

Consultation on Disability Assistance in Scotland Child Poverty Action Group (CPAG) in Scotland) response

Question 1. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 0-18 years old Disability Assistance for Children and Young People (DACYP)?
Neither agree nor disagree.

Question 2. If you disagreed, please could you explain why.

At a disability assistance consultation event hosted by CPAG in Scotland, organisations made a compelling case for not including the term 'disability' in the name as they believed people who may be entitled to the benefit may not define themselves as being disabled and therefore will not apply. We are concerned this may impede take up and may not address the stigma of claiming.

It may be useful for the Social Security Scotland to carry out research with potential claimants to ensure the names maximise take-up.

Question 3. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 16 years old to state pension age Disability Assistance for Working-Age People (DAWAP)?

Neither agree nor disagree.

Question 4. If you disagreed, please could you explain why.

[See answer to question 2](#)

Question 5. Do you agree or disagree with the proposal to name Disability Assistance for clients who are state pension age or older Disability Assistance for Older People (DAOP)?

Neither agree nor disagree.

Question 6. If you disagreed, please could you explain why.

[See answer to question 2](#)

Question 7. Do you agree or disagree with the proposal to enable multiple application channels for Disability Assistance?

Neither agree nor disagree.

Question 8. If you disagreed, please could you explain why.

Given the requirement in the Act¹ that an application must be made in the way(s) required or it is treated as not having been made, it is vital that Social Security Scotland accepts any initial

¹ References to 'the Act' are to the Social Security (Scotland) Act 2018

contact – by phone, letter, email or in person – as securing the date of application for disability assistance.

A recent roundtable on claiming universal credit (UC) from hospital highlighted the necessity of multiple application channels for benefits. Although these issues are exacerbated for people in hospital, they are reflective of the wider issues claimants face when options for making applications are restricted.

A number of patients are unable to claim online because:

- they do not have an internet enabled device
- internet access is not always available, depending on location and sometimes location with a building
- they do not have the IT skills or capacity to navigate an online system.

In exceptional circumstances where a person is not able to claim online, they may be permitted to claim over the phone, however:

- some people are not able to hold a phone due to their condition
- applying by phone may not be suitable for people with speech or hearing impairments
- it is often not possible to get through to DWP on the phone during an allocated appointment time with an adviser or support worker
- if there is nowhere private to make the call, this undermines personal privacy and data protection.

Enabling people to claim in writing or in person would circumvent some of the issues presented by restricting applications to phone or online. Where people would like to make an application in person but cannot attend a local Social Security Scotland location, a visiting officer should be offered.

Whatever the channel, the application process must guide the applicant to give all the relevant information needed to make a determination. The self-assessment form must be easy to complete, yet detailed enough to provide all the information that the case manager needs to determine entitlement. Every individual that needs it must receive the support they need in order to complete the self-assessment form.

In addition to multiple application channels, it is critical that Social Security Scotland also offer multiple communication channels, use the claimant's preferred channel consistently and, if requested, communicate with the claimant's named representative rather than the claimant.

CPAG Early Warning System² evidence shows how important multiple application channels are:

Early in the disability living allowance (DLA) to personal independence payment (PIP) transfer process, advisers reported seeing a lot of people with literacy problems who didn't return their PIP forms because they couldn't read them and their DLA simply stopped. This was the point at which they sought advice. #Mi168

A client with long term health problems who has been receiving PIP has just been sent an intervention questionnaire. The information he has been given about the form is confusing for him and the DWP has refused to put the information in writing and send him a copy. #8651

A client appealed the decision not to award him PIP, as he had been receiving DLA at middle rate care and high rate mobility. The decision was not overturned at the mandatory reconsideration stage, but prior to the appeal DWP called him directly, rather than his representative as requested, and offered him enhanced rate mobility of PIP. The client was scared not to accept, as he was struggling having lost his DLA and the severe disability premium within in his employment and support allowance (ESA). The adviser believes the client should also be entitled to the daily living component, but they do not want to pursue the appeal in case the mobility component is removed again too. #2626

Question 9. Do you agree or disagree with the proposal to broadly replicate the current temporary absence rules?

Broadly agree. However, we have some concerns and do not think that the Scottish Government has made the case for replicating all the main residency rules used by the DWP.

Question 10. If you disagreed, please could you explain why?

Temporary absence

² For more information, see: <http://www.cpag.org.uk/scotland/early-warning-system>

The rules on temporary absence should make it clear that individuals who remain ordinarily resident in Scotland, whilst present in the rest of the UK, remain eligible for disability assistance. This may include those who are in the UK but outwith Scotland who are:

- students studying elsewhere in the UK;
- away to receive medical treatment;
- travelling for work;
- carers or visiting relatives who are unwell; or
- on holiday.

The Scottish Government should ensure that communities that are most likely to be affected, such as members of a traveler community, migrant workers and disabled students are actively consulted to ensure that their views are taken into account.

The Scottish Government should also consider whether individuals who remain ordinarily resident in Scotland whilst absent from the UK should be treated in the same way.

The Scottish Government needs to consider how individuals who move permanently between different areas of the UK and Scotland can continue to receive their entitlements without the need for unnecessary reassessments or new applications.

Place of claim

The Scottish Government should ensure there are agreements with the DWP and the Northern Ireland Department for Communities to ensure that a claim for a disability benefit made to any national social security agency is treated as being made to the appropriate one. This will ensure that no individual 'falls through the cracks' and individuals are not disadvantaged by making a claim to the wrong agency. This is a potential risk as the social security systems across the UK become more complex, particularly in cases where it is not immediately clear where an individual is ordinarily resident.

Past presence

It is not clear what the purpose is of requiring the individual to have been in Great Britain for 104 weeks in the last 156 weeks (the past presence test). The habitual residence test is sufficient to ensure that only those who have made their home in the UK will be entitled to claim, excluding those who are only temporarily in the country. By denying disability assistance to those who have been in Great Britain for less than 2 years, the additional costs are either met by the individuals themselves, which often causes hardship, or by other services such as social work. The Scottish Government could remove, or reduce, the past presence test for disability assistance in Scotland.

A 5 year old foreign national has leukemia. She is not entitled to child DLA because she has only been living in the UK for the past year and does not meet the requirements of the past presence test. As the child is not entitled to DLA, her parents will not be entitled to carer's allowance for looking after her over the course of her treatment either. #673

A UK national is returning to live with relatives in the UK because she is unwell, but will not be entitled to attendance allowance until she has been living in the UK for two years.

Removing the past presence test would also remove the possibility of disability assistance being refused in error on this basis:

A refugee received a letter advising that her claim for PIP had been refused as she did not pass the past presence test. Refugees are exempt from this test.

