

Law Centre response to Independent Review of PIP Assessment (NI) Process

About Law Centre (NI)

1. The Law Centre provides free specialist advice, representation, training and policy services in different areas of law including social security law. The Law Centre works in partnership with Advice NI and CAB to deliver the Welfare Reform Support Project. The Law Centre is a member of the DfC Operational Forum and Disability Consultative Forum.
2. Since the introduction of PIP in June 2016, Law Centre has provided advice and/or representation in approximately 250 PIP cases. Overall, 77% of Law Centre's PIP tribunal cases have been allowed. This figure rises to 89% in the year to date. The Law Centre has a number of pending appeals to the Commissioner.

About this response

3. We welcome the opportunity to respond to the Independent Review of the PIP Assessment (NI) Process. We have made detailed comments and formulated a number of targeted recommendations based on our casework experience. Where appropriate, we have made reference to case studies to illustrate particular issues. We have grouped our recommendations into topics for ease of reference.
4. We note that this review is limited to the assessment process and does not consider the wider PIP policy or key concepts. We therefore do not make any comments on the underlying principles or policy intent of PIP.

Summary of Law Centre's key recommendations

The Law Centre has identified twenty nine recommendations that would improve the PIP Assessment process. These are set out at Appendix 1. Our key recommendations are:

- Improved communications from the Department with claimants and healthcare professionals to increase understanding of the PIP journey and of the concept of functional assessment.
- All claimants should have access to audio recording (free of charge) during face-to-face assessments.



- Greater emphasis on identifying vulnerable claimants and ensuring that reasonable adjustments are *always* considered.
- An agreed process for accessing medical evidence, which would include an agreement that claimants do not have to bear the cost of providing same.
- An agreed process for carers to input into the assessment.
- Improved accountability and transparency through the regular publishing of PIP data, which would include appeal data and Capita performance data.
- An independent complaints process that looks at *all* aspects of the PIP journey.

Detailed comments and recommendations

The following section covers the following topics:

- Understanding of the PIP process
- Face-to-face assessments including audio recording
- Further evidence including evidence from carers
- Administrative issues
- Appeals
- Complaints
- Accountability and transparency

Understanding of the PIP process

5. Our experience is that many PIP claimants have a limited understanding of the PIP process, how it differs to DLA and the relationship between Capita, the Department and the claimant. In particular, many claimants have a limited understanding of the concept of a functional assessment. In GB, DWP has accepted the need to improve communication with claimants and to improve understanding of the process and of the concept of functional information. DWP has agreed to explore means of doing so e.g. by developing video content, illustrating examples of the types of evidence, etc.¹
 - The Department should also commit to simplifying and improving communications products to provide a clear explanation of claimants' responsibilities, to ensure accessibility and to improve understanding of functional information.
6. In addition to improving communication with claimants, the Department also needs to improve communication with the medical profession (see section on Further Evidence, below).
7. The Law Centre has identified a particular lack of awareness of the Supplementary Payment for DLA claimants who are not entitled to PIP on reassessment. If a person does not qualify for PIP and lodges an appeal, s/he will be eligible for a Welfare Supplementary Payment, equal to the DLA payment, until the appeal is heard. This mitigation is not automatic: a claimant must lodge an appeal to receive it. Department statistics show that in 2016/17, a total of 530 customers received this particular Welfare Supplementary Payment.² Other Department statistics show that of 14,810 DLA claimants reassessed for PIP, 1,040 lost their

¹ DWP, 'Government's response to the Second Independent Review of the PIP Assessment' (December 2017), Annex A p 25.

² DfC, 'Welfare Supplementary Payments, Sanctions, the Operation of Discretionary Support, and Standards of Advice and Assistance provided' (December 2017) section4

award during a similar time period. This indicates that **almost half** of the eligible DLA claimants did not access the Supplementary Payment.³ This is a matter of concern.

- The Department should ensure that all DLA claimants who do not qualify for PIP are properly informed of the Supplementary Payment available; a warm handover to the Independent Welfare Changes Helpline should be considered.

Assessments

8. The Law Centre considers that further efforts at the initial stages of the PIP assessment are needed to identify claimants who are vulnerable. There is an overreliance on claimants self identifying as vulnerable; this is not sufficient as not all claimants will ask for additional help at the PIP1 stage. Even where there is evidence to show that the claimant is vulnerable, this is not always promptly and appropriately recognised.

