

## **Written evidence submitted by the Public Law Project**

### ***Introduction***

1. Public Law Project (PLP) is an independent national legal charity. For 30 years, PLP's mission has been to improve public decision-making, empower people to understand and apply the law, and increase access to justice through a mixture of casework, advocacy, and research. PLP's vision is a world in which individual rights are respected and public bodies act fairly and lawfully.
2. We welcome the opportunity to provide evidence to the Public Accounts Committee ('the Committee') on the 2022-23 Accounts of the Department for Work and Pensions ('the DWP' or 'the Department').
3. Since October 2019, one of PLP's priority areas is working to achieve a just and non-discriminatory welfare system with a particular focus on benefit sanctions, deductions and recovery of overpayments. Our experience in this area includes casework support in individual cases, bringing strategic litigation to challenge systemic issues,<sup>1</sup> research<sup>2</sup> and the provision of training to welfare advisers. We are currently undertaking a large-scale research project on deductions from Universal Credit with publication planned for December this year. It focuses on the adequacy and availability of safeguards put in place to ensure fair and correct Debt Recovery.
4. Another of our focus areas is automated decision-making (ADM) in government, including by the DWP. We are not opposed in principle to government use of ADM systems, and we recognise their benefits. Instead, we are focused on ensuring that such systems operate transparently, lawfully, and in a non-discriminatory way, particularly given the increasing impact they have on the lives of those individual and groups which PLP represents who are amongst the most vulnerable in society.
5. Given PLP's experience and expertise, this evidence is divided into two parts: the first part focuses on the Department's use of automation and the risks it presents to benefit claimants; and the second on the recovery of benefit overpayments, LEAP exercises, cost of living payments and conditionality/sanctions.

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<sup>1</sup> See, for example, *R (on the application of K) v Secretary of State for Work and Pensions* [2023] EWHC 233 (Admin) where PLP's actions on behalf of K prompted the DWP to end its unlawful practice of pressuring disabled benefits claimants into accepting a lower award than they were entitled to.

<sup>2</sup> See, for example, PLP's report '*Benefit Sanctions: A Presumption of Guilt*,' Caroline Selman (2022), which documented the significant harms imposed by the system for challenging benefit sanctions to individuals' health, finances, and well-being.

## ***Recommendations***

### ***For Fair and Transparent Use of Automation by the Department for Work and Pensions***

#### ***Systematic Opacity in the Department***

6. PLP recommends that, for each automated tool in use, the Department disclose: (i) who developed it and who owns it; (ii) its colloquial name; (iii) the team(s) who operate it; (iv) what it is used for; (v) any criteria or rules applied by the tool (provided they are known to the Department); (vi) any data used to train the tool and/or determine its rules or criteria; and (vii) any Equality Impact Assessments, Data Protection Impact Assessments, or other fairness evaluations, risks and mitigations relating to it.
7. PLP recommends further that the Department, in relation to the models being used for people living together, self-employment, capital and housing, disclose: (i) when the models were piloted; (ii) if the pilots are complete, what the results of the pilots were; (iii) if the models are currently in use; (iv) their official names; (v) what information they present to caseworkers; (vi) whether claims are suspended before a caseworker reviews references made by the models; and (vii) whether Data Protection Impact Assessments or Equality Impact Assessments were carried out for each of the models, or, if assessments were made, what they found.
8. PLP recommends that all automated tools used by the Department are published on the Algorithmic Transparency Recording Standard Hub.

#### ***Claimants Are Left Without Adequate Information or Meaningful Avenues for Redress***

9. PLP recommends that the Department should be subject to a mandatory requirement of contacting claimants before a decision is taken to suspend their payments on account of suspected fraud or error (i) explaining the basis for the decision and (ii) explaining how the claimant can make representations to challenge the decision.
10. PLP recommends that the Department notify individuals when they have been subjected to a decision which has been meaningfully informed by automated processing and provides them with an understandable explanation as to how the automated process was used.

#### ***Systems Present a Heightened Risk of Discrimination***

11. PLP recommends that the Department publish the results of its fairness analyses and consult with stakeholders – particularly affected groups – before increasing its reliance on the model further.
12. PLP recommends that the Department publish *all* Equality Impact Assessments and Data Protection Impact Assessments in relation to its automated decision-making tools

(including automated tools that aid a human decision-maker by providing a recommendation, risk score, or similar).

13. To this end, PLP supports the Comptroller and Auditor General’s recommendation that the Department “*should seek to improve public confidence in its use of data analytics by committing to regularly publishing summaries of its assessment of bias in machine learning models and any impact on customer service.*”<sup>3</sup>
14. PLP recommends that the Department only put these systems into live use when it is confident that they do not unlawfully discriminate against protected groups. The Department should not use systems until it is able to test for unfair impacts across all protected characteristics.

### ***Systems’ Reliability, Efficiency and Lawfulness***

15. PLP recommends that the Department be subject to a regular and independent technical evaluation of any automated systems it uses to assess their reliability, efficiency and fairness.

### ***For Achieving a More Just and Less Discriminatory Welfare System***

#### ***Benefits overpayments recovery***

16. In line with the Committee’s recommendation from the twenty-sixth Report of Session 2019–21 on the DWP Accounts, PLP recommends that the Department assess how Universal Credit claimants, particularly vulnerable claimants, are being impacted by deductions to their awards.
17. PLP recommends that the Department only seek to recover overpayments resulting from Official Error in exceptional circumstances.
18. PLP recommends that the Department and HMRC urgently review their processes for coordinating challenges to Tax Credit overpayments and write off historic Tax Credit Overpayment Debt.
19. PLP recommends that, prior to seeking recovery of a debt, the Department proactively assess claimants’ individual circumstances and their ability to repay.
20. PLP recommends a further reduction the maximum rate of recovery set for overpayments to reflect the fact that benefit level have not adequately risen in the face of the cost-of-living crisis.
21. PLP recommends that the Department revise the wording in Debt Management letters and clarify via staff guidance that claimants have the right to challenge (i) any underlying decisions material to finding that the claimant has been overpaid and (ii) whether, where

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<sup>3</sup> National Audit Office, ‘*Report on Accounts: Department for Work and Pensions*’ as set out in Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455 – at paragraph 24(g).

the claimant has been overpaid, that that overpayment should be recovered (such as those caused by official error in relation to benefits other than UC, new style JSA and ESA).

22. PLP recommends that the Department amend its working practices so that claimants are clearly told: (i) that deductions will be taken from their award; (ii) how the overpayment occurred and what category of debt is owed; (iii) the total amount owed; and (iv) how the rate of recovery was determined.
23. PLP recommends that when the Department corresponds with a claimant about an overpayment or a deduction, it clearly refers to the claimant's right to request that the deduction be waived, suspended, or recovered at a lower rate.
24. PLP recommends that the Department promote cooperation between their Universal Credit and Debt Management teams to enable claimants to navigate more easily between the two when seeking information regarding an alleged debt.
25. PLP recommends the Department urgently publish a full equality impact assessment which explains how the Department is mitigating the disproportionate impact which its deductions policy is having on those with protected groups.

#### ***LEAP reviews***

26. PLP recommends that the DWP publish the findings of its Recoverable Hardship Payments LEAP exercise and any further such exercises conducted in 2022/2023.

#### ***Cost of Living Payments***

27. PLP recommends that the Department adjusts the "qualifying period" for Cost of Living payments from 1 month to 2 months, so that more people can benefit from the support they need.

#### ***Work Incentives and Conditionality***

28. PLP recommends that the Department pause sanctions until the end of the cost-of-living crisis, and review its approach to conditionality, considering the overwhelming evidence that it does not support people into work.

## PART I – PLP’S SUBMISSION ON USE OF AUTOMATION BY THE DEPARTMENT FOR WORK AND PENSIONS

### Summary

29. The Committee has identified that the Department is “*increasingly reliant on data analytics and machine learning to flag potential fraud.*”<sup>4</sup> In its 2022-23 Accounts, the Department describes data analytics and automated tools as being “*at the heart of*” its response to fraud and error.<sup>5</sup> It has previously confirmed that it widely relies on automated tools to target and suspend potentially incorrect benefit claims.<sup>6</sup> At the same time, the Department has maintained a position of systematic opacity in response to requests for information about whether and how its automated systems are making decisions about people’s everyday lives. We simply do not know the full extent to which the Department’s fraud response is automated. As a result, we cannot understand what specific effects the Department’s automated systems are having on people who rely on the welfare system to meet their basic subsistence needs.

30. PLP is concerned at the lack of ability to fully evaluate the effects of the Department’s automated systems for three main reasons:

- (i) ***Claimants Are Left Without Adequate Information or Meaningful Avenues for Redress:*** we have been concerned by increasing reports of people whose benefits, often their only source of income, have been indefinitely suspended by teams within the Department known to operate automated systems. People report having not been provided with any explanation what they need to prove or disprove for the benefit to be reinstated, nor of how they might seek redress for any incorrect suspension and for the hardship it has caused.
- (ii) ***Systems Present a Heightened Risk of Discrimination:*** we are concerned that the Department has put new automated systems into use without first having examined whether or not they discriminate against protected groups and, to the extent that there is possible discrimination, whether this can be mitigated or whether it is justified. The Department’s existing automated systems have presented prima facie evidence of a discriminatory effects against older people,<sup>7</sup> people with disabilities<sup>8</sup> and people of certain nationalities;<sup>9</sup> yet, the Department is rolling out new, similar models while its “*ability to test for unfair impacts across protected characteristics is currently limited.*”<sup>10</sup> The Department has only tested

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<sup>4</sup> The Committee of Public Accounts ‘*The Department for Work and Pensions’ Account 2021-22 – Fraud and Error in the benefits system*’ (2022) HC 44. p.3

<sup>5</sup> Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455, p.101.

<sup>6</sup> Department for Work and Pensions, ‘*Annual Report and Accounts 2021-22*’ (2022) HC 193 p.74

<sup>7</sup> National Audit Office, ‘*Report on Accounts: Department for Work and Pensions*’ as set out in Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455 – at paragraph 5.13.

<sup>8</sup> Greater Manchester Coalition of Disabled People have highlighted that a disproportionate number of disabled people appear to have been automatically referred for fraud investigations. See:

<https://www.gmlaw.org.uk/2022/03/31/algorithmic-injustice-an-interview-with-rick-burgess-from-gmcdp/>

<sup>9</sup> Kate Osamor MP has highlighted that all of the 29 constituents who have contacted her having been referred to the Risk Review Team were Bulgarian. See: <https://hansard.parliament.uk/commons/2022-01-26/debates/333BCD75-7B81-464A-BA13-91D711B1A4EF/DWPRiskReviewTeam#contribution-4A0104C1-9AE4-4315-9175-998A491DF1E2>

<sup>10</sup> National Audit Office, ‘*Report on Accounts: Department for Work and Pensions*’ as set out in Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455 – at paragraph 5.12.

for unfair outcomes against three protected characteristics: age, gender and pregnancy. Furthermore, the only published finding of such a test concluded that the model is biased because it is biased towards younger claimants.<sup>11</sup>

PLP is concerned that the Department is not taking a precautionary approach to implementing new automated tools. Further, the Department's refusal to publish the Equality Impact Assessments ('EIAs') for any of the automated tools (even on a redacted basis), has prevented the public from understanding what the steps the Department is taking to ensure that its automated systems are not discriminatory.

(iii) ***No Independent Evaluation of Systems' Reliability, Efficiency and Lawfulness:*** we hold a wider concern that the Department's opacity in relation to its use of automated systems has prevented effective independent assessment of the reliability, efficiency, and lawfulness of those systems.

31. Our submission sets out the factual background to the Department's increased use of automation in its response to fraud; demonstrates how the Department's use of automation has lacked transparency; sets out our concerns in more detail; and invites the Committee to make the above recommendations to remedy those concerns.