An EU national lone parent had to stop work when she developed cancer and tried to claim PIP. It was refused as she had only been in the UK for 94 weeks and not the required 104. However, it should have been treated as an advance claim as she would meet the criteria within three months. #10574

[Question 11. Do you agree or disagree with the proposal to implement a person-centred approach to making decisions about entitlement for Disability Assistance?](#)

Agree in part.

Case managers should take a holistic, person-centred approach when making judgements about the functional impact an individual's condition has on them. However, the criteria against which people are assessed must be set out in regulations in order to ensure consistent decision making. We agree that case managers will require the skills and values identified by the Scottish Government. The Scottish Government should work with experts to develop and test their training programmes to ensure that these skills and values are fully developed.

Training for case managers should include training on the inquisitorial approach to decision making (ensuring sound understanding of the law, ability to establish relevant facts, and ability to act fairly and reasonably according to the law). Their understanding of the practical application of the law should also be backed by guidance which is published so that individuals and their advisers can see how the law is being applied.

Learning for case managers should be informed by systematic feedback from tribunals where determinations have been overturned at appeal. This allows case managers to understand where their processes and decision-making can be improved.

Question 12. If you disagreed, please could you explain why?

We disagree with the implied assumption that ‘supporting information’ would be required in order for a case manager to make a robust decision.

We know from research by HMCTS that the key to accurate decision making is getting a full account of an individual’s circumstances.³ In most cases the best person to provide this account is the individual. Where an individual is not able to provide this account, family members and carers are best placed to provide this information. Additional ‘supporting information’ or evidence will, in most cases, only corroborate the individual’s account, not provide additional information. Requiring corroborating evidence in all cases is against the Scottish social security principles.

A decision about entitlement that is made in line with the principle of respect for the dignity of individuals is one that trusts the individual to give an accurate account of their needs. Many of the concerns about the current disability benefits systems arise because of the lack of trust in the system.

Client received a letter stating that their PIP assessment was not carried out properly and that they would have to attend another. This is the second time adviser had heard of this happening. #943

A system that trusts individuals will itself build trust in the system. The fact that an individual, or their appointee, has to sign the form should be sufficient evidence that the account is, to the best of their knowledge, accurate. A process of audit, and the possibility of prosecution for failure to provide correct information should provide a sufficiently robust system.

It is also important that that decisions are being made on a balance of probability, rather than starting from a position of the individual having to *prove* their entitlement.

If further checks are needed, then training case managers so they can identify when someone’s functionality is broadly in line with what would be expected from someone with the conditions(s) they identify should be sufficient.

Also see our answers to [questions 17](#) and [18](#).

Question 13. Do you agree or disagree with our proposed approach to the involvement of Specialist Advisors in Decision Making?

³ Social Security and Child Support Tribunal hearings: Early analysis of appeals allowed from pilot data (2012) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223139/sscs_appeals.pdf

Question 14. If you disagreed, please could you explain why.

Question 15. What factors should Case Managers take into account in deciding when a Specialist Advisor should be involved?

Question 16. Do you agree or disagree that the decision making process for Disability Assistance for Children and Young People, and for Older People should use existing supporting information and not through face-to-face assessments?

Disagree.

Question 17. If you disagreed, please could you explain why.

We welcome the commitment to reduce the number of face-to-face assessments. However, it is not clear why the assessment process will vary depending on the age of the individual. The failure to provide for any possibility of a face-to-face assessment for DACYP and DAOP risks less robust decision-making in cases where additional information is not available.

An individual should always have the option to request a face-to-face assessment if they feel that this would be the most appropriate way for them to give a full account of their situation.

We disagree with the implied assumption that either 'supporting information' or a face-to-face assessment would almost always be required. See our answer to question 18.

Face-to-face assessments should never be required if medical evidence suggests that it would be detrimental to the claimant's health.

A client with severe mental health problems was offered a home assessment however her psychiatrist and MP both requested that she not be subjected to an assessment as it would be detrimental to her health. Further information was requested from an occupational therapist and the claimant was advised a face-to-face assessment must be carried out - however there is no record of what the occupational therapist said. #2826

Question 18. What types of supporting information would be relevant in assessing an application for Disability Assistance eg. social work report, medical report?

It is not clear from the consultation when case managers will be required to collect supporting information, and what the purpose of supporting information will be in the Scottish social security system. The consultation document provides some information about when a face-to-face assessment may be carried out. It is vitally important that there is clarity on both these issues.

There is no evidence to suggest that corroboration of an individual's own account is needed in order to make a robust decision.

We know from research by HMCTS that the key to accurate decision making is getting a full account of an individual's circumstances.⁴ Additional 'supporting information' or a face-to-face assessment will, in most cases, only corroborate the individual's account, not provide any additional information.

The assessment process for disability assistance should focus on helping the individual tell their story, to enable the case manager to have a full picture of their situation. This is the way to make the most accurate decision. By enabling the individual to tell their story, the individual is then able to understand why they are, or are not, entitled to disability assistance.

The assessment process can help the individual give a full account of their situation by:

- ensuring that the self-assessment form is easy to complete, yet detailed enough to provide all the information that the case manager needs to determine entitlement.
- ensuring that every individual that needs it receives the support they need in order to complete the self-assessment form.

There may be situations where the individual is unable to give a complete account of their situation, or there may be gaps in the individual's account. In such circumstances:

- a family member, or an informal or formal carer may be able to provide information that can help the case manager get a full picture of the individual's circumstances.
- where the individual has other evidence that would demonstrate their entitlement to disability assistance, this could either be supplied by the individual or collected by Social Security Scotland.

A client was too embarrassed to disclose the full extent of her care needs at tribunal as they related to incontinence and was only awarded PIP mobility component as a result when she may also have been entitled to the daily living component as well. #122

We welcome the limitations placed on when a face-to-face assessment can take place, however we would like individuals to be provided with clarity as to why a face-to-face assessment is being carried out. Is it with the intention of assisting them to tell their story or is it with the intention to test their account of their own functionality? See our answers to [question 54](#) and [64](#).

Following a PIP reassessment, client received a phone call asking for further information. She was unable to answer the questions due to fatigue and was subsequently referred for

⁴ Social Security and Child Support Tribunal hearings: Early analysis of appeals allowed from pilot data (2012) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223139/sscs_appeals.pdf

another face-to-face assessment. When she asked why, the person on the phone refused to tell her. #2102

In order to build trust in the system and its processes, individuals should also have a right to view and comment on both 'supporting information' and the result of a face-to-face assessment. How this is practically done should be consulted on with service users and experts.

It is important that consideration is given to supporting evidence where it is appropriate, but it must be taken in context and with regard to the relevant legislation.