Case study

- Law Centre is assisting a woman who is the victim of a serious sexual assault. She detailed the assault in her PIP2 questionnaire and explained that she did not feel able to report the assault initially to the PSNI. The woman was invited to a face-to-face assessment which was conducted by a male disability assessor. The woman shut down and did not disclose what happened or explain its ongoing effects. The assessment report noted that the woman ‘smiled and nodded’ throughout the assessment and notes the Mental State Examination (“MSE”) as ‘unremarkable’. The case is now at appeal stage. The Law Centre has helped the woman submit a complaint about the inappropriateness of a male assessor conducting this assessment. The claimant has requested an all female tribunal panel to ensure that she is able to disclose her circumstances.
- Law Centre is assisting a client who stated on her PIP2 claim form that her conditions included schizophrenia. The client’s GP returned a report to Capita noting that the claimant suffered from paranoid schizophrenia and chronic acute psychosis. The GP report also noted that the claimant had no insight and was in denial of her illness, was resistant to all therapy and suffered from on-going delusions and hallucinations. Despite the medical evidence, a face-to-face assessment was arranged. The subsequent report listed the evidence considered by the disability assessor: this did *not* include the aforementioned GP report. The report does not list schizophrenia as the primary or secondary condition but instead lists it under the ‘other’ category. The disability assessor recorded that the claimant had good insight and notes the MSE as ‘unremarkable’.

A peer review audit was conducted 5 days later. The audit noted ‘*clinically improbable advice such that the descriptor choice is highly unlikely*’. The audit also states that the GP Factual Report notes ‘*resistant to all therapy, on-going delusions and hallucinations, no insight into condition and denies ill health*’. The auditor instructs the disability assessor that ‘*this therefore needs to be acknowledged in report and negated if you feel descriptor choices are appropriate*’. The audit also

³ DfC, ‘Personal Independence Payment (PIP) Experimental Statistics’ (July 2017) accessible here: <https://www.communities-ni.gov.uk/publications/personal-independence-payment-statistics-july-2017>

notes that Further Evidence had been available at the time of the assessment and that this Further Evidence should have been included in the report.

The disability assessor amended the report the following day to state that the GP's report had been considered. The descriptor choice remained zero but the reasons were amended to say that although the GP report noted that the claimant had no insight, risky behaviour and needed help, the Mental State Examination remained 'unremarkable'.

Our client sought Mandatory Reconsideration and her GP wrote another letter advising that the claimant's psychiatric history should be taken into account. The GP expressed surprise that the GP had *not* been contacted for medical information given the claimant's psychiatric history. A decision maker sought further advice from Capita. Capita advised that 7 points should be awarded. As this is below the threshold, no PIP award was made. This case is now currently at appeal stage.

- Capita should be more thorough in assessing whether the claimant has any particular vulnerabilities/needs. Further, Capita should be mindful of the legal obligation to make reasonable adjustments to the assessment process and should be sufficiently flexible to accommodate disability. Where there is evidence of sexual assault or abuse, Capita should check whether the claimant prefers a male/female assessor.
9. The booking process for face-to-face assessments can be deeply frustrating for claimants given the apparent inflexibility in rescheduling appointments and, at times, conflicting information about dates and times.

Case studies

- The Law Centre acted for a claimant who had been in receipt of DLA for many years. She was invited to apply for PIP. She completed the PIP2 form and returned it with a covering letter explaining that she was not available for a face-to-face assessment on a particular date because she and her carer were away. It would appear that this note was ignored because an assessment was scheduled for a date that she could not make; our client did not receive this communication (because she was away). She did not attend her assessment which resulted in her being taken off the PIP journey and in her DLA being stopped. Following our intervention, PIP agreed to reschedule the claimant's appointment.
- The Law Centre was contacted for assistance by a man who had managed to reschedule his face-to-face assessment, however, he received two text messages reminding him to attend the first assessment. The claimant found it difficult to clarify what was expected of him and was anxious about missing his assessment.
- At a recent meeting with Capita, a Law Centre member outlined her frustration that disability assessors who try to attend a home visit but find there is no-one at home do not provide a note at the door to confirm their attendance. This has led to disputes as to who was at fault i.e. whether it was the claimant who failed to be at home or whether it was the disability assessor who failed to attend.

