

EQUALITY COMMISSION FOR NORTHERN IRELAND

Response to the consultation by the Department of Health on the Shaping Future Support: The Health and Disability Green Paper

October 2021

Summary

- 1.1 The Equality Commission for Northern Ireland understands that aspects of this strategy will become a devolved matter and be progressed by the relevant Departments of the Northern Ireland Executive, primarily the Department for Communities.
- 1.2 As designated Public Authorities for the purpose of Section 75 of the Northern Ireland Act 1998, these Departments will be required to screen any related policies that are likely to have an impact on equality of opportunity. The Commission will seek to liaise with the relevant Northern Ireland Departments on this.
- 1.3 The Equality Commission has called on both the Northern Ireland Executive and the Department of Work and Pensions to identify and commit to specific measures which will mitigate the adverse impact of welfare reform on the promotion of equality of opportunity, or any alternate policies which might better promote equality of opportunity¹.
- 1.4 As joint designated UNCRPD Independent Mechanism for Northern Ireland (IMNI), The Commission and The Northern Ireland Human Rights Commission have set out the issues in a range of areas that Government and others need to address to fully implement employment rights under the convention. These include:

¹ [ECNI - Welfare Reform policy recommendations - Addressing Inequality, Equality Commission NI \(equalityni.org\)](https://www.equalityni.org/ECNI-Welfare-Reform-policy-recommendations-Addressing-Inequality)

- the employment gap for disabled people
 - shortcomings with welfare to work measures
 - attitudinal barriers
- 1.5 IMNI has called for consideration to be given to what measures, including outcome focused actions, policies, laws and programmes and the collection of appropriate data, will be taken to:
- assist persons with complex disabilities into employment in Northern Ireland; and
 - improve the overall employment situation of persons with disabilities in Northern Ireland.
- 1.6 IMNI have also published a Report on the Department for Communities Response to Independent Review of PIP Process and Compliance². This included a series of Recommendations to the Department³ that we highlight in this response, including that the Department for Communities examine the principles-based approach to social security implemented in Scotland, and further examines the case for adopting a similar approach in Northern Ireland.

Introduction

- 1.7 The Equality Commission welcomes the opportunity to respond to the Department of Health's consultation on the Shaping Future Report: Health and Disability Green Paper⁴.
- 1.8 Furthermore, we welcome the stated objective to improve on how the Government can help people living with a disability to live more independently, including support to start, stay and succeed in work and ways to improve the experience people have of the benefits system⁵.
- 1.9 In particular, we welcome:
- The Department's proposal to reduce the number of unnecessary assessments;

² [PIP-in-NI-IMNI-020719.pdf \(equalityni.org\)](#)

³ Ibid Page 4

⁴ Department of Health (2021): [Shaping Future Support: The-health-and-disability-green-paper](#)

⁵ Ibid: Forward Paragraph 2.

- Ensure greater flexibility in the way that assessments are delivered;
 - The proposal to change the special rules for terminal illness.
- 1.10 It is our understanding that this Green Paper consults on the following aspects of state support for disabled people and people with health conditions:
- How well DWP services work for people, and what more can be done to make improvements and build trust?
 - How effectively DWP support people to start, stay and succeed in employment?
 - How successful the changes DWP have made to the benefits system since 2010 have been?
- 1.11 In addition, throughout the Green Paper, DWP have been guided by three priorities. These are:
- Enabling independent living;
 - Improving employment outcomes; and
 - Improving the experience of people using our services.
- 1.12 This response takes into account the consultation questionnaire provided and is set out based on the 5 following chapters:
- Providing the Right Support
 - Improving Employment Support
 - Improving our Current Services
 - Re-thinking Future Assessments to Support Better Outcomes
 - Exploring Ways to Improve the Design of the Benefits System
- 1.13 In making our response, the Commission provides feedback on equality aspects associated with:
- the overarching vision;
 - draft strategic implementation plan and equality considerations/obligations; and
 - the application of Section 75 of the Northern Ireland Act 1998 to promote equality of opportunity and good relations within any new planning framework; and

- consideration of international human rights obligations such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

1.14 This response draws on our policy and advice work across a range of equality grounds, including advice on Section 75, and in our role as the 'independent mechanism' in Northern Ireland under the UNCRPD.

Section 75 Obligations

1.15 We note that while the UK Government is committed to improving the lives of disabled people and people with health conditions across the jurisdiction and welcomes views from people wherever they live, including in Northern Ireland, the specific areas covered in this Green Paper relate to Great Britain only.

1.16 The UK Government is responsible for policies on employment support and social security in England and Wales and shares that responsibility in Scotland with the Scottish Government. In Northern Ireland, these areas are the responsibility of the Northern Ireland Executive. However, the Department for Communities in Northern Ireland and the Department for Work and Pensions in Great Britain seek to maintain similar social security systems.

1.17 The Commission understands that aspects of this strategy will become a devolved matter and be progressed by Departments of the Northern Ireland Executive.

1.18 As a designated Public Authority for the purpose of Section 75 of the Northern Ireland Act 1998, these Departments will be required to screen any related policies that are likely to have an impact on equality of opportunity.

1.19 It is important that public authorities commit to screening at the start of the policy development process, rather than when the policy has been established. This helps to identify any policies that are likely to have major equality issues, and if so, they must be subject to a full equality impact assessment (EQIA).

