



Northern Ireland

Public Services
Ombudsman

Investigation Report

Investigation of a complaint against The Department for Communities

NIPSO Reference: 21568

The Northern Ireland Public Services Ombudsman

33 Wellington Place

BELFAST

BT1 6HN

Tel: 028 9023 3821

Email: nipso@nipso.org.uk

Web: www.nipso.org.uk



@NIPSO_Comms

The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

TABLE OF CONTENTS

| | Page |
|---|-------------|
| SUMMARY | 1 |
| THE COMPLAINT | 2 |
| INVESTIGATION METHODOLOGY | 3 |
| THE INVESTIGATION | 5 |
| CONCLUSION | 29 |
| APPENDICES | 33 |
| Appendix 1 – The Principles of Good Administration | |
| Appendix 2 – The Principles of Good Complaints Handling | |

Case Reference: 21568

Listed Authority: Department for Communities

SUMMARY

This office received a complaint about the Department for Communities' (DfC) handling of the complainant's claim for a Personal Independence Payment¹ (PIP). The complainant said the DfC failed to consider his '*difficulties*' when considering his claim, and '*lacked understanding*' of his condition.

The investigation examined the details of the complaint, the DfC's response, relevant legislation, and DfC policies. The Investigating Officer also interviewed relevant DfC staff. The investigation found the DfC's guidance failed to instruct staff to fully consider information contained within the complainant's records prior to making the decision to disallow his benefit. It also found there is no mechanism in place for an independent review of the decision at a more senior level before the decision to disallow the benefit is finalised. Furthermore, the investigation found that the DfC do not routinely retain copies of the letter that informs claimants that their benefit is suspended. I upheld this issue of complaint.

The complainant also said the DfC failed to apologise for an '*unsatisfactory*' call it made to him, or inform him of action it took following his complaint. The investigation found the DfC failed to apologise for a call it made to the complainant in December 2018, which it agreed was '*unsatisfactory*'. The investigation was unable to find evidence to suggest that the DfC adequately investigated the complaint, or that it documented its considerations and rationale for its decision not to uphold the complaint. Furthermore, the investigation found the DfC failed to undertake a fair and objective review at stage two of the complaints process. I also upheld this issue of complaint.

I recommended that the DfC apologise to the complainant. I also recommended that the DfC conducts a review of its internal guidance, and delivers complaint handling training to relevant staff.

¹ A welfare benefit in the United Kingdom that is intended to help adults with the extra costs of living with a long-term health condition or a disability.

THE COMPLAINT

1. I received a complaint about the actions of the Department for Communities (DfC). The complaint was about the DfC's handling of the complainant's claim for a Personal Independence Payment² (PIP). It was also about the DfC's handling of his subsequent complaint.

Background to complaint

2. The complainant was in receipt of the higher rate of both components of Disability Living Allowance³ (DLA) since 2006 for an indefinite period. Using assistance from the Citizen's Advice Bureau⁴ (CAB), the complainant applied for PIP and was invited to attend an assessment on 26 November 2018. This was to assess his eligibility for the benefit. However, he failed to attend. A PIP Case Worker telephoned the complainant on 28 December 2018 to obtain his reasons for failing to attend his appointment. The complainant said he asked the caller for a 'code' to prove she was from the DfC. However, the complainant said the call handler became '*irritated*' and informed him his payment would be suspended before '*abruptly*' ending the call.
3. The DfC said it suspended the complainant's benefit on 28 December 2018 and issued a 'Failure to Attend' form (referred to as a PIP 6000). The form was to provide the complainant with an opportunity to explain his reasons for failing to attend the assessment. The DfC said the complainant did not return the form. It also said that as the complainant did not provide his reasons for failing to attend the assessment, his PIP claim was disallowed. The complainant's DLA benefit was terminated on 5 February 2019.
4. The DfC said the complainant applied for a mandatory reconsideration of the decision in February 2020. It explained that it again attempted to contact the complainant to obtain evidence to support his reasons for failing to attend his assessment. However, these attempts were unsuccessful. Therefore, he

² A welfare benefit in the United Kingdom that is intended to help adults with the extra costs of living with a long-term health condition or a disability.

³ A social security benefit in the United Kingdom paid to eligible claimants who have personal care and/or mobility needs as a result of a mental or physical disability. This benefit will be replaced by PIP.

⁴ A network of independent charities throughout the United Kingdom that give free, confidential information and advice to assist people with money, legal, consumer and other problems.

remains unentitled to both DLA and PIP. The DfC said the complainant can appeal the decision at a tribunal.

5. The complainant said he submitted a complaint to the DfC about its actions in his letter dated 16 July 2019. The DfC issued its final response to the complaint on 30 August 2019.

Issues of complaint

6. The issues of complaint accepted for investigation were:

Issue 1: Whether the complainant's PIP application was handled in accordance with relevant guidance and standards.

Issue 2: Whether the complainant's PIP complaint was handled in accordance with relevant guidance and standards.

INVESTIGATION METHODOLOGY

7. In order to investigate the complaint, the Investigating Officer obtained from the DfC all relevant documentation together with DfC's comments on the issues raised by the complainant. This documentation included information relating to the DfC's handling of the complaint. The Investigating Officer also undertook interviews with relevant DfC staff.

Relevant Standards

8. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles⁵:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

9. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the DfC to establish that a

⁵ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

person was treated in a manner that is fair and consistent with the listed authority's policy and procedures, and in keeping with good administrative practice. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.

10. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards relevant to this complaint are:

- The Personal Independence Payment Regulations (Northern Ireland) 2016 (the PIP Regulations (NI));
- The Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 (the PIP Transitional Provisions Regulations (NI));
- The Department for Communities' Benefit Guidance Centre's Personal Independence Payment (PIP) Centre Bulletin 10/18: Failure to Attend/Failure to Comply (FTA/FTC) Tasks, August 2018 (DfC's Tasks Bulletin);
- The Department for Work and Pensions' (DWP) Personal Independence Guide, Section 2 Chapter 11, undated [DfC confirmed that this guidance was relevant at the time of the claim] (the DWP Guidance);
- The Department for Communities' Advice for Decision Making Guide, Chapter A1: Principles of decision making and evidence, September 2017 (the DfC's Decision Making Guide);
- The Department for Communities' Complaints Policy and Procedure [online], not dated (the DfC's Complaints Policy); and
- The Department for Communities' Guide to Effective Complaints Handling, September 2018 (the DfC's Complaints Guide).