10. In relation to claimants failing to attend assessments, and following correspondence with the Law Centre, the Department made an operational decision to change their procedures. The Department has accepted that claimants should have an opportunity to demonstrate good reason *before* a decision is made to stop a claimant's benefit.⁴ This has resulted in the reinstatement of DLA in reassessment cases where good reason was shown for failure to attend a PIP assessment. In amending its procedures, the Department has taken a different approach to DWP, which is welcome.
- The Department's approach to good reason should be commended and we would ask the Department to issue guidance to confirm this change of practice.
 - The appointment booking system needs to be more flexible. The Department and Capita should ensure that the appointment booking systems are aligned and synched so that claimants do not receive out of date texts/messages. Further, if a disability assessor arrives for a home visit but cannot enter the property, they should leave a sealed envelope through the letterbox that requests that the claimant gets in contact.
11. GB reviews of PIP have consistently highlighted the issue of specialist assessors: many claimants would feel more confident in the process if they were assessed by a person who has expertise in their particular health condition. In response, DWP maintains that PIP is a functional assessment and that 'matching' disability assessors to particular conditions is not necessary. The Law Centre's view is that Capita should try and match where feasible. Furthermore, the assessor should do more to reassure the claimant that s/he is fully prepared e.g. is familiar with the case, has read all the supporting documents, etc. In addition, the assessor's questions could be specifically tailored to the medical condition(s) reported by the claimant. This would help alleviate the criticism of many claimants that the assessor 'asked me lots of irrelevant questions' – this perception erodes confidence.
12. Claimants regularly report not feeling listened to during their face-to-face assessment, that the disability assessor made limited eye contact, that the assessor was focussed primarily on the computer, that the assessment was rushed, etc. Some of these concerns could be allayed fairly simply e.g. if the assessor provided more reassurances and explained why they were keeping notes, etc.
- Capita should try and match assessors with medical condition(s) where possible.
 - The disability assessor should do more to explain how the face-to-face assessment will work and should tailor the questions to the medical condition(s).
13. Departmental guidance states that prior to concluding face-to-face consultations, 'disability assessors should give claimants an overview of the findings they have taken from the

⁴ DfC written communication to Law Centre on 10 November 2017 relating to, PIP Regulations (NI) 2016 Reg 9

consultation. Claimants should be invited to clarify any points and ask any questions they have about the assessment procedure'.⁵ It should therefore not be a surprise for claimants to later 'discover' that the assessor has recorded that a claimant is /not able to carry out a particular activity. Our view that this does not happen in practice and that claimants come away from assessments without any sense as to the disability assessor's findings.

- Disability assessors should follow departmental guidance and provide all claimants with an overview of findings at the end of the assessment and should probe all issues rather than make assumptions.
14. The PIP system needs to be accommodating of vulnerable claimants and should include particular protections for exceptional circumstances.
- The PIP process should be more accommodating of exceptional circumstances. ESA regulations 29 and 39 may provide a useful template for same.⁶

Audio recording

15. The Law Centre strongly recommends a change in approach to audio recording. We consider that audio recording should be made available (free of charge) to all claimants with the possibility of claimants opting out. We believe that audio recording will reduce the prevalence of disputes and will make it easier for all parties to respond to any allegations/complaints. This will improve accountability and confidence in the PIP process and will help improve the perception of PIP being a 'modern' disability benefit. We acknowledge that *in theory* audio recording is available for claimants however the restrictions and specification of the recording equipment is such that *in practice* claimants are rarely able to avail of audio recording.⁷ Indeed, Law Centre is not aware of a single claimant who has recorded their assessment in line with departmental guidance; a recent media report indicates that only 13 claimants in N. Ireland have done so.⁸

The Law Centre has received a number of queries about audio recording from claimants and voluntary and community sector organisations. Organisations are generally frustrated to hear of the current restrictions, which seem somewhat antiquated in today's smartphone technology era and which are widely perceived to be a barrier to accountability. One community organisation was considering spending some of its (limited) resources to buy the necessary recording equipment that it could then make available to its members.

⁵ PIP Assessment Guide Part One- The Assessment Process (2 Nov 2017) 1.6.46

⁶ Under regulation 29 of the Employment and Support Allowance Regulations those who fail to achieve 15 points from Schedule 2, must still be treated as having limited capability for work ("LCW") if they suffer from some specific bodily or mental disablement which means there would be a substantial risk to their health, or the health of another person, if they were found not to have LCW.