### ***Factual Background***

32. The Department has been using automated decision making<sup>12</sup> in its approach to fraud and error detection since at least 2018.<sup>13</sup>

33. Its reliance on automated decision making increased significantly in 2020, partially in response to the alleged increase of fraud seen at the start of the pandemic.<sup>14</sup> The Department's 2019-20 Annual Report and Accounts explained two material developments in the way the Department was responding to fraud and error. Other material developments were identified in subsequent annual reports and accounts and through Freedom of Information Act requests. We do not have a clear overall picture of how the Department is using automation in response to fraud. Below we have set out what piecemeal information we have, which shows various teams and systems operating to identify and combat fraud, each relying to different extents on automated systems.

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<sup>11</sup> National Audit Office, 'Report on Accounts: Department for Work and Pensions' as set out in Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455 – at paragraph 5.13.

<sup>12</sup> PLP disagrees with the statement at paragraph 23 of the National Audit Office, 'Report on Accounts: Department for Work and Pensions' (2023) that because the Department's automated systems are overseen by a human decision-maker, the Department's fraud and error response "does not involve any automated decision making." Not all decisions are final decisions, so decisions which are overseen by human decision-makers can be automated (albeit not solely automated, which are prohibited by Article 22 ECHR in the absence of specific justifications). For example, PLP maintains that a decision to refer a case to a fraud investigator is a decision, even though it is not a finding of fraud.

<sup>13</sup> Department for Work and Pensions, 'Annual Report and Accounts 2017-2018' (2018) HC 1108 p.63: "[the Department has developed] cutting edge artificial intelligence to crack down on organised criminal gangs committing large-scale benefits fraud."

<sup>14</sup> Department for Work and Pensions, 'Fighting Fraud in the Welfare System' (2019) CP 679 at paragraphs 33-36.

### **a. The Integrated Risk and Intelligence Service ('IRIS')**

34. Firstly, the Department merged its Risk and Intelligence Service and its Serious and Organised Crime investigators with its Cyber Resilience Team to create IRIS.<sup>15</sup> IRIS was created with the aim of increasing the Department's prevention capability using data matching rules to identify potentially fraudulent cases and route them to investigators.<sup>16</sup>
35. The 2022-23 accounts explain that IRIS has developed at least five automated tools which identify claims as having features which have historically been more often present in incorrect claims than in correct ones, and which refer those claims for additional reviews by caseworkers (see further below).<sup>17</sup>

### **b. The Enhanced Checking Service ('ECS')**

36. Secondly, the Department created the ECS which is comprised of fraud investigators with the purpose of ensuring that "*benefit processing staff could refer any suspicious cases for further investigation.*"<sup>18</sup> The aim of the ECS is to intervene on new claims and prevent potentially fraudulent claims from being put into payment.
37. Despite initially explaining that the ECS responded to caseworker flags, the Department revealed in its 2021-22 Report that referrals often in fact result from the Department's data systems.<sup>19</sup> A year later, the Department explained that as of summer 2021, their data systems operate a rule which triggers ECS intervention when a claim presents with certain (undisclosed) characteristics.<sup>20</sup>

### **c. The Risk Review Team ('RRT')**

38. After the team was created in May 2020, individuals started reporting that their benefits had been suspended indefinitely without notice or explanation.<sup>21</sup> They were merely told that the RRT had been unable to verify their application and, accordingly, that their claim would be suspended. They were not told that they were suspected of fraud.
39. It was not until November 2021 that the Department finally confirmed the RRT's role: "*to review and take action on cases identified by IRIS as being a high fraud risk.*"<sup>22</sup> Even then the Department did not disclose how IRIS identifies cases as high risk and whether identification is automated. In fact, the Department has repeatedly refused to do so.

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<sup>15</sup> Department for Work and Pensions, 'Annual Report and Accounts 2019-2020' (2020) HC 401 p.76

<sup>16</sup> Department for Work and Pensions, 'Annual Report and Accounts 2019-2020' (2020) HC 401 p.73

<sup>17</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p.102 and National Audit Office, 'Report on Accounts: Department for Work and Pensions' (2023) at paragraph 5.9.

<sup>18</sup> Department for Work and Pensions, 'Annual Report and Accounts 2019-2020' (2020) HC 401 p.76

<sup>19</sup> Department for Work and Pensions, 'Annual Report and Accounts 2021-22' (2022) HC 193 p.112

<sup>20</sup> Department for Work and Pensions, 'Annual Report and Accounts 2021-22' (2022) HC 193 p.67

<sup>21</sup> As described by Kate Osamor MP at <https://hansard.parliament.uk/commons/2022-01-26/debates/333BCD75-7B81-464A-BA13-91D711B1A4EF/DWPRiskReviewTeam#contribution-4A0104C1-9AE4-4315-9175-998A491DF1E2> and the Work Rights Centre, see:

<https://www.independent.co.uk/news/uk/home-news/eu-benefits-universal-credit-dwp-b1977451.html>

<sup>22</sup> See the response to Parliamentary Question UIN 78476 asked to the Department for Work and Pensions by Kate Osamor MP, available at: <https://questions-statements.parliament.uk/written-questions/detail/2021-11-19/78476>

40. In light of this, PLP requested that the Department confirm whether any form of automation, including data matching, was used by the RRT at any stage in the process of identifying individuals for possible fraud investigations. We were initially told that: “where a computer highlights a risk a DWP agent intervenes and reviews the claim.”<sup>23</sup> We asked for more information about the risk indicators but were told, apparently to the contrary of what had been previously disclosed, that:

*“the Risk Review Team does not use any automated processes, machine learning or data matching when reviewing claims to Universal Credit.*

*“[What we have previously referred to] are the automated processes DWP can deploy to identify risky claims (not individuals) to Universal Credit. If a claim is identified as risky through any of these processes it may be passed on to our Risk Review Team which can make further checks into that claim.”<sup>24</sup>*

41. Stakeholders have continued to request information about the RRT from the Department and, almost three years after the RRT began suspending claims, the Department disclosed that it investigates claims based on risks identified automatically using data matching.<sup>25 26</sup>

#### **d. Enhanced Review Teams (‘ERTs’)**

42. The ECS and RRT have now merged into a wider ERT but they retain some (ambiguous) degree of operational independence from one another.<sup>27</sup>

43. Immediate and serious risks which require rapid responses are identified via ERTs. Referrals to ERTs are made by Universal Credit staff or by IRIS. ERTs can remove unverified elements of claims or suspend claims altogether.<sup>28</sup>

44. In 2022-23, ERTs reviewed 164,000 claims and corrected payments on 57,000.<sup>29</sup>

#### **e. The advances claims decision risk model or ‘the fraud risk model.’**

45. In its 2021-22 Annual Report and Accounts, the Department confirmed that it has trialled a risk model to detect fraud in Universal Credit advances claims.<sup>30</sup> The model was trained

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<sup>23</sup> See the DWP response to FOIA request submitted by Tatiana Kazim on the 25<sup>th</sup> May 2022, available at: [https://www.whatdotheyknow.com/request/864430/response/2062731/attach/3/Response%20FOI2022%2040949.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/864430/response/2062731/attach/3/Response%20FOI2022%2040949.pdf?cookie_passthrough=1)

<sup>24</sup> See the DWP response to FOIA request submitted by Tatiana Kazim on the 11<sup>th</sup> August 2022, available at: [https://www.whatdotheyknow.com/request/864430/response/2111441/attach/3/Response%20IR2022%2062925.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/864430/response/2111441/attach/3/Response%20IR2022%2062925.pdf?cookie_passthrough=1)

<sup>25</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 24<sup>th</sup> February 2023, available at: <https://www.whatdotheyknow.com/request/954350/response/2262635/attach/3/Response%20FOI2023%2015531%20v2KM.pdf>

<sup>26</sup> (Data matching is where subtly different records are identified as relating to one individual, for example identifying different records as relating to one person who has more than one way of spelling their name.)

<sup>27</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 24<sup>th</sup> February 2023, available at: <https://www.whatdotheyknow.com/request/954350/response/2262635/attach/3/Response%20FOI2023%2015531%20v2KM.pdf>

<sup>28</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455, p.101.

<sup>29</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455, p.100.

<sup>30</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2021-22’ (2022) HC 193 p.229



on historic advances claims whose fraud status had been manually determined and looks for similarities in claims whose fraud status is undetermined.<sup>31</sup>

46. The 2021-22 Annual Report and Accounts explains that “cases scored as potentially fraudulent by the model are flagged to caseworkers [for review].”<sup>32</sup> In response to a request for further information from PLP, the Department confirmed that “no score or Red-Amber-Green indicator **is presented** to the operational teams.”<sup>33</sup> We therefore could not say what form the model’s output took until the Department confirmed in its 2022-23 accounts that “the model assigns a risk score. Cases scoring above an agreed threshold are referred to a caseworker for review. [...] The caseworker is not informed why the claim was selected.”<sup>34</sup> However, the Department has still not disclosed how the model assigns these risk scores, or what information it presents to caseworkers.
47. The 2021-22 Accounts explained that the Department “expect[ed] to trial the model on claims before any payment has been made early in 2022-23”.<sup>35</sup> The Department refused to disclose whether that model was in use until more detail was provided in the 2022-23 accounts.
48. The model (referred to in the 2022-23 accounts as ‘the Fraud Risk Model’) was developed by IRIS and has been in use on Universal Credit Advance Applications since May 2022.<sup>36</sup> In 2022-23, the Department has developed and piloted four similar models for use on Universal Credit claims and awards: people living together, self-employment, capital, and housing.<sup>37</sup>
49. The Department has not disclosed any further information about these models. Therefore, we do not know how these models are identifying claims and awards as potentially fraudulent. Nor do we know the following:
  - when these models were piloted;
  - if the pilots are complete, what the results of the pilots were;
  - if the models are currently in use;
  - their official names;
  - what information they present to caseworkers;
  - whether claims are suspended before a caseworker reviews references made by the models; or
  - whether DPIAs or EIAs were carried out for each of the models, or, if assessments were made, what they found.

PLP has requested this information from the Department and is awaiting a response.<sup>38</sup>

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<sup>31</sup> See the DWP response to the FOIA request submitted by Mia Leslie on the 5<sup>th</sup> August 2022, available at: [https://www.whatdotheyknow.com/request/884773/response/2113867/attach/3/Response%20FOI2022%2061477.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/884773/response/2113867/attach/3/Response%20FOI2022%2061477.pdf?cookie_passthrough=1)

<sup>32</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2021-22’ (2022) HC 193 p.229

<sup>33</sup> See the DWP response to the FOIA request submitted by Mia Leslie on the 5<sup>th</sup> August 2022, available at: [https://www.whatdotheyknow.com/request/884773/response/2113867/attach/3/Response%20FOI2022%2061477.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/884773/response/2113867/attach/3/Response%20FOI2022%2061477.pdf?cookie_passthrough=1)

<sup>34</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455, p.102

<sup>35</sup> Report by the Comptroller and Auditor General, ‘Fraud and error in benefit expenditure,’ reproduced from p.215-238 Department for Work and Pensions, ‘Annual Report and Accounts 2021-22’ (2022) HC 193 at paragraph 48.

<sup>36</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455, p.102

<sup>37</sup> National Audit Office, ‘Report on Accounts: Department for Work and Pensions’ as set out in Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455 – at paragraph 5.9.

