
Follow Up Submission: response to UNCRPD Inquiry Report and UK Government Response

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Disabled People Against Cuts (DPAC)

DPAC is a grassroots campaign led by Disabled people. Following the first mass protest against austerity cuts held on the 3 October 2010 in Birmingham it was set up by a group of Disabled people in response to the disproportionate impact of austerity on Disabled people. That march had been led by Disabled people under the name of The Disabled Peoples' Protest. Since then DPAC has continued to grow as the negative impacts of austerity have widened. DPAC now has over 20,000 members and supporters with a far wider outreach through its work with mainstream anti-cuts groups, universities, Disabled Peoples' Organisations, and Trade Unions.

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Inclusion London

Inclusion London is a London-wide Deaf and Disabled People's Organisation. We support Deaf and Disabled people's organisations in London and campaign for equality for Deaf and Disabled people. Inclusion London supports 90 Deaf and Disabled Organisations working across every London borough. Through these organisations, our reach extends to over 70,000 Disabled Londoners.

www.inclusionlondon.org.uk [@inclusionlondon](https://twitter.com/inclusionlondon)

Abbreviations

AtW	Access to Work
CCG	Clinical Commissioning Group
DHP	Discretionary Housing Payment
DLA	Disability Living Allowance
ESA	Employment and Support Allowance
FFW	Fit For Work
ILF	Independent Living Fund
JSA	Job Seekers Allowance
LA	Local Authority
PIP	Personal Independence Payment
SG	Support Group
WRAG	Work Related Activity Group

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1. Comments on the findings of the Committee

We welcome the findings of the Committee which present an accurate evaluation of the situation in the UK. We acknowledge the time and effort which the Disability Committee put into their very thorough investigation and appreciate the opportunity that was given to Disabled people and our organisations to be listened to.

We were disappointed that neither we nor the UK Independent Mechanism received advance notice of the publication of the Committee Report other than via a leak to The Mail on Sunday newspaper¹. This meant that we were not able to ensure dissemination of the findings of the inquiry before it was publicly discredited.

The inquiry focused specifically on Articles 19, 27 and 28 of the Convention. Retrogression has not only occurred under these Articles, and we look forward to the routine scrutiny of the UK in 2017 as an opportunity for the Committee to consider wider, interrelated impacts of UK Government policy and legislation on the rights of Disabled people.

Evidence to the inquiry was submitted in three areas and, whilst acknowledging the volume of information considered by the Committee and its decision to strictly confine its findings to specific Articles, we are disappointed they are not covered in the Committee Report. These are:

- The impact of austerity measures on inclusive education
- Increasing barriers to employment for Disabled people
- The impact of cuts to mental health services

Increasing barriers to education and employment created by Government policy measures alongside the curtailing of social security protections have added to the cumulative adverse impact of austerity on Disabled people. These include, but are

¹ <http://www.dailymail.co.uk/news/article-3909276/Controversial-task-force-slams-Britain-s-welfare-cuts-says-disabled-people-unfairly-bearing-brunt.html>

not limited to, the decision to cut Disabled Student's Allowance², a raft of strategic and operational changes to the Government Access to Work scheme³, and the introduction of fees for employment tribunals⁴. There is also evidence that conditions for Disabled staff working within Government departments have worsened⁵.

Disabled people's rights under Article 19 have been impacted by cuts to inclusive education and to mental health services. Having choice and control over living arrangements includes full inclusion in mainstream education provision. This has been undermined by severe cuts to funding for learning support assistance. Mental health services have also suffered with real terms cuts of over £600 million to the budgets of Mental Health Trusts since 2010⁶. Over the same period the

² The UK Government's decision to cut Disabled Student's Allowance (DSA), namely removing assistance with Non-Medical Helpers Allowance, has resulted in adverse effects on potential and existing Disabled students. Plymouth University stated that the increased financial pressure to fund additional support will inevitably affect admissions tutors' attitudes when recruiting Disabled students. RANDSTAD, a Higher Education Support Agency, stated that 34% of Disabled students would definitely not be able to attend university without DSA support

³ Written submissions and personal testimony were given to the inquiry. Research is due to be published by Inclusion London in February 2017. A Work and Pensions Committee inquiry report on Access to Work (2014/15) covered many of the issues experienced at the time: <https://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/481/48102.htm>

⁴ Since the introduction of employment tribunal fees in 2013, disability discrimination claims have fallen by 54%. See: House of Commons Library, *Employment Tribunal Fees*, 22 June 2016.

