HOUSE OF COMMONS

Work and Pensions Committee

Oral evidence: Safeguarding vulnerable claimants, HC 146

Wednesday 7 February 2024

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Watch the meeting

Members present: Sir Stephen Timms (Chair); Debbie Abrahams; Marsha De Cordova; David Linden; Selaine Saxby; Dr Ben Spencer; Sir Desmond Swayne.

Questions 194 - 228

Witnesses

I: Jesse Nicholls, Barrister, Matrix Law; William Ford, Partner, Property Litigation and Housing and Social Care, Osbornes Law; and Caroline Selman, Senior Research Fellow, Public Law Project.

Written evidence from witnesses:

– Public Law Project (SVC0044)

Examination of witnesses

Witnesses: Jesse Nicholls, William Ford, and Caroline Selman.

Q194 **Chair:** Welcome to this meeting of the Work and Pensions Select Committee. We are looking forward to taking evidence today for our inquiry on safeguarding vulnerable claimants. A very warm welcome to the three witnesses joining us for the panel this morning. May I ask each of you very briefly to tell us who you are, starting with Caroline Selman?

Caroline Selman: I am a senior research fellow at the Public Law Project. We are an access to justice charity and one of my priority areas is welfare rights, particularly focused on benefits and sanctions.

William Ford: I am a solicitor at Osbornes Law. I specialise in housing, welfare benefits and public law.

Jesse Nicholls: I am a barrister at Matrix Chambers. I specialise in judicial review, inquests, inquiries and human rights work and I have represented the bereaved families of a number of vulnerable benefits claimants in DWP-related cases.

Q195 **Chair:** Thank you all very much for joining us. I will put the first question. Would each of you tell us what is your assessment of DWP's approach to safeguarding at the moment? How effective does it seem to you? After a safeguarding problem has occurred—there have been some quite high-profile ones in the last few years—have you seen the Department make changes to improve things subsequently in the light of what happened? Caroline Selman first.

Caroline Selman: In terms of the current approach to safeguarding, there are two key areas where we think things could be improved. One is around the fact that the current processes are very heavily reliant on claimants self-declaring, either in advance of something, so it is something that is reflected on their file, or in response to an action that has been taken—for example, a sanction or a deduction. There is a very heavy onus on it being linked to the claimant to share that vulnerability, but there are lots of reasons why that may be less likely to happen or will not happen. The claimant's vulnerability may make disclosure very difficult or unlikely: for instance, they may be in a mental health crisis, so it is not going to be easily done; or they may have long-standing concerns about trust or fear in relation to the state, which makes it less likely that that disclosure will happen. In that context, we feel it is important that there should be a shift in relation to that, where the onus is much more on the DWP to be proactive in terms of checking for vulnerability, either picking up on indications that suggest that they should be checking for vulnerability, or, where a particularly risky decision has been taken—for example, to impose a sanction or to make a deduction—there should be more of an onus for proactive inquiry on the part of DWP.

The other thing is that as more issues or concerns have been identified, we have seen new easements put in place—policies or processes to pick up on particular cohorts or particular situations. There is a particular process if somebody is a care leaver, for example. You end up with a system that has more and more easements tacked on, but until you look at the fundamental things that might be driving some of those risks, you are still going to have people who you need to capture but who fall through those nets. When you think about safeguarding, it is very important to think about safeguarding particular individuals, but you also need to think about the safeguarding of the system as a whole and where there are points of harm that might inevitably lead to increased vulnerabilities and risks that you might need to catch.

The other thing I wanted to highlight is it is very difficult both for us and for DWP to give you accurate detail on the impact of policies because quite simply the data is not collected and there is not an accurate picture of who is being impacted by policies and how. That is a regression from where we were in terms of legacy benefits. We have less information about who claimants are and what characteristics or situations we are talking about.

Q196 **Chair:** Can you give us an example of things you used to know that you do not know anymore?

Caroline Selman: Yes, if I go on to Stat-Xplore, the DWP database of statistics and information, and look at Jobseeker's Allowance, there is quite a lot of information there about clients in terms of health conditions, which goes into a breakdown in terms of the type of health condition you are talking about; I can find information about the ethnicity of claimants, and there is much more information there about whether there might be a child on the claim. For Universal Credit, the data tends to be limited to gender and age. Sometimes DWP can go a little bit behind that and find proxies for certain things, but that is not routine, and even then there is often no data on certain protected characteristics or other characteristics that would be relevant to safeguarding issues. That is an issue currently for things that are happening.

We are also worried about the impact of that on something that DWP is actively doing now, which is rolling out automated decision making, particularly in the context of fraud. DWP has been open with the National Audit Office about the fact that they do not have the data that they need to properly assess the impact of those tools that are being developed and rolled out now. A very live example of that is the schedule 11 powers of the Data Protection and Digital Information Bill being proposed at the moment for checking bank accounts. There has not been an updated equality impact assessment published in relation to that. Even if it was, our concern is that it is unlikely that it would be able to do a proper analysis because that data simply is not held. We are concerned there is a hurt first, fix later approach going on in that context, but also there is a problem across Universal Credit, which is that absence of understanding of who you are talking about, which means that you cannot properly understand. It is a problem for identifying individuals that you might have concerns about, and it is a problem on a systemic basis of understanding where there are points in the system that are causing harm and that might need particular action.

Q197 **Chair:** Can I press you on a couple of further points? You made the point that the system depends on people declaring themselves to be vulnerable in some way. If they do that—I take the point that often they will not==what do you make of how the Department responds to that? Does there then seem to be a satisfactory response to such a declaration? That is the first point.

The second point is you said that there had been various easements made over time. Does it look to you as though the Department is learning from when things have gone wrong, and therefore introduce these easements that you have referred to?

Caroline Selman: With the first question, it depends. If you are in a context where somebody is being supported by a good, proactive support worker or has managed to access advice, and that person is well plugged in and knows DWP processes, so they know about the safeguarding lead process, for example, they know the right words to use or the right bits of the system to tap into. Thinking about some of the research that we have done, some of our direct casework experience, the feedback we have had from that is that if you tap into the right thing, that can lead to a much better process for that individual. The issue is accessing that process sometimes. I think some colleagues on the panel might talk about this a bit more, but there is a huge challenge about being able to access that advice or support in the first place, to have somebody who knows to access it.

I think if you are a claimant engaging with the system, aside from the fact that you are in a vulnerable situation, there are a lot of reasons why there might be difficulties with engaging with it, but even without that it can be very difficult to know what those processes are, what you have the right to ask for, or what you could expect. Things tend to be very hidden in the detail of policy documents that tend to be aimed at DWP staff, not the general public, and which even then tend not to go into a huge amount of detail. For us to get a full sense of what should be happening often requires us to put in a Freedom of Information Act request or if something comes to light during a case where it transpires there is another policy or process that we were not aware of, there is the problem of knowing what it is that you should ask for and are entitled to.

There are examples of where people have managed to get through that, where things might work a bit better. The concern is that there are a lot of people who are not being caught by that because they cannot get through to it.

Q198 **Chair:** The easements you have referred to, does it look as though the

Department is learning from when things have gone wrong?

Caroline Selman: Again, it depends on the particular context. I am going to talk about specifically DWP's approach to deductions for overpayments. One of the things that we have been particularly involved with is the approach to accessing hardship measures and things such as waivers. We have been involved with that in terms of both casework and research. I have recently been in touch with DWP about work that they want to do to try to improve that approach. I feel that among the people that I am engaging with there is a desire to do something about it and to improve things, but the question is whether you do get concrete changes being made. You will maybe get some concrete changes being made but it can take quite a long time and be quite a tricky process.

William Ford: I entirely agree with what Caroline said. The other issues that I would focus on are perhaps transparency of decision making and policies. It is just not possible for a layperson to be able to find the information and the policies that exist. Some of the policies may be very good, but they are very difficult to access if they are buried away in decision maker guidance that only professionals can realistically access.