50. The Department will not disclose which anti-fraud team operates the advances claims decision risk model (or fraud risk model). Following a request for information from PLP, they have confirmed that the RRT does not.<sup>39</sup>
51. The model was developed internally within the Department.<sup>40</sup> So, it appears to be separate to the CRE, described below.<sup>41</sup>

#### **f. The Common Risk Engine ('CRE')**

52. From October 2021, the Department commissioned the CRE.<sup>42</sup> The tender was to develop a machine learning engine to risk score claims and orchestrate referrals. Its aim is to support transactional decisions and use a batch-based rules engine for fraud and error prevention.<sup>43</sup> The CRE is now in place to reduce annual managed expenditure loss across the DWP. It risk scores Universal Credit claims referred to the Counter Fraud and Compliance Directorate for suspected fraud and error.<sup>44</sup> The DWP have not disclosed where the referrals scored by the CRE come from, nor whether the referrals are automatic.

#### **g. The General Matching Service ('GMS')**

53. Privacy International have highlighted<sup>45</sup> that the Department's 2019 Staff Guide for Fraud Investigations refers to an automated system which extracts data from DWP systems at regular intervals to be matched against the most up to date savings data from an unknown source.<sup>46</sup> Caseworkers access this information through the GMS, which is a case management system used to investigate data mismatches which could be the result of fraud or error ahead of a potential fraud investigation.<sup>47</sup>

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<sup>38</sup> See the FOIA request submitted by Mia Leslie to the DWP on the 1<sup>st</sup> August 2023, available at: [https://www.whatdotheyknow.com/request/pilot\\_of\\_four\\_new\\_fraud\\_preventi#incoming-2381237](https://www.whatdotheyknow.com/request/pilot_of_four_new_fraud_preventi#incoming-2381237)

<sup>39</sup> See the DWP response to the FOIA request submitted by Caroline Selman on the 15<sup>th</sup> July 2022, available at: [https://www.whatdotheyknow.com/request/879002/response/2096590/attach/3/Response%20FOI2022%2055671.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/879002/response/2096590/attach/3/Response%20FOI2022%2055671.pdf?cookie_passthrough=1)

<sup>40</sup> See the DWP response to the FOIA request submitted by Mia Leslie on the 24<sup>th</sup> October 2022, available at: [https://www.whatdotheyknow.com/request/910782/response/2173661/attach/3/Response%20FOI2022%2084395.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/910782/response/2173661/attach/3/Response%20FOI2022%2084395.pdf?cookie_passthrough=1)

<sup>41</sup> This conclusion is consistent with a DPIA disclosed for the advances claims decision risk model and the CRE, which treats them separately. See the annex to the DWP response to the FOIA request submitted by Owen Stevens on the 6<sup>th</sup> February 2022, available at:

[https://www.whatdotheyknow.com/request/830539/response/2241632/attach/3/DPIA%201300%201%20redacted%201.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/830539/response/2241632/attach/3/DPIA%201300%201%20redacted%201.pdf?cookie_passthrough=1)

<sup>42</sup> <https://www.contractsfinder.service.gov.uk/Notice/be9bdeb6-d6de-4db8-8cf4-3320b9bfb2c1>

<sup>43</sup> <https://www.contractsfinder.service.gov.uk/Notice/Attachment/2737d480-7ed2-44b6-9987-5b10fe78902b>

<sup>44</sup> See the annex to the DWP response to the FOIA request submitted by Owen Stevens on the 6<sup>th</sup> February 2022, available at:

[https://www.whatdotheyknow.com/request/944593/response/2343100/attach/3/Redacted%20DPIA%20917%20as%20at%2013th%20Jan%202023%20redacted%201.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/944593/response/2343100/attach/3/Redacted%20DPIA%20917%20as%20at%2013th%20Jan%202023%20redacted%201.pdf?cookie_passthrough=1)

<sup>45</sup> <https://privacyinternational.org/long-read/4395/shedding-light-dwp-part-1-we-read-uk-welfare-agencys-995-page-guide-conducting>

<sup>46</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799788/fraud-guide-part-1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799788/fraud-guide-part-1.pdf) at 135; data pertains to claimants' individual savings and other capital.

<sup>47</sup> See the annex to the DWP response to the FOIA request submitted by Benjamin Brown on the 28<sup>th</sup> October 2021, available at:

[https://www.whatdotheyknow.com/request/802756/response/1922889/attach/3/Response%20FOI2021%2088200.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/802756/response/1922889/attach/3/Response%20FOI2021%2088200.pdf?cookie_passthrough=1)

## **h. Targeted Case Review ('TCR')**

54. The TCR process is based on the DWP's annual sampling exercise which measures fraud and error by randomly selecting cases and reviewing whether they have been correctly determined.<sup>48</sup> The TCR process differs because it targets claims which have been identified as 'potentially high risk' - as having features which have historically been more often present in incorrect claims than in correct ones.<sup>49</sup>
55. The Department has not explained how it determines TCR risk scores. PLP is particularly interested in whether scores are determined by the Fraud Risk Model (or by a model based on it) because whatever targeting mechanism is in use appears to have very low efficacy. At present, the Department has not reported any improvement in the ability of targeted case reviews to spot incorrect claims when compared with random case reviews, which had a similar success rate.<sup>50</sup> If scores are determined by the Fraud Risk Model, then the Department's increased reliance<sup>51</sup> on similar such models appears misguided. However, PLP recognises that the TCR process is in an early stage of development and might not rely on existing models. We would welcome clarification from the DWP.

### ***Systematic Opacity in the Department***

56. As apparent from the above factual background, the Department has published only minimal information about the extent to which their fraud and error response has been automated. Where an individual has their benefits suspended because of suspected fraud, they are not informed that they have been identified or their benefits suspended using data matching tools or on the basis of a fraud risk model. The Department has resisted providing information about the detail and impact of its automated systems and has refused to disclose how many risk models are currently in use. Much of what has been disclosed has been disclosed in response to resource intensive requests for information under the *Freedom of Information Act 2000*. In response to such requests by PLP and other stakeholders, the Department has consistently favoured withholding information over disclosing it.
57. Civil society groups have requested the following information about the Department's fraud detection systems, which the Department has failed to disclose:

#### ***Advances claims decision risk model***

- (i) the official name of the advances claims decision risk model (or fraud risk model);<sup>52</sup>
- (ii) what output is presented by the model to caseworkers;<sup>53</sup>

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<sup>48</sup> National Audit Office, 'Report on Accounts: Department for Work and Pensions' as set out in Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455 – at paragraph 5.3.

<sup>49</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p.107.

<sup>50</sup> National Audit Office, 'Report on Accounts: Department for Work and Pensions' as set out in Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455 – at paragraph 5.7.

<sup>51</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p.102.

<sup>52</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 17<sup>th</sup> February 2023, available at: [https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie\\_pass\\_through=1](https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie_pass_through=1)

- (iii) the datasets that the model was trained on;<sup>54</sup>
- (iv) the inputs of the model;<sup>55</sup>
- (v) the proportion of claims flagged by the model that eventually receive a substantive investigation;<sup>56</sup>
- (vi) the proportion of claims flagged by the model that are eventually reinstated;<sup>57</sup>
- (vii) any breakdown of flagged claims by the claimant's nationality, immigration status or sex;<sup>58</sup>
- (viii) the process by which caseworkers receive referrals from the model; the form of the flag presented to them;<sup>59</sup>
- (ix) EIAs for the advances model.<sup>60</sup>

### ***Referrals to Risk Review Team***

- (x) the name of the automated system or model that can refer cases to the RRT;<sup>61</sup>
- (xi) the name of any team responsible for making or monitoring referrals to the RRT;<sup>62</sup>
- (xii) the reasons for which claims can be referred to the RRT;<sup>63</sup>
- (xiii) the process by which claims are referred to the RRT;<sup>64</sup>
- (xiv) whether referrals to the RRT are subject to a triage process and the name of any team responsible for carrying it out;<sup>65</sup>

### ***Integrated Risk and Intelligence Service***

- (xv) any EIAs for IRIS's processes;<sup>66</sup>

<sup>53</sup> Ibid.

<sup>54</sup> See the DWP response to the FOIA request submitted by Mia Leslie on the 24<sup>th</sup> October 2022, available at: [https://www.whatdotheyknow.com/request/910782/response/2173661/attach/3/Response%20FOI2022%2084395.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/910782/response/2173661/attach/3/Response%20FOI2022%2084395.pdf?cookie_passthrough=1)

<sup>55</sup> Ibid.

<sup>56</sup> See the DWP response to the FOIA request submitted by Katarzyna Figiel on the 24<sup>th</sup> February 2023, available at: [https://www.whatdotheyknow.com/request/954205/response/2258179/attach/3/Response%2015276.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/954205/response/2258179/attach/3/Response%2015276.pdf?cookie_passthrough=1)

<sup>57</sup> Ibid.

<sup>58</sup> Ibid. [https://www.whatdotheyknow.com/request/954205/response/2258179/attach/3/Response15276.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/954205/response/2258179/attach/3/Response15276.pdf?cookie_passthrough=1)

<sup>59</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 17<sup>th</sup> February 2023, available at: [https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie_passthrough=1)

<sup>60</sup> See the DWP response to the FOIA request submitted by Owen Stevens on the 5<sup>th</sup> October 2022, available at: [https://www.whatdotheyknow.com/request/905060/response/2158335/attach/3/Response%20FOI2022%2078470..pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/905060/response/2158335/attach/3/Response%20FOI2022%2078470..pdf?cookie_passthrough=1)

<sup>61</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 24<sup>th</sup> February 2023, available at: [https://www.whatdotheyknow.com/request/954350/response/2262635/attach/3/Response%20FOI2023%2015531%20v2KM.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/954350/response/2262635/attach/3/Response%20FOI2023%2015531%20v2KM.pdf?cookie_passthrough=1)

<sup>62</sup> Ibid. [https://www.whatdotheyknow.com/request/954350/response/2262635/attach/3/Response%20FOI2023%2015531v2KM.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/954350/response/2262635/attach/3/Response%20FOI2023%2015531v2KM.pdf?cookie_passthrough=1)

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 17<sup>th</sup> February 2023, available at: [https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie_passthrough=1)

<sup>66</sup> See the DWP response to the FOIA request submitted by Owen Stevens on the 6<sup>th</sup> February 2022, available at:

- (xvi) an explanation of why no DPIAs for IRIS were sent to the ICO;<sup>67</sup>
- (xvii) any reasons for not carrying out DPIAs;

### *Miscellaneous*

- (xviii) the fairness analyses referred to on page 309 of the Department's 2022-23 Report and Accounts;<sup>68</sup>
- (xix) or what its fairness analyses for pregnancy or gender have found.

58. In his report, the Comptroller and Auditor General highlights the challenge faced by the Department in *“balancing transparency over how it uses machine learning to provide public confidence in the benefit system with protecting its capabilities by not tipping off fraudsters about how it tackles fraud.”*<sup>69</sup> PLP recognises this concern but considers that much of the information requested above is not capable of ‘tipping off fraudsters’. For example, the Department has failed to disclose even headline findings for two of the three characteristics for which it has performed fairness analyses of the fraud risk model. It is unclear what advantage would be afforded to fraudsters by disclosing whether the Department has found its own systems to be fair or unfair.
59. The Department has repeatedly resisted requests for EIAs, DPIAs and general information breaking down the protected characteristics of those processed by the fraud detection systems. DPIAs contain fundamental information about the regard given to the risks associated with automated data processing, as well as general descriptions of processing operations. We consider it implausible that disclosure of the type of information contained in the EIA, DPIA and other evaluations – such as a general description of the processing operation and an assessment of the risks to the rights and freedoms of data subject – would be likely to prejudice the prevention or detection of crime and any such risk can be mitigated with redactions rather than blanket refusals.
60. In each example at [57] above, the Department refused initial requests and upheld refusals on internal reviews. As a result, Child Poverty Action Group twice complained to the Information Commissioner’s Office about how their requests had been handled.<sup>70</sup> Each time, the Department subsequently determined that it would provide the DPIAs pertaining to IRIS data use.<sup>71</sup> It then provided heavily redacted versions of DPIAs for the CRE, the advances decision risk model, an unnamed decision model, and some of IRIS’s data processes. These DPIAs would not have been made available without resource-intensive work being carried out by third parties. The Department is yet to disclose any EIAs for these systems.