⁵ According to Civil Service benchmarking surveys, staff reporting that they have experienced disability discrimination within the past 12 months increased from 7% in 2010 to 10% in 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/568870/Civil_Service_People_Survey_2016_-_Benchmark_Report.pdf

Research has shown how the introduction of performance management systems in the civil service discriminate against Disabled workers

French, Steve Civil Service Performance Management Diversity & Inclusion outcomes data 2014/15 – an analysis, Keele University.

http://www.pcs.org.uk/en/news_and_events/pcs_comment/pcs_comment.cfm/pcs-report-highlights-dangers-of-civil-service-performance-management

⁶ Analysis carried out by the BBC and Community Care suggests mental health trusts suffered a real terms cut of 8.25% to their budgets, the equivalent of £598 million. Freedom of Information requests, annual reports and other research was used to compare the budgets of mental health trusts in England in 2010/11 with 2014/15: <http://www.bbc.co.uk/news/health-31970871>. Up to 15,000 beds have been lost in the past 15 years and many people are forced to travel miles to get support as units are shut and crisis teams merged to save money. Experts have warned that 75% of patients do not get the treatment they need. Figures from the NHS's health and social care

numbers of those seeking treatment rose from 500,000 to 1.7 million⁷. Recent figures show that detentions under the Mental Health Act have risen dramatically⁸ and the suicide rate has increased⁹. The number of unexpected patient deaths reported by England's mental health trusts has risen by almost 50% in three years¹⁰.

Cuts and policy changes in the above areas have all contributed to the retrogression experienced under Articles 19, 27 and 28.

information centre, obtained through a parliamentary question, show that the number of qualified nurses working in psychiatry dropped by 10.8% from 41,320 in 2010 to 36,870 in 2015. The King's Fund think-tank found that evidence of poor quality care is widespread, with less than a fifth of people feeling they received appropriate care in a crisis.

<https://www.kingsfund.org.uk/publications/mental-health-under-pressure>

⁷ <http://www.mind.org.uk/information-support/types-of-mental-health-problems/statistics-and-facts-about-mental-health/key-facts-and-statistics/>

⁸ Figures from the Health and Social Care Information Centre show a 10% rise in detentions between 2013/2014 and 2014/15. This is the fastest on record.

<http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

⁹ The number of suicides among women in the UK has increased to its highest level since 2005.

Figures from the Office for National Statistics released at the end of 2016 show that 6,188 people in the UK intentionally took their own lives in 2015, up from 6,122 in 2014.

¹⁰ Thirty-three mental health trusts out of a total of 57 in England responded to Freedom of Information requests carried out by the BBC programme Panorama. In 2012/13, the trusts reported a total of 2,067 unexpected deaths. By 2015/16 that had risen to 3,160.

2. Comments on the UK Government Response

2.1 Serious concern at the Government's approach

2.1.1 Rejection of the Committee findings

The UK Government has dismissed the findings of the Committee and rejected all eleven recommendations. They failed to disseminate the Committee's findings and recommendations in any way. The Secretary of State for Work and Pensions, Damian Green, publicly described the Committee's Report as demonstrating "an outdated view of disability which is patronising and offensive"¹¹.

Disabled people and our organisations do not agree. The UK Independent Mechanism has also written to the Government to urge a review of their Response outlining key concerns¹². All concerns have been dismissed¹³.

There are material reasons why Disabled people are excluded from the workplace and require social security protections and social care support in order to exist and to participate. The inquiry findings accurately evaluate the violations to our rights in these areas that have occurred as result of UK Government legislation and policy.

¹¹ <https://www.theguardian.com/society/2016/nov/08/damian-green-dismisses-offensive-un-report-on-uk-disability-rights>

¹² Copies of the letter and key concerns can be found at:
<https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

The EHRC has now received a response from the Minister of State for Disabled people stating her belief that the findings are "completely wide of the mark". This can also be found at the above link.