1.20 The Commission will seek to liaise with the relevant Northern Ireland Departments on this.

UNCRPD Obligations

- 1.21 The Equality Commission for Northern Ireland, together with the Northern Ireland Human Rights Commission, has been designated as the Independent Mechanism for Northern Ireland (IMNI), to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities in the region. Together with the Equality and Human Rights Commission and the Scottish Human Rights Commission we form the United Kingdom Independent Mechanism.

Key UNCRPD rights

- 1.22 Article 19⁶ of the United Nations Convention on the Rights of Persons with Disabilities requires State Parties to recognize that persons with disabilities have the right to live independently and be included in the community.
- 1.23 States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:
- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
 - b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
 - c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.
- 1.24 Article 25⁷ requires State Parties to recognize that persons with disabilities have the right to the enjoyment of the highest

⁶ [Article 19 – Living independently and being included in the community | United Nations Enable](#)
⁷ [Convention on the Rights of Persons with Disabilities \(CRPD\), Article 25 – Health](#)

attainable standard of health without discrimination on the basis of disability⁸.

- 1.25 Persons with disabilities must be provided with the same range, quality and standard of free and affordable health care and programmes as provided to other persons.
- 1.26 Persons with disabilities must also be provided with those health services needed specifically because of their disabilities, including early identification and intervention as appropriate, including among children and older persons.
- 1.27 Furthermore, Article 25 requires that health professionals provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities, through training and the promulgation of ethical standards for public and private health care.
- 1.28 Article 27 – requires State Parties to recognize that persons with disabilities have the right to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.
- 1.29 States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
 - a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

⁸ [Article 25 Health](#) UN Convention on the Rights of Persons with Disabilities

- c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- g) Employ persons with disabilities in the public sector;
- h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
- k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

1.30 States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

1.31 Article 28 requires State Parties to recognize that persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

- 1.32 States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
- a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
 - c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
 - d) To ensure access by persons with disabilities to public housing programmes;
 - e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

2 Specific Comments

Providing the Right Support

- 2.1 The Equality Commission has set out its recommendations in relation to the next Programme for Government and Budget of the NI Executive, including actions relating to access to social protection, namely to:
- protect the most vulnerable from the adverse impact of welfare reform, particularly mindful of impact on people with disabilities and women, and the barriers experienced by minority ethnic communities (including asylum seekers and refugees);
 - identify and commit to specific measures which will mitigate the adverse impact of welfare reform on the promotion of equality of opportunity, or any alternate policies which might better promote equality of opportunity⁹.
- 2.2 Social protection and an adequate standard of living are a prerequisite to enable disabled people to live independently and to participate fully in society.
- 2.3 There is evidence from an extensive range of sources that current levels of support are not adequate resulting in a range of adverse impacts on persons with disabilities.
- 2.4 In 1995, IMNI facilitated the visit to Northern Ireland of representatives of the Committee on the Rights of Persons with Disabilities, in respect of its Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 6 of the Optional Protocol to the Convention.
- 2.5 The inquiry examined the cumulative impact of the legislation, policies and measures adopted by the State party relating to social security schemes and to work and employment, from 2010 to the date of adoption of the report, directed to persons with disabilities or affecting their enjoyment of their rights to live independently and to be included in the community (article 19 of the Convention on the Rights of Persons with Disabilities), to an adequate standard of living and social protection (art. 28) and to work and employment (art. 27).

⁹ [ECNI - Welfare Reform policy recommendations - Addressing Inequality, Equality Commission NI \(equalityni.org\)](http://equalityni.org)

2.6 The Committee's Inquiry Report highlighted the findings from a wide range of research including:

- financial loss for persons with disabilities and lower incomes for households claiming benefits under the welfare system and for persons with disabilities;
- a significantly greater impact in the poorest areas;
- more persons with disabilities living in poverty;
- no account being taken of those people no longer eligible for entitlements and services;
- more inequality and growing restrictions on social care services, owing to the decreasing budget allocations earmarked for social care;
- a reduction in the services available for home care and for older people;
- a risk of social isolation and more reliance on informal and family care;
- loss of eligibility for or reduction in entitlement to personal independence payments;
- the negative impact of the reduction in housing benefit;
- the closure of the Independent Living Fund;
- the transition from disability living allowance to personal independence payments;
- the changes in the employment and support allowance;
- the impact on public transport services available for persons with disabilities; and
- negative stereotyping of persons with disabilities¹⁰.

2.7 The Committee found that there was reliable evidence that the threshold of grave or systematic violations of the rights of persons with disabilities has been crossed citing, inter alia:

- Measures resulting in a reduction in the support provided to meet the extra cost of disability and denial of reasonable accommodation in assessment procedures

¹⁰ UN Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 6 of the Optional Protocol](#) to the Convention, paragraph 79, page 13.

and in the realization of the right to employment have had a discriminatory effect on persons with disabilities;¹¹

- The core elements of the rights to independent living and being included in the community, an adequate standard of living and social protection and the right to employment have been affected: persons with disabilities affected by policy changes have had their freedom of choice and control over their daily activities restricted, the extra cost of disability has been set aside and income protection has been curtailed as a result of benefit cuts, while the expected policy goal of achieving decent and stable employment is far from being attained.¹²

2.8 Subsequent research has continued to suggest the persistence of many of the issues highlighted in the Inquiry report.