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[https://www.whatdotheyknow.com/request/830539/response/1981670/attach/3/Response%20template%20FOI2022%2009416.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/830539/response/1981670/attach/3/Response%20template%20FOI2022%2009416.pdf?cookie_passthrough=1)

<sup>67</sup> Ibid.

<sup>68</sup> See the DWP response to the FOIA request submitted by Owen Stevens on the 8<sup>th</sup> July 2022, available at:

[https://www.whatdotheyknow.com/request/877235/response/2097896/attach/3/Response%20FOI2022%2053942.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/877235/response/2097896/attach/3/Response%20FOI2022%2053942.pdf?cookie_passthrough=1)

<sup>69</sup> National Audit Office, *‘Report on Accounts: Department for Work and Pensions’* as set out in Department for Work and Pensions, *‘Annual Report and Accounts 2022-23’* (2023) HC 1455 – at paragraph 5.11.

<sup>70</sup> ICO ref: IC-160077-Z7M0, available at

<https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024687/ico-160077-z7m0.pdf>

<sup>71</sup> See the response to the FOIA request submitted by Owen Stevens on the 6<sup>th</sup> February 2022, available at:

[https://www.whatdotheyknow.com/request/830539/response/2241628/attach/6/IC%20160077%20Z7M0%20OS%2020FEB.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/830539/response/2241628/attach/6/IC%20160077%20Z7M0%20OS%2020FEB.pdf?cookie_passthrough=1)



61. When refusing Freedom of Information requests,<sup>72</sup> the Department has, in our experience, relied on the exemption provided by section 31(1)(a) of the Freedom of Information Act 2000. Section 31(1)(a) exempts information which, if released, would be likely to prejudice the prevention or detection of crime and where the public interest in preventing that prejudice outweighs the public interest in disclosure. The Department has suggested that if it were to disclose even simple details about how it has automated its fraud response, this would enable fraudsters to ‘game the system.’
62. The Department has not properly explained or substantiated the risk of gaming. Most of the information requested has been generalised and would go no further than establishing a general picture of the Department’s decision-making process.
63. Academic literature indicates that individuals cannot game characteristics that they cannot control.<sup>73</sup> Therefore, there is little risk of prejudice presented by disclosing whether or not the Department’s automated systems use inputs such as a claimant’s sex, ethnicity or disability status. Secondly, effective gaming requires fairly extensive information about the features of an automated system and about how it weights inputted factors.<sup>74</sup> Accordingly, it would be possible for the Department to disclose significant information about the features and form of their automated systems without encountering a material risk of prejudicing them.
64. The section 31(1)(a) exemption only applies where the public interest in maintaining the exemption outweighs the public interest in disclosing the information.<sup>75</sup> PLP is concerned that the Department is responding to requests for information with blanket refusals without a proper evaluation of the public interest test. The Department does not appear to have paid sufficient mind to the strong public interest in understanding how the fraud response has been automated. Maintaining opacity threatens to undermine claimants’ avenues for redress; impedes proper engagement with prima-facie evidence of systems’ discriminatory effects; and prevents independent assessment of systems’ reliability, efficiency, and ultimate lawfulness.
65. PLP also notes that since June 2022 the Government has instituted its Algorithmic Transparency Recording Standard Hub. The purpose of the Hub is to “*help public sector organisations provide clear information about the algorithmic tools they use, and why they’re using them... in a complete, open, understandable, easily accessible, and free format.*”<sup>76</sup> PLP notes that none of the automated tools used by the Department have been published on the Hub to date.
66. The DWP’s opacity in the context of algorithmic decision-making is illustrative of a wider lack of transparency across its policymaking and operations. The Department has previously been accused of a “culture of secrecy” by the chair of the Work and Pensions

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<sup>72</sup> See the DWP response to the FOIA request submitted by Adis Sehic on the 17<sup>th</sup> February 2023, available at: [https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie\\_pass\\_through=1](https://www.whatdotheyknow.com/request/950750/response/2256450/attach/3/Response13448.pdf?cookie_pass_through=1)

<sup>73</sup> N Diakopoulos, ‘Accountability in algorithmic decision making’ Communications of The Acm, February 2016, Vol. 59, No. 2

<sup>74</sup> Cofone, Ignacio and Strandburg, Katherine J, Strategic Games and Algorithmic Secrecy (2019) 64:4 McGill LJ 623

<sup>75</sup> Per Section 2(2) of the Freedom of Information Act 2000.

<sup>76</sup> Cabinet Office ‘Algorithmic Transparency Standard and Guidance’ (November 2021) p.1.

Committee after its failure to publish the research report on the effectiveness of benefit sanctions. This failure has been found unlawful by the Information Commissioner. Similarly, in *K v SSWP*,<sup>77</sup> the Court held that the failure to disclose the internal policy on benefit recovery overpayments was unlawful, as it precluded claimants from “*fully understanding the [deductions] policy and mak[ing] representations*”.

67. **PLP recommends that, for each automated tool in use, the Department discloses: (i) who developed it and who owns it; (ii) its colloquial name; (iii) the team(s) who operate it; (iv) what it is used for; (v) any criteria or rules applied by the tool (provided they are known to the Department); (vi) any data used to train the tool and/or determine its rules or criteria; and (vii) any EIAs, DPIAs, or other fairness evaluations, risks and mitigations relating to it.**
68. **PLP recommends further that the Department, in relation to the models being used for people living together, self-employment, capital and housing, disclose (i) when the models were piloted; (ii) if the pilots are complete, what the results of the pilots were; (iii) if the models are currently in use; (iv) their official names; (v) what information they present to caseworkers; (vi) whether claims are suspended before a caseworker reviews references made by the models; and (vii) whether DPIAs or EIAs were carried out for each of the models, or, if assessments were made, what they found.**
69. **PLP recommends that all automated tools used by the DWP are published on the Algorithmic Transparency Recording Standard Hub.**

### ***Claimants Are Left Without Adequate Information or Meaningful Avenues for Redress***

70. When an individual is investigated for benefit fraud, the consequences can be severe. It will often mean that they are deprived of their main or only source of income and cannot meet their living costs. It is therefore imperative that people under investigation can understand and challenge incorrect decisions. To do so, affected people must know why they are being investigated, including whether or not the decision maker used an automated tool and, if so, what the role of the automated tool in the decision-making process was and what the criteria or inputs the tool used were. Without such basic information, affected claimants have no way of even beginning to get a legal challenge of the ground: they cannot argue that the information relied upon was incorrect because they do not know what information was relied upon; nor can they contend that the criteria used by the automated tool are discriminatory or irrational as having no correlation to fraud risk because they do not know that an automated tool is being used nor the criteria it relies upon.
71. PLP is aware of reports from claimants whose awards have been suspended by the RRT receiving little to no information as to why. As set out in paragraph 38, such claimants were not told that they were being investigated for fraud; they were not told that the investigation resulted from an automated referral; and they were not told that they could challenge the allegation. As of February 2023, the RRT had suspended a total of 188,119 claims pending review. Just 6% have been re-instated and more than half remain

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<sup>77</sup> *R (on the application of K) v Secretary of State for Work and Pensions* [2023] EWHC 233 (Admin)

suspended.<sup>78</sup> Kate Osamor MP describes being contacted by some constituents whose benefits had been suspended for as long as 11 months.<sup>79</sup>

72. As shown at [57] (x) – (xiii), the Department has failed to provide almost any information about the suspension processes of either RRT or the ERT. Nor has the Department provided information about the criteria used to select claims for referrals. As a result, some claimants are informed that their income will be suspended without knowing why the decision was made, or the criteria used to make it. Individuals in this situation will often be contacted with requests for further evidence. However, if such individuals do not know what they need to prove or disprove to re-instate their claim, then they are at risk of failing to fully address the reason for suspension in their genuine attempts to comply with requests for evidence leading to situations where copious documentation is provided yet their payments remain suspended.
73. The Department’s own DPIA for its data matching service notes in the summary section that *“there are concerns about the quality of the data being used in this initiative”*. The DPIA also states that in order to mitigate against this risk it has been taking steps to improve the accuracy of the information held including by contacting individuals before action has been taken. That is not the experience that we have seen reported. Members of the public repeatedly report the suspension of their benefits without any prior contact or explanation as to why.
74. The ERT is not an isolated example. By September 2020, the Department claimed that there were 84 different categories of cases that could be subject to an IRIS fraud assessment.<sup>80</sup> In 2021, the Department received additional funding for the expansion of IRIS<sup>81</sup> and further development of transaction risking.<sup>82</sup> If the Department continues to keep how these systems work a secret, then with the expansion of IRIS will come an expansion of claims being wrongly suspended without effective redress: claimants cannot understand their basis for suspension and seek redress unless they know how automated processes are being used.<sup>83</sup>

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<sup>78</sup> See the response to Parliamentary Question UIN 142793 asked to the Department for Work and Pensions by Kate Osamor MP, available at <https://questions-statements.parliament.uk/written-questions/detail/2023-02-08/142793>

<sup>79</sup> Per Kate Osamor MP at <https://hansard.parliament.uk/Commons/2022-01-26/debates/333BCD75-7B81-464A-BA13-91D711B1A4EF/DWPRiskReviewTeam>

<sup>80</sup> Public Accounts Committee, *‘Oral evidence: Department for Work and Pensions Accounts 2019-20, HC 681’* (2020), the evidence of Peter Scofield on page 26, available at <https://committees.parliament.uk/oralevidence/987/pdf/>

<sup>81</sup> See the response to Parliamentary Question UIN 186257 asked to the Department for Work and Pensions by Lee Anderson MP, available at <https://questions-statements.parliament.uk/written-questions/detail/2021-04-23/186257>

<sup>82</sup> See the Statement UIN HCWS471 made by David Rutley as Parliamentary Undersecretary of State for Welfare Delivery <https://questions-statements.parliament.uk/written-statements/detail/2021-12-13/hcws471>

<sup>83</sup> The statistics on the scale of fraud published by the DWP might be misleading, as they involved claims that were terminated because of a lack of claimant engagement. In last year’s report, the Committee observed that rather than deliberate dishonesty, claimants’ failure to engage might be caused by the difficulties with understanding the Department’s communications and operating its services (paragraph 14), which might be exacerbated through underlying vulnerabilities (paragraph 13). Whilst acknowledging there is a variety of reasons for the lack of engagement, the DWP’s assumption is that “a legitimate claimant would need the money and be highly motivated to engage and keep their claim active”. It, therefore, treats non-engagement as proof of dishonesty (paragraph 11) whereas it could be based on a wide variety of legitimate reasons, including the basic fact that a person no longer has access to their Universal Credit journal, the primary means by which DWP communicated with Universal Credit claimants.