Both a GP and a consultant provided information confirming that a client with a brain tumour and uncontrolled seizures cannot complete daily living activities safely e.g. cooking or bathing. However this information appears to have been completely ignored by the PIP decision maker. #Mii157

Client was not awarded any points under the washing and bathing descriptor even though she has a wet room and a shower chair installed by occupational therapy for her. Adviser submitted the OT report with the request for a mandatory reconsideration but the decision maker simply said that it appears the wet room is not needed. #9605

Client was placed under surveillance due to fraud concerns some years ago. His DLA was stopped but subsequently re-instated at appeal. He was recently invited to claim PIP and attended an assessment but DWP have referred to the surveillance footage and refused PIP. The surveillance footage should not be considered reliable as it is not current evidence and cannot show whether the client can do something reliably or whether he was taking really strong pain killers to allow him to do something. #18300

15 year old's DLA was not awarded on renewal based on evidence from her school which said that she did not need help to get dressed and undressed but she doesn't do PE so doesn't have to get dressed or undressed in school. Her GP and surgeon provided evidence that it is a severe condition and requires help with bodily functions - washing and bathing and things not school-related. #8610

Question 19. Do you agree or disagree with the proposal to have no set award durations but to set an award review date when a decision on a Disability Assistance application is made?
Disagree.

Question 20. If you disagreed, please could you explain why.

CPAG in Scotland welcomes the proposal to make indefinite awards of disability assistance. However, we do not agree that a review date is always necessary.

Under these proposals, those with the most stable conditions will be reviewed more often than in the current DWP system. This is particularly the case for older people and young children, but also in comparison with the current personal independence payment system. See our answer to [question 22](#) below.

Where there are indefinite awards, it is vital that an individual always has a right to request a review of an award, and that there is an obligation on Social Security Scotland to make a fresh determination of an individual's entitlement to disability assistance if an individual requests a review. See our answer to [question 64](#) under changes of circumstances.

[Question 21. Do you agree or disagree with the proposal to set an award review date 5-10 years in the future for a person with a condition unlikely to change](#)
Disagree.

[Question 22. If you disagreed, please could you explain why.](#)

CPAG in Scotland does not agree with always setting award review dates.

How intrusive a review will be of course depends on who will be contacted, and what information is required, however the consultation does not make this clear. In principle, a number of individuals have long-term conditions that are stable, and so would be unlikely to see any change in their award. If a review required an assessment for a working age person, it appears possible that the entire award could be lost if they did not attend a consultation - even if there had been no change to the impact of the person's condition.

The implication is that those with conditions where change might be expected will be reviewed more frequently than is currently the case as well, although this is not clarified. Given the statements about the difficulty caused by repeated assessments in the current system, this is concerning.

A better approach would be to improve the information about the basis of an award included in notifications an individual receives on annual uprating. Alongside this, individuals will need support (not just from Social Security Scotland staff) to consider whether their condition has changed such that their level of award might be affected. Finally, in the case of a gradual change that is difficult to identify over time, there must be clear rules to protect people who may not have realised that a gradual change has affected their eligibility.

Whilst we acknowledge that children's needs are more likely to change over time, we do not agree that this will always justify reviewing entitlement in every case. A review of a child who will never be able to walk and who requires 24 hour care without prospect of change would seem extremely unlikely to be of any practical use. The current attendance allowance system does not set review dates for individuals with an indefinite award. For those with conditions

which will not change or will only deteriorate, it seems unnecessary to require a review in every case, no matter how light touch it is.

Client returned a PIP review form, having ticked no change in every box and with a supporting letter confirming her diagnosis and the effect it has on her day to day life. Her award was reduced from enhanced rate daily living to standard rate daily living, but there has been no change in the client's condition. #12192

Client's autistic son transferred from DLA to PIP. The PIP decision was successfully appealed so that the tribunal awarded PIP at a higher rate and for 3 years. DWP carried out a review after 2 years and reduced the rate of the award again. #13937

Question 23. Do you agree or disagree with the proposal that a change of circumstances should be defined as a change which has an impact on the level of assistance a person receives?

See our response to [question 64](#) under the heading Changes of circumstance.

Question 24. If you disagreed, please could you explain why.

Question 25. Do you agree or disagree with the proposal that clients have 31 days to request a redetermination?

Disagree.

Question 26. If you disagreed, please could you explain why.

The entitlement conditions for disability assistance are necessarily much more complicated than the current Scottish benefits, such as the Best Start Grant. Whilst we acknowledge the value of a consistent period to make a redetermination request, individuals may need time to seek advice about the meaning of a decision in order to decide whether they accept it, or wish to request a redetermination.

The proposal is that Social Security Scotland will be given a significantly longer period to consider redetermination requests than for other devolved benefits. It is unclear why the same should not apply to the period allowed to request a redetermination.

Whatever the period allowed, it is important that when someone has a good reason for a late request it is interpreted broadly. The current situation is that in effect a claimant has 13 months to request a 'mandatory reconsideration' of a DWP decision, even if the DWP does not accept good reason for lateness.⁵ Whilst the wording of the Act means that this right

⁵ See for example DMG memo 5/19, which applies to DLA and AA, and is online here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800747/dmg5-19.pdf

cannot be fully protected in the Scottish system, a way of getting close to replicating it would be to simply allow a request to be made within one year with no need to show good reason.

Question 27. We have proposed that Social Security Scotland have a period of between 40 and 60 days to consider a redetermination of Disability Assistance? Do you agree or disagree with this proposal?

Disagree.

Question 28. If you disagreed, please explain why.

CPAG in Scotland does not agree that this proposal is appropriate in all cases.

If further evidence is required, this period may be appropriate. However, it must be assumed that in some cases it will be clear immediately that there are no other possible sources of evidence – as all have already provided information in relation to the application. It is vital that guidance to decision makers is clear that redetermination requests should be decided much more quickly if there is no realistic chance of further evidence being forthcoming. This will balance the need to make redeterminations meaningful with an individual's interest in speedy access to justice.

It is vital that the process is not a barrier to progressing an appeal. Whatever the period, where the Social Security Scotland fail to redetermine and inform the individual of their right to appeal, no individual should fail to appeal at this point unless they explicitly choose not to pursue their challenge.

Question 29. Do you agree or disagree that STA should not be paid to people who are not living or present in Scotland?

Disagree.

Question 30. If you disagreed, please could you explain why.

This rule presupposes it will always be clear whether someone lives or is present in Scotland. There are many situations where it will not be clear, and CPAG's experience suggests this rule may generate a significant number of disputes. Where someone travels frequently – for example, because of their work – or has recently arrived in Scotland, or their evidence is simply not accepted, it may not be clear where their home is. This may in fact be the reason why their award has been stopped. This rule would place someone whose disability assistance has been stopped and who is appealing on this basis in a less favourable position than other appellants. Disputes about residence and presence conditions are frequent causes for benefit disallowance within the existing UK benefit system that should be avoided here.

