery for sanctions

29. One benefit of the Work Capability Assessment System is that it can exempt someone from work-related requirements, and therefore from risk of sanctions. This can either be because they score enough points, or because, by reason of their health condition or disability, there would be a substantial risk to the health of the claimant or others were the claimant found not to have LCWRA.
30. Under the White Paper proposals there would be **no automatic exemption from sanctions**: someone's Work Coach would decide what activities (if any) they should be expected to undertake.¹³ It is not clear whether or how the vital 'substantial risk' backstop will be replicated in the new system.

¹¹ See p.7 and 8:

https://cpag.org.uk/sites/default/files/files/policypost/Managed%20migration%20to%20UC%20-%20CPAG%20Briefing_0.pdf

¹² There are other exemptions, but these are the relevant ones for this briefing.

¹³ Page 34 of the White Paper

31. In practice this is not the scrapping of the Work Capability Assessment: **it is devolving assessments of someone's ability to work to the more than 10,000 Work Coaches.** These Jobcentre staff will now have to decide whether someone's health or disability prevents them from working or looking for work.
32. DWP's own research shows that ESA claimants are already less likely than Universal Credit claimants to say the DWP took their personal circumstances into consideration when setting up commitments¹⁴, and nearly 2 in 5 of all Universal Credit claimants do not think their commitments are achievable¹⁵. **This reform will inevitably lead to inconsistent decisions and inappropriate work-related requirements** being put upon disabled people – and therefore to sanctions.
33. Presumably, these decisions will form part of someone's Claimant Commitment, which sets out the 'conditions' or requirements that someone has to meet in exchange for receiving Universal Credit. If someone is given inappropriate requirements in their Claimant Commitment, they have **no right to formally challenge or appeal** except to apply for Judicial Review, or lodge a 'complaint' with DWP. These are **inadequate protections that remove vital independent oversight of DWP decisions about someone's ability to work.**
34. It is also not clear from the White Paper whether, if someone's Standard Allowance is reduced to zero by a sanction, they would also lose entitlement to the Health Element. **This would greatly increase the already devastating financial impact of sanctions**, which already regularly exceed criminal fines¹⁶.

¹⁴ <https://www.gov.uk/government/publications/dwp-claimant-service-and-experience-survey-2018-to-2019--2/claimant-service-and-experience-survey-2018-to-2019>

¹⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714842/universal-credit-full-service-claimant-survey.pdf

¹⁶ <https://publiclawproject.org.uk/resources/benefit-sanctions-a-presumption-of-guilt/>

What needs to happen now

Government should not continue with this high-risk reform. The forthcoming legislation should commit to improving the current system, and moving towards a co-produced disability benefit system that has disabled people themselves at the heart.

Our asks

1. A fairer process for disabled people

- Claimants should be able to choose between a telephone, video, face-to-face, or paper-based assessment
- Assessments interviews should be audio or video recorded, and assessments reports provided to the claimant, as standard
- If an assessor does not have expertise in the claimant's condition(s), they should be required to demonstrate that they have consulted with someone with expertise
- Government must roll out a financial package of locally-based independent advocacy for those applying or submitting a challenge against a disability benefit decision
- Legal Aid should be reinstated for disability benefit challenges and appeals

2. Better information about decisions

- Assessors and DWP should explain why they consider someone's capabilities differ from the evidence and an individual's own account
- They should also justify an award period by explaining why they consider a claimant's condition realistically may have improved by the end that time

3. Rebuilding trust and co-producing a better system

- DWP must acknowledge that its current system is failing, to rebuild trust with disabled people
- DWP must commit to redesigning PIP and WCA assessments wholesale, in collaboration with disabled people themselves
- Safeguards and accountability measures must be central to a new system to ensure claimants receive all that they are entitled to, and don't 'fall out' of the system

For more information

If you'd like to discuss any of these issues in more detail, please don't hesitate to get in touch with Jamie Thunder, Policy and Public Affairs Officer on JamieThunder@z2k.org or 07394 573 351.