75. PLP invites the Committee to consider how other jurisdictions, such as Canada<sup>84</sup> and France,<sup>85</sup> have adopted compulsory transparency regimes which require public authorities to notify individuals who are affected by automated decision-making tools and to give them a meaningful explanation of how the tool operated. We consider that the Department ought to do the same, or at the very least participate in the Government's Algorithmic Transparency Recording Standard Hub.
76. Furthermore, if claimants are not informed how automated processing has been used, they cannot know whether those processes are operating lawfully or not and simply do not have sufficient information to enable them to bring a legal challenge.
- 77. PLP recommends that the Department should be subject to a mandatory requirement of contacting claimants before a decision is taken to suspend their payments on account of suspected fraud or error (i) explaining the basis for the decision and (ii) explaining how the claimant can make representations to challenge the decision.**
- 78. PLP recommends that the Department should notify individuals when they have been subjected to a decision which has been meaningfully informed by automated processing.**
- 79. PLP recommends further that the Department should provide individuals who have been subjected to such decisions with an understandable explanation as to how the automated process was used.**

### ***Systems Present a Heightened Risk of Discrimination***

80. The Comptroller and Auditor General highlights that "*when using machine learning to prioritise reviews there is an inherent risk that the algorithms are biased towards selecting claims for review from certain vulnerable people or groups with protected characteristics.*"<sup>86</sup> In response, the DWP was unable to provide assurance that it was not unfairly treating any group of customers. The Department highlighted that while its ability to test for unfair impacts was limited, it is carrying out weekly fairness analyses for the impact of its fraud risk model on claimants with characteristics of age, gender, and pregnancy.
81. The Department has refused to describe the findings of these fairness analyses in any detail. Last year, the Department told the Committee that the analyses were "*still very much in test phase.*"<sup>87</sup> In its 2021-22 Annual Report and Accounts, the Department explained that the results were inconclusive.<sup>88</sup> A year on, in the Department's 2022-23

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<sup>84</sup> <https://www.tbs-sct.canada.ca/pol/doceng.aspx?id=32592>.

<sup>85</sup> Loi pour une république numérique (Law for a Digital Republic), available at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033202746/>.

<sup>86</sup> National Audit Office, '*Report on Accounts: Department for Work and Pensions*' as set out in Department for Work and Pensions, '*Annual Report and Accounts 2022-23*' (2023) HC 1455 – at paragraph 5.10.

<sup>87</sup> The Committee of Public Accounts '*The Department for Work and Pensions' Account 2021-22 – Fraud and Error in the benefits system*' (2022) HC 44, paragraph 24.

<sup>88</sup> Department for Work and Pensions, '*Annual Report and Accounts 2021-22*' (2022) HC 193, p.230

accounts, the results are still described as inconclusive. The only detail provided indicates that the fraud risk model refers a greater number of people over the age of 25 for review.<sup>89</sup>

82. In addition to refusing to publish the findings of its fairness analyses for the fraud risk model, the Department has consistently resisted publishing DPIAs and EIAs for its automated systems (as mentioned at [57]). The DPIA that the Department has published confirms that bias has only been “*minimised where possible.*”<sup>90</sup> This might indicate that some bias is ‘baked-in’ to the processes. Accordingly, we have asked the Department whether claimants’ protected characteristics are input values of its automated systems, but the Department has refused to disclose this information.<sup>91</sup>

83. As a result, PLP is concerned that not enough has been done to ensure that the Department’s automated tools operate in a non-discriminatory way. It has developed at least four new automated systems based on the fraud risk model, despite not having first concluded that the template model is fair. We consider the rollout premature and are supported in this view by prima-facie evidence of systematic bias:

(i) The Greater Manchester Coalition for Disabled People has collected anecdotal evidence that a high percentage of their group has been flagged for investigation by the Department’s automated systems. In light of this, it is concerning that, when asked by Debbie Abrahams MP at a Work and Pensions Committee meeting on 24 November 2021 on the subject of the 2021-22 Accounts, the Department was unable to say what proportion of the people being investigated for benefit fraud are disabled.<sup>92</sup>

(ii) The Work Rights Centre have told us that, since August 2022, they have been contacted by many service users who reported having their Universal Credit payments suspended. Even though the charity advises a range of migrant communities, including Romanian, Ukrainian, Polish, and Spanish speakers, the overwhelming majority of service users who reported having their payments suspended were Bulgarian.

(iii) Similarly, Kate Osamor MP has highlighted that all of the 29 constituents who contacted her after having their claims suspended by the RRT between October 2021 and January 2022 were Bulgarian.<sup>93</sup> This suggests that the automated tool has a disproportionate impact on people of certain nationalities.<sup>94</sup>

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<sup>89</sup> National Audit Office, ‘*Report on Accounts: Department for Work and Pensions*’ as set out in Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455 – at paragraph 5.13.

<sup>90</sup> See the annex to the DWP response to the FOIA request submitted by Owen Stevens on the 6<sup>th</sup> February 2022, available at:

[https://www.whatdotheyknow.com/request/830539/response/2241632/attach/3/DPIA%201300%201%20redacted%201.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/830539/response/2241632/attach/3/DPIA%201300%201%20redacted%201.pdf?cookie_passthrough=1)

<sup>91</sup> See the DWP response to the FOIA request submitted by Katarzyna Figiel on the 24<sup>th</sup> February 2023, available at:

[https://www.whatdotheyknow.com/request/954205/response/2258179/attach/3/Response%2015276.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/954205/response/2258179/attach/3/Response%2015276.pdf?cookie_passthrough=1)

<sup>92</sup> See <https://parliamentlive.tv/event/index/d4766433-5e00-4060-8e24-a5e4030da3d3?in=10:47:54>.

<sup>93</sup> Per David Rutley MP as Parliamentary Under-Secretary of State for Work and Pensions during the House of Commons DWP Risk Review Team Debate (26 January 2022), available at:

<https://hansard.parliament.uk/commons/2022-01-26/debates/333BCD75-7B81-464A-BA13-91D711B1A4EF/DWPRiskReviewTeam#contribution-4A0104C1-9AE4-4315-9175-998A491DF1E2>

<sup>94</sup> However, it should be noted that the Department has confirmed that nationality is not itself a factor in

84. The Department has acknowledged the risks of discrimination that is presented by its automated systems, highlighting that *“it is unavoidable that some cases flagged as potentially fraudulent will turn out to be legitimate claims. If the model were to disproportionately identify a group with a protected characteristic as more likely to commit fraud, the model could inadvertently obstruct fair access to benefits.”*<sup>95</sup> We are concerned that the Department’s response to prima-facie evidence of bias has been to double-down on obscuring how these apparently biased outcomes were reached.
85. The Department told the Committee last year that *“it continuously monitored for bias and accuracy, and will update the Equality Assessment to consider other protected characteristics following further testing.”*<sup>96</sup> This Equality Assessment is yet to be published.
86. **PLP recommends that the Department publish the results of its fairness analyses and consult with stakeholders – particularly affected groups – before increasing its reliance on the model further.**
87. **PLP recommends that the Department should publish all EIAs and DPIAs in relation to its automated decision-making tools (including automated tools that aid a human decision-maker by providing a recommendation, risk score, or similar).**
88. **To this end, PLP supports the Comptroller and Auditor General’s recommendation that the Department *“should seek to improve public confidence in its use of data analytics by committing to regularly publishing summaries of its assessment of bias in machine learning models and any impact on customer service.”***<sup>97</sup>
89. **PLP recommends that the Department only put these systems into live use when it is confident that they do not discriminate against protected groups. The Department should not use systems until it is able to test for unfair impacts across all protected characteristics.**

### ***Systems’ Reliability, Efficiency and Lawfulness***

90. PLP is also concerned that the Department’s systematic opacity is impeding independent assessment of its automated systems’ reliability, efficiency, and lawfulness. The current level of opacity is such that stakeholders cannot understand and provide input on its existing automated tools.
91. PLP is particularly concerned that an independent assessment cannot be carried out of the potential for automated systems to breach individuals’ fundamental rights which has

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referrals. See the highlighted section of the House of Commons DWP Risk Review Team Debate (26 January 2022) [here](#).

<sup>95</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2021-22’ (2022) HC 193 paragraph 49.

<sup>96</sup> The Committee of Public Accounts ‘The Department for Work and Pensions’ Account 2021-22 – *Fraud and Error in the benefits system*’ (2022) HC 44, paragraph 23.

<sup>97</sup> National Audit Office, ‘Report on Accounts: Department for Work and Pensions’ as set out in Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455 – at paragraph 24(g).

already been realised in other jurisdictions. For example, in February 2020, a Dutch court ruled that a similar automated welfare fraud detection system, known as SyRI, which also operated through data matching, violated article 8 (right to respect for private life, family life, home and correspondence) of the European Convention on Human Rights.<sup>98</sup>

- 92. PLP recommends that the Department be subject to a regular and independent technical evaluation of any automated systems they use to assess their reliability, efficiency and fairness.**

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<sup>98</sup> See <https://www.theguardian.com/technology/2020/feb/05/welfare-surveillance-system-violateshuman-rights-dutch-court-rules>.

## **PART II – BENEFIT OVERPAYMENTS RECOVERY, LEAP REVIEWS, COST OF LIVING PAYMENTS & CONDITIONALITY/SANCTIONS.**

### ***Summary***

93. In its 2022-23 accounts, the Department describes its approach to recovering overpayments as “*maintaining recovery levels, whilst providing a compassionate service during times of economic uncertainty.*”<sup>99</sup> PLP is concerned, however, that the Department has not provided claimants with sufficient safeguards to meet this standard.
94. In this part of our submission, PLP will provide the Committee with evidence on the following policy areas addressed in the Department’s 2022-23 Annual Reports and Accounts:
- (i) The Department’s recovery of benefit overpayments:
    - a. Official Error overpayments.
    - b. Historic Tax Credit overpayments.
    - c. Barriers to challenging overpayment decisions.
    - d. Barriers to accessing hardship measures.
    - e. Deductions and protected characteristics.
  - (ii) Legal Entitlements and Administrative Practices exercises (‘LEAP exercises’).
  - (iii) Cost-of-living payments.
  - (iv) Conditionality of Universal Credit.
95. Our submission will show that a more adequate balance should be struck between protecting the public purse and protecting claimants from significant hardship when recovering debt owed to DWP, such as overpayments. DWP’s role as a creditor to some of society’s most vulnerable people needs urgent scrutiny.
96. The Department has discretion as to whether to recover an overpayment and at what rate; however, it relies on claimants to initiate the renegotiation of the repayment plan when deductions are already in place and individuals are often not aware that they can. Communications from the Department do not make this sufficiently clear. Claimants who experience severe financial hardship as a result of deductions taken from their award might seek relief from the Department. To obtain it, however, they face a series of administrative and behavioural barriers, which are particularly detrimental to those suffering from mental and physical health conditions.
97. PLP will also set out our concern that the Department lacks adequate equality monitoring processes across its activities; in particular, the DWP’s policies on overpayments recovery. The Department does not hold data on claimants’ characteristics which prevents the meaningful assessment of the impact of such policies on particular groups.<sup>100</sup>

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<sup>99</sup> Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455, p.128.

98. PLP notes the Department’s use of Legal Entitlements and Administrative Practices exercises (‘LEAP exercises’); however, we are concerned that some of them are not being appropriately delivered and, as a result, that some claimants who have been underpaid have not been provided with an adequate remedy. PLP is particularly concerned by the Department’s apparent failure to correctly follow internal guidance when setting up the Recoverable Hardship Payments (“RHP”) LEAP exercise, a scheme set up to address historic unlawfulness in the recovery of RHP debt.
99. Our submission will also set out PLP’s concern about groups who have missed out on cost-of-living payments support and about the official justification for this occurring.
100. Lastly, PLP is concerned about superficial commentary on the conditionality regime in the Annual Accounts. This year’s report on “The Impact of Benefit Sanctions on Employment Outcomes” is omitted from the report regardless of its revealing findings.

### ***Debt recovery policy***

101. The Department’s 2022-23 Annual Report and Accounts explains that last year, three quarters of total debt recovery was done through deductions from benefit.<sup>101</sup> The highest proportion of debt recovered this way are advance payments, which claimants take when waiting for their claim to be determined<sup>102</sup>. The second highest driver of deductions are benefits overpayments (caused by the administrative, or claimant’s error). Under the relevant statutory framework,<sup>103</sup> DWP has discretion over whether or not to recover Universal Credit overpayments, and the rate at which they can be recovered up to a maximum cap.<sup>104</sup>
102. According to the 2022-23 Accounts, the DWP works to “*recover the money at the earliest opportunity, whilst working closely with customers in order to avoid hardship*”<sup>105</sup>. However, various studies have found that Universal Credit deductions push people further into poverty and exacerbate their mental and physical health conditions - especially during the cost-of-living crisis. Comprehensive evidence on the impact of deductions can be found in reports by Trussell Trust<sup>106</sup> and the Lloyds Foundation.<sup>107</sup>
103. We have recently assisted an elderly man in his late 90s with an over £40,000 historic overpayment debt. DWP agreed to waive the debt following pre-action correspondence. However, the stress and upset caused to the client, who had serious health issues, was considerable.