2.9 For example, research by the Social Market Foundation (2021) has highlighted that:

- Nearly half of all people in poverty in the UK are either disabled themselves or live with someone who is disabled;
- More in four in ten people (42%) living in families that rely on disability benefits are in poverty;
- There are 1.8 million more people in poverty whom live in a family that includes a disabled person that there were fifteen years ago;
- Close to four million disabled people in the UK were living in poverty in 2018/19 (the most recent available figures) against nearly three million in 2003/04.¹³

2.10 A cumulative impact assessment of the impact of tax and social security reforms in Northern Ireland commissioned by the Northern Ireland Human Rights Commission (2019) found that there is a clear relationship between household disability 'score' and the proportion of households losing from the reforms. Overall just 32% of households containing no members with

¹¹ UN Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 6 of the Optional Protocol](#) to the Convention, paragraph 113 (e), page 18.

¹² UN Committee on the Rights of Persons with Disabilities (2016): [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 6 of the Optional Protocol](#) to the Convention, paragraph 113 (f), pages 18-19.

¹³ Oakley, M (2021): [Time to think again - Disability benefits and support after Covid-19](#) (Social Market Foundation).

functional disabilities lose from the reforms, in comparison to 68% of households with a disability score of four or six or more and 66% of households with a disability score of 5 lose out¹⁴.

- 2.11 The report recommends an additional payment of £20 per month for disabled people in low income households for claimants of Universal Credit who receive the higher or lower disability addition for any adults or children as part of their claim¹⁵, and those claiming legacy tax credits and means tested benefits such as ESA and Housing Benefit who qualify for disability premia for those benefits. The rationale for the proposed measure is to offset some of the adverse consequences of the cuts to benefits, tax credits and Universal Credit since 2010 which have affected households with disabled people more than other households.
- 2.12 A key contributor to the ability of benefit claimants to 'get by' on benefits has been the impact of the benefits freeze from 2016-2020 which led to a decline in the value of the benefit against rising costs of living. Citizen's Advice (2020)¹⁶ noted that found that the number of people who are unable to cover their living costs has increased by 25% since the benefits freeze began in 2016.
- 2.13 The Trussell Trust has highlighted that more than six in ten (62%) working-age people referred to food banks in early 2020 were disabled.¹⁷
- 2.14 The Trust point out that the majority (78%) of households affected by disability who were referred to food banks in early 2020 were not in receipt of either Personal Independent Payments (PIP) or the Disability Living Allowance (DLA), the benefits that provide extra money to help disabled people get on with everyday life. The Trust draw attention to the impact on disabled people of the demanding criteria set in order to apply for, and successfully receive PIP resulting in many disabled people not meet the criteria and left without additional support to cover the costs associated with their disability.

¹⁴ Reed, H. and Portes, J. (2019): [Cumulative impact of tax and social security reforms in Northern Ireland](#), para 7.2, page 101

¹⁵ Claimants who receive disability additions for more than one person in the household should receive £20 per month for each disabled person.

¹⁶ Citizens Advice (2020): [Making Ends Meet: the impact of the benefits freeze on Citizens Advice's debt clients](#), page 3.

¹⁷ The Trussell Trust (28 June 2021): [The State of Hunger: It's not right that disabled people are being forced to turn to food banks](#)

- 2.15 The Trussell Trust have also highlighted how households affected by disability were on average in greater levels of debt than other households referred to food banks.
- 2.16 Furthermore, 23% of households with a disability were losing more than a quarter of their income on repaying debt or loans, compared to 14% among households not affected by disability whilst 41% of disabled people were in debt to the DWP. Households affected by disability are more likely than other households arriving at food banks to be in debt, to have accrued multiple debts, and for a higher proportion of their income to be swallowed up repaying these debts.¹⁸
- 2.17 A Joseph Rowntree Foundation report (2020) on Universal Credit in Northern Ireland found that the recipients of the benefit spoken to for the study experienced the benefit in negative ways:
- There were particular problems linked to the five-week wait for the first payment to come through and the provision of advance payments, which are repayable loans;
 - Recipients found it hard to recover from the financial hardship that the five-week wait caused, and described ongoing difficulties linked to reduced UC payments as the advance payments (and often other historical debts) were repaid.
 - A 'domino effect' was often experienced: debt led to more debt and aggravated mental health problems as people struggled to meet essential needs¹⁹.
- 2.18 The Disability Benefits Consortium has drawn attention to the financial situation faced by disabled people on legacy benefits facing rising costs for essential items and new costs as a result of changes brought on by the pandemic and the withdrawal of services and support:
- 82% of disabled claimants have had to spend more money than they normally would during the pandemic.

¹⁸ The Trussell Trust (22 June 2021): [The State of Hunger - The debt crisis facing households at food banks](#)

¹⁹ Patrick, R. and Simpson, M. (2020): [Universal Credit could be a lifeline in Northern Ireland but it must be designed with people who use it](#) (Joseph Rowntree Foundation).