⁷ The procedure / specifications for Capita PIP audio recording are set out here: <http://www.capita-pip.co.uk/en/assessment-process.html> DWP policy is outlined in 'ESA-WCA Audio recording of face-to-face assessments' https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418925/wca-audio-recording-policy-march_2015.pdf

⁸ Irish News, 'Stormont tells PIP claimants: Buy your own audio equipment for assessments' (6 Jan 2018)

16. The Law Centre acknowledges that there are concerns that digital recordings could be edited, however, this challenge is surely not insurmountable and we think that a technical solution could be found. For example, at the end of the assessment, and in the presence of the claimant, the disability assessor could upload the recording on to a secure website and a secure link to the recording could be shared with the claimant/representative, Capita and the Department.
17. Reviews of PIP and ESA have made repeated recommendations for the introduction of audio recording. We note that a specific recommendation has been made to the NI Social Security Agency (“SSA”) to avail of surplus GB recording equipment to make it available in N. Ireland. This recommendation remains outstanding.

Extract of Independent Review of WCA Year 5⁹

The benefits to allowing people, especially the most vulnerable, to record their face-to-face assessment is not disputed and it is the practical issue of who provides the equipment. The Reviewer considers that there are a number of practical disadvantages for all parties in placing the responsibility for recording on the person making a claim rather than the Provider. The provision of this equipment by the Provider is now standard in Great Britain and, presumably, it will mostly become surplus to requirements at the end of the current contract. **The Reviewer therefore recommends that the SSA revisit this policy with a view to requiring the Provider to make recording equipment available when requested.**

- The Department should implement the recommendation to provide audio recording to all PIP claimants free of charge with an opt-out provision.

Further Evidence

18. Obtaining Further Evidence – especially medical evidence - creates many difficulties both in terms of the process and in terms of identifying and securing the relevant information. An agreed process developed and implemented by the Department is urgently needed to address the current difficulties.
- The Department should develop and implement a process for obtaining medical evidence and should issue guidance.

⁹ Dr Paul Litchfield, ‘An Independent Review of WCA – Year 5’ (November 2014) accessible here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380027/wca-fifth-independent-review.pdf



19. The Law Centre's perception is that the rate at which GPs respond to requests for medical evidence has dropped sharply compared to DLA. It is unclear why this is the case although it is possible that Capita is not requesting such evidence.
- This Review should consider whether there has been a drop in the response rate from medical practitioners to requests for evidence given the much higher prevalence of responses for the previous disability benefit's GP medical evidence. If so, the Review should identify reasons for same.
20. In GB, the issue of Further Evidence has been considered in considerable detail. Taking into account various factors, the Second Gray Review concluded that the onus of responsibility for gathering Further Evidence should primarily sit with the claimant¹⁰. DWP accepted this recommendation and the need to communicate this more clearly to claimants.¹¹ The DWP has agreed to explore different means of conveying to claimants the role of evidence and the type of functional evidence that might be helpful. For example, a good source of evidence for some clients is information compiled by an Occupational Therapist (this tends to be held in hospital records rather than GP records and access costs £10).
21. While the Law Centre agrees that different types of evidence can be helpful, our experience is that medical evidence is often given more weight by decision makers than other forms of evidence. The difficulty is that there are many barriers for claimants obtaining medical evidence and practices vary considerably across Northern Ireland: some GPs have a policy of not providing any evidence whereas other GP practices do provide evidence but charge fees that can vary between £10-£75. Such fees may be prohibitive and unfortunately, a Ministerial commitment to provide funding for such fees has not been delivered.

Extract from letter from DSD Minister Storey to Church Leaders dated 20 October 2014
Medical Evidence for Personal Independence Payment
I am proposing that the Executive provide additional funding for medical reports as part of the PIP decision-making process. It is proposed that where a medical report has not already been provided, then one must be received prior to a claimant receiving an unfavourable decision (reduction or disallowance) on their benefit.

- The Department should consider funding GP surgeries to provide medical evidence. In the meantime, it should deliver on the commitment to fund the cost of medical evidence for PIP claimants.¹²
22. The Law Centre acknowledges that many GPs do recognise the importance of the medical evidence and do provide this evidence free of charge to their patients. However, a different

¹⁰ Paul Gray, 'The Second Independent Review of the PIP Assessment' (March 2017)

¹¹ DWP, 'Government's response to the Second Independent Review of the PIP Assessment' (December 2017), Annex A p 25.

¹² DSD Minister Storey letter to Church Leaders (20 October 2014) previously accessible on the DSD website.

issue arises in that some GP evidence – e.g. a letter confirming diagnosis - is of limited relevance. The Department should commit to liaising with the medical profession with the view to improve awareness of the PIP process and of the type of evidence required.