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<sup>101</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455, p.131.

<sup>102</sup> See the DWP response to the FOIA request submitted by Jagna Olejniczak on the 19<sup>th</sup> April 2023, Annex 1, available at [https://www.whatdotheyknow.com/request/universal\\_credit\\_overpayments\\_an#incoming-2291570](https://www.whatdotheyknow.com/request/universal_credit_overpayments_an#incoming-2291570)

<sup>103</sup> Regulation 10 (the power to recover an overpayment from UC) and Regulation 11 (rates of recovery) of the Social Security (Overpayments and Recovery) Regulations 2013 and section 71ZB Social Security Administration Act (the power to recover all overpayments of UC)

<sup>104</sup> (lowered from 40% to 25% of the standard allowance in April 2021).

<sup>105</sup> Department for Work and Pensions, ‘Annual Report and Accounts 2022-23’ (2023) HC 1455 p.95

<sup>106</sup> *Debt to Government, Deductions and Destitution* <https://www.trusselltrust.org/wp-content/uploads/sites/2/2022/02/Debt-to-government-deductions-and-destitution-qualitative-research-report.pdf>.

<sup>107</sup> *Deductions as Drivers of Poverty* <https://www.lloydsbankfoundation.org.uk/we-influence/welfare-deductions>

104. Our evidence gathered through surveys, interviews and our own casework indicates that the Department is not acting on its commitment to “*working closely*” with claimants; instead, it is automatically recovering debts and not providing claimants with adequate information about the relief measures available.
105. In its response to the twenty-sixth PAC report on its 2019-2020 Accounts, the Department agreed with the recommendation to “*do more to understand the impact that both overpayments and underpayments have on claimants and ensure that vulnerable claimants are treated with care when dealing with error on the claim*”.<sup>108</sup>
106. In line with the Committee’s recommendation from the twenty-sixth Report of Session 2019–21 on the DWP Accounts, **PLP recommends that the Department assesses how Universal Credit claimants, particularly vulnerable claimants, are being impacted by deductions to their awards.**

### ***Official Error overpayments***

107. As a part of wider welfare reforms in 2012, the Department expanded the scope of recoverable overpayments to include any type of Universal Credit overpayment, including those that have resulted from the Department or from system error.<sup>109</sup> Previously, overpayments could only be recovered when caused by misrepresentation or failure to disclose a material fact.<sup>110</sup> This means that the Government will seek recovery, even though it is fully responsible for it occurring.
108. The Department has disclosed that in 2020-21, around 75% of new overpayments handled by the Debt Management were classed as Official Error.<sup>111</sup> Most of the overall debt recovery is not, therefore, conditional upon claimants’ behaviour but rather as a result of deliberate policy design (such as the 5-week wait for the first Universal Credit) or the DWP’s own mistakes.
109. Recovering overpayments caused by administrative error often causes extreme hardship by forcing claimants to pay the price for a mistake they were not responsible for. Universal Credit overpayment recovery was recently subject to consideration by the High Court in *K v SSWP*.<sup>112</sup> K was a single mother caring for two disabled sons. She was wrongly paid a ‘child element’ and ‘disabled child element’ for her youngest son who started an apprenticeship alongside his education and, therefore, his entitlement ceased. K brought this change to the DWP’s attention, repeatedly questioned the amounts she received and was assured that the calculation is correct. 18 months later she was told she had been overpaid £8623.20. Despite the DWP agreeing she had done nothing wrong and

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<sup>108</sup> <https://committees.parliament.uk/publications/5290/documents/52870/default/>

<sup>109</sup> Through inserting a new s.71ZB into the Social Security Administration Act 1992

<sup>110</sup> Section 71(1) of the Social Security Administration Act 1992

<sup>111</sup> See the DWP response to the FOIA request submitted by Magdalena Caley on the 29th of July 2021, available at:

[https://www.whatdotheyknow.com/request/778106/response/1857789/attach/3/61616%20Response.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/778106/response/1857789/attach/3/61616%20Response.pdf?cookie_passthrough=1)

<sup>112</sup> *R (on the application of K) v Secretary of State for Work and Pensions* [2023] EWHC 233 (Admin).



apologising for a “*profound lapse in service*,” they still insisted on recovering the overpayment, and K’s requests for it to be waived were rejected three times.<sup>113</sup>

110. In our experience recovery of official error overpayments has a particularly damaging psychological impact on claimants, who can feel a strong sense of injustice in having to live on a reduced income long term, for something that was not their fault and often they could have done nothing to prevent. This risks eroding their trust in the Department and Government more broadly.
111. **PLP recommends that the Department only seek to recover overpayments resulting from Official Error in exceptional circumstances.**

### ***Historic Tax Credit Overpayments:***

112. The 2022-23 Accounts show that the Department recovered £428 millions of tax credit debt that has migrated from HM Revenue and Customs.<sup>114</sup> These are often old debts, which claimants have no recollection of.<sup>115</sup> In 2019 only 29% of tax credit overpayment debt related to claims made after 2016.<sup>116</sup> The House of Lords Economic Affairs Committee recommended that the historic tax credit should be written off and treated as a ‘sunk cost’ as “*the Government should not jeopardise [claimants’] financial security*” by recovering debt that might not be their fault and of which they are unaware.<sup>117</sup>
113. PLP is aware of an 18-year-old tax credit overpayment, which the DWP sought to recover after the individual migrated to Universal Credit in 2021. When HMRC were asked by PLP to provide the individual with further information about how the debt had actually arisen (information not passed to the DWP debt recovery team), HMRC admitted that they were unable to ascertain the precise circumstances from their internal records, agreed to cease recovery and return the money collected. Without access to third party support, many claimants will not be aware of the possibility of disputing the decision to recover or how to question how and whether the overpayment has actually occurred.
114. **PLP recommends that the Department and HMRC urgently review their processes for coordinating challenges to Tax Credit overpayments and write off historic Tax Credit Overpayment Debt.**

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<sup>113</sup> More about this case can be found in this note:

<https://publiclawproject.org.uk/content/uploads/2023/02/230207-Note-implications-of-K-v-SSWP-judgment-v1-branded.pdf>

<sup>114</sup> Department for Work and Pensions, ‘*Annual Report and Accounts 2022-23*’ (2023) HC 1455, p.129

<sup>115</sup> In 2014 the Department and HMRC entered into a Memorandum of Understanding that tax credit debts would be transferred to the Department and collected through deductions from UC:

<https://www.rightsnet.org.uk/forums/viewthread/17450/>

<sup>116</sup> APPG on Universal Credit (2019), What needs to change with Universal Credit

<sup>117</sup> House of Lords Economic Affairs Committee ‘*Universal Credit isn’t working: proposals for reform*’, 31 July 2020, HL 105 2019-21, 31 July 2020, paras 159-160.



## *Automatic recovery*

115. The Department's 2022-23 Accounts explain how the DWP supports clients with outstanding debts.<sup>118</sup> These measures are, however, dependent on claimants pro-actively contacting the Department. PLP is concerned that vulnerable claimants might be less likely to renegotiate their debt and, in any case, any adjustment is applied retrospectively (where some deductions are already applied). PLP's position is that the Department should use its discretion to not recover "*at any point in claimants' journey, including when the overpayment is first discovered and before it is notified to the claimant.*"<sup>119</sup>
116. The DWP has the discretion to set deductions up to a maximum of 25% or 15%;<sup>120</sup> however, it seems that they are normally applied at the maximum rate. In February 2023 29% of the overall number of households on Universal Credit had a deduction of 25% of the standard allowance and 12% of households had one of 15%.<sup>121</sup> These numbers are striking given that in February 2023, 45% of households on Universal Credit had a deduction in place.<sup>122</sup>
117. The Department has the discretion not to recover an overpayment debt from the outset; however, it does not exercise this discretion apart from small overpayments of less than £65.<sup>123</sup> Instead, any alteration of the repayment plan needs to be initiated by the claimant. The process of applying a deduction is "largely automated" with human agents only<sup>124</sup> intervening following customer contact.
118. This means that there is no proactive assessment carried out on how affordable deductions are and there is no link between the initial rate of deduction and a claimant's individual circumstances. This means that the most vulnerable members of the society often face sudden, significant hits to their budgets.
119. At the time of the introduction of the Welfare Reform Act 2012, the then Employment Minister, Chris Grayling said that he wanted to avoid a "*one-size-fits-all approach*" and warned that prescribed circumstances for a discretionary write-off or non-recovery of an overpayment, "will miss the fact that every case is different, and every circumstance is different."<sup>125</sup> The Minister went on to say that "*the DWP do not have to recover money from people where Official Error has been made, and we do not intend, in many cases, to*

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<sup>118</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p.130

<sup>119</sup> Benefit Overpayment Recovery Guide, DWP, para 8.2

<sup>120</sup> Social Security (Overpayments and Recovery) Regulations 2013/384 reg. 11 Recovery by deduction from universal credit

<sup>121</sup> See the DWP response to the FOIA request submitted by Jagna Olejniczak, on 3 July 2023, available at: [https://www.whatdotheyknow.com/request/988491/response/2351728/attach/3/Response%20FOI2023%2044034.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/988491/response/2351728/attach/3/Response%20FOI2023%2044034.pdf?cookie_passthrough=1)

<sup>122</sup> <https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0166/>

<sup>123</sup> "There are no other circumstances other than small overpayments (SMOP) and waiver where SSWP will apply discretion not to recover an overpayment before it is notified to the claimant" – see the DWP response to the FOIA request submitted by Jagna Olejniczak on 13<sup>th</sup> June 2023:

[https://www.whatdotheyknow.com/request/the\\_level\\_of\\_discretion\\_when\\_app#incoming-2360067](https://www.whatdotheyknow.com/request/the_level_of_discretion_when_app#incoming-2360067)

<sup>124</sup> FOIA request submitted by Jagna Olejniczak on 13<sup>th</sup> June 2023:

[https://www.whatdotheyknow.com/request/the\\_level\\_of\\_discretion\\_when\\_app#incoming-2360067](https://www.whatdotheyknow.com/request/the_level_of_discretion_when_app#incoming-2360067)- human agents would also sometimes intervene in legacy benefits cases where the account is "not suitable" for the robotics to calculate.

<sup>125</sup> <https://publications.parliament.uk/pa/cm201011/cmpublic/welfare/110519/am/110519s01.htm>

*recover money where official error has been made*". Contrary to this assurance, recovery is always triggered.

120. The current deductions policy is a clearly an example of a 'one-size-fits-all approach.' PLP has come across numerous examples of Official Error overpayments being recovered by default, also when claimants could not have reasonably been expected to know they were being overpaid. Similarly, people who are particularly vulnerable are treated with the same standard procedures, which can often result in their mental or physical health declining.
121. In its response to the Committee's report 2019-20, the Government said the "*department's analysts are currently looking at how the department can use financial data to help identify vulnerable customers at source so that deductions can be tailored, and collection strategies refined.*"<sup>126</sup> Since this document was published in 2021, there has been no change in how the Department tailors its approach to taking deductions from vulnerable claimants' awards.
122. PLP recommends that, prior to seeking recovery of a debt, the Department proactively assess claimants' individual circumstances and their ability to repay.
123. **PLP recommends a further reduction the maximum rate of recovery set for overpayments to reflect the fact that benefit level have not adequately risen in the face of the cost-of-living crisis.**

#### ***Barriers to challenging overpayment decisions.***

124. The Department's 2022-23 Accounts do not address the situation where the overpayment sent to Debt Management is wrongly calculated or erroneously applied. In these circumstances, claimants have a right to a mandatory reconsideration and appeal. PLP's research has shown that accessing these measures is lengthy and confusing for claimants.<sup>127</sup> This is aggravated by the barriers specific to challenging a benefit overpayment decision outlined below:

- (i) **Lack of information as to how the debt has arisen:** PLP's evidence gathered for ongoing research and through casework indicates that claimants often do not know that they have a deduction applied and what it is applied for<sup>128</sup>. The situation seems to be worst for alleged tax credit debts, as debts may be very old. Letters from DWP about overpayments are often confusing and, in some cases, do not set out the details of how an overpayment has arisen.