- This is most commonly due to greater food shopping and utility bills, as over half (54% and 53%) of disabled claimants said these costs had increased significantly
- As a result of these increased costs, two thirds (67%) of disabled claimants have had to go without essential items at some point during the pandemic
- Almost half (44%) of disabled claimants are reporting being unable to meet financial commitments such as rent and household bills.²⁰

2.19 A survey conducted on behalf of the Cabinet Office's Disability Unit (June 2021) found that:

- 4% of disabled people, 4% of carers, and 6% of general public respondents 'agree' or 'strongly agree' that disabled people have sufficient financial support to meet their needs;
- 5% of disabled people, 6% of carers, and 9% of general public respondents 'agree' or 'strongly agree' that in general, the government provides a good level of support to disabled people.²¹

2.20 In light of the adverse impacts, highlighted above, the Commission reiterates its **recommendation** that the NI Executive protect the most vulnerable from the adverse impact of welfare reform; and commit to specific measures which will mitigate the adverse impact of welfare reform on the promotion of equality of opportunity, or any alternate policies which might better promote equality of opportunity.

2.21 With regard to the Department's proposals for exploring options for improved advocacy, one option which might usefully be explored is the piloting of a partnership approach between Disabled Persons' Organisations (DPOs) and Advice agencies. This approach could combine the knowledge of 'experts by experience' with that of benefits advice specialists in a way that is consonant with the underpinning principle of the UNCRPD, 'Nothing About Us, Without Us', to:

²⁰ The Disability Benefits Consortium (2021): [Pandemic Poverty - stark choices facing disabled people on legacy benefits](#)

²¹ Cabinet Office Disability Unit (June 2021): [UK Disability Survey Research Report](#), Q110 (d) and Q 110 (e).

- better secure the trust of disabled people seeking to navigate the benefits system;
- create employment for disabled advisors; and
- achieve better outcomes for disabled claimants.

Improving Employment Support

- 2.22 The Commission has highlighted the need to address inequalities in employment experienced by people with disabilities²².
- 2.23 The disability employment gap in Northern Ireland remains higher than the rest of the UK²³ and there is also a higher rate of economic inactivity²⁴ in NI.
- 2.24 In addition, while there are more people in work than previously, data indicates that there is a higher proportion of people on in-work poverty.²⁵
- 2.25 The Commission was disappointed to note that the Disability Employment Strategy did not appear as a priority in the NI Executive's Covid recovery plan.²⁶
- 2.26 The removal of barriers to work, including those experienced by people with disabilities, will contribute to realising Northern Ireland's full economic potential with improved employment opportunities for all.
- 2.27 We recommend action to reduce discrimination in employment, including due to disability. There is clear evidence of the economic exclusion of people with disabilities.²⁷ People with disabilities face barriers to employment and require support in terms of accessing and remaining in the workplace.
- 2.28 The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission (NIHRC) are jointly responsible, as the Independent Mechanism for Northern

²² Equality Commission for Northern Ireland: [Employment Equality](#)

²³ Equality Commission for Northern Ireland (2018): [Statement of Key Inequalities in Employment](#), paragraph 4.12, page 27.

²⁴ Equality Commission for Northern Ireland (2018): [Statement of Key Inequalities in Employment](#), paragraph 4.22, page 29.

²⁵ Hick, R. and Lanau, A. (2017): [In-Work Poverty in the UK](#), page 3.

²⁶ Northern Ireland Executive (June 2021): [Building Forward: Consolidated Covid Recovery Plan](#)

²⁷ Equality Commission for Northern Ireland (2018): [Statement of Key Inequalities in Employment](#), page 24.

Ireland (IMNI), for promoting, protecting and monitoring implementation of the Convention in Northern Ireland²⁸.

2.29 The Commission and NIHRC have set out the issues in a range of areas that Government and others need to address to implement fully the convention. In relation to employment IMNI have identified the following issues:

- employment gap for disabled people;
- shortcomings with welfare to work measures;
- attitudinal barriers.²⁹

2.30 Person with disabilities make up 26% of the total figure of those classed as economically inactive in Northern Ireland. The employment rate for people without disabilities 38% is over half that of persons without disabilities (80%), mirroring a similar ratio in relation to those without educational qualifications³⁰.

2.31 According to a 2013 survey, most people claiming the main unemployment benefit, Job Seekers Allowance, had worked since 2010. This figure contrasts significantly with the experience of persons with disabilities which show just 12% of respondents with a disability had worked since 2010.

2.32 IMNI has called for consideration to be given to what measures, including outcome focused actions, policies, laws and programmes and the collection of appropriate data, will be taken to:

- assist persons with complex disabilities into employment in Northern Ireland; and
- improve the overall employment situation of persons with disabilities in Northern Ireland.³¹

2.33 While the Department for Employment and Learning provides a number of programmes to support persons with disabilities in Northern Ireland into employment such as Access to Work NI, evidence provided to IMNI from the disability sector indicates

²⁸ [ECNI - Employment policy and equality in Northern Ireland \(equalityni.org\)](http://equalityni.org)

²⁹ Independent Mechanism for Northern Ireland (2017): [UNCRRPD - Jurisdictional Parallel Report on implementation in Northern Ireland](#), pages 69-70.

³⁰ [Disability and employment, UK - Office for National Statistics \(ons.gov.uk\)](http://ons.gov.uk)

³¹ Independent Mechanism for Northern Ireland (2017): [UNCRRPD - Jurisdictional Parallel Report on implementation in Northern Ireland](#), pages 69-70.

that these programmes have not effectively supported people with more complex disabilities³².

2.34 This includes people requiring a high level of personalised and ongoing support to access and retain employment and did not include accurate statistics and targets utilising appropriately disaggregated data to identify what progress has been made in this area.

2.35 The Northern Ireland Union of Supported Employment have highlighted concerns that the substantial support received by the disability employment sector in Northern Ireland by the European Social Fund will not be replicated by the post Brexit UK Shared Prosperity Fund³³.