¹³ The Committee spoke to over 200 individuals in the course of their investigation. Since publication of the Committee's Report and UK Government Response, Disabled People's Organisations and members of the House of Lords have written to the Government asking that they reconsider their response. Our concerns have been consistently dismissed.
<https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/equality-and-human-rights/governments-dismissal-uns-recommendations-disabled-peoples-rights/>

By signing and ratifying the Optional Protocol to the UNCRPD, the UK recognised the competence of the Committee to determine violations¹⁴, and has at this stage provided an unconvincing response to the Committee’s determinations.

The Response accuses the Report of having “too narrow a scope” by only focusing on changes to the welfare system (paragraph 7). While the Committee Report focuses on the rights of Disabled people under those three specific interrelated Articles, retrogression has occurred across all areas covered by the Convention¹⁵, including those cited by the Response as “significant measures” that it claims the Report fails to reflect¹⁶.

¹⁴ Implied questioning of the Committee’s competence in written statements by Government Ministers is concerning. See letter from Damian Green to Baroness Jane Campbell. <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/equality-and-human-rights/governments-dismissal-uns-recommendations-disabled-peoples-rights/>

¹⁵ Disabled People Against Cuts and Inclusion London will be submitting evidence across the Articles through a shadow report to the routine scrutiny of the UK in 2017 as part of the Reclaiming Our Futures Alliance.

¹⁶ **There is substantial evidence of retrogression in each of the areas cited in paragraph 7 of the Response as**

“significant measures” as detailed in

Conclusion
We agree with the Committee’s conclusion that “the threshold of grave or systematic violations of the rights of persons with disabilities has been met” (paragraph 113). We disagree with the UK Government’s suggestion that progress in areas not included in the Report cancel out adverse impacts under the three Articles on which the Committee inquiry was focused and that sufficient mitigations have been put in place. As the Response clearly shows there is no evidence to back up these claims. There is by contrast a considerable weight of robust evidence demonstrating retrogression.

The Response expresses the Government’s belief that “though welfare provides necessary social protection, it is not the only way to help disabled people live independent, inclusive lives” (paragraph 81). Social protection and an adequate standard of living are indeed just one of the 33 Articles of the Convention, however, people are unable to meet their most basic human needs if left with no income and no means to obtain one. Serious breaches under Articles 19 and 28

Whilst the Response sets out various initiatives¹⁷ which it says are relevant to the fulfilment of Articles 19, 27 and 28, it fails in significant respects adequately to grapple – save by way of denial – with the specific nature of many of the criticisms advanced in the Report. In particular, it does not adequately address the Committee’s findings as to the adverse and disproportionate impact of measures on Disabled people.

The very serious issue of high-ranking officers misleading the public as to the nature of welfare reform covered in paragraph 85 is completely omitted from the Response.

Disabled people are now facing a still worsening situation as a result of the Government’s refusal to implement the Committee recommendations alongside further changes to policy and guidance and a widening of the adverse impacts of austerity measures.

2.1.2 £50bn spend

A central argument in the Government’s Response is that it claims to spend £50bn per year on what it calls “benefits to support disabled people and people with

combined with insufficient support and protections under Article 27 therefore have the potential to cause fast and dramatic retrogression. This has been the experience of Disabled people in the UK since 2010.

We follow the UK Independent Mechanism (UKIM) in urging the UK and devolved governments to enhance the status of the CRPD in domestic law, including a domestic mechanism for scrutiny of policy and legislation to ensure compliance with the CRPD.

We agree with the eleven recommendations of the Committee. Appendix F sets out the minimum measures that the UK Government should now implement in order to comply with the Committee findings.

Appendix A.

¹⁷ Our evaluation of the impact of the specific policy initiatives cited in the Government Response is included under our response to the respective Articles below.

long term health conditions”¹⁸. It says that this is above OECD average and more than countries such as Germany, France and the USA. This information is misleading. As confirmed by the Freedom of Information response attached at Appendix B, the £50bn figure includes spending on social care support as well as statutory sick pay, war pensions and carers’ allowance.

According to a new report by the Institute for Fiscal Studies, the Government will spend £24 billion on working age disability or incapacity benefits in 2016/17. Spending on incapacity benefits is now a smaller share of national income than in any year since 1989/90. In part, that reflects the fact that average awards have fallen from 24% of average earnings in 1986/87 to 19% in 2016/17¹⁹.