If it is of assistance, I can give an example of that, a case that I was involved in. It is not a live case. I represented a deaf client who could only communicate through a BSL interpreter. She was in work but did not earn enough money to cover all her rent, so she needed to claim Universal Credit and she had come over from the legacy benefit system. Initially, it worked well, because she was provided with a BSL interpreter at her initial appointment to make an application and was able to get Universal Credit, but where the problems occurred was with requirements to comply with claimant commitments, and if you are profoundly deaf it is quite common that dealing with written text is more challenging. In this case, it was the standard response, "Respond to this within seven days or we are going to close your Universal Credit claim." That is then what happened. She approached her jobcentre, asked for an appointment with the BSL interpreter again and it was refused. Months and months passed without her receiving any Universal Credit. I got involved in the case primarily from a housing perspective, because she was in rent arrears, and she was in repossession proceedings at the time. It was then relatively easy for me to resolve it, but even I struggled to find the material. It is tucked away in a House of Commons archive deposit that you can access if you have access to legal textbooks but there is just no way a layperson would have any chance of finding that. I was then able to get them to change their decision and reinstate the benefit, but it is just by chance that I happened to be involved. Transparency is an issue with policies, even if they are good policies.

I know we are probably going to talk a bit about whether we should have a statutory duty to safeguard.

Chair: We will certainly come on to that.

William Ford: In the context of existing statutory duties, for example, in the Equality Act, there is a duty on the DWP to make reasonable adjustments in cases with people who are disabled, the way that they access and work with the DWP. In my experience, I have never had a case where steps have been taken proactively. It is always, as Caroline said, the claimant who has to put that forward and it is whether they have the knowledge to do that. I know that CPAG did some research on this in February 2022, making adjustments, and it did find the DWP systematically failing to put in place practices to ensure they complied with their Equality Act duties. It also identified a lack of accessible remedies and barriers to accessing courts as being an issue as well.

Jesse Nicholls: Can I focus on the adequacy of safeguarding measures? I will start with a very brief caveat before I make a few of my points. I have been very conscious of the caution that has been emphasised and I am not speaking about live cases. I represent the mother of Jodey Whiting in the inquest into her case, so I will not talk about that case, which is the Joy Dove case that was touched on at the start. What I am going to speak about comes from the context of some other fatal cases in which I have represented the families of people who have died in circumstances where they had contact with the Department shortly or for a long period before their death.

The first point I wanted to cover is that I certainly emphasise and agree with Caroline's point: in my experience in the cases that I have done, there has been a particular indication that the onus is placed on the claimant to inform the Department that they are vulnerable and of the measures that they need to deal with that vulnerability. I have particular experience dealing with fatal cases, which often involve people in some of the most extreme cases of vulnerability—mental ill health, anxiety, an inability to engage with the outside world including with what can feel like a behemoth of a Department facing them—that the onus that is placed on claimants to provide information can be extremely difficult and dangerous, because the ultimate consequence of not being able to engage in that way is that you can suffer a sanction or a termination of a benefit, which is your sole ability to live, because you have not been able to provide a large bureaucracy with the relevant information that the bureaucracy tells you that you need to provide. I would certainly agree with that broad point that Caroline has made.

There seems, in some of the experiences that I have had, to be evidence that where there is clear prima facie evidence from what the Department already knows, including sometimes from information that the claimant or their family tries to provide, that there is vulnerability—for example, there is prima facie evidence that someone has a long-standing mental health vulnerability; there is, therefore, a flag on the system in the Department and they know that is the case—when they are reconsidering and reassessing benefits, and are then considering that in the context of that existing flag, what does not always then seem to be apparent is a proper degree of curiosity from the Department to understand whether that long-standing issue remains present and means that there are going to be issues engaging with the Department to satisfy the relevant criteria. In particular, the sort of curiosity I am describing is if you have people who find it very difficult, for example, to pick up the phone or fill in complex forms, or provide detailed evidence, because they have to go into the world to get that evidence to provide to the Department, there often seems to be a lack of curiosity to seek that information from known third parties—a GP, for example, or a treating clinician who is known to be involved with that person.

Linked to that, in cases that I have done there also seems to be something of a blunt approach to the decision on whether to, for example, sanction or terminate a benefit. Can I set that in context? In the particular cases that I am dealing with, decisions that are taken can have devastating consequences. You are dealing with a situation in which you are taking away someone's ability to survive, and we know from past cases that that can be fatal. The consequences can be very severe. I am not saying they will always be severe, but it is known that they can be very severe. In that situation, one might hope that there would be a considered and proper focus on why someone is not engaging in the way that the process envisages. For example, is the reason they are not engaging the very reason that they should have access to the benefit system, because they have a long-standing mental health issue that makes it very difficult for them to engage? Instead, what seems to sometimes happen is the Department says, "The onus is on you to provide evidence. You have not provided it; therefore the computer says to terminate benefits because that is what the guidance says that we do."

A final point on adequacy is that in some of the cases I have done, there do appear to be measures that exist within the Department's policies, for example, home assessments for what used to be WCAs, or safeguarding visits, prior to a termination decision being made, because of the gravity of that decision. Department staff know about them because they are in the policies, but they are not used. So even though you have a case where after the event, because that is when I normally have come to the case, you can see that before the awful outcome, one would have thought you would look at that case and say, "That looks like a case where we should use the range of safeguarding measures we have available to us," and that did not happen. Why that did not happen is a very important issue, but the fact that it does not happen is a concern about adequacy.

Can I then come on to a final point, which arises from some of the work that I have done, which is how one assesses the adequacy of safeguarding measures? This Committee's work is extremely important in doing that, of course, but from my experience, I would say that assessing adequacy has been made difficult, if not very difficult, by the limits of what I am going to call the investigative regime around these cases. By that I mean the patchwork of internal process reviews—I think you will know what I mean by that—the serious case panels, and the occasional way in which the coronial inquest process touches on DWP benefit-related death cases. I can come into more detail on that later rather than now, if that would be helpful. Obviously, if you have an investigative regime that is not broadly independent and public and open to transparency and public scrutiny, it is very difficult to know whether you are getting a proper picture to assess adequacy, because what you are getting is moments of light showing you particular instances where something appears to have gone wrong, but otherwise a morass of darkness where you cannot assess the spectrum of cases the Department is dealing with and how they are dealt with. It makes assessing what they do case-by-case very difficult.

Q199 **Debbie Abrahams:** Goodness, this is very interesting indeed. I think you have touched on some of the things that I wanted to pursue with you about the adequacy of transparency already. Jesse, could you continue that? Thinking about what we know already, as you rightly say we have the IPRs and the serious case panels, all internal reviews. Let me go back. Given what you have just said, what are your concerns about who is making the decisions? You said "we" or "they". Who is ultimately responsible for these decisions? Why is it apparently so inadequate?

Jesse Nicholls: My understanding of what I describe as the investigative regime is that it is made up broadly of IPRs, the SCP, occasionally the independent case examiner, the ICE—I will come on to talk about the role that can play and its limits—and occasionally the coronial process but, again, with limits.

Just picking up on your point about IPRs, there has been some further public exposure of what they have and have not covered by the National Audit Office report from 2020, which talked about IPRs being conducted into a certain number of DWP-related suicides, but that number appeared to be likely much fewer than the likely total number of such suicides. My understanding of IPRs is that they are taking place in suicide cases where the suicide is considered to be associated with DWP activity. That is my understanding, although the Committee may have a different understanding. They are not conducted in public, so there is no form of public evidence gathering in the way that we are doing here, or evidence testimony in the way that you would have in an inquest. It is therefore not known what kind of evidence is being gathered by the IPR to make the assessment. The provider of that information is the Department to a part of itself, in the IPR, and my understanding is that the IPR is an internal review conducted by DWP officials into the Department's own conduct.

Obviously there is a role for administrative reviews within the welfare state, but this is a form of the Department marking its own homework in many cases involving some of the most serious consequences of the Department's own decision making. I would have concerns about that in terms of its effectiveness as a process and also its ability to carry public confidence. It means that there is an opaque, non-transparent process. It is not known what cases it chooses to be engaged in or how that decision is made. The person making the decision is someone in the Department who is being scrutinised, and in fatal cases the family have no involvement in that process—indeed, no one else does either.