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<sup>126</sup> <https://committees.parliament.uk/publications/5290/documents/52870/default/> p. 14

<sup>127</sup> Ongoing research on UC deductions and completed project '*Benefit Sanctions: Presumption of Guilt*' by Caroline Selman (2021) available at <https://publiclawproject.org.uk/resources/benefit-sanctions-a-presumption-of-guilt/>

<sup>128</sup> The 2021 Research from StepChange Debt Charity: '*The true cost of tax credit overpayments: A fairer approach*' also confirmed that 63% of people they surveyed were not given the details on their overpayments (p. 16)

This makes it very difficult to identify how the amount deducted was calculated and on what basis. Once claimants seek an explanation, they are often redirected elsewhere (for example, from Universal Credit journal to debt management and the other way around). The lack of information about the specific cause of the deduction is a significant barrier to challenging whether the overpayment has occurred and whether it was properly calculated.

**(ii) Confusion as to whether mandatory reconsideration applies:** claimants have the right to challenge the underlying overpayment decision (whether a debt is owed and what amount) by mandatory reconsideration and appeal; however, if the overpayment is legally recoverable by the DWP the overpayment decision is not appealable (in relation to Universal Credit and new style JSA and ESA the DWP is entitled to recover all overpayments however caused). While the decision to recover the overpayment by way of deductions (as opposed to the underlying overpayment decision) does not attract a right of appeal per se, claimants can request that the level of those deductions are reduced, or the debt is waived altogether. In our experience, this is not made clear to claimants, which might mislead them into thinking that they have no right to seek mandatory reconsideration of the underlying decision regarding their entitlement that led to the overpayment.

125. **PLP recommends that the Department revise the wording in Debt Management letters and clarify via staff guidance that claimants have the right to challenge (i) any underlying decisions material to finding that the claimant has been overpaid and (ii) whether, where the claimant has been overpaid, that that overpayment should be recovered (such as those caused by official error in relation to benefits other than UC, new style JSA and ESA).**

### ***Barriers to accessing hardship measures.***

126. In the Department's 2022-23 Accounts it "*recognises the importance of safeguarding the welfare of those who have incurred debt and remains committed to supporting customers who may be in hardship and struggling with repayments.*"<sup>129</sup> However, PLP are concerned that many vulnerable claimants face barriers when accessing support when struggling with deductions.

127. PLP has found, from conversations with welfare rights advisors and initial findings of ongoing research, that claimants are also not clear on the measures they can access when facing unaffordable deductions. These are specified in the Benefit Overpayments Recovery Guide ('BORG')<sup>130</sup> and include the suspension of the recovery, reduction of the rate of recovery and discretionary waiver.

128. The Department does not hold data on applications for reduction or suspension of the deductions<sup>131</sup> but has disclosed that "*the proportion of customers who currently have a reduction in place on their Universal Credit repayment terms stands at 13%.*"<sup>132</sup>

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<sup>129</sup> Department for Work and Pensions, "*Annual Report and Accounts 2022-23*" (2023) HC 1455, p.130

<sup>130</sup> <https://www.gov.uk/government/publications/benefit-overpayment-recovery-staff-guide/benefit-overpayment-recovery-guide#chapter-8>

129. In the calendar years 2021 and 2022, there were only 338 registered applications for a discretionary waiver, of which 32 were fully or partially successful.<sup>133</sup> These numbers are vanishingly small given that 3.6 million households had one or more deduction from March 2021 to February 2023.<sup>134</sup>

130. The relatively small use of hardship measures is likely to be caused by:

(i) **a lack of information:** there is no information about what specific options are put in place in deductions notification letters.

(ii) **restrictive policy criteria (particularly for waiver requests):** according to the BORG, waivers are only issued in “*exceptional circumstances*.”<sup>135</sup> The guidance lists factors to be considered when deciding whether to grant a waiver, including the debtor’s financial circumstances, the DWP’s conduct, and how the overpayment occurred. However, there seems to be an unspoken prioritisation of some of the factors: from April 2021 to August 2022, there were no waivers granted on other than medical grounds.<sup>136</sup>

(iii) **difficulty of the process:** PLP has heard many accounts from claimants and welfare advisors about the difficulty to navigate between Debt Management and Universal Credit journal/general Universal Credit helpline. Claimants routinely report being redirected from one office to another because:

- a. The Debt Management Team is unable to consider whether the overpayment is correct since that is the decision made by the Universal Credit and then “committed” to the debt management.
- b. Universal Credit is unable discuss matters relating to recovery (including rates and decision to waive).

These difficulties are exacerbated when dealing with HMRC debt (historic tax credit) as ascertaining how the debt has arisen requires contacting a separate department.

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<sup>131</sup> A response to a FOIA request submitted by Jagna Olejniczak on the 24th of March 2023 available at [https://www.whatdotheyknow.com/request/964439/response/2291570/attach/4/Response%20FOI2023%2024003.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/964439/response/2291570/attach/4/Response%20FOI2023%2024003.pdf?cookie_passthrough=1): the explanation is that the DWP “*does not capture specific data on how many claimants have contacted Debt Management to discuss a suspension/reduction of their debt repayment.*”

<sup>132</sup> A response to a FOIA request submitted by Jagna Olejniczak on the 24th of March 2023 available at [https://www.whatdotheyknow.com/request/964439/response/2291570/attach/4/Response%20FOI2023%2024003.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/964439/response/2291570/attach/4/Response%20FOI2023%2024003.pdf?cookie_passthrough=1): data for 19 April 2023: unclear if 13% relates to overall number of UC claimants or those with deductions applied to their account.

<sup>133</sup> A response to a FOIA submitted by Jagna Olejniczak on the 24th March, annex 1, available at [https://www.whatdotheyknow.com/request/universal\\_credit\\_overpayments\\_an#incoming-2291570](https://www.whatdotheyknow.com/request/universal_credit_overpayments_an#incoming-2291570)

<sup>134</sup> UIN 189564, tabled on 14 June 2023 <https://questions-statements.parliament.uk/written-questions/detail/2023-06-14/189564>

<sup>135</sup> see BORG, chapter 8

<sup>136</sup> A response to a FOIA request submitted by Samuel Willis on 27 July available at [https://www.whatdotheyknow.com/request/882400/response/2108655/attach/3/Response%20FOI2022%2058483.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/882400/response/2108655/attach/3/Response%20FOI2022%2058483.pdf?cookie_passthrough=1)

We have recently talked to claimants (a couple) who had been underpaid over £600 after the DWP had not registered their reported change of circumstances. They were notified this has been “*offered to their debt management as he owed some money to them [the DWP]*”. Upon contacting the Debt Management, they were told that the money could not be found and were redirected back to the UC. They only received the underpayment upon contacting their local MP and, in the meantime, suffered considerable anxiety about their ability to afford essentials.

**(iv) behavioural difficulties:** relying on claimants initiating renegotiation of the repayment plan might discriminate against claimants with specific vulnerabilities, in particular those with psychosocial conditions who struggle with social interaction and expression. Similarly, the complicated processes and confusing correspondence might be difficult to act upon for claimants whose cognitive abilities are affected, e.g., those suffering from learning disabilities.

**(v) high evidential burdens:** claimants are expected to provide comprehensive medical and financial evidence linking their conditions to the application of the deductions. PLP’s previously mentioned client, K, had her waiver application refused due to ‘insufficient evidence’ despite providing a letter from her GP, her family social worker, and a full breakdown of her income and expenditure. She was only successful after bringing a court case.

PLP is aware of a cancer patient who along with his application for a waiver provided medical evidence confirming that receiving the letter about upcoming overpayment recovery caused significant stress and anxiety capable of exacerbating his illness. He was told by the DWP that they could not accept such evidence if the deductions were not yet in place – he needed to wait until the first payment was made to see if such effects occurred then.

131. The difficulties with accessing waiver are particularly concerning given that the DWP’s default practice is that they will not usually refund money already recovered from a claimant once a waiver is granted<sup>137</sup>. This could be addressed by setting clear timelines for response and suspending the repayment when the application is received.

132. **PLP recommends that the Department amend its working practices so that claimants are clearly told: (i) that deductions will be taken from their award; (ii) how the overpayment occurred and what category of debt is owed; (iii) the total amount owed; and (iv) how the rate of recovery was determined.**

133. **PLP recommends that when the Department corresponds with a claimant about an overpayment or a deduction, it clearly refers to the claimant’s right to request that the deduction be waived, suspended, or recovered at a lower rate.**

134. PLP recommends that the Department promote cooperation between their Universal Credit and Debt Management teams to enable claimants to navigate more easily between the two when seeking information regarding an alleged debt.

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<sup>137</sup> Benefit Overpayment Recovery Guide 8.49 – although the wording “*No refund of any monies already correctly recovered would usually be given*” indicates it is possible for the DWP to make exceptions.

### *Deductions and protected characteristics*

135. The Department's 2022-23 Accounts explains how it undertakes equality considerations.<sup>138</sup> The Accounts (i) sets out nine protected characteristics subject to PSED, (ii) mentions The Reasonable Adjustment Forum and (iii) covers Pension Participation programme. It does not, however, engage in any way with how its policies might disproportionately affect certain groups or refer to what equality assessments it has carried out.

136. In the context of overpayments recovery, there are two main equality concerns:

- (i) the breakdown of statistics is reduced to age and gender;<sup>139</sup> and
- (ii) the EIA for deductions policy does not meaningfully engage with the risk of disproportionate impact on groups with protected characteristics<sup>140</sup>.

137. Statistics on ethnicity, disability status and lone parent status across those affected by deductions are not readily available as they are held across a number of different systems.<sup>141</sup> This makes it difficult to track the impact on these groups and examine the possibility of unlawful discrimination.

138. In *K v SSWP*, the Government confirmed that the Department's 'Equality Analysis for Universal Credit Third Party Deductions', dated 15 September 2020, applies to all types recovery of overpayments via benefits.<sup>142</sup> This, however, was held to be an insufficient assessment of the impact the deductions policy would have on people with disabilities.

139. PLP's engagement with first tier, supported by statistical data, organisations confirm that people with physical and mental disabilities are at a particular disadvantage when faced with deductions.<sup>143</sup> Not only are their overall spending needs higher, but also their conditions might be exacerbated due to insufficient nutrition, medication or poorly heated accommodation.