11. I did not include all of the information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.

12. A draft copy of this report was shared with the complainant and the DfC for comment on factual accuracy and the reasonableness of the findings and recommendations.

INVESTIGATION

Issue 1: Whether the complainant's PIP application was handled in accordance with relevant guidance and standards.

Detail of Complaint

13. This complaint is about the DfC's handling of the complainant's PIP application. The complainant said he did not attend the assessment in November 2018 due to his mental health and cognitive difficulties. He referred to the phone call he had with the DfC on 28 December 2018 and said the DfC failed to consider his difficulties, as documented in his claim form. The complainant also said the DfC '*lacked understanding*' of his condition. A chronology detailing the events leading to the complaint is enclosed at Appendix five to this report.

Evidence Considered

Legislation/Policies/Guidance

14. I considered the following guidance:
- i. The PIP Regulations (NI);
 - ii. The PIP Transitional Provisions Regulations (NI);
 - iii. The DfC's Tasks Bulletin;
 - iv. The DWP Guidance; and
 - v. The DfC's Decision Making Guide.

Relevant extracts are enclosed at Appendix four to this report.

15. Notably, the PIP Regulations (NI) state:

'10. The matters to be taken into account in determining whether C [the Claimant] has good reason [for failing to attend the assessment] under regulation 8(3) or 9(2) include—

- (a) C's state of health at the relevant time; and*
- (b) the nature of any disability that C has.*

Relevant DfC records

16. A summary of the relevant records is enclosed at Appendix three to this report. The DfC provided a recording of the phone call that occurred on 28 December 2018. A transcript of the call is enclosed at Appendix four to this report.

The DfC's response to investigation enquiries

17. The DfC explained the Case Worker who made the phone call to the complainant on 28 December 2018 followed '*normal process*'. However, it '*acknowledged the call was not satisfactorily handled by the Case Worker*'. It further explained that '*PIP staff do not have any "codes" that they can provide during calls to prove they are calling from the PIP Centre*'.
18. The DfC explained that the complainant's DLA benefit was suspended, which was '*in line with correct procedures*'. It also explained that the complainant was informed his benefit was suspended in the PIP 6000 letter it issued to him following the phone call. The DfC explained the letter contained a form for the complainant to state in writing his reasons for not attending his assessment. However, the DfC said the complainant failed to return the completed form. It explained that his PIP claim was therefore '*disallowed*' and '*his DLA was terminated*'.
19. The DfC was questioned about a Case Worker (Administrative Officer⁶ grade) making the decision to suspend and subsequently disallow a benefit. It referred to the DfC's Decision Making Guide and explained, '*a Case Worker, on behalf of the Department, is authorised to terminate DLA and not just suspend it*'. It explained that '*if [the complainant] had returned the form giving his reasons for not attending his assessment, the case would have been referred to a Case Manager...for a decision. As decisions to disallow PIP for failing to attend and then failing to explain reasons for non-attendance are straightforward with no room for ambiguity, it is perfectly acceptable for [a Case Worker] to make such a decision*'.

⁶ These roles tend to comprise administrative support and operational delivery roles.

20. The DfC explained that *'the Case Worker was following the FTA process which states that a telephone call should be completed. This is the same process regardless of a customer's medical condition, with the exception of customers who are profoundly deaf. This is in the customer's best interest to enable the 'good reason' decision to be completed as quickly as possible alleviating any further delay in the PIP assessment process. There is no specific policy on what type of communication is required...'* The DfC further explained that *'the PIP computer system also carries an 'Additional Support' indicator on some customer's cases. This is entered at the initial claim stage if the customer indicates or displays severe difficulty with communicating or a severe mental health impairment. A caseworker making an external call to a customer with the 'Additional Support' indicator would be aware of this and take this into account. [The complainant] did not have such an indicator attached to his case'*.
21. The DfC explained that it does *'not have a specific 'cold calling' policy, however, all calls coming from the PIP Centre will always show as coming from the same contact number...If the customer has a missed call from this number and attempts to call it back, there is an automated message to advise that the DfC had tried to contact them today and will attempt to contact them again later'*.
22. The DfC further explained that *'the Department do not operate a password scheme and never have, therefore [the complainant] would not have been advised of or given a password or code word. If [the complainant] was unsure of the authenticity of the caller he could have ended the call and made contact with the PIP Centre to query the call and to give his reasons for non-attendance. Following the call of 28 December 2018, [the complainant] made no attempt to contact the PIP Centre for verification and he also failed to return the letter that was issued to him which requested his reasons in writing for failing to attend the Capita assessment. If [the complainant] had returned the form or contacted the PIP Centre his claim would have been put back into payment if good reason was accepted by the PIP Centre'*.
23. The DfC explained the PIP 6000 letter is a *'clerically issued letter and must be tailored to the individual's case. The letters are not retained on the PIP*

computer system but are uploaded when the customer replies'. It further explained, 'we know what [the complainant's] letter contained as it is recorded in the notes on the PIP computer system...[the complainant] was aware his DLA was suspended as he alludes to this fact in...his letter to [DfC] dated 19 August 2019'. The DfC was asked if a claimant can appeal the decision to suspend the DLA benefit. It explained that this decision 'does not carry dispute rights as it is not a disallowance of benefit'.

Interviews

Interview with the Case Worker

24. The Case Worker explained she was assigned the task to contact the complainant by telephone on 28 December 2018 to obtain reasons for his failure to attend his assessment in November 2018. She further explained that for this particular call, she checked the complainant's name, address, and telephone number prior to making the call. She added that she also checked the complainant was provided with appropriate notice of the assessment date. The Case Worker explained that she reviewed the records to check for any reason, already recorded, why the complainant did not attend his assessment. She said there were no reasons recorded.

Interview with the Deputy Centre Manager (DCM)

25. The DCM explained the decision to attach an Additional Support Marker to a file is based on information received from the claimant at the beginning of the process. He explained it is *'specifically to do with the non-return of the...application form'*. The DCM further explained that if a claimant is marked as requiring additional support and did not return an application form, *'we would've automatically referred him...for assessment, even in the absence of the application form'*.
26. The DCM explained that *'anyone who's making a decision about disallowing benefit for failure to attend should look at the case in the round, they should look at everything'*. He was questioned about information relating to the complainant's ability to attend an assessment contained in the ESA medical report form, dated June 2016. He explained that the content of this report would have been *'more relevant if [the complainant] had returned the PIP 6000 and*

said, I didn't attend my assessment because I'm not mentally capable of doing so'. The DCM also said that 'a lot of customers will say that they can't cope with an assessment, and in those situations, we would try to accommodate an assessment in their home to make them feel more comfortable, we would try and accommodate possibly a paper based assessment to avoid them having to attend at all'. He further explained that 'the Disability Assessor who carried out the initial review has obviously felt that [the complainant] was capable of attending an assessment and also it was necessary for him to attend an assessment to get a robust...report'.