My understanding is that that sometimes leads to some of those cases being considered by the serious case panel, and that there has been some indication through the House, I believe, that the serious case panel is a place where particular systemic or thematic issues that have arisen from IPRs are essentially elevated to be considered by the SCP. Now, my understanding of the SCP is again it is a relatively opaque, non-transparent body. There is some public domain information about its purpose, which is the one that I have just set out, sometimes its terms of reference. and also who sits on it, which I think includes DWP officers including the Permanent Secretary and all Directors General, but also the ICE and I think one other non-DWP member on occasion. There is a greater degree of independence, but no greater degree of transparency, as I understand it, or public scrutiny, which gives rise to the same concerns.

If that body is the one responsible for identifying the systemic thematic concerns, but it is the Department broadly that is deciding which IPRs go up to the SCP, and it is predominantly the Department who discharges the SCP's function, it remains the case that the Department decides what are the thematic and systemic concerns in its own conduct. Then it is the Department at the SCP level that broadly that decides what to do about those concerns. Are they concerns? If they are, what are they going to do to remedy them? That is a concerning state of affairs in terms of public scrutiny and public confidence in the efficacy of that scrutiny.

Q200 **Debbie Abrahams:** I want to extend this a bit further. When the Permanent Secretary was at the Committee a few weeks ago, we had received data on the number of IPRs that had been referred to the serious case panel. Your explanation about your confusion is matched to ours, I have to say. We had data on the numbers that were referred, but we also had data on the 29 that were not, but we did not know how they had arrived at those decisions or the criteria by which they had reached their conclusion that these were the ones they were going to explore in terms of, as you mentioned, the systemic issues that may exist. I think what you are all saying is that you do not know what these criteria are either, from your experience of these cases.

Jesse Nicholls: That is correct.

Q201 **Debbie Abrahams:** Again from your experience, how does the lack of transparency, not understanding the process, impact on claimants? Who would like to start?

Caroline Selman: I can probably speak more broadly but not specifically about the IPR process, which Jesse might be able to do. Do you want to start on that, Jesse?

Jesse Nicholls: I can if you would like. I am aware of the lack of transparency and the impact that it has on the clients that I have represented, talking in general terms, which is a specific subset of the bereaved family members of vulnerable benefit claimants who have died after contact with the Department. Clearly, it has a very significant and traumatic impact, because they do not understand what, if anything, is being done to investigate the circumstances of their loved one's death—circumstances where it appears to be connected with the Department. In some cases, they are aware to a degree that their cases may be considered by the IPR, but they do not know what the IPR has done, what decisions have been made about their loved one's case, and what the outcomes are.

Stepping back, in other contexts of state-related deaths, the purpose of investigations into state-related deaths are multiple but they include accountability and lesson learning. One of the core purposes of lesson learning is improvements to prevent future deaths, but it is also a duty to the bereaved and the deceased, so that there is an understanding that, at least through some form of reflection, others will not go through the same trauma and anguish that they have. If you have an opaque, non-transparent investigative process where you do not know what is being done, how effective it is and what the outcomes are, as a bereaved person you cannot receive the kind of necessary resolution or any form of catharsis in knowing that there has been a proper investigation into what happened, that people have been held to account for what happened, and that something is being done so that it will not happen again to someone else. At present the current system does not provide for that.

Caroline Selman: When I am talking about transparency here I am talking about the transparency of policies, about what safeguarding processes should be followed, rather than the IPR process. Quite simply, if you do not know what should be happening you do not know to ask for it or to correct it if it goes wrong. To use a very specific example of that, we have been more involved with supporting people to ask for waivers of deductions due to health reasons or for other concerns. The number of waivers that are being granted are vanishingly small. They have slightly increased since we have been doing some work to raise awareness about them, but where somebody has accessed advice, and we know about the policies and we know the right things to ask for, you have relatively good odds of accessing a waiver, but the vast majority of people will not be able to access that or know about that. Quite simply, if you do not know about the policies, you cannot access the rights that you are meant to be able to and the processes that you should be able to.

William Ford: I think you are asking about the impact on the claimant. By the time they come to see someone like me, there is normally some sort of crisis. I am primarily acting for people to try to resolve an issue. Jesse is primarily acting for people where something tragic has already happened. I do not think you can look at the situation without looking at the wider context of the lack of any accessibility to advice for people in these situations. You’ve done well today at finding some solicitors and lawyers who specialise in welfare benefits, because there are not many of us. I think there are 29 welfare benefit legal aid contractors in the entirety of England and Wales now, in 2023, down from 52 in 2018-2019. Since LASPO, Legal Aid, Sentencing and Punishing of Offenders Act, came into effect, we have seen a huge drop. In 2010 there would have been 141,000 matter starts. The year before LASPO, 82,000; the year after 163. Last year we had 76 cases opened. This year, for the first six months, five cases opened. There have been no increases in legal aid rates since 1996.

The Law Society has done research on this and produced these advice desert maps; it is red where there is no provider. They do it per legal aid category, and if you look at the map for welfare benefits, almost the entire country is red. Even if you can find a lawyer in your area I cannot do any work at an early stage to prevent some of these issues that we are talking about unless I get exceptional case funding, which you can apply to the Legal Aid Agency for and it is in their discretion. I can only get involved at the upper tribunal stage, so a person would have had to go through an initial problem, loss of benefit; they would have to then bring an appeal themselves to a first-tier tribunal, have applied for permission to appeal to the upper tribunal and been rejected, and then at that point potentially get legal aid. As of last April, the Government have changed the rules on the payment for legal aid, so that you can only receive now a standard payment of £208 to cover the entirety of a case before the upper tribunal. There is no meaningful system set up that is going to encourage anyone to be able to provide advice to people.

Q202 **Debbie Abrahams:** Are you saying, as we think is the case and which prompted this inquiry, that the cases that we are seeing in the media and so on are just the tip of the iceberg? Is that what you are saying?

William Ford: We get so many inquiries every week that we just cannot take on, whether it be for capacity issues or they are just not in scope. I do quite a lot of exceptional case funding cases, but in most of those cases I am doing a significant proportion of the work where I do not know if I am going to get paid for it. Maybe I will and that is a bonus. It is not a way to run a system in any way. Just look at the numbers. There were 140,000 people getting legal advice and now there are five. It is very unlikely that within that time, given the complexity of social security and the number of Acts that have been passed since, the need has dropped. If anything it is likely to have increased, certainly from my experience of constantly having to turn people away that we cannot help. Any structures and policies that you have in place to safeguard vulnerable claimants are good, and whatever can be done in that space is a good thing, but if it is not enforceable—

Q203 **Debbie Abrahams:** There is no point, yes. Can I ask about accountability? Who is ultimately accountable for when things go wrong, as we are increasingly seeing? Particularly thinking about the sad cases when people die, who is ultimately accountable? What happens around that? I am conscious, for example, of the Errol Graham case; and one of the points that was made in the coroner's report was that she was not going to issue a prevention of future deaths report because the DWP official providing evidence said that they were improving their safeguarding rules. I have seen letters from her chasing up these improvements and what improvements have been made. I do not know if you ever received them but who is ultimately accountable for this?

Jesse Nicholls: I think that is probably directed at me, at least to start with. I should say I acted for Errol Graham's family including in the judicial review that they brought in relation to the Department which included, as one of its grounds of challenge, a challenge on the basis that the Department had assured the coroner at the inquest that a safeguarding review was going to take place, which would result in a change of policy resulting from that review, and that did not happen. The answer to your question is the Department is responsible, at senior level, because those are the people who have responsibility for the ultimate consequences of the Department's conduct.

Q204 **Chair:** Are you saying that the Department said this would happen and just did not do it?

Jesse Nicholls: Yes. The context that your friend mentioned to me was that at the inquest into Mr Graham's death, he was unrepresented by lawyers, but the coroner conducted a very thorough and impressive investigation. One of the people that the coroner called to give evidence was a Department official called David Carew I believe—it is quite a long time ago that I did the case. He was a senior official within the Department.