- The Department should consider the best way of obtaining information from healthcare professionals. Our view is that ESA and DLA processes work better than in PIP as healthcare professionals are more likely to respond with relevant evidence. We would invite the Department to consider introducing a form similar to the ESA 113 form which might be easier for healthcare professionals to complete.
23. Another barrier for claimants is the availability of evidence. Claimants who have long-term conditions may require no on-going involvement with their health care professional and therefore it follows that they might have limited access to relevant evidence to support their claim. This is particularly the case for claimants who have poor mental health. Another problem is the lack of accessibility to a particular service: claimants may face waiting lists of many months for a diagnostic appointment and therefore may struggle to provide the information deemed necessary to support their PIP claim.

Waiting lists and diagnosis

A FOI response revealed that in early 2017 close to 1,000 patients across NI were waiting for an appointment for assessment at a memory clinic (the main function of which is specialist assessment and diagnosis of dementia). There was considerable variation in waiting numbers, waiting times and the type of service available. The South Eastern Trust had the highest waiting list numbers and the longest delays, with some patients waiting up to nine months for an appointment.¹³

The Department of Health publishes quarterly data on the waiting times for diagnostic assessments.¹⁴ This data clearly outlines which assessments have the longest waiting lists: for example, just under three quarters of patients waiting 26+ weeks for an assessment related to the following diagnostic tests: Peripheral Neurophysiology; Echocardiology; Non-obstetric Ultrasound; Magnetic Resonance Imaging; Computerised Tomography; Respiratory physiology sleep studies and Arthroscopy.

- Departmental guidance should clarify that PIP decision makers should consider the *availability/accessibility* of particular services relevant to the claimant’s condition. Any issues relating to the absence / lack of accessibility should be duly noted by the decision maker. Guidance should specify that the claimant’s own evidence should be given greater weight in such circumstances.

¹³ <http://www.thedetail.tv/articles/patients-in-ni-waiting-up-to-nine-months-to-be-seen-at-a-memory-clinic>

¹⁴ Department of Health, ‘Diagnostic Waiting Times Quarter 4’ (December 2017) accessible here: https://www.health-ni.gov.uk/sites/default/files/publications/health/hs-niwts-diagnostic-waiting-times-q3-17-18_1.pdf

24. If Capita obtains Further Evidence on request from the Department, it is only shared with the claimant in the appeal pack. Our view is that this evidence should be shared earlier (i.e. at Mandatory Reconsideration stage). Further, if a claimant submits Further Evidence to support a claim and the decision maker does not consider the evidence to be sufficiently relevant/comprehensive, etc. the decision maker should explain such reasoning in the report. This could help improve understanding and confidence: currently claimants feel aggrieved if it appears that information has been ‘ignored’.
- Capita should share all Further Evidence with the claimant at the Mandatory Reconsideration stage.
 - The decision maker should provide reasoning for rejecting any evidence /giving it little weight.
25. If Further Evidence is submitted, the Department decision maker has to make a referral to Capita before revising the decision. If the decision maker is unsatisfied with the Capita response, it is possible for the decision maker to escalate the issue internally. The Department has informed us that a decision maker has never challenged the Capita opinion in this way. This is extremely concerning and the Law Centre considers that there is a conflict of interest in the contracted provider (Capita) having this level of influence: if Capita were to indicate that the additional Further Evidence would support an award, it would effectively indicate that the original Capita report did not meet its purpose of correctly assessing the claimant’s entitlement to the benefit. Law Centre notes that decisions makers previously made these decisions in relation to other disability benefits without the need to seek advice from the contracted provider.
- We invite this Review to comment on this apparent conflict of interest. We invite the Review to recommend that the decision maker makes its *own* decision on whether Further Evidence changes the decision to award PIP without seeking advice from Capita.

Evidence from carers

26. Claimants often report that companions (carers / family members) are not given an opportunity to make an input at the assessment. The DWP PIP Assessment Guide is largely silent on how the Department should treat evidence submitted by carers and it seems that any input depends on the discretion of disability assessors. We consider this to be a missed opportunity: companions are likely to have very valuable information about a claimant’s abilities. Indeed, given the purported focus on function, it seems that such information should be integral to the PIP process. In GB, DWP has agreed to work with the assessment providers to investigate how assessments could be better structured to incorporate input from companions.¹⁵ We welcome this and urge the Department to take a similar approach.

¹⁵ DWP, ‘Government’s response to the Second Independent Review of the PIP Assessment’ (December 2017), Annex A p 25.

- The Department should equally commit to ensuring that evidence of carers is given sufficient weight and should amend the assessment process to ensure that carers are formally included.