27. The DCM explained the Case Worker took the decision and actioned the suspension of the complainant's benefit. He further explained that in the absence of a returned PIP 6000 from the complainant, the Case Worker also took the decision to disallow the benefit. The DCM said that this process has now changed, and in the absence of a returned form, a Case Manager makes the decision to disallow the benefit.
28. The Investigating Officer obtained information from the DCM by telephone regarding the complainant's request for a mandatory reconsideration. The DCM explained that following his request, the Case Manager attempted to telephone the complainant twice. He said that the Case Manager wrote to the complainant on 9 March 2020 asking him for reasons and to provide evidence why he did not attend his assessment. However, he did not respond to that letter and his claim was disallowed. The DCM explained the complainant now has the option to lodge an appeal to a tribunal and this option is still open to him.
29. In relation to the letters issued to the complainant regarding his request, the DCM explained they state that the complainant did not provide his reasons for failing to attend his assessment. However, he said this was inaccurate and the complainant did provide reasons, but did not provide any evidence to support these reasons.

The DfC's response to the draft report

30. The DfC referred to the complainant's ESA record in his file. It explained it was completed 28 months before his arranged PIP assessment and indicated he

could be considered for work within 18 months. It said the 18 month period would have ended around the end of December 2017 and almost a year before the complainant was asked to attend his PIP assessment. The DfC explained that the healthcare professional⁷ (HCP) considered this and decided there was insufficient evidence in the complainant's records to determine he was entitled to PIP. It further explained that the HCP was of the clinical opinion that the evidence held on the case did not indicate that the complainant was currently unable to attend an assessment. The DfC also said that in making their decision, the HCP considered the guidance set out in the PIP Assessment Guide. It explained there was no need for the Case Worker to further consider the evidence the HCP already considered prior to making contact with the complainant. It said the Case Worker followed the correct process.

31. The DfC said there was no indication on the complainant's claim form that he would have difficulty attending an assessment. It also said the complainant did not inform the DfC that he did not receive any of the correspondence it sent. It explained that its correspondence also informed the complainant that he could contact Capita to advise if he was unable to attend.
32. The DfC disagreed that the complainant ought to have had an AS marker on his file. It explained that the marker was not set because of the responses the complainant gave to questions during his initial claim call. The DfC did not provide a recording of its initial claim call with the complainant. It also did not provide any notes of the call. The DfC said it was satisfied the Case Worker made the decision appropriately as the complainant had assistance from the CAB.
33. The DfC explained that as the complainant was contacted to find out reasons for non-attendance before the good reason decision was made, it followed an identical process to the one that would have been followed had the AS marker been set. It said the complainant was therefore not disadvantaged.

⁷ The HCP is employed by Capita. The HCP decides if the claimant should attend a face to face assessment.

34. In relation to the decision to disallow the benefit being made by a Case Worker (AO grade), the DfC said departmental guidance states that such officers should be suitably trained and experienced to do so. It explained that Case Workers are considered suitably trained and experienced to make this particular decision. The DfC said that in the complainant's case, the failure to attend an assessment is a fact that was not in dispute at the time the Case Worker was making the decision, and it is also a fact that the complainant did not provide any information in relation to the reasons for his FTA.
35. The DfC explained there is no internal review process of a Case Worker's decision to suspend and disallow a benefit. It said claimants can request a mandatory reconsideration of the decision. It explained that the complainant raised such a request, and a Case Manager made the decision on his request.
36. The DfC said the complainant did not contact it or Capita to advise he was unable to attend his assessment. It also said the complainant did not provide reasons for failing to attend his assessment during the initial telephone call (in December 2018). Therefore, it was appropriate for the Case Worker to issue the PIP 6000 letter to request his reasons for failing to do so, and to advise him his benefit was suspended. It said the letter advises claimants that if they do not provide their reasons for failing to attend their assessment, and evidence to support their reasons, they will not be awarded PIP and their DLA payment will end.
37. The DfC said its Tasks Bulletin includes an additional process introduced by PIP Centre in Northern Ireland as a safeguard measure, which instructs the Case Worker to contact the claimant to establish if there was a good reason for failing to attend an assessment. It explained that the DWP did not follow the same process, and that in this case, the complainant's claim would have been automatically disallowed without the opportunity to provide reasons for his non-attendance.
38. The DfC referred to its change in process so that a Case Manager makes the decision to disallow a benefit. It said this was due to the volumes and variety of work where Case Worker staff were required more frequently to deliver the

priority front end telephony. The DfC said it decided that Case Managers had capacity and would take responsibility for applying all of the process, including the evidence gathering process. The Case Manager has direct ownership of each case and can engage directly with claimants on the phone rather than relying on written case notes. This was an operational decision and was not related to the grade of the staff member making the decision.

39. The DfC referred to the complainant's request for a mandatory reconsideration. It said the complainant explained in this letter why he did not attend his assessment. However, the statement was not sufficient on its own to establish good cause. The DfC said it expected the complainant to provide some form of corroborative evidence to substantiate his statement, given that he previously attended an ESA Work Capability Assessment in June 2016. The DfC explained that the PIP 6000 letter provides some examples of additional evidence claimants can provide. The Case Manager considered the content of the complainant's letter, along with all other evidence available, and decided he did not demonstrate good reason for his failure to attend the assessment. It further explained that the Reconsideration Case Manager decided the disallowance decision would remain unchanged.
40. The DfC explained that a Case Manager made three attempts to contact the complainant by telephone to establish if he intended to provide further evidence to support his request. These attempts were unsuccessful as the complainant did not answer the calls. The DfC said the Case Manager allowed a further calendar month for the complainant to provide further evidence. The Case Manager also wrote to the complainant on 9 March 2020 by way of a PIP 2008 form, which reminds a claimant of the need to provide further evidence.
41. The DfC said it fully accepts that some claimants find attendance at face to face assessments difficult and potentially stressful, and reasonable adjustments will be made, if needed, to facilitate this. It explained that claimants are encouraged to bring someone with them to the assessment for support, and can ask for their assessment to be carried out in their home rather than in a clinic setting if this would make the process easier for them. The DfC said that at no stage of the process prior to July 2019 did the complainant make it aware that he could

not attend an assessment. The DfC said that when the complainant provided his reasons in July 2019 and again in February 2020, he did not provide any evidence to support this.