2.36 The 2020 report developed by the NI Disability Strategy Expert Advisory Panel set out a number of relevant recommendations. These included the following in relation to employment:

- Develop a new Disability Employment Strategy in meaningful partnership with d/Deaf and disabled people and relevant statutory and voluntary organisations.
- Ensure that disability employment law is revised to reflect provisions within the Equality Act 2010 to ensure at least parity of treatment of all d/Deaf and disabled people across the UK.
- Develop disaggregated and qualitative data to better inform employment policy, shape programme design/delivery and ensure better outcomes.
- Ensure that currently proposed and future training and employment programmes (current programmes include ESF) are clearly linked across Departments. That by default they are co-produced with d/Deaf and disabled people, specialised and not a 'one size fits all' provision.
- Prioritise d/Deaf and disabled people within social clauses linked to employment practice within all Government procurement contracts NICS need to realign representation to at least match the percentage of d/Deaf and disabled people in employment in GB Civil Service.

³² Independent Mechanism for Northern Ireland (2017): [UNCRPD - Jurisdictional Parallel Report on implementation in Northern Ireland](#), page 68

³³ <https://www.nicva.org/article/niuse-policy-group-publishes-paper-on-the-future-funding-for-disability-employment-services>

- Firmly commit to development and roll out positive action (i.e. ring fencing posts) employment measures aimed at securing, retaining and progressing d/Deaf and disabled people through all levels of the NICS.
- Monitor and address the disability pay gap in employment.
- Incorporate access to work as a potential mechanism to support d/Deaf and disabled people in work experience to access employment in the first place – particularly in accessing equipment, transport, work-related expenses and personal assistance.
- Immediately work towards ending the practice of sheltered employment and other poor practices and advance creative opportunities for d/Deaf and disabled people to access meaningful jobs in a wide range of sectors.
- End the practice of reasonable adjustment being used as a punitive or restrictive measure on d/Deaf and disabled people and ensure that reasonable adjustments continue to be respected when the employer’s situation or external circumstances have changed (e.g. in light of Covid 19).
- Work with those responsible for the Disability Employment Stakeholder Forum on the following three recommendations:
 - Funding for Supported Employment model for d/Deaf and disabled people furthest from the labour market.
 - Develop a broad range of options to ensure d/Deaf and disabled people can participate at all levels in the labour market (recruitment, retention and promotion/advancement).
 - Access to work to support d/Deaf and disabled people in training and work experience and greater public awareness programme.³⁴

³⁴ [Disability Strategy Expert Advisory Panel Report](#) (2020), pages 86-88.

- 2.37 The Commission would especially seek to highlight concerns regarding the impact of sanctions on the mental health of job seekers.
- 2.38 The mental health Charity MIND highlighted that statistics show that the current conditionality system isn't working effectively for people with mental health problems.³⁵ Nearly 70% of the 60,000 sanction threats for people with mental health problems in the Employment and Support Allowance Work Related Activity Group in 2014-15 were later cancelled or reversed.³⁶
- 2.39 MIND maintain that these threats, whether they resulted in a sanction or not, have a detrimental impact on the mental health of people with mental health problems and propose that before introducing new forms of conditionality or requirements, the Department should review its current use of the policy to understand where improvements need to be made.
- 2.40 Mental health problems include symptoms that can be exacerbated by the environment created by conditionality or by placing requirements on people. If exacerbated, it is likely that the person experiencing them will be pushed further away from work³⁷.
- 2.41 MIND have made a number of recommendations including that The Department for Work and Pensions should redesign and improve training in mental health for Work Coaches, including introducing assessments and audits of knowledge and skills³⁸.
- 2.42 In relation to job seeking and employment support for people with mental health problems, MIND recommend that it should be tailored and personalised, ensuring progression is achieved at the claimant's own pace. MIND advise that pushing someone with a mental health problem too quickly into something they are unable to achieve or feel unready to undertake, could have a detrimental impact on their health³⁹.
- 2.43 Finally, MIND emphasise that to allow for progression, reasonable adjustments are made by both the employer and Work Coaches (as required under the Equality Act 2010), to

³⁵ See also: Royal Psychological Society et al (2019): [A consensus statement on the use of sanctions in the benefits system and entitlement to personalised support.pdf](#); Wright, S. (2020): [Mental health, welfare conditionality and employment support \(University of Glasgow\)](#); National Audit Office (2016): [Benefit Sanctions](#).

³⁶ [Written evidence - Mind; https://www.mind.org.uk/media-a/4279/32341.pdf](https://www.mind.org.uk/media-a/4279/32341.pdf)

³⁷ Ibid.

³⁸ Ibid, page 3.

³⁹ Ibid.

ensure that someone with a mental health problem is not at a disadvantage⁴⁰.

- 2.44 The Commission notes that Disability Rights UK (DRUK) have expressed concern that the Green Paper's employment related suggestions are concentrated around the Disabled person, rather than changing the attitude of employers and the nature of work and the workplace⁴¹.