**140. PLP recommends the Department urgently publish a full equality impact assessment which explains how the Department is mitigating the disproportionate impact which its deductions policy is having on those with protected groups.**

### *LEAP Reviews (Recoverable Hardship Payment LEAP Exercise)*

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<sup>138</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, pp. 67-70

<sup>139</sup> A response to a FOIA request submitted by Samuel Willis on 27 July

[https://www.whatdotheyknow.com/request/882400/response/2108655/attach/3/Response%20FOI2022%2058483.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/882400/response/2108655/attach/3/Response%20FOI2022%2058483.pdf?cookie_passthrough=1)

<sup>140</sup> can be found in the response to FOIA Request submitted by Caroline Selman on 2 February 2022 available at [https://www.whatdotheyknow.com/request/universal\\_credit\\_deductions\\_data#incoming-1973156](https://www.whatdotheyknow.com/request/universal_credit_deductions_data#incoming-1973156)

<sup>141</sup> Ref: FOI2022/12570 submitted by Caroline Selman, 15 February 2022,

[https://www.whatdotheyknow.com/request/829354/response/2006402/attach/6/Response%20FOI2022%2012570.pdf?cookie\\_passthrough=1](https://www.whatdotheyknow.com/request/829354/response/2006402/attach/6/Response%20FOI2022%2012570.pdf?cookie_passthrough=1)

<sup>142</sup> *K v SSWP*, para 200

<sup>143</sup> summarised in *K v SSWP* judgement, paras 196-198

141. The 2022-23 Accounts lists nine LEAP (Legal Entitlements Administrative Practice) exercises that the Department is currently conducting to remedy benefits underpayments.<sup>144</sup> PLP is concerned with one particular LEAP exercise which is not included in the 2022/23 annual accounts for reasons that are not clear.
142. In November 2022, the DWP opened a scheme<sup>145</sup> to enable Universal Credit claimants to apply for a review of decisions not to waive their repayments for recoverable hardship payments (loans claimants can take when sanctioned by the DWP). The scheme has been set up following a judicial review brought by PLP's client, which led to the DWP changing its guidance on hardship payment debt in May 2021<sup>146</sup>, i.e., clarifying that contrary to previous practice, the government does have a discretion to waive recoverable hardship payment debt.
143. In a letter to PLP, the Director General DWP Change & Resilience, Neil Couling confirmed that the scheme was a LEAP exercise, but claimants who may be entitled to apply were not being directly contacted. The letter stated that it was "a reasonable and proportionate response" to advertise the scheme on the gov.uk website and the DWP newsletter "Touchbase". This is even though the DWP's own Annual Accounts state that LEAP exercises should involve "contacting customers who may be owed any arrears"<sup>147</sup>. In February 2023, there was one application for the scheme<sup>148</sup>. Despite such limited publicity of the scheme, it was only open for 7 months (from 22 November 2022 to 19 June 2023), with no discretion to extend the deadline to apply.
144. PLP submitted three FOIA requests<sup>149</sup>, attempting to obtain information on:
- the "impact analysis" and equality analysis of the scheme.
  - the departmental estimates on how many people are eligible to apply and entitled to a refund under the scheme,
  - documents containing the decision-making process/reasoning on whether those eligible should be identified by DWP from its own records and proactively contacted.
145. All the requests were refused based on either section 12 of FOIA (costs of compliance) (first two) or the fact that the information is not held (the final, narrowed request).

**146. PLP recommends that the DWP publish the details of its Recoverable Hardship Payments LEAP exercise and any further such exercises conducted in 2022/2023.**  
***Cost of Living Payments***

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<sup>144</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, pp. 120-121

<sup>145</sup> <https://www.gov.uk/guidance/ask-dwp-to-review-a-previous-request-to-stop-waive-recoverable-hardship-payment-repayments-made-between-1-january-2014-and-1-january-2021>

<sup>146</sup> <https://publiclawproject.org.uk/resources/dwp-sets-out-policy-for-waiving-and-repaying-universal-credit-hardship-payments/>

<sup>147</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p. 119

<sup>148</sup> UIN 152228, tabled on 24 February 2023 by Seema Malhotra <https://questions-statements.parliament.uk/written-questions/detail/2023-02-24/152228>

<sup>149</sup> Submitted by Jagna Olejniczak on 23 March 2023, 12 May 2023 and 6 July 2023 available at [https://www.whatdotheyknow.com/request/recoverable\\_hardship\\_payments\\_le#incoming-2298346](https://www.whatdotheyknow.com/request/recoverable_hardship_payments_le#incoming-2298346)  
[https://www.whatdotheyknow.com/request/recoverable\\_hardship\\_payments\\_le\\_2#incoming-2329173](https://www.whatdotheyknow.com/request/recoverable_hardship_payments_le_2#incoming-2329173)  
[https://www.whatdotheyknow.com/request/recoverable\\_hardship\\_payments\\_le\\_3#incoming-2356024](https://www.whatdotheyknow.com/request/recoverable_hardship_payments_le_3#incoming-2356024)



147. The 2022-23 Accounts describe Cost of Living Payments as an example of its achievements and progress in supporting the most vulnerable.<sup>150</sup> PLP recognises that such payments have been invaluable lifelines to some of the most vulnerable in our society, including young children and those with disabilities, during a period which has seen a rapid increase in energy prices and the cost of household essential. Nevertheless, such one of payments are not an adequate substitute for benefit levels being set at amounts which enable a minimum acceptable standard of living.

148. Additionally, PLP is concerned that the eligibility criteria for qualifying for Cost of Living Payments are such that some of the most vulnerable have been excluded from benefitting from such payments.<sup>151</sup> Such concerns were signalled to the Department long before the roll-out of this year's support,<sup>152</sup> after it became clear that some groups in need of support had not received them last year. The most affected group were people who had a Universal Credit sanction who did not receive the payment due to the "nil award" during the qualifying period<sup>153</sup>. This effectively led to a double punishment for whatever (usually minor) misstep was the basis for the sanction, for example, missing an appointment with the work coach. Other groups who were likely to miss out on payments include:

- People with fluctuating income, who top up their wages with Universal Credit but earned too much in the qualifying period and received a "nil award": this is particularly concerning given the assurances by the Department that people would not lose out when working alongside social security support.
- People on contributory Employment Support Allowance (ESA).
- Surviving partners in a couple claim where their partners died in the qualifying period (flagged to us after this year's roll out).
- Mothers on maternity allowance, rather than statutory maternity pay (in certain circumstances)
- Students only receiving the support during summer holidays (potentially qualified for one payment).

149. One of the reasons DWP cites for not including claimants with nil award within the scope of the automatic payment is the lack of sophistication of their IT, as the "*payment in a qualifying month [...] triggers the payment on the system.*"<sup>154</sup>

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<sup>150</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, at p. 41

<sup>151</sup> In order to be eligible, a claimant must have been in entitled to payment of at least 1p of a qualifying benefit, such as UC, during the qualifying period.

<sup>152</sup> it was widely covered by civil society and in press: <https://www.chroniclive.co.uk/news/cost-of-living/dwp-sanctioned-universal-credit-payments-24765421>

<sup>153</sup> <https://publiclawproject.org.uk/blog/cost-of-living-payment-sanctioned-uc-claimants-face-double-punishment/#:~:text=Depriving%20sanctioned%20UC%20recipients%20of,appointment%20with%20their%20work%20coach.>

<sup>154</sup>A response to Q18 by Neil Couling at the Work and Pensions Select Committee oral hearing on 11 January 2023 available at



150. PLP does not find this explanation satisfactory. Given the problem was clear in the previous round of payments,<sup>155</sup> the Department had time to plan for the same issues reappearing and adjust its mechanisms. Interestingly, this year's Accounts mention that the Department "*launched a 'nil award' digital service for Pension Credit, introducing automated claim processing to a small range of Pension Credit applications received online which are ineligible to go into payment*".<sup>156</sup> It is unclear why a similar adjustment was not introduced to avoid the most vulnerable claimants missing out on what the Government describes as "*vital support*".<sup>157</sup>

**151. PLP recommends that the Department adjusts the "qualifying period" for Cost of Living payments from 1 month to 2 months, so that more people can benefit from the support they need.**

### *Conditionality/sanctions*

152. The Annual Report and Accounts is almost silent on the issue of sanctions despite their widespread use by the Department. Reference is only made to sanctions in the context of the Serious Case Panel.<sup>158</sup>

153. Sanctions normally result in 100% of the standard allowance being taken for a specified period or until compliance.<sup>159</sup> They are normally applied for very minor failings: last year, 97.1% of sanctions decisions were taken because of the failure to attend or participate in an interview with the work coach.<sup>160</sup> The process of challenging such unfairly applied sanctions is lengthy and confusing, which can undermine trust in the system and cause additional hardship.<sup>161</sup>

154. PLP is concerned that the use of sanctions is counter-productive in relation to a number of the Department's priorities specified in the Annual Report and Accounts. The DWP-commissioned draft report 'The Impact of Benefit Sanctions on Employment Outcomes',<sup>162</sup> reluctantly released in April 2023,<sup>163</sup> found sanctions result in "*exiting [the*

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<https://committees.parliament.uk/oralevidence/12500/pdf/>

<sup>155</sup> UIN 45953, tabled on 2 September 2022 by Vicky Foxcroft, <https://questions-statements.parliament.uk/written-questions/detail/2022-09-02/45953>

"12,200 households containing 12,400 UC claimants had a nil Universal Credit award with an amount deducted for a sanction in the qualifying assessment period, that did not receive the cost-of-living payment."

<sup>156</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p.83

<sup>157</sup> <https://www.gov.uk/government/news/millions-of-low-income-households-to-get-new-cost-of-living-payments-from-spring-2023>

<sup>158</sup> Department for Work and Pensions, 'Annual Report and Accounts 2022-23' (2023) HC 1455, p. 66

<sup>159</sup> Regulation 111 The Universal Credit Regulations 2013

<sup>160</sup> <https://www.gov.uk/government/statistics/benefit-sanctions-statistics-to-may-2023-experimental/benefit-sanctions-statistics-to-may-2023-experimental>

<sup>161</sup> Caroline Selman, 'Benefit Sanctions: Presumption of Guilt', available at

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

<sup>162</sup> The Impact of Benefit Sanctions on Employment Outcomes: draft report

<https://www.gov.uk/government/publications/the-impact-of-benefit-sanctions-on-employment-outcomes-draft-report>

<sup>163</sup> only after compelled by Information Commissioner's judgement: <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024536/ic-162699-x6d9.pdf>

*benefits system] less quickly into earnings & to earn less upon exiting."* Sanctioned claimants earn on average £34 per month less than non-sanctioned claimants over a 6-month period, with this gap raising to £43 amongst those under 26 years old. This report is not mentioned in the 2022-23 Accounts.

155. This confirmed long-voiced concerns of academics, civil society and press, that punitive conditionality obstructs meaningful support into work by pushing people into unsustainable employment and result in them returning to benefits.<sup>164</sup> This suggests that on top of harming claimants,<sup>165</sup> conditionality might also have a negative effect on the public purse.
156. The Government maintains that the policy is still justified because of the deterrent effect it has on other claimants. This argument is highly speculative and has been convincingly criticised by Dr David Webster in his commentary on the DWP's report<sup>166</sup>.
157. **PLP recommends that the Department pause sanctions until the end of the cost-of-living crisis, and review its approach to conditionality, considering the overwhelming evidence that it does not support people into work.**

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<sup>164</sup> There is a consensus amongst academics that sanctions are ineffective in supporting people to work. See: Welfare Conditionality Project (2018) [http://www.welfareconditionality.ac.uk/wp-content/uploads/2018/06/40475\\_Welfare-Conditionality\\_Report\\_complete-v3.pdf](http://www.welfareconditionality.ac.uk/wp-content/uploads/2018/06/40475_Welfare-Conditionality_Report_complete-v3.pdf), [https://jpit.uk/sanctions-dont-work-but-they-are-increasing-anyway#\\_ftn5](https://jpit.uk/sanctions-dont-work-but-they-are-increasing-anyway#_ftn5), Williams, E. Punitive welfare reform and claimant mental health: The impact of benefit sanctions on anxiety and depression. Soc Policy Adm. 2021; 55: 157– 172., p. 159

<sup>165</sup> there is a catalogue of negative effect on claimants ranging from homelessness, through destitution to mental health problems, see Selman, "Benefit Sanctions: Presumption of Guilt"

<sup>166</sup> <https://cpag.org.uk/policy-and-campaigns/briefing/david-webster-university-glasgow-briefings-benefit-sanctions>