42. The DfC referred to the current process, which does not require it to retain copies of PIP 6000 letters issued to claimants. It said it is content that the current process is sufficient and sees no value in retaining copies of uncompleted PIP 6000s. The DfC explained that the PIP 6000 is a standard template and the only free text available is for claimant's personal details and the date of their assessment.
43. The DfC said that legislation does not require it to retain copies of documents/ notifications. It explained that the PIP 6000 letter is uploaded upon their return rather than on their issue. The DfC said the complainant did not return the PIP 6000 form so it was not uploaded. It explained that Regulation 10 of the PIP Transitional Provision Regulations relates to the suspension of benefit in relation to no PIP claim being made and is therefore not relevant to a suspension due to failure to comply with the process.
44. The DfC said it arranged for a Quality Assurance Manager (QAM) to review the decisions made for the complainant's claim at first tier and Mandatory Reconsideration stage. It explained that the QAM concluded that the decisions to disallow the claim, due to the complainant's failure to attend his assessment, and the subsequent upholding of that decision at Mandatory Reconsideration stage, were correct and in line with the legislation.

Analysis and Findings

The telephone call, and the decision to suspend and disallow the benefit

45. The complainant said that when the DfC contacted him about his reasons for not attending his assessment, it failed to consider his difficulties, as documented in his claim form. The complainant also said the DfC '*lacked understanding*' of his condition. I note the DfC explained it acted in accordance with relevant guidance when dealing with the complainant's application. I considered the transcript of the telephone call that occurred on 28 December 2018. I note the confusion that arose when the complainant asked the caller to

prove her identity. I further note the DfC acknowledged the call was '*not satisfactorily handled*'. However, it also said the call followed '*normal process*'.

46. I note the DfC's Tasks Bulletin does not outline a procedure for outgoing calls. Given the recent increase of fraud-type calls in the community, I consider it reasonable for the complainant to seek to identify the identity of the caller. Given the nature of the complainant's disability, it may not have been clear to him that the caller was from the DfC and she wished to discuss his claim. I would have expected an experienced and trained member of staff to have taken more time to understand what the complainant was trying to say. Furthermore, this would have been more evident to the Case Worker had she been aware of the complainant's information the DfC held about his disability. I consider it good practice for bodies who regularly make outgoing calls to have a mechanism in place to satisfy customers of the identity of the caller. I consider that had such a procedure been in place, and had the Case Worker approached the call appropriately, it is likely the complainant would have been satisfied with the identity of the caller, and been able to discuss his reasons for not attending his assessment.
47. The PIP Regulations (NI) state the DfC ought to consider the nature of the claimant's disability to determine 'good reason' for their non-attendance. I note the DCM said the Case Worker ought to '*look at everything*' when considering reasons for an FTA. I note that in the complainant's case, the Case Worker said she undertook a number of checks before contacting him. However, I note this did not include a review of the complainant's claim form or supporting documents. I note these records clearly document the nature of the complainant's disability. In particular, the ESA report documents that the complainant is '*not fit for assessment*'.
48. I note in response to the draft report, the DfC explained the ESA report was completed 28 months before the assessment was due to occur. It also explained that the Capita Healthcare Professional (HCP) considered this document before they made the decision to invite the complainant for an assessment. I acknowledge the DfC's response. However, I consider the ESA report would still go some way to explain the complainant's reasons for his non-

attendance. While I note the DfC said the HCP considered this report before making a decision on inviting the complainant for assessment, my investigation concerned the DfC's examination of the records when making a decision on whether to suspend then disallow the benefit (a decision not made by the HCP). I am satisfied these are two different processes and in this instance, I am only concerned with the latter process. I consider it remains there is no evidence to suggest the Case Worker considered this report when seeking to establish 'good reason' for the complainant's failure to attend his assessment.

49. I note the DfC said it considered the Case Worker's decision to issue the PIP 6000 letter appropriate. I agree with the DfC's view and accept the Case Worker issued the letter in accordance with the Tasks Bulletin. However, I note, with concern, that the DfC's Tasks Bulletin fails to instruct Case Workers to review claimants' application forms and other supporting documents before they issue the PIP 6000 letter. I consider this fundamental when establishing good reason for claimants' failure to attend their assessment.
50. I also note the DfC said had it not had a process in place which allowed it to contact claimants to establish good reason (such as that followed by the DWP at the time), the complainant's claim would have been automatically disallowed. However, my investigation examined the process the DfC followed at the time of the claim, and not the DWP's. I do not consider the DWP's process relevant for this investigation.
51. I note the DCM explained that the information contained in the complainant's supporting documents would be '*more relevant*' had he returned the PIP 6000 letter detailing reasons why he did not attend his assessment. I disagree with this view. As I explained previously, this pertinent information ought to be considered at the outset of the process when establishing good reason for claimants failing to attend their assessment. Furthermore, if the PIP 6000 letter is not returned, the opportunity to consider this information is missed, as demonstrated in the complainant's case.
52. In response to the draft report, the DfC explained the HCP decided there was insufficient evidence in the complainant's records to determine if he was

entitled to PIP. It further explained that the HCP was of the clinical opinion that the evidence held on the case did not indicate the complainant was unable to attend an assessment. The issue of whether the complainant was required to attend an assessment to determine his entitlement to the benefit is not in dispute. Furthermore, my investigation did not concern the decisions made by the HCP. It related to the process the DfC followed to establish 'good reason' for the complainant's failure to attend his assessment.