Improving our Current Services

- 2.45 The National Audit Office's 2016 report on Health and Disability Assessments⁴² highlighted difficulties in securing appropriately qualified assessment staff. One possible consequence of capacity shortages is that assessment report quality is lower as staff may be less experienced⁴³.
- 2.46 The National Audit Office's Report also included the following recommendations:
- Develop an overall commercial strategy for health and disability assessments. It should develop an integrated approach to assessments which would support longer-term market development and capacity building. It should clarify the role of in-house provision and how it will complement contracted-out services.
 - Assess its future commercial capacity and skills needs against future risks. The Department should tailor its contract management approach to the risks associated with individual contracts. Having increased staff numbers, it needs to work with the Cabinet Office to review and develop staff skills.
 - Set out realistic but challenging evidence-based targets and adhere to clear principles for challenging assumptions through the procurement and management of contracts. It should challenge targets and assumptions, and reduce its reliance on responding through ad hoc changes after contracts are signed. Where assumptions are uncertain it should develop its principles for using 'allowable

⁴⁰ Ibid.

⁴¹ Disability Rights UK (September 2021): [Health and Disability Green Paper - A cause for concern](#)

⁴² [Contracted-out-health-and-disability-assessments \(nao.org.uk\)](#)

⁴³ Ibid, para 11.

assumptions' clauses and extend these beyond the initial stages of a contract.

- 2.47 The Northern Ireland Public Services Ombudsman (NIPSO) has conducted an investigation into the role of further evidence in the administration of Personal Independence Payment (PIP) in Northern Ireland.⁴⁴
- 2.48 Further evidence in PIP is evidence which is additional to the claimant's PIP application form and any evidence that is gathered through a face to face consultation with a Disability Assessor.
- 2.49 Sources of further evidence in PIP can include, but are not limited to:
- reports from health professionals involved in the claimant's care, such as a community psychiatric nurse or a general practitioner;
 - evidence from those who support the claimant, such as care coordinators or key workers;
 - prescription lists and care or treatment plans; and
 - information provided directly by the claimant.
- 2.50 Despite the stated importance and value of further evidence to the benefit decision making process, as set out in the Department's own policy and procedures, and its reported significance in the overturn of decisions, the Ombudsman was surprised to learn, based on revised Capita figures, that further evidence was only requested in approximately 25% of the total number of PIP cases progressed between August 2019 and April 2020.⁴⁵
- 2.51 The investigation also found that:
- At the Initial Review stage, further evidence was requested by Capita Disability Assessors in only 35 of the 100 claims examined. This figure includes both written and telephone requests. Whilst 10% higher than the overall 25% average, given the importance of further evidence to the PIP process it is lower than would be expected.

⁴⁴ Northern Ireland Public Services Ombudsman (2021): [PIP and the value of further evidence](#), page 5.

⁴⁵ Northern Ireland Public Services Ombudsman (2021): [PIP and the value of further evidence](#), page 6.

- Despite Disability Assessors having the ability to request further evidence at all stages of the PIP process, of the 96 claims routed for face to face consultation, further evidence was requested in only one case at the Assessment stage.
- The most commonly recorded indicator for deciding not to request further evidence was that it was unlikely evidence would be obtained within the timescale required.
- Capita's own written process, in respect of claims routed for a face to face consultation, almost acted as a deterrent to further evidence being gathered from other sources, despite claimants being left with the clear impression it would be an important part of the decision making in their claim.
- When evidence was requested from Health Professionals named by the claimant, the request letters sent by Capita were often poorly completed and did not specify what information was sought.
- In the face to face assessments, the evidence from the consultations was often the primary and in some cases the only source of evidence relied upon by the Disability Assessors when providing their advice to the Department.
- Disability Assessors did not explain or record why more reliance was placed on their observations at a face to face consultation than other available evidence from claimants, carers or professionals.
- In addition to passing quality audits, Capita use information about the number of assessment reports completed and submission times to decide bonuses for Disability Assessors. Time pressures and incentives have the potential to inhibit the appropriate use of further evidence to improve the quality of assessment advice.
- Although claimants tended to submit further evidence with their appeal submission, the NIPSO observed cases in which the same substantive information already existed in the claim file and/or additional evidence came from

sources previously highlighted by the claimant but were not contacted by Capita or the Department.⁴⁶

- 2.52 NIPSO observed that it was misleading to describe such cases as ‘overturned decisions on the basis that the evidence or the source of the evidence being relied upon as ‘new’ was often available from the very outset of the claims.
- 2.53 NIPSO concluded that as the statutory body responsible for making the decision of entitlement and in aiming to get PIP outcomes right first time, the Department for Communities needs to place testing the sufficiency and strength of the overall evidence at the core of their decision making role.
- 2.54 NIPSO advised that the Department must engage properly with claimants, on an individual basis, about where the best evidence to support their claim may be found and be proactive about bringing such evidence to light. Where aspects of its delivery are outsourced, such as in the undertaking of assessments by Capita, the Department must ensure the standards of service provision meets what the Department needs in order to make good decisions at the earliest opportunity possible.
- 2.55 The issues identified by NIPSO were not considered to be ‘one off’ mistakes but instead support the need to fundamentally review how further evidence is obtained and applied in the PIP process and how this is communicated.
- 2.56 In January 2020, the Scottish Government published Welfare reform: impact report on benefits for Disabled people⁴⁷. Reforms identified include:
- replacing DLA, PIP and AA with three new benefits that make decisions using a claimants account of their circumstances and existing supporting information.
 - for adults, significantly reducing the number of formal face-to-face, telephone or video assessments and with a formal assessment held when it is the only practicable way to make a decision.
 - basing entitlement to the new DLA Child benefit using the claimant’s account of their circumstances and existing

⁴⁶ Northern Ireland Public Services Ombudsman (2021): [PIP and the value of further evidence](#), pages 6-7.