Question 31. Do you agree or disagree that STA should not be recoverable except where it is later established that the principal assistance type was claimed fraudulently when STA was awarded?

Agree.

Question 32. If you disagreed, please could you explain why.

Question 33. Do you agree or disagree that STA should not be available where an investigation by Social Security Scotland has determined that the original payment was claimed fraudulently?

Disagree.

Question 34. If you disagreed, please could you explain why.

If there is no entitlement to any payment as a result of fraud, then the issue doesn't arise, as there is no entitlement to short term assistance either. If there were entitlement to some disability assistance, but fraud has been involved in some other way, remedies already exist for recovering fraudulently obtained payments. These include both the recovery of overpayments and, where appropriate, the imposition of penalties. It seems proportionate therefore, that claimants and their families are able to realise ongoing entitlement to short term assistance.

The consultation does not seem to make a clear distinction between fraud and error, referring both to an award being paid incorrectly and to fraud being identified. The rules for STA should make it clear whether it is not available in both situations or only in cases where there is evidence of an offence having been committed.

Question 35. Do you agree or disagree that any deductions being made from an on-going assistance type to service an overpayment liability should also be applied to STA?

Disagree.

Question 36. If you disagreed, please could you explain why.

By definition, short term assistance is being paid at a point where disability assistance would otherwise be interrupted and may be about to cease. Further reducing the income for the person claiming the assistance (and their family) at this point undermines one of the stated objectives of this type of assistance, which is about removing barriers to challenging decisions. We know that even small ongoing reductions in household income can make it harder for people (especially people with disabilities or with caring responsibilities or both) to take on the extra tasks or costs associated with challenging decisions.

Question 37. Do you agree or disagree that for successful process decision appeals where the tribunal has overturned Social Security Scotland's decision, STA should become available at the point the decision is overturned rather than the date of the original request?

Neither agree nor disagree.

[Question 38. If you disagreed, please could you explain why.](#)

It is unclear whether this question is about when actual payments of STA start or when the period for which they are paid starts.

If it is when the payments should begin, then yes, we agree actual payments should not be made until the tribunal has decided a valid redetermination application was made.

However, STA payments should be backdated to cover the period beginning on the date the initial redetermination request was made.

For example, if a person requests a redetermination on 01/05/2020, Social Security Scotland decides it is an invalid request, and on 01/06/2020 the tribunal overturns the decision and decides the redetermination request was validly made, the person should receive a payment on 01/06/2020 (or as near after as plausible) to cover the period from 01/05/2020 to 01/06/2019 and onward until the final decision on entitlement is made.

This would ensure STA is not paid for invalid redetermination requests and not punish those who have made a valid redetermination request that was initially rejected as invalid by Social Security Scotland.

[Question 39. Do you agree or disagree with the proposed approach that, generally, where there is a break in a client's eligibility to receive the benefit, eg. due to being in residential care, they will cease to receive the benefit?](#)

Disagree.

[Question 40. If you disagreed, please could you explain why.](#)

Under the current benefit system, payments of disability and carer's benefit is suspended and can be re-instated when the claimant leaves hospital, residential care or prison. The consultation document does not make it clear whether payment will be re-instated or if the claimant will have to start a new claim. This should be clarified and it should be the case that entitlement should continue even if payments stop so no new claim is necessary.

We welcome the continuation of DACYP when a child is in hospital.

We welcome the decision to continue payments of DACYP whilst a young person is in prison.

It is unclear why there would be a different policy regarding payment of DAWAP and DAOP for individuals who have been sentenced or are on remand. These should be aligned so payment continues for 28 days and is then suspended with further payments being made if the claimant does not receive a custodial sentence. This would simplify the system. Advocacy and advice should be provided to individuals leaving prison to ensure they receive their correct entitlements.

There should be interaction between the prison service and the Social Security Scotland on both entry and liberation from prison. The interaction between the prison service and the DWP is less effective when people have been remanded in custody or held for short periods.

This is an area where interaction could be improved. Access to money for individuals is one of the keys to successful rehabilitation, along with access to housing.

Currently carers of a disabled prisoner who has home leave from prison can access support from the Scottish Welfare Fund (SWF) via a community care grant. However this grant only covers the living expenses of the prisoner. It does not cover the extra costs caused by their disability nor the extra costs of caring for them. The Scottish Government should consider how to cover this gap. This could be done by allowing prisoners on home leave entitlement to disability assistance or ensure that the SWF is able to provide for these additional costs.

Question 41. Please outline any comments or experience you would like to share with us about overpayment recovery and the current DWP approach to deductions?

We are aware that under the current DWP system if a claimant is overpaid any disability benefits they have the opportunity to argue that the overpayment is not recoverable either because the overpayment was caused by the DWP rather than by the claimant or that it is not recoverable for another reason. This is an important right that quickly allows a claimant to determine if they are liable to repay an overpayment. Only once liability has been decided is a decision made about how to recover the overpayment.

At present the Act only gives an individual the opportunity to show that the overpayment is not recoverable at the point Social Security Scotland decides to start recovery.

This potentially means that individuals receiving disability assistance will have less rights than an individual receiving a benefit from the DWP. It also means that recovery of the debt may have begun before liability is established. This could cause difficulty for individuals including:

- Damaging people's credit score – implications for getting a loan, opening a new bank account or buying on credit in the future.
- Needless anxiety for people - individuals could be left for months or years with debts for which they don't believe they are liable, and can't appeal.
- Confusion and complexity – individuals may be unclear about whether they are challenging the determination of entitlement, their liability to repayment or the method or amount of recovery.

The Early Warning System has received a large number of case studies highlighting concerns about the approach to overpayment recovery and deductions in universal credit (UC). All UC overpayments can be recovered, even those caused by DWP's error.

A disabled couple have recently been notified that they have been overpaid £2000 UC as carer's allowance had not been taken into account when their UC was calculated. The couple's adviser queried the amount of their first UC payment, highlighting the possibility of an overpayment, following their first payment. She put a note for the work coach in the client's journal but never received a reply.

The rate of deductions in UC is causing claimant's ongoing financial hardship:

A client is having 40% of his UC deducted to pay back his UC advance, two overpayments and a budgeting loan. His housing element is paid direct to the landlord, leaving him with £169 a month (£39 a week) to live on. #3178

Client has been asked to pay back an overpayment of 10 weeks PIP, after an anonymous phonecall was made to DWP advising that the client is working. He does, but only a couple of days a month, but the PIP award was revised on the basis that the award had been made in ignorance of a material fact and that the claimant had failed to inform the DWP. Client is appealing the decision. #3860

[Question 42. Do you agree or disagree with our proposal to provide entitlement to Disability Assistance for Children and Young People to clients aged 0-18 years?](#)

CPAG in Scotland welcomes the proposal to increase the upper age limit for DACYP, and agree that individuals over the age of 16 should apply for DAWAP.