53. I note the DfC said there was no indication in the complainant's claim form that he would have difficulty attending a face to face assessment. I disagree with its view. In relation to the nature of the complainant's disability, the claim form states, '*Severe anxiety and distress often prevent me from going out even though I have planned to go out...*'. I consider that had the Case Worker reviewed the complainant's claim form and records attached to his file prior to contacting him in December 2018, she would have had sight of the information required to establish 'good reason' for the complainant's non-attendance at his assessment (including his difficulties with leaving his home). This would have enabled her to take further action to address his FTA, and for the DfC to consider an alternative method of assessment. In failing to do so, I am not satisfied the DfC met the legislative requirement to consider the nature of the complainant's disability when it determined reasons for his failure to attend his assessment.
54. The DfC explained that claimants who have difficulty communicating may have an Additional Support (AS) marker on their file. It said an AS marker was not attached to the complainant's file. The DfC said it bases its decision on whether or not to apply this marker on guidance from the DWP (the DWP Guidance). I note the DfC said there are a number of revised versions of this guidance. However, it provided to my office the version it said was '*current at the time*' of the complainant's claim (version one). I note that following its receipt of the draft report, the DfC provided to my office a revised version of this guidance (version two). However, having already received confirmation from the DfC that version one was relevant at the time of the claim, I consider it to be the

applicable guidance against which I will assess the DfC's decision not to apply an AS marker to the complainant's file.

55. The DfC said the decision not to apply an AS marker was based on the complainant's responses given during his initial claim call. I acknowledge the DfC did not retain a recording of the call due to data protection guidelines. However, I note it failed to provide a documented note of the call, or of the Case Worker's rationale for the decision not to add an AS marker to the complainant's file. I am critical of this failure. Without the maintenance of such records, it is impossible for public bodies to defend its actions and the decisions it makes when challenged. It can also have the effect of diminishing the public's confidence that decisions made are not arbitrary and are outside of due process.
56. In the absence of these records, the DfC said it was satisfied the Case Worker made the decision appropriately, as the complainant had assistance from the CAB. The DWP Guidance (version one) states, '*If the claimant only has informal support...such as CAB, it may still be appropriate to set the support marker...*' Therefore, I do not consider the fact the complainant received assistance from the CAB a sufficient reason not to apply an AS marker to his file.
57. The DWP Guidance (version one) also states that a claimant with AS needs may have a condition that affects their ability to be fully aware of the consequences of not returning forms; or, not responding to a reassessment invite or reminder. Having reviewed the guidance, I am satisfied the nature of the complainant's disability, as detailed in his claim form and supporting documents, meets the required definition. Therefore, I consider the complainant ought to have had an AS marker attached to his file.
58. I note in response to a draft copy of this report, the DfC said it did not consider the complainant was disadvantaged by not having the AS marker on his file. However, the DWP Guidance states that for those claimants with an AS marker, staff ought to make additional efforts to explain the impact of not attending an assessment, or to provide additional assistance rather than disallowing their benefit. I consider that had this marker been on the

complainant's file, the DfC would have provided him with additional support, and it is unlikely it would have disallowed his benefit for the reasons it did.

59. I note it was a Case Worker (AO grade) who took the decision to suspend and disallow the complainant's benefit. I accept that in doing so, the Case Worker acted in accordance with the DfC's Task Bulletin. I note the DfC's Decision Making Guide states that it can authorise officers to make decisions, '*provided that it is satisfied that they are suitably trained and experienced to do so*'. I note that the DfC considered the process '*straightforward*', and that it was '*perfectly acceptable*' for an AO to make this decision.
60. I accept that in this situation, and based on the fact the complainant failed to attend his assessment, and to respond to the PIP 6000 letter, an officer of a higher grade would likely have made the same decision. However, I am still of the consideration that had the Case Worker reviewed the complainant's file in its entirety, she would have had sight of the information required to establish 'good reason' for the complainant's non-attendance at his assessment. This is regardless of who made the decision to disallow the complainant's benefit.
61. I note the DfC said that while there is no internal mechanism for a more senior officer to review a Case Worker's decision to disallow a benefit, claimants have the opportunity to request a mandatory reconsideration of the decision. However, I note a reconsideration occurs after the benefit is disallowed and the claimant is no longer receiving their benefit. I find it concerning that the decision to terminate a benefit is not checked internally by a more senior officer before it is finalised. I consider the absence of an internal review at this stage places the DfC at risk of making unfair decisions that can place claimants in severe financial difficulty.
62. I note that following his enquiries to my office, the complainant requested a mandatory reconsideration of the decision to disallow his benefit in February 2020. Despite the difficulties that occurred in December 2018, I note a Case Manager attempted to telephone the complainant. When this was unsuccessful, I note the DfC wrote to him to request 'evidence' to support his reasons for

failing to attend his assessment. However, the complainant did not respond to the letter and the decision to disallow his claim stood.

63. In relation to the type of evidence the DfC required, it explained it expected the complainant to provide some form of corroborative evidence to support his reasons for his non-attendance given that he previously attended an ESA Work Capability Assessment in June 2016. Having considered the nature of the complainant's disability and how it impacts him, I do not consider it reasonable for the DfC to base its decisions on his ability to attend an assessment that occurred approximately 26 months before the scheduled assessment in November 2018.
64. I note the template PIP 2008 letter the DfC issued to the complainant following his request for a mandatory reconsideration requests 'evidence' from claimants. However, it fails to outline what specific evidence is required to process the claimant's request.
65. I asked the DfC if it outlined to the complainant what type of evidence it required him to provide. It referred to the PIP 6000 template letter, which outlines examples of evidence claimants can provide. I note the letter lists just two examples; '*appointment cards or evidence of illness*'. However, the complainant did not attend his assessment due to the nature of his disability. It was not because he had to attend a different appointment, or because he was unwell. Therefore, these examples were not relevant to the complainant. Furthermore, the PIP 6000 letter was issued in December 2018. I would not expect the complainant to refer to a letter issued to him 18 months previous to establish what type of evidence the DfC required. I consider that by this time, the DfC was aware of the complainant's previous difficulties he encountered with the process. However, the PIP 2008 letter failed to provide the complainant with any advice or assistance on how to progress through the mandatory reconsideration process.
66. As explained previously, the complainant said he did not attend his assessment due to his mental health and cognitive difficulties. I consider that in his letter of request, the complainant fully outlined the reasons why he was unable to attend

his assessment, and that these reasons related to the nature of his disability. However, there is no evidence to suggest the DfC considered the information the complainant outlined in his letter of request. There is also no evidence that it considered the complainant's previously submitted claim form or the supporting documents attached to his file.