In comparison to other countries, the OECD Social Expenditure Database shows the UK is just at the OECD average of 'public spending for social purposes', below 16 countries including Greece, Portugal and Slovenia²⁰.

2.1.3 Listening to Disabled people

The Response refers to the UK as “a strong parliamentary democracy, where the voices and opinions of disabled people are represented and listened to” (paragraph 3). The volume of consultation responses, Parliamentary inquiry reports and Select Committee recommendations ignored by the Government in pushing ahead with their legislation and policy implementation and considered by the Disability Committee within their inquiry is evidence to the contrary. The Response cites no supporting evidence for their claim to listen to Disabled people.

A number of measures cited in the Response as examples of mitigation only came about following public pressure and campaigning by Disabled people after our concerns were initially ignored by Government²¹. The need to expend considerable

¹⁸ Paragraph 2 of the Response says: “It now spends around £50bn a year on benefits to support disabled people and people with health conditions, which is over £6bn more than in 2010. That is around 2.5% of GDP, or over 6% of government spending. The UK spends more on disabled people and people with health conditions than the OECD average, and countries such as Germany, France and the USA”.

¹⁹ <https://www.ifs.org.uk/uploads/publications/budgets/gb2017/gb2017ch6.pdf>

²⁰ <http://www.oecd.org/social/expenditure.htm>

²¹ Examples of mitigating measures cited in the Response that were the result of public pressure

campaigns are included at **Appendix C**.

effort in order to challenge harmful proposals adds significantly to the barriers Disabled people have faced.

The Response displays little engagement with, or understanding of, either the general principles that are contained within, and underpin, the UNCRPD, or the specific principles summarised in paragraphs 43-46 of the Committee's Report.

2.2 General Findings

2.2.1 Social model of disability

The Response states that the Government addresses the barriers faced by Disabled people “using the social model of disability adopted by the Committee and disability sector”. The model of disability used by the Government to underpin its programme of welfare reform is the biopsychosocial model developed by Waddell and Aylward specifically for the purposes of policy formation. On 17th January 2012 Hansard records that Lord Freud explained to the House of Lords that the Government's approach to welfare reform was based upon “the biopsychosocial model”²². He references a “Models of Sickness and Disability” document distributed to selected members of the House of Lords explaining how what he refers to as a “coherent theory” is different from the social model. Rather than bringing together biological, psychological and social factors in a holistic account of disability, the Waddell-Aylward BPS is in actuality a causal explanation of sickness absence, with advocacy for a particular approach to disability management, that has been used to justify restriction of welfare entitlements²³.

²² <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0001.htm>

²³ The biopsychosocial (BPS) model of mental distress, originally conceived by the American psychiatrist George Engel in the 1970s and commonly used in psychiatry and psychology, was adapted by Gordon Waddell and Mansell Aylward to form the theoretical basis for UK Government thinking on disability. Waddell and Aylward developed their approach while working at the Centre for Psychosocial and Disability Research, Cardiff University. This Centre has worked extensively for the Department of Work and Pensions, and from 2004-2008 was sponsored by the US health insurance company Unum Insurance. Two key publications by this team have been *The Scientific and Conceptual Basis of Incapacity Benefits* (2006) and *Models of Sickness and Disability Applied to Common Health Problems* (2010). This latter document represents the most recent and extensive statement of their perspective on the BPS. The model reframes employment

2.2.2 Equality Act 2010

The Response states that the Equality Act 2010 “serves to ensure that the rights of disabled people are fully considered by UK policy makers”. However, there is currently no explicit statutory requirement or a non-statutory commitment for Ministers to give ‘due regard’ to the CRPD when developing new policy and law. A letter from the UK Independent Mechanism to the UK Government outlining concerns states:

“UKIM does not consider that the UK Government has provided sufficient evidence to demonstrate that it consistently gives due regard to the need to promote the equality of disabled people or their broader human rights, when developing new law and policy.”²⁴

The socio-economic duty that forms the very first section of the Equality Act 2010 and was passed by Parliament, has not been brought into force. This would require all public bodies to take account of socio-economic disadvantage when making policy decisions²⁵.

support for disabled people within a ‘support’ discourse, arguing that ESA should be seen as a mechanism to support people who experience health or disability-related barriers to work in accessing employment.