Administrative issues

27. PIP decision letters include a summary of the assessment report, however, the full report is only issued at the appeal stage, which might be several months after the assessment took place. This time lapse can make it difficult for claimants to accurately recall discussions at the assessment. The Second Gray review recommended that all claimants are provided with the assessment report with their decision as a means to improve transparency of decision making.¹⁶ The Law Centre's view is that this could be overwhelming /distressing for some claimants (e.g. those with anxiety disorders) and so we do not recommend that this becomes standard practice. However, we strongly recommend that claimants are clearly informed of their right to request the full assessment report following the receipt of a decision.

- The Department should clearly inform claimants of their right to request the full assessment report.

28. ESA assessment reports in Northern Ireland are written on the same day as the assessment takes place (as are PIP reports written by Atos in GB). In contrast, there is no requirement that PIP disability assessors in Northern Ireland complete the assessment in one day. If the disability assessor does not write the report immediately and goes on sick leave, annual leave or leaves their post (Capita confirmed at 5% turnover of disability assessors) it can result in the claimant being called back to attend a second assessment, which can be distressing. It can also mean that complaints about the assessment cannot be fully investigated, which is unsatisfactory.

Case study

- The Law Centre is assisting a client whose report was completed 18 days after the face-to-face assessment. Capita does not record individual reasons to explain delays in the completion of reports. The Law Centre has raised concerns about the evidential weight that should be given to a report that has been completed after an unexplained delay.

- The Assessment Provider should be required to complete the assessment in the same day.

29. The process by which claimants should report changes of circumstances is unclear e.g. what form is used (the PIP Centre has indicated that there is a form, but it cannot be shared with

¹⁶ DWP, 'Government's response to the Second Independent Review of the PIP Assessment' (December 2017), Annex A p 25.

advisers); whether claimants are advised about the potential of losing/reducing their award; whether claimants can withdraw a change in circumstances notification, etc. We are not aware of any guidance in the PIP Assessment Guide or the Advice for Decision Makers, hence the lack of clarity. In a similar vein, the process by which a claimant renews their PIP claim at the end of a fixed award would benefit from clarification.

- The Department should clarify the process by which claimants report changes in circumstances and renew PIP claims.

30. Law Centre has noted that some claimants who did not have assistance with form filling misunderstand some of the questions. For example, in response to 'Communicating Q9', some claimants provide an explanation of e.g. a social anxiety disorder (which is actually more relevant for 'Mixing with other people Q11'). We note that the ESA50 claim form more closely aligns with the legislation / activities and think that its format might be easier for claimants to complete.

- We would encourage the Department to review the PIP2 form and to consider whether some of its questions would be better framed in a closed question format.

Appeals

31. Statistics issued by the Department for Communities show that by the end of July 2017, 82% of new claims and 77% of reassessed DLA reconsiderations resulted in **no change to the award**.¹⁷ This reflects our experience and we can understand that many claimants feel that the Mandatory Reconsideration stage merely obstructs access to the Tribunal.

- The Department should urgently review the Mandatory Reconsideration process and consider whether it is an effective remedy for claimants.

32. It would be helpful if the Tribunal service could provide more timely information about appeals. A 'feedback loop' was recommended at the fourth WCA review and would ensure that learning is communicated to the assessor as well as to decision makers.¹⁸ This action remains outstanding.

- The Department should work with the Tribunal to action the recommendation of a feedback loop.

¹⁷ Department for Communities, 'PIP Statistical Bulletin Experimental Statistics' (July 2017) accessible here: <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/personal-independence-payment-statistical-bulletin-july-2017.pdf>

¹⁸ Dr Paul Litchfield, 'An Independent Review of WCA – Year 4' (Dec 2013) Para 26 page 79 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265351/work-capability-assessment-year-4-paul-litchfield.pdf

Audits

33. Auditing of PIP assessments for quality issues is commonplace. Auditing can result in the amendment of reports, changing of scores and comments on the quality of the assessment that may be relevant to the weighing of evidence by decision makers and tribunals. Prior to November 2017, none of this PIP information was disclosed by the assessment provider, with just the final version of the assessment included in the appeal papers. Since autumn 2017, the Department has agreed to include each version of the assessment, an explanation of the changes and crucially a copy of the Assessment Provider's actual peer review audit document. The Law Centre considers this to be a very positive development and consistent with the principle of an Article 6 fair hearing¹⁹ and we pleased that audit information is now being supplied.