67. I consider that given the information was already on file, the DfC's pursuit of further information was disproportionate. I consider the DfC could reasonably have established 'good reason' for the complainant's failure to attend his assessment from his file and from his letter of request for the mandatory reconsideration. I consider that the reconsideration process was an opportunity to resolve the concerns already raised. However, instead, the DfC repeated its previous failures.
68. Based on the evidence available to me, I accept the complainant's view that the DfC failed to consider the '*difficulties*' he outlined on his claim form. I am satisfied the DfC had access to all of the information it required to establish 'good reason' for the complainant's failure to attend his assessment. However, it failed to consider these records. I note there was a further opportunity to consider the records prior to making the decision to suspend and disallow the complainant's benefit. However, it again failed to do so. Furthermore, I consider a third opportunity arose when the complainant raised a mandatory reconsideration request. However, the DfC again failed to respond appropriately.
69. The First Principle of Good Administration, 'getting it right', requires bodies to act '*in accordance with the law and with regard for the rights of those concerned*'. The Third Principle of Good Administration, 'being open and accountable' requires bodies to be '*open and clear about policies and procedures*' and ensure '*that information, and any advice provided, is clear, accurate and complete*'. The Fourth Principle of Good Administration, 'acting fairly and proportionately', requires bodies to ensure that decisions taken are appropriate and fair. In dealing with the complainant's PIP application, I am not satisfied the DfC acted in accordance with these principles. I am satisfied this constitutes maladministration and I uphold this issue of complaint.

70. I am satisfied the failures identified caused the complainant to experience the injustice of stress, uncertainty, frustration, and the loss of opportunity to have his application fully considered. I am also satisfied this led to the complainant suffering substantial financial loss. It is for DfC to implement procedures for staff to follow when determining good reason for claimants' failure to attend assessments. However, I consider the DfC's Tasks Bulletin is flawed, and fails to properly instruct staff to take appropriate steps to meet the relevant legislative requirement. Regrettably, this is to the disadvantage of its claimants.

The PIP 6000 letter

71. The DfC explained it issued a PIP 6000 letter to the complainant on 28 December 2018. I note the DfC said this letter informed the complainant his DLA benefit would be suspended as he failed to attend his assessment. I note the DfC did not retain a copy of the letter it sent to the complainant. I have no reason to doubt the DfC issued this letter to the complainant.
72. I note the template PIP 6000 letter does not refer to the suspension of a benefit. The DfC explained that a line notifying the complainant of the suspension was added to the letter before it was posted. However, in the absence of a copy of the letter sent, I am unable to substantiate this. I note the DfC said it 'sees *no value*' in retaining a copy of the document. I agree there is no value in retaining an incomplete form. However, as the letter accompanying the form documented the decision to suspend the complainant's benefit, I consider it appropriate to retain a copy of it. Without this letter, there is no record of the DfC's communication of its decision to suspend the benefit. I am critical of the DfC's failure to retain a copy of this letter.
73. A failure to retain proper and appropriate records is contrary to the Third Principle of Good Administration, 'being open and accountable'. Retaining appropriate records is a key tenet of good administrative practice. I am satisfied this failing constitutes maladministration. I consider the DfC ought to retain a copy of the PIP 6000 letter sent to claimants, especially as the template that it does retain fails to include a reference to the suspension of the benefit.

74. I considered the impact this failure had on the complainant. I do not consider the failure to retain a copy of this letter affected DfC's consideration of the complainant's PIP application. Therefore, I do not consider the complainant experienced an injustice arising from this failure.

Issue 2: Whether the complainant's PIP complaint was handled in accordance with relevant guidance and standards.

Detail of Complaint

75. This issue concerns how the DfC handled the complaint. The complainant said that in its response, the DfC agreed that its handling of the call made to him in December 2018 was unsatisfactory. However, it failed to apologise to the complainant or inform him of action it would take as a result of his complaint.

Evidence Considered

Legislation/Policies/Guidance

76. I considered the following guidance:
- i. The DfC's Complaints Policy; and
 - ii. The DfC's Complaints Guide.

Relevant extracts are enclosed at Appendix four to this report.

Relevant DfC records

77. A summary of the relevant records is enclosed at Appendix five to this report.

The DfC's response to investigation enquiries

78. The DfC explained that the failure to apologise to the complainant in its responses was *'an unfortunate oversight as the PIP Centre always issue an apology to a customer when it has been acknowledged that they have received unsatisfactory customer service. I would like to extend my own personal apology to [the complainant] for this...'*

79. The DfC was asked to provide documentation relating to its investigation of the complaint. It explained that *'no notes of this nature exists'*. The DfC further explained that all discussions were *'done verbally'*. In relation to action taken,

the DfC said that it addressed the matter of the call with the Case Worker. It further explained that it was '*accepted as an isolated incident*'. The DfC explained that training for dealing with '*vulnerable people*' is already delivered to PIP telephony agents. It said that the training '*includes role plays of calls from such customers*'.

Interviews

Interview with the Customer Response Officer (CRO)

80. The CRO explained that his role in the organisation is to review complaints and draft the responses. He said that he was allocated the complaint after the DfC received it on 18 July 2019. In relation to the stage one process followed, the CRO explained that he listened to the phone call and prepared a background note. He explained, '*if I listen to the call, that's my interpretation...that's what I would generally write in to the response*'. The CRO said that he would '*try and explain what's gone on with the claim as well, just to give [the complainant] a...background*'.
81. The CRO explained that he reviewed the process the Case Worker followed and how she handled the call. In relation to the call, he said, '*I think it could've been handled better...*'. The CRO explained that he drafted a response to the complaint and provided it to his line manager for his review. He said that the response was then passed to the Operational Manager for his review and signature.
82. In relation to the stage two complaint, the CRO explained that it '*may have been sent directly to [the Director's] office and then they would acknowledge it*'. He further explained that the customer service team '*hand it out to one of us to respond*'. The CRO explained that the stage two complaint is sometimes issued to the same person who dealt with it at stage one. He said, '*there's times when you get the same one again, there's times when other people look at it*'. He said that he could not confirm whether or not he dealt with this particular complaint at stage two. However, the CRO explained that for stage two, once the response is drafted, it is again issued to his line manager for review before it is provided to the Director for his review and signature.

Interview with the Deputy Centre Manager (Customer Services)

83. The Deputy Centre Manager (DCM) explained that he allocated the first stage complaint to a member of his team (the CRO). He said that he asked the CRO to listen to a recording of the telephone call. He explained that there is no record of this allocation as the instruction was communicated to the CRO verbally.
84. The DCM explained that he was also involved in the second stage complaint. When asked if the 'same person' deals with the second stage complaint, the DCM explained that *'it goes to the same team'*. He further explained that he reviewed the second stage response letter once it is drafted. It then is also reviewed by the Operational Manager (who responds to the first stage complaint) before it is reviewed and signed by the Director. The DCM explained that stage one and stage two complaints undergo the same process.