For a critique of Waddell and Aylward’s model, examining its origins, its claims and the evidence it employs: Blaming the victim, all over again: Waddell and Aylward’s biopsychosocial (BPS) model of disability (May 2016) https://ueaeprints.uea.ac.uk/58235/1/1351_Shakespeare.pdf

For the links between Aylward and Waddell, the Department for Work and Pensions and Unum see: New Labour, the market state, and the end of welfare by Jonathan Rutherford http://www.midmoors.co.uk/Unum/unum_in_uk.pdf

²⁴ See ‘annex outlining key concerns’ to Letter to the Minister of State for Disabled People in response to the CRPD committee inquiry (December 2016) <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

²⁵ In December 2016 civil society organisations wrote an open letter calling on the Government to implement Section 1 of the EA 2010: <https://www.equalitytrust.org.uk/joint-letter-sunday-telegraph-calls-section-1-equality-act-be-brought-force>

2.2.3 Legal Aid changes

The Response fails to acknowledge the adverse impact on Disabled people's access to justice arising from changes including the reduction in scope of legal aid and the introduction of a mandatory telephone gateway service in England and Wales as evidenced by the EHRC²⁶.

A report by Amnesty published in October 2016 concludes:

“In human rights terms, the cuts to legal aid constitute a retrogressive measure. They were primarily motivated by a desire to reduce spending on the justice system at a time of increased fiscal pressure, but were made with insufficient regard for the potential negative and profound impacts on the protection of human rights in the UK. There is no dispute that fewer people can now access free legal help and representation in a wide range of cases; the Government's own statistics bear this out.”²⁷

According to official figures there was a 99% reduction in welfare-benefit cases receiving legal aid funding following the introduction of LASPO²⁸, from 88,378 in the year 2012/13 to just 145. The Amnesty report calls for the restoration of welfare benefits advice funding.

The experiences of Disabled people following the closure of the Independent Living Fund have evidenced the lack of support for individuals to challenge cuts to their social care packages in breach of the Care Act 2014 due to changes rendering them ineligible for legal aid²⁹.

²⁶ EHRC (2015), 'Equality, human rights and access to civil law justice: a literature review' (November 2016). <https://www.equalityhumanrights.com/en/publication-download/equality-human-rights-and-access-civil-law-justice-literature-review>. The literature review highlighted a number of shortcomings in the Ministry of Justice's 2014 review of the telephone gateway service, see pp 62-64.

²⁷ Cuts that hurt: the impact of legal aid cuts in England on access to justice: <https://www.amnesty.org/en/documents/eur45/4936/2016/en/>

²⁸ Legal Aid, Sentencing and Punishment of Offenders Act 2012

²⁹ <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/independent-living-social-care-and-health/ilf-one-year-on/>

2.3 Article 19 - Living independently and being included in the community

2.3.1 Failure to understand the principle of Independent Living

The right to live independently and be included in the community as enshrined in Article 19 of the CRPD places a responsibility on State parties to ensure Disabled people have access to adequate support that enables us to have equal choices and opportunities. It is about having the right levels of support in place and is not about being able to “do things for ourselves”.

The Government’s Response reveals a failure to understand the core principle of independent living by the following statement: ““Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act” (paragraph 32).

2.3.2 Failure to address social care funding crisis

Disabled people’s right to independent living is dependent upon adequate funding for the support we need to be able to have the same chances to participate as other people. A lack of suitable support and assistance results in isolation and inactivity and removes dignity and opportunity. Increasing reliance on unpaid support and an emphasis on finding cheaper alternatives goes against the interests of Disabled people.

The UK is facing a social care funding crisis³⁰. The Response cites funding available increase their budgets for social care spending (paragraph 25). This is insufficient to address the size and depth of the funding crisis³¹. Additional funding for social

³⁰ A recent indication of the scale of the crisis was demonstrated by Surrey County Council’s Conservative Cabinet planning a Referendum for residents to vote on a Council tax rise of 15% in 2017–18 to fund social care services. The Council website said: “The Cabinet believes this increase is the only way to protect vital services following substantial cuts in Government funding and an increase in demand for services every year”. The Referendum was cancelled at the last minute with leaked texts suggesting a “sweetheart deal” with central government:
<http://www.bbc.co.uk/news/uk-politics-38920416>

³¹ A recent report from the National Audit Office has shown that the Better Care Fund has failed to ease pressure on NHS hospitals or to save. The total Better Care Fund budget for 2015/16 was

care will be swallowed up by demographic pressures and additional costs for providers of implementing the National Living Wage set to rise for a second time in April 2017³².