One of the duties of a coroner is that where evidence is revealed by the inquest that they are conducting that indicates a risk of future deaths of others, the coroner has a duty to issue a prevention of future deaths report under a provision within the Coroners and Justice Act 2009. Pursuant to that duty, the coroner considered whether she did have such a duty in Errol Graham's case, and the Department, in saying that there was no requirement on the facts of Errol Graham's case to issue such a report—what is often called a PFD report; a preventing future deaths report— said, and I am paraphrasing, "You do not need to because we are conducting a safeguarding review that is going to produce outcomes in the following time period," and that did not happen.

I can go back to a couple of points, including on the PFD point that I have just mentioned because you will probably be aware of this case anyway but I am not involved in it. I was asked about the impact on claimants of the Department's lack of transparency. In cases that I have not done but am aware of, in particular a case involving the death of a woman called Philippa Day, who died after repeated pleas to Capita, which the Department had outsourced their telephone banking system to, and also in a recent case which you will probably also be aware of, which I understand only from media reporting and from the PFD report, of a man called Kevin Gale, from late last year in Cumbria, there have been indications in coronial inquests that the Department's processes directly impact vulnerable benefits claimants. That is to say that it can exacerbate their existing mental health conditions and make their situations worse. In both those cases that has been suggested in different ways. In the Philippa Day case, the coroner expressly concluded that the Department's processes and Capita's conduct caused the death in a contributory way; that is in public, and that is a closed case. I am only saying this based on public reporting and from the PFD report, which is on the chief coroner's website, in the Kevin Gale case the coroner issued a preventing future death report to the Secretary of State on the basis that a number of aspects of the Department's conduct—for example the length of forms, the overwhelming nature of completing them for someone with mental health problems, and the inability to get help to complete such forms, long telephone queues to speak to an adviser—were all exacerbating issues in relation to someone with underlying mental health conditions.

Q205 **Selaine Saxby:** Good morning. In 2020 the National Audit Office published a report that found it to be highly unlikely that the Department had investigated the full extent of claimant suicide cases that it could have investigated. Do you think that is still the case?

Caroline Selman: I think that is probably best directed at Jesse. Apologies.

Jesse Nicholls: I do. For all the reasons I went through earlier in relation to the limits of the nature of the investigative regime and its patchwork nature—I do not want to go through them again—yes, that seems likely.

Q206 **Selaine Saxby:** Okay, so moving on from there into the responsibility for safeguarding, should DWP have a statutory duty to safeguard the wellbeing of vulnerable claimants, in your opinion?

Caroline Selman: Yes, we think it should and a lot of that comes back to what we have all touched on, which is where the onus sits for making that inquiry and understanding whether there is vulnerability there. There is the question about what that should look like, which we might come on to, but we think there should be a statutory duty.

Q207 **Selaine Saxby:** I am assuming everyone agrees with that, so what would implementing a statutory safeguarding duty achieve that could not be achieved through improved safeguarding procedures?

William Ford: Having a directly enforceable legal right to a duty to safeguard would enable people to enforce that right. It is easier to access lawyers through judicial review proceedings. That is an area that is quite easily within scope. If there is a clear statutory duty that is in breach, that is something that can be relatively easily challenged, providing people can get access to advice for the reasons I gave earlier.

Caroline Selman: The enforcement element of that is key, but also in terms of thinking about this, it is important to think through what that process is for oversight and enforcement. One important route is the ability to be able to bring a judicial review, which that potentially gives you the ability to do, but you also do not want to end up with something that is solely dependent upon by definition the vulnerable client having to go through long and costly litigation in order to realise that duty. Alongside thinking about what that duty is and what it looks like is thinking about what the oversight and enforcement of it is.

In terms of what it would do, there is something about the link across to culture and culture change, and what you would hope is something that is not just about the nuts and bolts of processes but is about how the DWP understands and views its role throughout the system.

William Ford: Hopefully a duty would encourage a proactive approach at early stages by decision makers in gathering information that might indicate where a person is vulnerable, so that measures could be put in place to identify key traits that are indicative of vulnerability.

Jesse Nicholls: I do not disagree with any of that. I think the culture change point that has just been made is a very important one. I would only add that the purpose of a statutory duty would be to ensure accountability. In theory, accountability should lead to improvement of performance, so you would not see some of the decision making and the ultimate tragic outcomes that I have talked about. It would also, one would hope, give rise to a greater incentive for the Department to identify the ongoing systemic concerns that there are and remedy them, because if they are causing repeated breaches of a statutory duty, you would hope that the Department would stop that and then those issues would be addressed, obviously not in perfection, but that would be the aim.

Q208 **Selaine Saxby:** Is there any further evidence that we have not already covered to show that implementing a statutory duty would improve the welfare and health outcomes for vulnerable people?

Jesse Nicholls: I think we have covered the reasons why it would.

Q209 **Chair:** Mr Ford, you said that if there was a statutory duty, people would have recourse to judicial review. Did you say that getting legal aid in that situation is easier?

William Ford: It is marginally better than on welfare benefits cases. Legal aid generally has a lot of issues but public law is an area that has remained within a scope that has not been substantially tampered with post-LASPO, so if you can find a lawyer, which is the main issue, it is easier to access. You do not have as many hoops to jump through as you would with a welfare benefits case, trying to take a case to a tribunal or something like that.

Q210 **Sir Desmond Swayne:** If there was a statutory duty, how would it affect policy? Would there be a chilling effect on a Minister seeking to change policy on the grounds that it might have an adverse effect on vulnerable claimants and open him to judicial review and tie up a democratic process with a legal one to the great benefit of the legal profession?

William Ford: I am not trying to make work for myself, trust me. I do not think so. As Jesse was saying, having that duty in place would hopefully improve decision making, and hopefully you would not need the involvement of lawyers so often. There will always be cases where mistakes are made and enforcement is required and the duty would be useful from that perspective, but having a duty could also influence policymaking in a positive way, if you are looking at it in the context of, "We have this duty to safeguard vulnerable people. How can we implement that through our policymaking?" The statutory duty is a starting point that could well lead to far better decision making. I do not think it necessarily needs to have any chilling effect.

Q211 **Sir Desmond Swayne:** So moving down the food chain to the decision of imposing a sanction that a claimant clearly deserves by contumacious repeated offence, might the decision maker be subject to a chilling effect, for fear of breaching or being seen to breach a statutory duty in imposing a sanction that was clearly deserved?

Caroline Selman: To answer that it is worth just stepping back and thinking a little bit about the context. As we have talked about already, sanctions are a very severe thing that you are imposing on somebody. In monetary terms, it is equivalent to some of the most serious criminal fines that are issued, but before you issue a serious criminal fine you go through a court process. It is quite a full process. We take it very seriously because it has a very serious set of implications from imposing that fine. There is nowhere near the equivalent set of safeguards around the decision process that goes into deciding whether to impose a sanction. There is no contact between the person deciding the sanction and the person being sanctioned, for them to be able to explain, for example, face-to-face about what their good reason might be, or for them to disclose that there are very serious concerns as to why you should not impose that sanction. In terms of where the system currently is, there is significant scope to redress that balance between taking into account the risk that that action could result in, and the claimant's right to make sure their rights are being protected. That is the context in which that is happening.

In terms of whether that would have that chilling effect, at the moment what we are seeing with sanctions is that the rates are quite high, so the chance of there being that chilling effect is not where we are at the moment.

William Ford: Essentially what we are saying is giving decision makers access to more information will produce better decision making. If they are going to make a decision over a sanction, if they have access to more information about the personal circumstances of the person they are about to sanction, they are more likely to make a more informed and better decision that is going to be less likely subject to challenge if they have gone through that process.

Q212 **Sir Desmond Swayne:** What are the legal implications of imposing such a duty? For example, who would be responsible for discharging it? Let us face it, work coaches are not regulated in any way as a profession. They have no additional qualifications, so how does that fit?

William Ford: It would be the Department, same as any challenge to the DWP. Ultimately it is the Secretary of State who would be responsible.

Q213 **Sir Desmond Swayne:** So the Department's view is that a vulnerable person is someone who has special needs to be able to access benefits and services from the Department, and the Department's view at the moment is that giving them that additional system is something that they signpost those vulnerable people to the services of others, other organisations, that do have a duty of care. Why is that unsatisfactory? Why should the duty of care not lie where it currently does with those agencies to whom vulnerable claimants have been referred?