The consultation document is not clear about eligibility for children who are terminally ill from birth. However it is clear that eligibility should start at birth, not at 3 months. This should be made clear in regulations.

[Question 43. If you disagreed, please could you explain why.](#)

[Question 44. Do you agree or disagree with our proposal to extending eligibility, for those in receipt of Disability Assistance for Children and Young People before the age of 16, to age 18?](#)

[Question 45. If you disagreed, please could you explain why.](#)

[Question 46. Do you agree or disagree with our approach to the eligibility rules for the different components of Disability Assistance for Children and Young People?](#)

Neither agree nor disagree.

CPAG in Scotland agrees that, during a period of transition to the Scottish social security system, the eligibility criteria should remain similar to DLA. We disagree that the eligibility rules should necessarily remain the same after a safe and secure transition.

[Question 47. If you disagreed, please could you explain why.](#)

All the eligibility criteria for DLA should be included in the DACYP regulations. This would include the current rules that allow entitlement to certain elements for individuals undergoing certain forms of dialysis, those who are blind and deaf, blind or severely impaired and those without feet. See the section on Regulation in our answer to [question 64](#).

The Scottish Government should take an evidence based approach to make long term changes to disability assistance to ensure that it continues to meet the principals set out in Act. Data should be collected, and publically reported, that allows this evidence to be used to continually improve the system.

Question 48. Do you agree or disagree with the proposal to make a £200 Winter Heating Assistance payment to families in receipt of the highest rate care component of Disability Assistance for Children and Young People?

Neither agree nor disagree.

Question 49. If you disagreed, please could you explain why.

Whilst we welcome the commitment to extend eligibility to families with severely disabled children, it appears that this will not be fully delivered until 2024. The proposal appears to be that a family will only be eligible for assistance once a child is transferred to DACYP. CPAG in Scotland's view is that a similar arrangement should be put in place for families with a child receiving DLA highest rate care component during the transition period. The example of the carer's allowance supplement demonstrates that it is possible for Social Security Scotland to use DWP administrative data to make payments of devolved social security entitlements.

Question 50. Do you agree or disagree with our proposal to use a points based system to assess eligibility in relation to Disability Assistance for Working-Age People?

Neither agree nor disagree.

CPAG in Scotland agrees that, during a period of transition to the Scottish social security system, the eligibility criteria should remain similar to PIP. We disagree that the eligibility rules should necessarily remain the same after a safe and secure transition. See our answer to [question 47](#).

Question 51. If you disagreed, please could you explain why.

All the eligibility criteria for PIP should be included in the DAWAP regulations. This would include the rules used to determine where an individual can undertake an activity safely, to an acceptable standard, repeatedly and within a reasonable time period. For further information see the section on Regulation in our answer to [question 64](#).

Question 52. Do you have any suggestions about the most appropriate way to assess eligibility in relation to mobility for Disability Assistance for Working-Age People?

Question 53. Do you have any comments on the full list of descriptors (provided at page 36) currently used to assess claims for Personal Independence Payments?

The criteria for eligibility for disability assistance must be included in the regulations to ensure that individuals in Scotland have the same rights as individuals receiving reserved benefits.

Including the qualifying criteria in the regulations ensures clarity for individuals.

If, after safe and secure transfer, changes are made to the criteria these should be evidence based and received proper scrutiny. If changes to the qualifying criteria require changes to the regulations this ensures that any changes receive sufficient scrutiny.

Also see our answer to [question 64](#) under the heading Regulations.

Question 54. What types of observations, as part of a face-to-face assessment, do you believe are inappropriate?

Observations as part of a face-to-face assessment do not take into account fluctuating conditions, any medication the claimant may have taken to allow them to attend, or whether an activity can be performed safely and reliably and therefore should not be regarded as 'disproving' a claimant's account of their disability.

A claimant with mental health problems attended a work capability assessment centre. A sign displayed in centre said that if you were going to be kept waiting for more than half an hour you would be notified. Claimant was aware that there was a delay. When he was called in for assessment, he was told that as he was able to cope with an unexpected delay of more than half an hour, he clearly didn't have problems coping with change. #8891

Client with fibromyalgia and mental health problems was refused PIP at appeal. The tribunal also commented that she drank a bottle of water during the hearing and therefore doesn't experience any muscle tremors. She was subsequently awarded standard daily living and standard mobility on a new claim. #11360

Question 55. In relation to assessments, what are your views on acceptable distances to travel?

A distance that is acceptable for one client may not be acceptable for another. A person centred approach must be taken to determine what an acceptable distance is for individual claimants, taking into account the variables listed in Question 56.

Question 56. What other circumstances should the Agency take into account?

The below is not intended to be an exhaustive list:

- How a person will travel – for example car, or public transport
- How long it will take the person to travel
- The impact the journey may have on the client's physical or mental health
- Whether the person requires someone else to accompany them
- Suitability of the timing of the appointment in relation to the person's condition, public transport and availability of support
- Accessibility of the venue and the surrounding terrain.

People are routinely being asked to travel more than 90 minutes (Dornoch to Inverness) by public transport. When they ask for a home visit for the assessment, they are told that these can only be offered when there are reasons associated with their condition

A client with mental health problems who lives in East End of Glasgow was offered a PIP assessment in Edinburgh. When challenged he was advised it was within the requisite 90 minutes on public transport. However he was then offered him an assessment at 9am on Hogmanay in Hamilton, but if was going to be difficult for him to find someone to accompany at that time. #8034

A client with mental health problems asked if his PIP assessment could be carried out in a local mental health facility that he attends but his request was refused. The client would struggle to drive the hour and half, or to travel by public transport for the two hours, that it would take to get to the nearest assessment centre. He was offered a home visit, but due to his mental health, the client does not want a stranger in his home. #7451

Where an individual is required to make a journey to a face-to-face assessment the travel costs should be paid in advance.

PIP claimant was offered an assessment in her local town 25 miles away. She was unable to attend because she is unable to use public transport and relies on family and friends to drive her places. She was offered another assessment in the city (a similar distance) and was offered a taxi from her home to the assessment, the cost of which would be reimbursed up to a fortnight later. The client was unable to accept this appointment because the taxi would have cost approximately £120 and the client's weekly income from means-tested benefits was £73 so she simply did not have the money to pay for the taxi. #1405

[Question 57. In relation to assessments, how many times do you think an individual should be able to reschedule, or fail to attend, an appointment?](#)

If an assessment is based on the principles, as outlined in our answer to questions 11 and 12, we envisage there will be very few individuals that will be required to undertake a face-to-face assessment. If an individual is required to undertake a face-to-face assessment they should be able to reschedule an appointment as many times as is necessary. Often the reasons someone is unable to attend an assessment is due to the location or lack of available support.

