

Written evidence from the Public Law Project (PLP) (HAB0058)

About PLP

1. The Public Law Project ('PLP') is an independent, national, legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or similar barriers.
2. PLP welcomes the opportunity to provide evidence to the Work and Pensions Select Committee inquiry into Health Assessments for benefits focusing on how the Department for Work and Pensions ("DWP") can improve the application and assessment processes for these benefits.
3. One of PLP's five current focus areas is Benefit Sanctions. Through our work in this area we also have some broader experience of the benefit system, including in relation to health assessments, the subject of this response.
4. While PLP's casework experience in this area is relatively low volume, we provide evidence to this committee by drawing on the casework experience we do have as well as on the information provided to us by frontline advisers during training sessions about their experiences in practice.
5. We have provided responses only to those questions where we feel we can provide relevant insight and expertise.

Q1 How could DWP improve the quality of assessments for health-related benefits?

6. Through casework referrals, PLP has identified concerns about the process for finalising report recommendations following health assessments. These include concerns about reports appearing to have been revised, for example as part of the internal auditing process, without good reason and without clear explanation of why something has changed. This includes circumstances where the final health assessment report differs from the initial assessment of the healthcare professional who conducted the assessments.
7. We recommend that the approach and process applied to finalising medical assessment reports needs to be reviewed by DWP as a matter of urgency. In particular we recommend that any revisions to reports should be accompanied by clear and transparent explanations of why the change was made. We would also recommend that all versions of reports should be made available to claimants with decisions on their entitlements, in order to allow claimants to identify (and therefore hopefully resolve) any issues or inconsistencies at the earliest possible stage.

Q7a What could DWP change earlier in the process to ensure that fewer cases to go appeal?

8. In the recent Health & Disability Green Paper measures identified by DWP to "*improve decision making and reduce appeals*" included:
 - a. Allowing decision makers additional time for initial and mandatory reconsideration decisions;
 - b. The use of "lapsed appeals"¹.

9. While PLP welcomes an approach that focusses on trying to fairly and correctly resolve matters at the earliest possible stage, we have some reservations about these specific measures for the reasons set out below.

Mandatory Reconsideration (MR)

10. The Health & Disability Green Paper refers to applying a “holistic” decision making process at MR stage by allowing staff extra time to reach a decision.
11. While we are strongly supportive of ensuring that decision makers have the necessary time to properly consider the evidence submitted, we are mindful of the potential negative impact of a lengthy process with no clear timelines.
12. PLP is currently conducting research on the barriers that claimants face when challenging benefit sanction decisions. This research is not yet complete, however one of the initial areas of concern we have is the barrier created by a potentially lengthy mandatory reconsideration (and subsequent appeal) process with no clear timelines.
13. We draw the committee’s attention to Z2K’s 2018 report “Access Denied” which similarly identified this as a concern in the specific context of challenging initial PIP and ESA assessments.² This notes the additional stress and anxiety that can arise from claimants being left in a state of uncertainty for an indeterminate amount of time.
14. The above report also identifies the existence of MR as a barrier in and of itself due to a lack of clarity about its role and the demoralising effect of a potentially lengthy process which may not have a successful outcome³. This is something we have seen reflected in some of the research we have done to date in the context of benefit sanctions.
15. The Work & Pensions Select Committee has previously acknowledged concerns about the lack of clear timelines for MR decisions in its 2018 inquiry into benefit sanctions. This included recommending that DWP commit to a timeframe for making decisions at MR and appeal and monitor compliance with that. PLP supports that recommendation and continues to view it as appropriate in the current context as well.
16. We also note that while there appears to be a focus on ensuring that decision makers have sufficient time to reach a decision, this does not appear to be matched by ensuring claimants have sufficient time to submit their MR application and any supporting evidence. This is likely to be as, if not more, important to ensuring an accurate decision is reached at the earliest point in time.
17. We would also recommend that DWP ensures claimants have the time they need to gather any evidence they need, for example by extending the deadline that claimants have for submitting a MR request.

Lapsed appeals

18. Lapsed appeals refers to a situation where new evidence or information becomes available after an appeal has been lodged, but before it is heard at Tribunal. In this situation, DWP are able to change a decision and increase the award where appropriate.

¹ para 185 to 197 of the Health & Disability Green Paper
<https://www.gov.uk/government/consultations/shaping-future-support-the-health-and-disability-green-paper/shaping-future-support-the-health-and-disability-green-paper>

² Page 25, Jen Durrant [Access Denied: Barriers to Justice in the Disability Benefits System](#) Z2K (2018)

³ page 26 n. 2

19. DWP's approach to "appeal lapsing" was the focus of a judicial review brought by PLP's client K earlier this year: <https://publiclawproject.org.uk/latest/dwp-to-stop-cold-calling-disabled-people-to-make-low-benefit-offers/>.
20. Following an unsuccessful MR, PLP's client K sought to appeal the level of her PIP award after she was told by her GP and her support workers that she was entitled to the highest level of PIP.
21. After her appeal process started, DWP telephoned her without warning from a "withheld" number and pressurised her into accepting a bit more than her original award, but not the full entitlement that her GP and support workers believed she was entitled to.
22. DWP did not call K's mother who supported her with all her financial affairs. K did not think she could appeal the new "offer" and DWP did not tell her about her rights. K ended up feeling suicidal and struggled to cope. When she realised this was happening to other disabled benefit claimants, she instructed PLP to challenge the practice.
23. Evidence gathered over many months showed that:
 - a. Disabled claimants who had appealed a DWP decision were being called by DWP and encouraged to accept awards that were lower than their statutory entitlement
 - b. DWP callers repeatedly telephoned claimants directly even when claimants had made clear that they had representatives who should have been contacted first
 - c. The people who were called were not told about their appeal rights.
24. In settlement of this case, DWP agreed to amend its policies and guidance as detailed in a [Consent Order](#).
25. Our understanding is that the reference at paragraph 197 of the Green Paper to the adoption of new guidance for staff refers to the revised Best Practice Memorandum that was published as a consequence of this Consent Order: <https://depositedpapers.parliament.uk/depositedpaper/2283506/files>.
26. While PLP welcomes the fact that DWP is now engaging with this issue we remain concerned that there is a risk of claimants feeling under pressure to agree to (and not onward appeal) awards that do not in fact reflect their entitlement.
27. This is particularly the case given that we know from experience (including in relation to the case of K above), that approaches applied in practice are not always in accordance with DWP's own guidance. We recommend that DWP set out how it intends to monitor compliance with the revised guidance in practice. We also recommend that DWP continue to engage with organisations with expertise in this area, such as Child Poverty Action Group, to consider how best to approach this issue.

November 2021