Jesse Nicholls: Can I pick up on that briefly? Because they do not signpost to other agencies.

Q214 **Sir Desmond Swayne:** But if they did it properly would that suffice?

Jesse Nicholls: No, not on its own, but one of the things that they do not do is signpost to other agencies or seek information from the very agencies who have the information that the Department needs to make a proper decision. They say they do that, but often they do not, and they do not inform themselves in a way that allows them to make an effective decision.

My colleagues have covered things very well and comprehensively in relation to your last question, but just on your chilling effect on the Minister question, there was one aspect I thought would be helpful to the Committee in relation to that. The Committee is probably aware that a number of iterations down the years of Department policies already refer to the Department having a duty to vulnerable benefits claimants. I am sure you are aware of that. For example, at one point the Department's policies said that the Department decision makers would be, "… failing in their duty on behalf of the Department to safeguard vulnerable benefits claimants if they did not check mental health flags." Another iteration referred to there being a moral—

Q215 **Chair:** When was that said?

Jesse Nicholls: I am afraid I do not know the date of that. It is very difficult, for the reasons that Caroline has talked about, to know which iteration of particular policies is in force at any particular time, and the policies both overlap and are also often undated. It was during one of the previous cases I have been involved in and I do not know whether it is still the case.

There was also a previous iteration that referred to there being a moral obligation on the Department to protect vulnerable benefits claimants. The reason I mention that is because what the Department seems to be saying is that they accept that they have a duty to protect the most vulnerable who are at risk from the decisions that they make, which have potentially dire effects on those people, but currently is no protective consequence if the Department fails to meet the duty that it says it owes to those it is engaged with. A statutory duty would provide a firmer footing for what the Department already says that it should be doing, with teeth if it does not do it.

Q216 **Sir Desmond Swayne:** So the Department at the moment says that it has no common law duty nor statutory duty. Clearly it is making an assessment of what constitutes a vulnerable claimant and it is perfectly proper that it should and that it signposts them. Now, if they are not doing what they say they are doing then they ought to, but would a statutory duty simply provide that requirement that they do what they say they are doing? In other words, the imposition of a statutory duty would force them to be much more exacting in determining what is a vulnerable claimant and then doing what they say they do by referring them to those agencies that can provide that support. Would that be sufficient?

Jesse Nicholls: It would be one of the things that they should do. As you say, it would require them to be more exact in identifying who is vulnerable including by seeking information to be able to assess that properly, rather than as we talked about about half an hour ago, placing the onus on the claimant to prove that they are vulnerable and in circumstances where they are so vulnerable that they cannot do that the Department concludes that they are not and terminates benefits.

Q217 **Dr Ben Spencer:** What is interesting about that signposting, if you look at the evidence that was given by the academics when they were flagging the amount of morbidity in the claimant database, you do wonder whether it should be routine that people are offered a referral anyway to a broader health intervention; I wonder if a vulnerability flag is even necessary for assessing cohorts of people coming through. That goes into my question. The evidence that you have given has been really interesting, particularly in the direct experience you have had in terms of scrutinising and looking at the work that the Department has been doing. In terms of transparency and data, I am fairly sure this is something that the Committee has said before in making sure that the data set is good to be able to analyse it properly.

My question for you is a bit more of a meta one, I would say, Is the problem here less about the statutory duty but more about agency? The benefits system for the vast majority of people operates on the assumption that people using it have agency; the whole system of navigating sanctions is based on the individual’s agency, and if they do not do X, Y and Z there are consequences and they own those consequences because they have personal agency. But there will be claimants whose agency is limited or diminished because of illness or because of other reasons. The health and social care sector is very set up to deal with those situations, and in fact, when people go to their GP, they do not have direct consequences if they do not engage with their GP when they are consulting on a health problem. Is there a risk that a statutory duty may have a secondary effect of effectively undermining the social contract with people using the benefits system where, if there is a perception that everybody using the system is by definition vulnerable, the Department by treating people as if they have agency is therefore in breach of its own statutory safeguarding duty? A very long run-up to a complicated question but I hope you can see the concern I have in terms of the direction of travel. I totally get referring on. I totally get scoping out and making sure, and I totally get the data stuff, but I think it is the bigger picture that I would like to dig into.

William Ford: I do not think there needs to be an assumption that everybody is vulnerable. Part of the issue is that with the amalgamation of benefits into Universal Credit, there is a focus on different things, but there is a focus on getting people into work, which is one of the major parts of it. There may well be people who are out of work and can easily claim Universal Credit, seek work and then go back into work, that do not come into this regime of the extra measures that we are talking about. Within Universal Credit, there are these conditionality elements, and there will be a significant cohort of people who are disabled, people with limited capability for work or limited capability for work-related activity. These are the sorts of people who are much more likely to need these safeguarding measures. What we are talking about is identifying processes that can be undertaken at an early stage, so evidence gathering at the point that a person is making an application is probably an ideal opportunity to gather the necessary information to provide indicators as to whether a person is vulnerable. There would be lots of key things that would indicate that.

If the evidence gathering process can be done properly and inform necessary decision makers, I do not think it needs to have any secondary effect on the overall purpose of the system.

Caroline Selman: It is an interesting way of articulating it. One thing to note on that point about agency is that when we step back from just thinking about individuals but also look at how the system as a whole is operating, there are lots of ways at the moment that make it quite difficult to exercise that agency. Some of the things we are touching on are about the accessibility of policies for example. Some of it is also about how you make it easier to exercise agency and then, within that, to identify the people who might not be able to exercise agency and who you then need to safeguard. That comes back to the shift in the onus point as well.

Jesse Nicholls: I would start by echoing what William has said, that I do not think we are saying that everyone should be recognised as vulnerable. That is not what we are suggesting, but I think I do entirely agree with the problem you described, that there is at least a cohort of very vulnerable benefits claimants who do, or who at times, depending on how their conditions may fluctuate, lack agency, and there is something structurally concerning to me that the Department is required to provide benefits to such people because of their very vulnerabilities and yet in the very cases where they are highly vulnerable, therefore unable to engage, the Department then applies a very blunt agency model of decision making to say, "You have not engaged therefore that means you are not vulnerable, therefore we are going to terminate your benefits." One might think that you would invert it and if someone who is known to be potentially vulnerable does not engage that would be a symptom of their vulnerability, such that you would not terminate their benefits or sanction them because it is an indication that they are vulnerable.

Q218 **Dr Ben Spencer:** How do you get around the issue of the relationship that claimants have with the DWP service? I remember this coming up with evidence we received from disabled people going through the process, where the contract of seeing one doctor is a very different social contract than seeing a job coach, which also has a scrutinising element in terms of people's engagement with the system, and so people by definition are resistant, understandably, to talk about personal, sensitive information because it is a very different relationship than if you go to a carer. You have put evidence that the onus is about self-disclosure, but is that possible in that sort of relationship and should the self-disclosure again be done with health and care professionals rather than DWP work coaches?

Caroline Selman: That is a good point and is something that is reflected in the research we have done previously, which is that context of there will be some people for whom, because of how they view the DWP or their relationship with DWP, relying on self-disclosure will be difficult. As some colleagues on the panel have touched on, some of this is also about how the DWP works with other agencies and organisations where there will be more of that trusted relationship. It is important to recognise the context that you are talking about and, therefore, that there will probably always be an inherent limitation of what is disclosed to DWP. But there are also lots of ways that you could significantly improve that relationship as well in terms of what is shared with DWP and how DWP could access that information; but there will always be a limitation on how much will be directly disclosed to DWP.

Jesse Nicholls: I completely agree with what Caroline said there. I would only say that there are cases where the person—even if they feel reluctant or unable to divulge the information themselves—actually says, "Please contact my GP, my social worker, my domestic violence supporter," and the issue is that that needs to then happen. I have seen cases where it does not happen, because the person has said, "Please do that," and the Department says, "Well, we do not have a duty to do that, you have a duty to tell us, you can gather the information if you want, send it to us through one of the portals or some other mechanism, but it is not our duty to do what you have said you want us to do in order to identify that you are vulnerable."