⁴⁷ [Scottish Government \(2020\): Welfare Reform: impact report on benefits for disabled people](#)

supporting information and holding no face-to-face assessments being held.

- the Scottish Short Term Assistance payment which provides those challenging benefit decisions with their previous level of support until a decision is reached on the appeal. This payment is not repaid regardless of appeal outcome.

- 2.57 Disability stakeholders in England and Wales have welcomed and highlighted these changes when responding to this consultation process⁴⁸.
- 2.58 When an assessment or reassessment is required, the disabled person's choice of format (home, telephone, assessment centre, video, paper) should be followed. Additional stress is often caused by having to arrange care/travel to attend assessment centres, during an already anxious time.
- 2.59 Stakeholders have also raised concerns about the continuous reassessment of disabled people who are unlikely to improve year on year in terms of how their impairment affects their day-to-day lives.
- 2.60 The DPO Forum suggest that the system could be improved by using an approach centred on trust, where the benefit continues for longer periods, with the onus on the disabled person to notify of any changes in the meantime. At reassessment, this should be done by a simplified process to ask if anything has changed, since the last claim.

Re-thinking Future Assessments to Support Better Outcomes

- 2.61 In July 2019 The Independent Mechanism for Northern Ireland published a Report on the Department for Communities Response to Independent Review of PIP Process and Compliance⁴⁹. This included a series of Recommendations to the Department⁵⁰.

⁴⁸ The DPO Forum. England (September 2021): [Consultation response to "the health and disability green paper" - DPAC](#)

⁴⁹ Independent Mechanism for Northern Ireland (2019): [Independent Mechanism for Northern Ireland report on the Department for Communities response to the Independent Review of PIP Process and Compliance with Recommendations of the UN CRPD Committee](#)

⁵⁰ Ibid, page 4

2.62

The Commission particularly highlights the following recommendations that, in the context of supporting better outcomes, the Department for Communities should:

- review current arrangements to allow for the inclusion of a copy of the assessor's report to be made available to claimants along with the decision letter.
- continue its collaboration with thematic support groups, including disability groups to develop and facilitate ongoing educational awareness, particularly in relation to what constitutes "relevant information".
- review the terminology used throughout the process, especially terminology used in advice and guidance documents, and does not remain confined to the terms of the research undertaken by the Department for Work and Pensions in this area. IMNI further recommends that the Department's production of the series of information guides for the Universal Credit system in general is replicated to provide information specific to PIP.
- commit to further adjustments within the engagement process relating to the use of DLA evidence, including the introduction of paper- and electronic based advice.
- undertake its own review, separately to the Department for Work and Pensions, of all written material used throughout the PIP process. The review should determine the accessibility and comprehension of the written material, identify areas where revision is required, and outline steps to improve the accessibility of written material. IMNI further recommends the Department devise concise material in a variety of accessible formats, describing the PIP assessment process in particular.
- commit to undertaking its own review, separately to the Department for Work and Pensions, of the accessibility and comprehension of the PIP application process. The review should include the consideration of further adjustments to the initial stage of the application process, including the introduction of electronic forms. The Department should further commit to liaising with Capita in delivering enhanced awareness training to staff operating the initial telephone claim desk to ensure awareness of how to engage with claimants have

difficulties in using or are unable to use telephone communications due to their disabilities.

- undertake, separately to the Department for Work and Pensions, exploratory research into the development of a “Function First” approach to the PIP assessment process. IMNI further recommends the Department engage with relevant professional medical bodies to devise a process which enables the most effective and time efficient way to obtain a GP Short Summary Report to support the PIP2 submission. This engagement process should also examine what constitutes “relevant information” and “additional information” regarding a claimant’s medical history, condition, and how this may be obtained and included within the GP Short Summary Report.
- produce concise paper- and electronic based advice for claimants, families, carers and guardians regarding the preferred format and style for the submission of the completed PIP2 form and additional supporting documentation. The advice should also provide information on the process by which Capita receives a completed PIP2 form, including how documents are processed for inclusion in the claimant’s case file.
- review the procedure of determining when a face-to-face assessment is conducted, and the process by which this assessment is carried out. The review should include the consideration of adjustments to the initial review carried out by Capita, including the feasibility of alternative means of assessment beyond paper-based and face-to face assessment. The review should also assess the compatibility of the initial review including its restricted methods of assessment with the rights of the people of NI, especially people with disabilities.
- undertake, separately to the Department for Work and Pensions, exploratory research into the process by which requests for home assessments are considered.
- review the training currently delivered to assessors. The review should take into account the recent judgment of the High Court of England and Wales in December 2017 and assess the compatibility of the current training with the human rights of the people of NI, particularly people with disabilities.

- engages in discussion with Capita about developing enhanced training, particularly to consider specialist training for mental health awareness/conditions in line with human rights standards. The development of enhanced training should also consider the implementation of a system whereby claimants with particular medical conditions may request an assessor with enhanced training and knowledge of their conditions, or request a paper based review.
- review the continued use of informal observations within the assessment process. The Department and Capita should undertake a review on the continued inclusion of questions about suicide and self harm in the assessment process. This review should take into account the recent judgment of the High Court of 8 England and Wales in December 2017¹ and assess the compatibility of the use of such questioning with the human rights of the people of NI, particularly people with disabilities. IMNI advises this review should consider the introduction of specialist training for mental health awareness/conditions, and consider the development of a system whereby claimants with a history of suicide and/or self-harm may request an assessor with enhanced training and knowledge of mental ill health.
- review current arrangements to allow for the inclusion of a copy of the assessor's report to be made available to claimants along with the decision letter.