- The Department's approach to disclosing PIP audits should be commended. Including all audit papers in PIP appeal bundles should be standard practice and the Department should issue guidance to this effect.

34. If a claimant submits a request for auditing information, Capita will not provide it. Instead, the claimant must request this information from Capita via the Department. This process is cumbersome and may result in some claimants giving up on their efforts to obtain the auditing information. It is important that the auditing process is made more transparent. Law Centre is concerned that the audit process is more concerned with meeting contractual standards rather than identifying correct outcomes. The following case study illustrates the apparent ineffectiveness of the auditing process.

Case study

- LCNI is assisting a client whose assessment was initially audited with a finding that *'descriptor choice was clinically improbable advice such that the descriptor choice is highly unlikely but would not lead to a wrong award or major error in duration if left unchanged'*. The audit also noted *'poor justification which fails to support the advice, including descriptor choices'* but did not suggest an alternative award. The report was subsequently amended but there was no change to descriptor choice. A second audit stated that *justification was clinically possible but evidence supports consideration of an alternative opinion or descriptor choice*. Still no changes were made to descriptor choice.

- Auditing information should be more easily obtainable for claimants; Capita / Department should release data on auditing (see section below 'Accountability & Transparency') and the Department should consider the effectiveness of the auditing process.

¹⁹ Commissioner decision CDLA 41272003

Complaints

35. Law Centre has raised concerns about the complaints process with the Department. Our concern is that the complaint process does not provide an effective remedy for claimants. This assertion is evidence by our experience: whereas Law Centre's current success rate at appeal is 89%, our success rate with complaints is 0%. In short, while we have pursued many complaints, none of these complaints have been upheld.

At a recent meeting between the advice sector and Capita, many advisers expressed their frustration with the complaint process. Advisers said that they could not justify spending time helping claimants draft complaints in the knowledge that so few complaints are upheld. One adviser expressed the sentiment succinctly, describing the complaints process as a 'waste of time'.

36. The current complaint process directs the complaint to Capita in the first two stages, to the Department in the third stage and then to be escalated to the NI Parliamentary Ombudsman / Independent Complaints Examiner. However, these latter two bodies can only consider administrative issues and cannot consider the contents of a complaint.

Case study

- Law Centre assisted a client who was described in the face-to-face assessment report as being *'very nervous, restless, tense, he was very tearful for the duration of the assessment and remained tearful as he left the consultation'*. The report also noted that the claimant's *'mood appeared to be very low and anxious, he was fidgeting throughout, had an evident tremor in his leg that he needed prompting to follow the process of assessment and answer the questions asked'*. The disability assessor recorded smelling alcohol on the claimant's breath and that the claimant had driven to the centre. Despite the recorded observations about the claimant, they were omitted entirely in the descriptor choices. The claimant was awarded zero points and the justification given was that the claimant had been able to drive to the assessment.

The Law Centre submitted a complaint about how the report did not take into account the claimant's visible state during the face-to-face assessment and about the assessor citing an apparently intoxicated person driving to their assessment as a justification of the score of zero points.

Our complaint was rejected and so the Law Centre escalated it to the Ombudsman. The Ombudsman refused to consider whether the disability assessor should have taken their own observations into account and explained, *'I must explain the legislation placed certain constraints on the Ombudsman's ability to act, one of which is that she is neither authorized nor required to question the merits of discretionary decisions unless there is clear evidence of maladministration in reaching these decisions'*.

While the Law Centre acknowledges the limits of the Ombudsman's remit, this case illustrates the lack of available remedy for a claimant who feels that the assessment was conducted inadequately.

- There needs to be an effective independent avenue of complaint regarding clinical assessments.

Accountability and transparency

37. In December 2017, the Work & Pensions Select Committee issued statistics relating to the PIP and ESA Assessments inquiry,²⁰ which included performance data for the PIP assessment providers. The statistics related to GB only. We would urge the Department to publish comparable NI data as a means to improve accountability: it is important that policy makers and the wider sector are aware of the quality of the service provided by Capita.

- The Department should publish NI data relating to appeals and PIP assessment providers' performance and the methodology for calculating same.

38. The Department publishes detailed PIP data on its website. This is welcome. However, the data is limited in that it does not include data relating to Mandatory Reconsiderations, appeals and outcomes. The Appeals Service has informed the Law Centre that it is compiling appeal statistics,²¹ however, as far as we are aware, this information is not regularly published.

- The Department should obtain and publish regular appeal statistics from The Appeals Service.