Q219 **Dr Ben Spencer:** That is the problem. Speaking as a former doctor—although perhaps you are always a doctor—my sense is very much to ask shouldn't the doctors and nurses be doing this sort of stuff? But that fails if there is no pathway for getting people there or that is not happening.

To drill down; if somebody went to their work coach and for whatever reason a vulnerability flag was fired up and the person disclosed, or there was sufficient information where you could get permission to pass on to the GP or nurse or social care, or whoever it was, and that happened consistently and reliably, would that discharge the duty of care that you think is missing?

Jesse Nicholls: That is part of what should be done to meet the duty of care, but it is not a reason why there should not be a duty. It is the reason why there should be a duty, so that they do that.

Q220 **Marsha De Cordova:** Good morning to each of you. Given what you have all said this morning, we know people with vulnerabilities or with any complex needs will particularly struggle to access advice or information about their social security benefit. Do you consider the current system is perceived to be a bit rigid how it operates, quite hostile to those with vulnerabilities? In its current form is it working or fit for purpose? I do not mind who starts that; Jesse?

Jesse Nicholls: I am happy to start. I cannot answer the question about how it is now because I am not dealing with live cases, and the case I am dealing with I am not allowed to talk about, for reasons we talked about.

Marsha De Cordova: In your experience.

Jesse Nicholls: Is it seen as rigid and hostile? Yes. On the rigidity point, I would talk about the bluntness that I mentioned some time ago, that is to say a seemingly quite blunt approach to a situation in which there is prima facie evidence of vulnerability, but the onus is placed on the claimant to discharge the burden of showing that they are vulnerable. That is seen as a rigid and blunt system.

Whether it is hostile, I have limited anecdotal experience that goes to that, but you could look at the Philippa Day case because that is an example of a case where essentially you had someone making repeated pleas to a person they were speaking to on the telephone. As I understand it, those calls were played out during the inquest. That person is saying, "I am desperate, I am at risk, I may take my own life," and the response is essentially like talking to a call centre, "Sorry, the flow chart does not tell me what to do with that information, so I am sorry, you should go and do the other things we have already told you to do." I would say that is a form of hostility, even if it is not aggressive that is a hostile environment for a vulnerable person who is at risk.

William Ford: I would agree with the rigidity point. In my experience, certainly, you do find decision making is quite rigid. Also in my experience there is often an unwillingness to implement change. That can be as simple as cases where you have won and you have a tribunal or court decision telling the DWP to do something and in numerous cases I have had to, months later, send pre-action letters saying, "Are you actually going to implement this?"

Let me give an example of a recent case that involved vulnerable people in the context of the EU settlement scheme and people with pre-settled status, so not automatically eligible for benefits but can be depending on their right to reside. It is a Court of Appeal case of AT *v*. Secretary of State. In that case they were looking at people with pre-settled status who had no other right to reside in the UK and were, therefore, excluded by the law from entitlement to claim Universal Credit. But in that case a challenge was brought saying that in certain situations where a person is unable to live in dignified conditions there are potential breaches of the EU charter of fundamental rights, and in those situations the Withdrawal Act can mean that that person should nevertheless be able to access benefits.

The judgment in that case required individual assessments of individuals in those situations. The DWP lost at every stage, from the first tier tribunal, the upper tribunal, to the Court of Appeal; and they were refused permission last October or November to go to the Supreme Court on it. But what happened in practice, while it was going through the appeal process, the DWP had a discretion as to whether to implement the existing judgments that had been given to essentially allow other people in similar situations to get access to benefits based on what the courts were telling them the law was. The Child Poverty Action Group did a freedom of information request on that and I think 2,816 claims were stayed pending the final conclusion, and only 83 claims were allowed. The writing was very much on the wall in the judgments they were getting but there was resistance within the DWP to accept that that was correct. I was not involved in that case but I have had similar experiences in cases taken against DWP because there is a reluctance to change. Those are my points.

Caroline Selman: On the point about hostility, we previously carried out a piece of research about sanctions, and people's willingness and ability to access mandatory reconsideration and appeals of sanctions. A strong theme that came out of that was the perception within that group of research participants of the DWP as hostile, but recognising that is a factor of lots of different aspects of the system. If you felt while going through the work capability assessment that you were having to prove that you were not a fraud, and regardless of whether you have been sanctioned, being in a regime where sanctioning is part of it, feeling it being a potentially quite confrontational relationship and where you are perceived as being likely to be fraudulent or likely to be sanctionable, that feeling impacts people's relationship with the DWP and, therefore, the impact on their willingness to access their rights, for example challenging something by mandatory reconsideration or by disclosing something.

A point about the accessibility of that system was picked up on. There are lots of points where even if you then do decide to try to access it, it becomes very difficult to do so. For example, the mandatory reconsideration is not clear, you do not get a clear acknowledgement back, you do not know what the timeline is for when you can anticipate to get it back. That can feel like a very hostile experience in terms of the ease in which you are engaging with it.

William Ford: Let me follow up on an example of where in my experience there is rigid application of policy—this is something Caroline will know a lot about as well. It is where the DWP is recovering a debt from the claimant: very often an overpayment may well have been the fault of the DWP, but even if there has been an official error they have a discretion to recover overpayments in all cases and generally they always do. There is a maximum rate that they can apply to recovery those debts, which is 15% of the standard allowance for Universal Credit if a person is not working, or 25% of Universal Credit where they are working. In my experience the maximum deduction is always the amount that is sought to be recovered, and it is only when perhaps an advice agency or lawyer gets involved and challenges it that it might be changed. I have never seen that applied any other way; I do not know if it is your experience as well.

Caroline Selman: There is one particular case that is now closed and in the public domain that we were involved in that process. If you track it through, it illustrates quite well the difficulties that an individual can experience engaging with the system to exercise their right. There was a series of points about being given inaccurate information, for example, first of all trying to check the fact that she thought an overpayment was happening in the first place, checked that several times, and was assured it was not, until it turned out that there was and there was then recovery was sought. But also in terms of her trying to find out what she was able to do in terms of her challenging it; being given incorrect information or there being confusion about the difference between hardship measures and appeal rights. It illustrates quite well some of the challenges that people can face in accessing the processes that are meant to be in place, including the ones that are meant to be in place to safeguard against people having unaffordable deductions, or deductions in a context where you would not want them to be made because of health circumstances or other vulnerabilities that would mean you are thinking you should be either waiving, suspending or reducing.

Q221 **Marsha De Cordova:** Would you say the current measures in place for providing support to individuals are sufficiently accessible? People do not understand it, do they, the some of the measures you have in place? Let us say some of the payment systems—getting support with debt recovery or even getting support with housing payments or anything like that. Do you feel that the current processes that the DWP operate under are accessible and easy to understand for claimants and individuals?

Caroline Selman: No, and I think that is borne out often by the data that is available. Coming back to that point about specifically hardship measures on deductions, particularly things like waivers and suspension are never referenced anywhere. So to know that you have the right to ask for that is near impossible, unless you come across not just an advisor, because lots of advisors do not know either because it is quite buried, but find something in the bottom of a policy somewhere as was being touched on in response to a parliamentary question, for example. That you even have this right could be much more transparent.

Q222 **Marsha De Cordova:** What could they do to improve that?

Caroline Selman: Some of it is literally about what is set out in correspondence, It is not clearly flagged up in correspondence that you have the right to something like waiver or suspension. There is also a quite specific point about that correspondence, which is that there is quite a confusing landscape in terms of appeal rights. Because of the change in the law that you can now recover stuff which are DWP's mistakes, you used to be able to appeal that fact that it was not your fault—it was DWP's fault essentially—you cannot do that anymore. You could still potentially appeal the underlying decision but you have a slightly confusing landscape about when you are allowed to challenge things.