Where an individual has failed to attend an appointment, Social Security Scotland should establish whether the individual is willing to attend a face-to-face assessment. If they are willing to attend a face-to-face assessment, a new appointment should be arranged. Where an individual is not willing to attend a face-to-face assessment a decision on entitlement should be made on the basis of the information the Social Security Scotland already has

Neither the consultation nor the published policy papers explain what the consequences will be if an individual fails to attend an assessment. This should be clarified.

The Act⁶ gives the powers to make a 'negative determination' of someone's entitlement if they fail to attend a face-to-face assessment. We don't believe that making a negative determination of an individual's entitlement solely because they have failed to attend an assessment or provide information is in line with the principles. We strongly believe that these powers should never be used. Where Social Security Scotland has requested that an individual attend face-to-face assessment, or provide specific information, and the individual

⁶ s54

is unable to, or refuses to, then a decision should be made based on the information that Social Security Scotland already holds. There is absolutely no justification for individuals to be refused assistance, to which they would otherwise be entitled, for refusing to comply with requests from Social Security Scotland. Imposing what appears to be a sanction on an individual for failing to undertake an assessment undermines the principles of the Scottish social security system.

Client with Huntingtons Disease had her DLA stopped because she failed to attend two PIP assessments. She missed the first because her husband, who is also her appointee, was not able to get out of work. He asked for at least three week notice before the next appointment but got less notice and was unable to bring his wife to the appointment again. #10951

Question 58. In relation to a missed assessment. do you have any comments on what should amount to exceptional circumstances (e.g. hospital admissions)?

See our answer to [question 57](#).

Question 59. Please provide any comments you wish to make about the audio recording of assessments.

The consultation document states that there is a lack of trust in the current assessment process. This is in line with the feedback we received from our Early Warning System. The best way to increase trust in the whole system is for decision makers to trust that individuals are giving an accurate account of their situation.

The individual should always have a right to choose not to have the assessment recorded.

There should be clear information explaining the purpose of recording the assessment.

Case managers, and assessors, should be given training to ensure they understand the limitations of an audio recording - for example that it fails to record non-verbal communication.

Question 60. Do you agree or disagree with our proposal that Disability Assistance for Older People is provided to those who are state pension age or older?

Question 61. If you disagreed, please could you explain why.

Question 62. Do you agree or disagree with the proposed eligibility criteria for Disability Assistance for Older People?

Question 63. If you disagreed, please could you explain why.

Question 64. If you have any further comments you would like to make relating to Disability Assistance benefits not covered by this consultation document, please provide them below.

Many of the problems with current disability benefits, particularly PIP, are caused by the DWP's internal processes. It is vital that there is consultation with those with experience of the current system and experts in disability and social security whilst the agencies processes are being developed, and that operations guidance is produced and made publically available.

Examples of areas where things go wrong at present:

- claimants do not receive claim forms that they have been told have been posted to them
- safeguarding procedures are not followed correctly
- legislation and case law are not considered when awarding points
- points are added together incorrectly
- dissatisfaction about the way decisions are communicated – why the decision was made, what to do next

These are things that can be fixed immediately as part of the safe and secure transition and should be embedded before looking ahead to making any criteria alterations.

Client who had a lifetime award of DLA was invited to claim PIP but didn't receive the PIP2 form and her DLA stopped. She was only alerted to this when her Motability deal ended.
#11402

When a client transferred from DLA to PIP his award reduced from mid care, high mobility, to standard daily living and no mobility. The client has no feeling below his thighs which makes walking very awkward and limits how far he can go. At the assessment he said he could walk for ten minutes if he had to, but he was not asked how far he could go or how reliably or safely.

Client's PIP ended due to failure to respond to renewal notice – the client unaware what was required due to condition.

Take up

The Act provides a duty to promote take up of Scottish Social Security indicating the importance that the Parliament places on issue.

A take up strategy should be developed now to inform the design of disability assistance. Social Security Scotland should ensure that rules and processes are designed with supporting take up in mind.

One way in which Social Security Scotland can achieve this is to ensure the claim process is easy, and individuals are supported throughout the process (see safeguarding below).

We have heard there is evidence that the perceived stigma of being in receipt of any social security benefit is a barrier to some individuals accessing their entitlements – this should be addressed in any take up strategy.

The take up strategy should take a wider view of take up, not simply of disability assistance but of the range of financial and other support that are available from local authorities, health trusts, the Scottish Government and the UK Government.

There should be clear ‘warm’ referrals between Social Security Scotland and other agencies delivering wider financial advice and other support built in. Referrals are much more effective than signposting.⁷ Where possible, passporting of individuals with disability assistance to other forms of support should be considered.

Take up rates of disability assistance should be measured and monitored. Analysis should be segmented by disabling condition, by groups that share protected characteristics and by other relevant factors. This analysis should be used to address any barriers that may be identified.

Changes to an award

Individuals who get a disability benefit⁸ from the DWP can:

- request that their award is looked at again due to a change of circumstances. This change may be that the claimant’s condition has deteriorated so that they believe that they are now entitled to a higher rate of benefit; *and*
- request that the original decision is looked at again. A request can be made within one month⁹ for any reason, and at any time due to specific reason – the most common specific reason is due to ‘official error’.

After the request is made the DWP is normally obliged¹⁰ to look at the claimant’s entitlement again. If the decision maker decides not to change the award there is always a right to appeal against this decision. We believe it is important that individuals in Scotland continue to have these rights. One of the principles of the Scottish social security system is that social security is a human right.¹¹ The Scottish Government’s international obligations¹² suggests that

⁷ http://www.equalitiesinhealth.org/public_html/documents/HWC_final_report_FINAL_updated_Aug_2012.pdf

⁸ Disability living allowance, personal independence payment and attendance allowance.

⁹ Whilst the regulations require that requests made more than a month after the date of the decision include reasons for lateness, the Upper Tribunal has held that even if the claimant’s reasons are not accepted by the DWP there is a right of appeal if the request was made within 13 months. For details, see <http://www.cpag.org.uk/content/refusal-accept-late-mandatory-reconsideration-requests>

¹⁰ The only situations in which a decision maker does not have to make a decision are if an application is clearly not on a potentially relevant ground or is otherwise misconceived.