Interview with the Operational Manager

85. The Operational Manager said that he responded to the stage one complaint in his letter, dated 12 August 2019. In relation to the process, he explained, *'any complaints that...come in would automatically be scanned and tasked...to our Customer Response Team'*. He said that the Customer Response Team *'do the investigations on the...case, and audit...in terms of what's the nature of the complaint, and...establish right through the various facts'*. He further explained that the team create *'a draft background note which sets out the facts [and] a draft response to that. And then that would come to me then to consider....I'm heavily reliant on the information that's provided to me... but often what can happen is...I would look to see is everything adding up in terms of the background note, or if there's any gaps within it, I would seek further clarification if required'*.
86. In relation to this particular complaint, the Operational Manager explained that he listened to the call that occurred on 28 December 2018. He said *'I certainly acknowledged in my reply that it could've been handled a lot better...what I do regret not saying in my response was, 'and I therefore apologise for this'. I should've said that. I'm happy to accept that'*.

Interview with the Director

87. The Director explained that he responded to the escalated complaint (stage two). He said that *'Customer Services receives the Stage 2 complaint, I'm copied into it and it is sent through to the PIP centre who then prepare a draft reply from me plus they forward to me all the previous correspondence so that I can see whether there is [sic] any discrepancies or things that just don't look right. If there are contradictory things...then I would talk to [the Operational Manager] about them'*. The Director further explained that he also receives a background note [chronology] for the complaint. For this particular complaint, he said that he did not listen to the call that occurred on 28 December 2018 and went *'on the basis of what [the Operational Manager] has advised me'*.

The DfC's response to investigation enquiries

88. The DfC said it does everything possible to investigate complaints about the service provided by Capita, utilising all options available in relation to the investigation that can be undertaken. It explained that the standard of investigation is appropriate given the nature of the vast majority of PIP complaints.
89. The DfC said that at no stage since the introduction of PIP in June 2016 has the Ombudsman identified or referred to any shortcomings in its complaints handling process.

Analysis and Findings

90. This complaint is about the DfC's handling of the complaint. The complainant said that although the DfC agreed the call was *'unsatisfactory'*, it did not apologise to him. The DfC's Complaints Policy states it *'will at the very least apologise if a mistake has been made or a service has been provided at a standard below what you would expect'*. The DfC's Complaints Guide also provides guidance on when an apology is appropriate. I note the DfC considered its handling of the call made to the complainant on 28 December 2018 was *'unsatisfactory'*. However, it failed to apologise to the complainant in either of its written responses (for stage one and two). Furthermore, despite its acceptance that the call was *'unsatisfactory'*, the DfC failed to acknowledge in its responses the impact it had on the complainant's benefits. I note the DfC

accepts and regrets that it did not make an apology. I consider the provision of fair and proportionate remedies is an integral part of good complaint handling. I consider that in this instance, an apology was an appropriate remedy, and the DfC ought to have apologised to the complainant in its response to his complaint. This action was also in accordance with its Complaints Policy and Complaints Guide.

91. The complainant also said the DfC did not inform him of any action it took following his complaint. I accept the DfC could not inform the complainant how it addressed the matter internally with the Case Worker. However, when responding to complaints, I expect bodies to explain how the complaint was investigated, its decision, and its rationale for the decision. I am not satisfied the DfC provided this information to the complainant in its responses.
92. I note the DfC said it considered the standard of the investigation appropriate given the nature of the vast majority of PIP complaints. I disagree with its view. The DfC's Complaints Policy outlines its process for handling complaints. It states the DfC '*will carry out a thorough investigation into all complaints received*'. I note in its stage two response, the DfC stated, '*I am satisfied your concerns have been investigated*'. However, I found no evidence of an investigation beyond the DfC's written responses to the complainant. I note the DfC explained that discussions relating to the investigation were '*done verbally*'. I also note the CRO, DCM, and Operations Manager said they listened to the call. I have no reason to doubt these discussions occurred or that the call was listened to as part of an investigation process. However, as neither the discussions nor their considerations of the call were documented, the DfC did not provide any documentary evidence of the investigation it said it undertook, or of its rationale for the decisions made. In the absence of these records, I am unable to determine whether the DfC undertook a thorough investigation in accordance with its Complaints Policy.
93. I note the DfC commented it does everything possible to investigate complaints about the service Capita provides. I do not consider its comment relevant to this investigation, as the complaint concerned its assessment of the complainant, and was unrelated to the service Capita provided to the complainant.

94. I note that following receipt of the DfC's response to his stage one complaint, the complainant initiated the stage two process. It is not clear from the DfC's Complaints Guide whether this stage is a reinvestigation of the complaint or a review of the process undertaken at stage one. Nevertheless, I note the Complaints Guide outlines that the process followed at stage one is repeated for stage two, in that the customer services team also considers the stage two complaint and drafts a response. This is then reviewed by the DCM. I also note the same CRO who investigated the issues at stage one can consider the stage two complaint.
95. The purpose of a two stage complaints procedure is to allow for a fair and independent review of the process undertaken during the first stage. To achieve this, wherever possible, staff who were involved in the first stage ought to be spoken to as part of the investigation process. This is not possible if the person undertaking the second stage review is the same person involved in the first stage of the process. I note the DfC Complaints Guide states that the Director reviews and signs the stage two response (or someone does so on his behalf). However, there is nothing in the guide to suggest the Director, or anyone else not involved in the stage one process, conducts an independent review of the decision. I also note that in the complainant's case, the Director said that he went '*on the basis of what [the Operational Manager] has advised me*'. I do not consider staff should simply accept colleagues' accounts without question. Where appropriate, they ought to question the reasons for their decision. There is no evidence to suggest there was any effort to examine or question the decisions of those involved in the stage one complaints process. Based on the evidence available to me, I am not satisfied the second stage process the DfC undertook involved a fair and independent review. The second stage of any complaints process ought to be completely independent of the first. Otherwise, there is no purpose of having a second stage.
96. In its handling of this process, I consider the DfC demonstrated a poor attitude to complaints and their importance in continuous improvement and putting things right. I find this extremely concerning. A complaints process provides bodies with an opportunity to identify what went wrong and what it can do to

resolve any errors made. I consider the DfC failed to identify the chain of errors that occurred as a result of the poorly handled call made in December 2018. I do not consider the DfC appreciated the opportunities presented to rectify the failures that occurred. This was likely as a result of the DfC's failure to undertake an adequate investigation. I would have expected an investigation to identify that the procedure outlined in the Tasks Bulletin failed to meet the appropriate legislative requirement. I would especially expect this to be considered during the second stage of the complaints process, which is undertaken at Director level. The operation of the complaints procedure seems to be process driven without an engagement with the substantial issues the complainant raised. I uphold this issue of complaint.