Based on cases that we have been involved with or people that we have spoken to have been involved with, that often leads to confusing messages being given to people about whether they do have a right to appeal, and people have often been sent down the appeal route when it is a wasted journey, or not been told about appeal rights that they do have. It is not being flagged up that what they are actually asking for is they want a waiver or a suspension and not being sent off down that process. Through the research and cases that we have done we have seen quite a few examples where you look at situations and think it should give cause for concern that you are recovering money from people at that stage, but where that has not been picked up by debt management until you get to the stage where there is essentially somebody sending a pre-action protocol letter. The number of people who will be able to get through to that stage where they have somebody to support them for a pre-action protocol letter is tiny; there will be vast numbers of people who are not accessing that. Like I say, that is reflected in the fact that the data for waivers that are issued suggests that very few are.

William Ford: I think you would want to keep the complex, detailed policy out of it because that is all useful and relevant, but what you would want—as Caroline is saying—is in the communications to individuals, in the letters that they receive, clear information about what the actual correct legal position is and what remedies they may have, and perhaps links to guidance that is in a much more user friendly format. All the detailed stuff, that can come up later on if mistakes are made and it goes further down the road, that will be relevant but it should not be for lay claimants to have to find some obscure policy that is not easily or readily accessible or in any way easy to understand. That is something that could be changed.

Marsha De Cordova: Better ways of communicating and how they do it.

William Ford: Yes.

Caroline Selman: Better ways in what is set out in the letters or Universal Credit journal notifications; the clarity about what the current policy and process is, which is out there in an accessible way for advisors and also potentially for claimants as well. At the moment, to find out what the policy is and what the process is, you have to do quite a bit of digging across a range of different, often not very obvious, sources to find documents that are not outward facing—they are guidance documents for members of staff—to pick out what you think the policy is. Things are often only discovered because of a Freedom of Information Act request, or because litigation has been initiated. I think it is very difficult as an advisor to know what you should be asking for for your client, but it is also extremely difficult for people engaging with the system. Having clarity about what the current process is for things like safeguarding leads, or what should be happening in terms of processes that could be being asked about—for example, easements to your claimant commitments—that is currently not publicly available in an accessible form and should be.

Q223 **Debbie Abrahams:** Can I pick up on something Sir Desmond was mentioning about of a statutory duty of care? Sir Desmond was saying should this not remain with the existing statutory agencies. The point was made that there is not always referral to those statutory agencies. But those other statutory agencies—the local authorities, the NHS and so on in the safeguarding board for that particular area—they do not have control over the services of the DWP, do they? If they have no control of the services that may or may not have contributed to that particular death how can they be held accountable for that?

If you could have a think about that, and then I want to ask another question specifically about coroners and coroner inquests. Coroners investigate a whole host of deaths but only a tiny proportion of them will identify, as I understand it, whether somebody has been in receipt of social security. Is that right? Then the ones that you will deal with tend to be pushed by family members who are so aggrieved by what has happened to their loved ones. Is that fair?

Jesse Nicholls: Shall we pick up on those two questions in order?

Debbie Abrahams: Yes, please.

Jesse Nicholls: The coroner's inquest one is one for me so maybe if I answer the first question you asked; others can come in if they want to. I am happy to cover coroners' inquests.

The issue with the statutory duty and other agencies is that in the anecdotal experience I have, there are basically two things that seem to be problematic in the relationship between the Department and other agencies. First, when the Department is making its own decisions it does not engage in the way that it should with other agencies to obtain the relevant information to make a proper decision. Secondly, when it makes a decision to terminate, which can have far-reaching and potentially devastating consequences, the Department does not always tell the agencies who are acting as a form of safety net for the consequences of that decision. Those are the two issues. I said I would pause if anyone wanted to answer that.

Debbie Abrahams: Anybody want to add onto that? Okay.

Jesse Nicholls: On inquests the short answer to your question is yes, there is only a tiny minority of cases. If one, for example, knows that IPRs have been conducted into—let us take from the NAO report—69 cases and that is considered to be a significant underestimate of the number of cases, we know that significantly fewer than 69 inquests have been conducted into deaths in which the Department's conduct was involved. So the short answer is that, yes, very many inquests—and this is not a criticism of coroners and I will come on to explain why briefly—where the person was in receipt of benefits and, therefore, where the termination of benefits or a sanction may have been material to the circumstances of death, will not be investigated by an inquest. So inquests are not at the moment the solution to the investigative issue. They provide in certain cases, such as the kinds that you have described, where family members are aware that there has been an issue with the Department and are very concerned that the Department's conduct has had a direct impact on their loved one's death, either because the loved one has died from starvation, which has happened in cases that I have done, or has died in circumstances where it appears that because of the lack of funds they have suffered a physical medical crisis because of an underlying physical medical condition, or because of the termination of benefits having a devastating impact on their mental health, which appears to have resulted in self-inflicted death.

There are a number of reasons why inquests at the moment do not often investigate those issues. Broadly it is partly because the threshold test for opening an inquest means that the coroner, depending on the facts of the case, may not consider that the test is even met in a case where the Department was involved. So if the death was not by self-infliction and appears to have been a natural causes death—for example in the case I am describing where someone is sanctioned or had benefits terminated and that triggers an underlying physical health condition—the coroner may consider that is a natural causes death, therefore, they do not even conduct an inquest. That is one category of case. That is what happened in a case that I was involved in called the David Clapson case, which is quite old now but you will be aware of it.

Even where a death is of a kind that means an inquest is opened—so a self-inflicted death is an example because of the use of the term "violent" in section 1 of the Coroners and Justice Act, a self-inflicted death is a violent death and there is reason to suspect that—even if the coroner then does open an inquest to investigate that apparent self-inflicted death, because of both a lack of knowledge and also an understanding of the limits of the investigative scope of an inquest, many, many inquests will not investigate whether the Department's conduct had any impact on the decision that the person has taken to end their own life. So in many such cases there will not be an inquest that investigates the role of the Department at all, and even where there is an investigation at inquest of the Department's role, it is extremely rare, if not impossible, for the inquest currently to investigate the broad, systemic issues that may arise from the Department's conduct in relation to that death because of the limits of an inquest.

Debbie Abrahams: That gives us something to think about.

Jesse Nicholls: Can I add one point to that? There is another trigger for investigating and causing an inquest to happen. It is when there is reason to suspect that the death was violent or there is reason to suspect the death was unnatural. In coronial law "unnatural" means contributed to by culpable human failure. One might think that in some of the cases that we are talking about these are cases where there is "reason to suspect that the death was contributed to by culpable human failure" because these are cases in which the Department has failed to, for example, maintain benefits where it should have, such that an inquest should happen.

Q224 **Debbie Abrahams:** That is such an important point.

I want to get onto my substantive question if I can now. When we have been talking about vulnerable claimants, we have not considered that we all have a potential to be vulnerable in particular circumstances. I wondered about your views about that and how we should be considering it in the context of this inquiry, and if I could mention a couple of things the Select Committee have investigated before.

First, in terms of the Universal Credit and the five-week wait, we heard from a researcher who had found a relationship between the UC application process—so people who are seemingly well, coming into social security maybe for a temporary measure, but the actual application process, and I have forgotten which mental health metrics were used, was found to create mental distress.

We also have heard from other academics that not only were people on what is considered out of work support for people with sickness or disability four times more likely to die than the population as a whole, but also that people seeking work were twice as likely to die as the general population; showing that this is an existing vulnerable population but people might present as being well.

Finally, we have also heard other evidence in this inquiry about the potential for everybody to be harmed. We should not forget that people who go through the work capability assessment may be refused but on appeal they can have that overturned but people have sometimes died in that process. So I wondered—and this also gets back to what Sir Desmond was saying—how DWP itself and its processes can potentially contribute to this distress and to the vulnerability and what we should be doing about that. Do you want to have a go at that one, Caroline?