¹¹ s1(b) Social Security (Scotland) Act 2018

¹² COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Thirty-ninth session 5-23 November 2007 GENERAL COMMENT NO. 19 The right to social security (art. 9) Para 42

individuals in Scotland should have the same, or greater, rights as they currently have under the UK social security system.

The Scottish Government’s policy paper¹³ states that the regulations will allow an individual “to request a review of their disability assistance”. We agree with this policy but the regulations must go further. It must not be a requirement that the individual needs to convince the decision maker that there has been a change of circumstances before a fresh determination is made. The regulations must be framed in such a way so that there is an **obligation on Social Security Scotland to make a fresh determination of an individual’s entitlement to disability assistance once an individual requests a review**. This is the only way to give the individual a right to appeal the decision if they disagree.

Example 1a: Dave gets disability assistance. He asks Social Security Scotland to have a look at his award because he feels that his care needs have increased. He completes a new self-assessment form. The case manager decides that the change in his circumstances has no impact on his award, and makes a new determination with no change to the level of the award. Dave disagrees. Because there has been a new determination Dave has a right of appeal.

Example 1b: Dave gets disability assistance. He asks Social Security Scotland to have a look at his award because he feels that his care needs have increased. He completes a new self-assessment form. The case manager decides that the change in his circumstances has no impact on his award. There is no new determination. Dave disagrees. Because there has not been a new determination Dave has no right of appeal.

It is important that Dave has an appeal right to challenge this decision. If he doesn’t he will have less legal rights than when he was receiving personal independence payment.

There may be other circumstances where there is a need to make a new determination of an individual’s entitlement. **Regulations must be drafted so that a new determination must be made in these circumstances**. Situations where this would apply include if there are changes in the law¹⁴ or in the eligibility criteria and where an individual is receiving disability assistance but is now entitled to disability assistance under special terminal illness rules.

Example 2: Social Security Scotland make a mistake adding up the points an individual was awarded – this isn’t noticed until the individual seeks advice two years later. How can the original determination be changed to correct the official error?

If an award is changed, either by the DWP or at an appeal, there are detailed rules about when the new rate of benefit is paid from. Having clear rules about the date a change in the amount of disability assistance takes effect is important both for clarity and to protect individuals. For example, for personal independence payment a new decision normally takes effect from the date the claimant requested a review.¹⁵ **The rules about when a new determination takes effect**

¹³ ‘Duration of awards and automatic entitlement for disability assistance’

¹⁴ Under the current system caselaw has established that a change in the law is a relevant change of circumstances.

¹⁵ Subject to the three-month qualifying period to get a different rate of benefit.

should be clearly set out in regulations, and should provide at least as much protection as people receive under the current system.

Example 3: Meg gets disability assistance. She tells Social Security Scotland that her care needs have increased. Social Security Scotland agrees, but it takes four months to make a new determination of entitlement due to delays gathering additional information. From when does Meg get paid the higher amount?

Claimant receiving DLA notified DWP that there had been a deterioration on her condition and was invited to claim PIP. She had been receiving the low rate mobility and care component, but was awarded PIP at the enhanced rate of both daily living and mobility components. The higher amount is paid from four weeks after the PIP decision and not from the date the change was notified. There has been a gap of seven months. #6611

Safeguarding

DWP have different safeguarding policies for different benefits and different circumstance, but they usually only apply when claimant is flagged as 'vulnerable'. This is neither person-centred nor in line with the principles in the Act. Therefore Social Security Scotland should have an overarching safeguarding policy including the following features:

- The policy must recognise that everyone can be vulnerable at different points and in different circumstances. It is not the person whom is vulnerable but the situation they are in.
- Social Security Scotland should have indicators that suggest an individual may be in a vulnerable situation, drawn up using current best practice. These may include:
 - failure to complete the claims process
 - failure to respond to request for information or to attend a face-to-face assessment
 - break-down in communication with the individual.
- Where Social Security Scotland identifies that an individual is in a vulnerable situation they should have clearly defined, and publically available, safeguarding procedures that are followed.
- The safeguarding procedures should be drawn up by working with relevant stakeholders and should follow current best practice. There should be an ongoing review process to ensure the policies remain the best they can be.

There must be an acknowledgement that unless the processes are carefully designed, some claimants may feel 'hounded' rather than supported by any safeguarding processes, particularly as result of their previous, or ongoing, engagement with the DWP.

Reports

In order to ensure that Social Security Scotland is tracking how well processes are working for all, as well as to ensure that staff are continuously learning, there should be a requirement to systematically collect data and report on this. This is a crucial way of ensuring longer-term improvements to the system. This should include:

- Protected characteristics. It's important to ascertain if certain protected characteristics are being adversely affected in the new system.
- Every claim that is refused and the reasons for this. It is also important to see if certain conditions are inadvertently excluded by the application process, or by the assessment criteria.
- Number of lapsed appeals. This should allow us to see how well these processes are working.
- Number of refused redeterminations that are not appealed and the reason the individual didn't continue with their appeal. This will allow Social Security Scotland to ensure that the processes of requesting a redetermination is not creating a barrier to individuals appealing.
- Social Security Scotland should be required to report on the length of time redeterminations are taking and if particular conditions are being refused – this would suggest problems with the criteria or application.
- In order to ensure that Social Security Scotland and staff are continuously learning what works and what doesn't, there should **also be a requirement to report back**. This should include feedback loops so everyone involved in an application is notified of the outcome once appeal rights have been exhausted and the learning fed into individual training plans, as well as being used to identify any systematic problems.

Regulations

Current entitlement to social security is based on **legislation**, **caselaw** and **guidance**. All three are needed for the smooth running of the system and all three will be required to ensure a safe and secure transition to the Scottish system. **Legislation** is the rules in Acts and regulations that set out who is entitled to a benefit. **Caselaw** is the courts' interpretation of the legislation. The legislation and caselaw are legally binding and are what give individuals the right to receive benefits. Detailed **guidance** is produced by the DWP to help decision makers make a decision about claimants' entitlement. The guidance is publicly available¹⁶. The guidance is not legally

¹⁶ E.g. Advice for decision making: staff guide (<https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>); Decision makers' guide: staff guide (<https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>); Personal Independence Payment (PIP) assessment guide for assessment providers (<https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers>) etc.

binding, so if a claim is refused the claimant cannot use the guidance to argue that a tribunal must change the decision on entitlement.

Any changes to current entitlement to social security should be made in light of the UN Covenant on Economic, Social and Cultural Rights that states ‘there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant’¹⁷. So the Scottish Government’s commitments¹⁸ and their international obligations suggest that **individuals in Scotland should have the same, or greater, rights as they currently have under the UK social security system.**

The Scottish Government must ensure that at the very least the **legal rights claimants currently have will continue for individuals who claim disability assistance in Scotland.** This can be done during the transition period by including the current legislation and the meaning of important words as established by caselaw in the Scottish disability assistance regulations. This gives clarity around who will be entitled to disability assistance in Scotland in a way that guidance does not. If conditions of entitlement, definitions of terms and processes for determining entitlement are only included in guidance, individuals in Scotland will have fewer rights than claimants currently enjoy.