Exploring Ways to Improve the Design of the Benefits System

2.63

The Independent Mechanism for Northern Ireland has **recommended** that the Department for Communities examine the approach adopted in the social security system in Scotland - namely the introduction of a principles-based approach to social security, as enshrined in a social security charter – as a case of good practice particularly for the protection of the dignity and rights of people with disabilities and with regard to the possibility of the future implementation of a similar principles-based approach in Northern Ireland.

- 2.64 The principles identified in the Social Security (Scotland) Act 2018, Part 1, section 1. are: (a) social security is an investment in the people of Scotland; (b) social security is itself a human right and essential to the realisation of other human rights; (c) the delivery of social security is a public service, (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system; (e) the Scottish social security system is to contribute to reducing poverty in Scotland; (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence; (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which— i) put the needs of those who require assistance first, and ii) advance equality and non-discrimination; and (h) the Scottish social security system is to be efficient and deliver value for money.
- 2.65 The 2018 Act provided for the preparation and publication of a Scottish Social Security Charter, with the preparation requiring Scottish Ministers to consult persons with a physical and/or mental impairment, and in receipt of social security payments. The Act provides for reporting requirements on Scottish Ministers and for the establishment of a Scottish Commission on Social Security in order to periodically assess the extent to which the expectations set out in the Social Security Charter are being fulfilled.
- 2.66 The Social Security Charter, published in 2019, outlines what can be expected of Social Security Scotland, the Scottish Government, and of customers. These expectations include: a commitment from the Scottish Government to develop policy that seeks to advance the human right to social security, as well as equality, non-discrimination as defined in laws, treaties and guidance and to publicly challenge the myths and stereotypes about social security so as to reduce stigma and negativity; to respect the dignity of people using the service; and to generally promote a more positive view of social security.
- 2.67 The Equality Commission is aware that some stakeholders have noted that the Green Paper indicates that Ministers want to “explore making bigger changes to the benefits system” that will mean the system is “more affordable in the future”⁵¹.

⁵¹ The DPO Forum. England (September 2021): [Consultation response to "the health and disability green paper" - DPAC](#)

- 2.68 Disability Rights UK, for example, raise a concern in relation to a proposed: “new single benefit” so as to simplify the application and assessment process. One that could “put more focus “on supporting people with their extra costs, or alternatively place “more of an emphasis” on helping people to find and stay in work.⁵²
- 2.69 While the precise form of what form this new benefit might take is not clear at this stage, there has been speculation that it may be created by merging PIP – which contributes towards the extra costs of disability – with the income based ESA and Universal Credit (UC).
- 2.70 DRUK have expressed concern that this is likely to exclude many disabled people who rely on PIP to try to maintain independence. Yet the whole purpose of PIP is to compensate for the extra costs of disability.
- 2.71 A single benefit has the potential to remove all a person’s income in one sweep. At present, a disabled person in receipt of both benefits can challenge a flawed assessment while still receiving the other benefit.
- 2.72 DRUK have expressed doubt that many disabled people would support a single assessment if it meant PIP would be abolished and with just a ‘single disability benefit’ remaining.
- 2.73 The Commission notes that the NI Disability Strategy Expert Advisory Panel (2020) has set out a number of relevant recommendations⁵³ in relation to social protection:
- Repeal the PIP benefit and associated assessment for a better alternative, based on the social security legislation in Scotland adopting human rights principles underlining that legislation.
 - Repeal the Work Capability legislation, including the associated assessment and adopt a human rights approach to supporting disabled people into employment that does not conflict with their right to an adequate standard of living and entitlement to social security.
 - The Scottish Government engaged meaningfully and directly with d/Deaf and disabled people through establishing “disability experience panels” and have

⁵² Disability Rights UK (September 2021): [Health and Disability Green Paper - A cause for concern](#)

⁵³ [Disability Strategy Expert Advisory Panel Report](#) (2020), pages 46-48.

begun developing a social security system intended to reflect those experiences in keeping with CRPD obligations. The Northern Ireland Government must reflect this human rights approach that affords dignity and autonomy to d/Deaf and disabled people in the development of future social security provision Consider the abolition of Universal Credit in light of its disproportionate adverse impact on d/Deaf and disabled people and its replacement with a social security system that is compatible with a human rights approach in line with the recommendations above.

- Extend and maintain the existing welfare mitigations package.
- Extend the scope for further mitigations, including the introduction of the Contingency Fund to support those on Universal Credit.
- Exclude d/Deaf and disabled people, children and families from the sanctions regime associated with Universal Credit.
- Research to consider the impact of welfare reforms on specific disability grounds e.g. mental health issues/d/Deaf people.
- Adopt the recommendations from the British Deaf Association for a separate benefit for d/Deaf people to access language interpretation services; retention of the Covid 19 measure - £20 increase for claimants on Universal Credit.
- Amend the payment schedule associated with Universal Credit for d/Deaf and disabled people in line with fixed day fortnightly benefits of Employment Support Allowance and income support

October 2021