March 2018

²⁰ Work & Pensions Select Committee, 'PIP & ESA Assessments Inquiry: Supporting Statistics' (4 December 2017)

²¹ As per Law Centre email correspondence with The Appeals Service 6 March 2018

Appendix 1

All Law Centre recommendations to improve PIP process

1. The Department should commit to simplifying and improving communications products to provide a clear explanation of claimants' responsibilities, to ensure accessibility and to improve understanding of functional information.
2. Capita should be more thorough in assessing whether the claimant has any particular vulnerabilities/needs. Further, Capita should be mindful of the legal obligation to make reasonable adjustments to the assessment process and should be sufficiently flexible to accommodate disability. Where there is evidence of sexual assault/abuse, Capita should check whether the claimant prefers a male/female assessor.
3. The Department's approach to good reason should be commended and we would ask the Department to issue guidance to confirm this change of practice.
4. The appointment booking system needs to be more flexible. The Department and Capita should ensure that the appointment booking systems are aligned and synched so that claimants do not receive out of date texts/messages. Further, if a disability assessor arrives for a home visit but cannot enter the property, they should leave a sealed envelope through the letterbox that requests that the claimant gets in contact.
5. Capita should try and match assessors with medical condition(s) where possible
6. The disability assessor should do more to explain how the face-to-face assessment will work and should tailor the questions to the medical condition(s).
7. Disability assessors should follow departmental guidance and provide all claimants with an overview of findings at the end of the assessment and should probe all issues rather than make assumptions.
8. The PIP process should be more accommodating of exceptional circumstances. ESA regulations 29 and 39 may provide a useful template for same.²²
9. The Department should implement the recommendation to provide audio recording to all PIP claimants free of charge with an opt-out provision.

²² Under regulation 29 of the Employment and Support Allowance Regulations those who fail to achieve 15 points from Schedule 2, must still be treated as having limited capability for work ("LCW") if they suffer from some specific bodily or mental disablement which means there would be a substantial risk to their health, or the health of another person, if they were found not to have LCW.

10. The Department should develop and implement a process for obtaining medical evidence and should issue guidance.
11. This Review should consider whether there has been a drop in the response rate from medical practitioners to requests for evidence given the much higher prevalence of responses for the previous disability benefit's GP medical evidence. If so, the Review should identify reasons for same.
12. The Department should consider funding GP surgeries to provide medical evidence. In the meantime, it should deliver on the commitment to fund the cost of medical evidence for PIP claimants.
13. The Department should consider the best way of obtaining information from healthcare professionals. Our view is that ESA and DLA processes work better than in PIP as healthcare professionals are more likely to respond with relevant evidence. We would invite the Department to consider introducing a form similar to the ESA 113 form which might be easier for healthcare professionals to complete.
14. Departmental guidance should clarify that PIP decision makers should consider the *availability/accessibility* of particular services relevant to the claimant's condition. Any issues relating to the absence / lack of accessibility should be duly noted by the decision maker. Guidance should specify that the claimant's own evidence should be given greater weight in such circumstances.
15. Capita should share all Further Evidence with the claimant at the Mandatory Reconsideration stage.
16. The decision maker should provide reasoning for rejecting any evidence /giving it little weight.
17. We invite the Review to recommend that the decision maker makes its *own* decision on whether Further Evidence changes the decision to award PIP without the need to seek advice from Capita and to consider the apparent conflict of interest.
18. The Department should equally commit to ensuring that evidence of carers is given sufficient weight and should amend the assessment process to ensure that carers are formally included.
19. The Department should clearly inform claimants of their right to request the full assessment report.
20. The Assessment Provider should be required to complete the assessment in the same day.

21. The Department should clarify the process by which claimants report changes in circumstances and renew PIP claims.
22. The Department should review the PIP2 form and to consider whether some of its questions would be better framed in a closed question format.
23. The Department should urgently review the Mandatory Reconsideration process and consider whether it is an effective remedy for claimants.
24. The Department should work with the Tribunal to action the recommendation of a feedback loop.
25. The Department's approach to disclosing PIP audits should be commended. Including all audit papers in PIP appeal bundles should be standard practice and the Department should issue guidance to this effect.
26. Auditing information should be more easily obtainable for claimants; Capita / Department should release data on auditing and the Department should consider the effectiveness of the auditing process.
27. There needs to be an effective independent avenue of complaint regarding clinical assessments.
28. The Department should publish NI data relating to appeals and PIP assessment providers' performance and the methodology for calculating same.
29. The Department should obtain and publish regular appeal statistics from The Appeals Service.