Example. For DLA, one route to entitlement is that the claimant ‘requires’ attention from another person.¹⁹ Caselaw has established that ‘requires’ means ‘reasonably requires’, rather than ‘medically requires’. So someone claiming DLA has a legal right to entitlement if they ‘reasonably require’ the attention.

Therefore the regulations for disability assistance in Scotland should include a similar route to entitlement; that when the claimant ‘reasonably requires’ attention from another person they are entitled to DACYP. The regulations in Scotland should take into account both the legislation and caselaw that protects claimants entitlement at the moment.

Unless the regulations in Scotland provide this level of detail individuals in Scotland will have fewer rights and it may require further caselaw in Scotland to provide clarity around entitlement.

In many cases a claimant’s entitlement to benefit currently flows from primary legislation. For example, when a blind or partially sighted child is entitled to the mobility component of disability living allowance is set out in primary legislation. This detail is not in the Scottish primary legislation, and should be included in the Scottish regulations.

In other cases, entitlement conditions are set by regulations. For example the requirement that for personal independence payment claimants are able to manage the activities ‘safely’ is

¹⁷ COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Thirty-ninth session 5-23 November 2007 GENERAL COMMENT NO. 19 The right to social security (art. 9) Para 42

¹⁸ s1(b) Social Security (Scotland) Act 2018

¹⁹ s72(1) Social Security Contributions and Benefits Act 1992

included in the regulations. The same level of detail should be included in the Scottish regulations. **The Scottish Government should undertake a review, and include the views of HMCTS judges, DWP decision makers, welfare rights experts and claimant's representatives, to find what needs to be included in the regulations in Scotland to ensure claimants have the same legal rights as they currently enjoy. The starting point should be that no detail is lost from the current legislation.**

Some of the specific areas that need to be included in the regulation are:

- The eligibility rules DACYP, DAWAP and DAO;
- Details of when a new determination should take effect;
- The individual's right to request a new determination of entitlement to disability assistance and Social Security Scotland's obligation to provide a new determination;
- The definition of key words and phrases as currently defined by legislation.

There are areas where the regulations could perhaps be simplified. **The Scottish Government should undertake a review to find out where regulations can be simplified, without removing claimants' legal rights.**

Some entitlement flows from caselaw. There are well established areas of caselaw that are no longer subject to challenge. For example caselaw has established that 'continual supervision' is less than 'continuous' supervision and can include short breaks rather than requiring constant presence. **The Scottish Government should undertake a review to identify which pieces of caselaw need to be included in the regulations in Scotland to ensure claimants have the same legal rights as they currently enjoy.** Caselaw is evolving and where issues are still subject to further legal proceedings the Scottish Government should consider how these can best be incorporated into regulation.

Some areas, where the caselaw has been settled, that should be included in the regulations are:

- The definition of 'requires' for DLA & AA;
- The definition of 'safely' for PIP;
- The definition of 'continual supervision' for DLA & AA;
- The definition of other key words and phrases as currently defined by caselaw

Following a safe and secure transition, the Scottish Government may wish to make changes to disability assistance. Including the details above in the Scottish legislation during the transition should not be seen as a barrier to future changes to the system. Any future changes would require full public and parliamentary scrutiny. New regulations should be laid to ensure this level of scrutiny. ***The ability to make changes to disability assistance in the future should not be a reason for limiting individuals' legal rights during the transition period.***

Motability

CPAG recommend that claimants be allowed to retain their Motability vehicle pending redetermination or appeal of a decision terminating or reducing their entitlement to disability assistance. The removal of the vehicle causes distress and logistical difficulties. Returning to the scheme following a successful decision often causes unnecessary financial hardship.

Client is appealing a decision reducing his PIP from enhanced rates to standard rates, but will not be able to retain his Motability care pending appeal. Had he been appealing a decision refusing or granting him a lower rate of PIP on his transfer from DLA, he would have been allowed to retain the Motability car pending appeal, but not pending appeal of a PIP decision.

#3210

Client bought his Motability car after he lost entitlement on transfer from DLA to PIP. He was later awarded PIP on appeal and became entitled to a Motability vehicle again. Motability refuse to buy the car back from him so he now has a £10k debt and his only option is to sell the car to pay off the loan and the exit charges.#9208

Face to face assessments

Under section 4.8 it states that for working age people a face-to-face assessment may also be needed to allow a determination of entitlement to disability assistance. It goes on to describe the situations where Social Security Scotland *may* carry out a face-to-face assessment. With the exception of when an individual requests a face-to-face assessment we believe that Social Security Scotland should be cautious about the use of the face-to-face assessments.

As detailed in our response to questions 18 and 54 we believe there are limitations in the information that can be gathered at a face-to-face assessment. There are also concerns that the act of undertaking face-to-face assessments can be detrimental on a population's mental health.

Research²⁰ has shown that the act of having to undertake a face-to-face assessment for the purposes of determining social security entitlement can have a detrimental effect on mental health – each 10 000 people assessed was associated with an additional 6 suicides (95% CI 2 to 9), 2700 cases of reported mental health problems (95% CI 548 to 4840), and the prescribing of an additional 7020 antidepressant items (95% CI 3930 to 10100). The research was conducted in England and looked at a work capability assessment for employment and support allowance (ESA) but the report's author has confirmed they would expect that [a re-assessment for PIP] has had similar negative mental health consequences.

Client with anxiety and depression had to be placed on suicide watch by her own health-care professional following a PIP assessment that was carried out in the client's home. PIP was

²⁰ Barr B, Taylor-Robinson D, Stuckler D, et al 'First, do no harm': are disability assessments associated with adverse trends in mental health? A longitudinal ecological study J Epidemiol Community Health 2016;70:339-345. <https://jech.bmj.com/content/70/4/339>

refused. Client was assisted to reapply and a request for a paper based assessment was included, but client was told that she would have to have a face-to-face assessment. #13828

Whilst assessment for disability assistance will not be carried out in the way that assessment have been carried out for ESA the Scottish Government should be mindful of the negative consequences of face-to-face assessment, and aware that many individuals who make an application for disability assistance will also be undergoing face-to-face assessments for ESA.

Further and ongoing research should be carried out to ensure the costs and risks associated with face-to-face assessments are justified by any measureable benefits and Social Security Scotland policy continually developed in line with the evidence.

For further information, please contact Jen Gracie (Policy and Parliamentary Officer):
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