Caroline Selman: Yes, it is quite a broad question. As you say, there are individuals who make contact with DWP who have existing vulnerabilities; there is also a set of actions from which there is a high risk of potentially increasing those vulnerabilities. The two areas that I am probably closest with are sanctions and deductions. When we did our research the focus of it was on access to mandatory reconsideration rather than impact, but still what came through quite strongly from participants was where that process of engaging with it had, from their perspective, exacerbated mental health concerns like stress and anxiety. In some ways that is unsurprising, given the context that you are talking about. Likewise, the survey that we have done on deduction, there is research in terms of showing that a third of respondents had been left destitute by a deduction. I think sanctions are recognised by DWP in guidance that by their definition they will cause some harm and hardship. The focus within this, rightly, is about how do you pick up on individuals that are vulnerable, but there is also something about how the system also steps back and, provided it has the data to do it as well, looks at it, to understand where there are bits which are sort of inherently risky, and where if somebody was not vulnerable before they may become vulnerable as a result of having 100% of their standard allowance stopped. It is about the importance of thinking about how you make sure the safeguards are in place for everybody across that, not just because a support worker has said, "This person is a care leaver, so you should have a single point of contact for dealing with a sanction." You also have to have built in, "Before we do this measure we need to make sure that the decision maker has proper contact with the claimant to understand the circumstances and the context. We need to be checking what is on the case file to understand if there are things that mean that we should maybe be doing some further checking. Are there other people that we should be speaking to?" It is about thinking about how you need to build in better safeguards and better due process as well before actions are taken that could result in vulnerability.

William Ford: I do agree entirely with what Caroline says. From my experience as a housing lawyer, as long as I have been doing it we have been arguing about what vulnerable means. It does not mean what you or I think it means in context of a housing case where someone is homeless and potentially in priority need of accommodation. It would be good to avoid that if we do start to look at this.

I have touched on the importance of the early stages of gathering that information and identifying key risks and, as Caroline says, being aware, both of the individual's vulnerability and also the impact that the DWP can have on people through the decisions that it is making. By the very nature of claiming a subsistence benefit, you are asking the Government to provide you with enough to meet the basic cost of living, and that is what the standard allowance is designed to do. It is at historically low levels, but we do not need to get into the issues of the low levels of benefits. People are going to be subsisting on very low sums of money and so there is scope for problems in almost any case. Jesse may want to comment.

Jesse Nicholls: What should the DWP do? I said earlier that clearly the way the Department conducts itself—both the decisions it makes and the processes that it uses in making those decisions—can have significant adverse impacts on claimants. I will just refer back to the earlier evidence I gave on that.

What should the DWP do? There are a number of things from the cases I have done that you can see that it should do. First, consult third parties on risk before making decisions. Secondly, when it is going to make that decision, warn third parties of the risk of the Department's decision before it makes it. Thirdly, apply the existing safeguards that it already has—home assessments, for example, or safeguarding visits before making a decision. Fourthly, simplify processes: for example, rather than rigidly sticking to the fact that when someone wants a mandatory reconsideration you say, "You have to put that in writing," you actually can take that decision on the phone if someone calls up and says, "I am desperate, I am really concerned about the decision that has been made." You should just treat that as a request for mandatory reconsideration on the phone. There is no reason not to do that. That would be beneficial to all involved and more protective.

Then there is the culture change point that was made. The mindset should be to be alive to vulnerability and sympathetic to it, rather than hostile to the idea of vulnerability and sceptical that that is what you are hearing.

Debbie Abrahams: Thank you so much.

Q225 **David Linden:** We are nearing the end so I will be relatively brief. If I can direct my questions perhaps to Mr Nicholls. I am keen to understand a bit more about how existing DWP processes exacerbate pre-existing vulnerabilities. You cited the cases earlier on of Philippa Day and Kevin

Gale. Can you speak a bit more broadly to that to give the Committee a slightly better understanding?

Jesse Nicholls: I did not act in either of those cases, so I am speaking from what is publicly available and also anecdotally from other cases that I have done.

In cases involving people who are highly vulnerable and concerned about their engagement and contact with the outside world, my understanding is that they face what can feel like a wall of bureaucracy involving filling in large amounts of forms. They find it very difficult to speak to a human being on the telephone, yet they are required to speak at particular times, go through choosing relevant options on the phone, arrange appointments to be at certain places at particular times, and be told that they have to go out to a strange place that they do not know to do that. In the Kevin Gale case, there was a reference to having to travel long distances for an appointment being particularly difficult for someone with certain kinds of mental health issues.

All of those matters can exacerbate the kind of underlying mental health conditions that some of the most vulnerable benefits claimants will have—depression, severe anxiety, an inability to engage with other people without stress, other mental health conditions and paranoia. That is how it can exacerbate. Obviously, if you then have to try to essentially plead your case that you are a deserving person entitled to support with a bureaucracy that does not seem to be empathetic or listening to you, that can compound your sense of isolation, loneliness, and concern that somehow there is no one listening to you, or that you are doing something wrong when you are not.

Q226 **David Linden:** Ms Selman, what can be done to prevent the system from retraumatising claimants? Have you any particular views on that?

Caroline Selman: I think some of that is understanding how big a question that is in a way. I come back to the bit about the research we did previously on sanctions, which was very much focused on mandatory reconsideration and appeal, accessing things that way. The very strong theme that comes through from that is understanding the impact of what the system as a whole had on individuals, and then the knock-on implication that has to other points in the process as well.

Starting from the point about the work capability assessment and touching on some of what Jesse was saying, if you are engaging with that process and you feel like you are having to almost defend yourself in that as not being a fraud and prove yourself, that can be a very difficult thing to go through. Also, there is the aspect of feeling that you have to go back over things that can be quite difficult to talk about and the impact of that process. Similarly, if you then are at a stage where you are concerned about potentially being sanctioned because of conditionality, there is the impact of that in terms of feeling that there is a perception that you should feel guilty about something or that you are doing something wrong. There are lots of different stages where that can happen, and those things then impact your interaction at later stages as well. If you are then trying to access a mandatory consideration, your previous experience of the process will impact that.

That bit about what can be done, I think that some of it is about recognising that to do something properly with it is probably something quite significant in terms of understanding the relationship between people who are receiving benefits and the DWP, but there are more immediate things that you can do to try to improve that. The importance of interactions with work coaches or members of DWP staff is an important one. If people have a positive interaction, it can make a genuinely positive difference and, vice versa, one perceived as hostile will have a knock-on impact beyond just that one interaction. You look at your wider interaction as well, and that awareness of how you are engaging with and speaking to individuals. Is it an exchange which is shaped by respect, or is it one which is shaped by the person on the other side who feels very much that they are being scrutinised or made to feel guilty, or viewed differently? I come back to the point about culture. Some of this is about culture, but also things that can help culture are very pragmatic things like the tone of letters, how clear things are and how accessible the processes are. If you have an accessible process, it feels less hostile.

Q227 **David Linden:** I am very conscious of time and I think we have kept you slightly longer than we promised, so perhaps a "yes" or "no" answer will suffice from each of you on the final question. Starting with Mr Nicholls and working our way along: should vulnerable people be enrolled on conditionality regimes and face sanctions?

Jesse Nicholls: It is not an area that I work on, so I probably should not give a "yes" or "no" answer because it is not something I do.

William Ford: No.

Caroline Selman: No.

David Linden: Thank you for your time this morning.

Q228 **Chair:** Thank you very much indeed. A couple of final points, Mr Ford, at the start you gave us an example of somebody you had helped. You said he was deaf, and the solution was in an obscure parliamentary archive somewhere. Did you come across that solution because you happened to know about it, or is there a tool to find such things available to you that is not available to members of the public?

William Ford: Child Poverty Action Group produced what is essentially a bible for welfare benefits advisers, a handbook, and within it, there was a link to that policy.

Chair: I was going to ask you about that because that is published every year, it is 1,800 pages, and you would think surely it must be somewhere in there, but there is a link in there.

Mr Nicholls, you read something out to us, which appeared to be the Department acknowledging that it does have a duty of care. You said you were not sure when that was said, because that was not clear. Can you tell us what the source that you read it from is?

Jesse Nicholls: It comes from departmental policy and it is quoted in the judgment of the Divisional Court in a case that has been decided but is part of the case that I was told is still live. I can talk more about that if you like.

Chair: If you could just let us have the reference.

Jesse Nicholls: It is the case of Dove v HM Assistant Coroner for Teesside and Hartlepool in the Divisional Court in judgment at paragraph 81.

Chair: Can you send us a link for it by email, just so that we can see it? That is very helpful. Thank you all very much indeed for a very interesting session. That concludes our questions.