97. I note that in response to the draft report, the DfC said my office has not previously identified or referred to any shortcomings in its complaints handling. My investigation considered how the DfC handled this particular complaint. I do not consider the DfC's past history of complaint handling provides evidence that it handled this complaint appropriately.
98. I consider the approach to complaint handling in this case ought to be extremely concerning to the Department. I am concerned as to whether a culture exists that properly values complaints. A valuing complaint culture seeks to resolve complaints as early as possible. Where there have been service failures, these are identified, and the underlying issues that led to the service failure rectified to ensure continuous improvement. I see no evidence of this in the Department's approach to this complaint.
99. The First Principle of Good Complaint Handling, 'getting it right', requires bodies to act in accordance with '*relevant guidance and with regard for the rights of those concerned*'. The Third Principle of Good Complaint Handling, 'being open and accountable', requires bodies to keep '*full and accurate records*' and to provide '*honest, evidence-based explanations*' and give '*reasons for decisions*'. Furthermore, the Fourth Principle of Good Complaint Handling, 'acting fairly and proportionately', requires bodies to ensure that '*complaints are investigated thoroughly and fairly to establish the facts of the case*' and to ensure that '*complaints are reviewed by someone not involved in*

the events leading to the complaint'. The Fifth Principle of Good Complaint Handling, 'putting things right', requires bodies to apologise where appropriate. I consider the DfC failed to act in accordance with these Principles in its handling of the complaint. I am satisfied this constitutes maladministration and I uphold the complaint. As a consequence, I am satisfied the maladministration identified caused the complainant to experience the injustice of frustration and uncertainty. Furthermore, I am satisfied it also caused the complainant the time and trouble in bringing his complaint to this office.

100. I consider it important to provide some context regarding NIPSO's expectations of public bodies whose clients may experience difficulties engaging or participating in their procedures and processes. These procedures and processes ought to be flexible and take account of these difficulties. Furthermore, staff ought to be sufficiently trained and able to manage such situations when they arise. In considering this case, I was struck by the profound impact that the DfC's decisions had on the complainant, and how little regard it took for his individual difficulties before his benefit was suspended. The complainant was in receipt of DLA with no set review, which was an indicator of his difficulties. However, when he applied for PIP, the result was not only that his claim was disallowed, but he lost the benefit he received since 2006. While errors can be made, it is my expectation that when they are, they will be resolved quickly. In this case, despite the fact that more senior staff became involved at the complaint stage, a person-centred approach was still not evident. I would have expected the failure to take account of all the information available to the Case Worker would have been rectified, and the complainant's claim would be considered following the normal process.

CONCLUSION

101. I received a complaint about the DfC's handling of the complainant's application for a PIP. The investigation established that the DfC's guidance failed to instruct staff to fully consider information contained within the complainant's records prior to making the decision to disallow his benefit when he did not attend an assessment. It also found there is no mechanism in place for this decision to be reviewed independently at a more senior level.

102. The investigation also established that the DfC do not routinely retain copies of the PIP 6000 letters issued to claimants. Therefore, it could not demonstrate that it informs claimants their benefit is suspended.

103. The complainant also raised concerns about the DfC's handling of his complaint. The investigation established that the DfC failed to follow its own complaints procedure when dealing with the complaint. It found the DfC failed to apologise for its handling of a call it made to the complainant in December 2018, which it agreed was '*unsatisfactory*'. The investigation was also unable to find evidence to suggest that the DfC undertook a thorough investigation into the complaint, or that it documented its considerations and rationale for its decision not to uphold the complaint. Furthermore, the investigation found the DfC failed to undertake a fair and objective review of the stage one process at stage two.

104. I am satisfied the maladministration identified caused the complainant to experience the injustice of uncertainty, frustration and the loss of opportunity to have his application fully considered. I am also satisfied this led to the complainant suffering substantial financial loss. In relation to complaint handling, I am satisfied it caused the complainant the time and trouble in bringing his complaint to this office.

Recommendations

105. I recommend within **one** month of the date of this report:

- i. The DfC provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused to him as a result of the maladministration identified; and
- ii. The DfC reconsiders the complainant's PIP application, and depending on the outcome, makes a payment to the complainant in respect of any amount he would have received had the DfC properly managed his application.

106. I note the DfC revised its procedure and in the event that a claimant fails to

return the PIP 6000 form, it is now a Case Manager, rather than a Case Worker, that makes the decision to disallow the benefit. I note the DfC's comment that this was an operational decision.

107. I further recommend that the DfC implements an action plan to incorporate the following recommendations and should provide me with an update within **three months** of the date of my final report. That action plan is to be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings) to:

- i. Undertake a review of its Tasks Bulletin to ensure it meets the relevant legislative requirements. The DfC ought to consider including:
 - (i) A procedure for making outgoing calls to claimants, to include a mechanism that will satisfy claimants of the identity of the caller;
 - (ii) An instruction for relevant staff to review claimants' records that outline the nature of their disabilities when establishing reasons for failing to attend assessments;
 - (iii) The inclusion of an internal mechanism for the decision to disallow a benefit to be independently reviewed by a more senior role within the DfC; and
 - (iv) An instruction to staff to retain a copy of the PIP 6000 letter issued to individual claimants.

- ii. Undertake a review of its Complaints Policy and Complaints Guide to ensure it clearly outlines what actions should be undertaken for the stage two process; and

- iii. Provide complaint handling training for relevant staff. This is to incorporate:
 - (i) Apologising for all shortfalls in service identified during the complaints process;
 - (ii) The importance of conducting thorough investigations for each element of a complaint;

- (iii) The creation and maintenance of investigation records, including contemporaneous notes of interviews undertaken, considerations of findings, and rationales for decisions; and
- (iv) Actions to take as part of a stage two review, including a thorough examination of the steps leading to the stage one decision.

A handwritten signature in black ink that reads "Margaret Kelly". The signature is written in a cursive style with a horizontal line under the name.

MARGARET KELLY
Ombudsman

March 2021

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.

- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.

- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.