Despite the ageing population and rising demand for services, UK public spending on social care is set to fall back to less than 1% of GDP by the end of this parliament, leaving thousands more older and Disabled people without access to services³³.

£5.3bn (some local authorities added extra money to the £3.8bn earmarked by the government). Within the first year of the Fund being introduced: the number of emergency hospital admissions has gone up, not down; the number of people stuck in hospital because they have no suitable care package available to them in the community - be that a place in a care home or adequate homecare - has also risen. <https://www.nao.org.uk/report/health-and-social-care-integration/>

An investigation by The Observer in December 2016 revealed that data from 98 of the 151 local authorities in England with statutory responsibility for social care showed only 218 (42%) of 515 targets to improve social care in their area had been met, with the other 297 (58%) missed.

<https://www.theguardian.com/society/2016/dec/10/tory-plans-making-social-care-worse>

³² Even where the precept is implemented there is still a large shortfall in funding:

<https://sentinelnews.co.uk/2016/04/05/osborne-tax-leaves-adult-care-services-facing-billion-pound-black-hole/>

King's Fund analysis of how the precept was used by Councils this year (2016/17) shows that it is deeply flawed as a way of securing sustainable funding for adult social care. It was used by 95% of councils, but raised just £382 million – less than 3% of what Councils plan to spend on adult social care. It will not even cover the £612 million estimated cost of the National Living Wage this year, let alone demographic and other cost pressures. Increasing the precept from 2 to 3% will barely make a dent in this, and many councils will be mindful of the impact of council tax rises on working families with low incomes. <https://www.kingsfund.org.uk/publications/social-care-older-people>

Not all Councils have chosen to implement the social care precept. For 2016-7, 5% chose not to: <http://www.localgov.co.uk/Widespread-council-take-up-of-social-care-precept/40595>

There are concerns that in poorer areas with greater social care needs Local Authorities will be less able to raise revenue this way. Dr Fernández, London School of Economics, explained that a 2% increase in council tax will not translate into the same increased revenue for local councils across the country. This is important because wealthier councils with the greatest opportunity to raise resources are also those likely to be faced with least demand for social care. Ray James, president of the Association of Directors of Adult Social Services (ADASS) said: "In the most affluent areas you will raise about two-thirds of your council spend through council tax. In the most deprived areas you will raise less than 20% of your council spend through council tax. The precept raises least money in areas of greatest need." The 10 most affluent areas will raise more than two and a half times (£41m) the amount of the 10 areas with the greatest level of pensioner need (£17m). <https://www.kingsfund.org.uk/publications/social-care-older-people>

³³ https://www.kingsfund.org.uk/sites/files/kf/field/field_publication_file/Autumn_Statement_Kings_Fund_Nov_2016_3.pdf

Recent analysis of Sustainability and Transformation Plans by the British Medical Association has revealed a £4.7bn social care shortfall³⁴.

There is now an unprecedented consensus that the social care system is on the brink³⁵. Those who have spoken out include NHS leaders³⁶, local government leaders from all parties³⁷, independent health think-tanks³⁸ and the regulator³⁹. The Chairs of three House of Commons Select Committees are urging the Prime Minister to reach a cross-party agreement on the future of health and social care funding⁴⁰.

³⁴ <https://www.bma.org.uk/news/2016/december/transfer-of-care-delays-threaten-to-capsize-the-nhs>

The Local Government Association estimates a £2.6 billion gap in funding for adult social care by 2020. This figure takes into account the Government's promises of extra funding through the Better Care Fund and the optional council tax rise: http://www.local.gov.uk/media-releases/-/journal_content/56/10180/7991319/NEWS

³⁵ <https://www.theguardian.com/commentisfree/2016/dec/10/observer-editorial-government-must-increase-funding-social-care>

³⁶ In December 2016 the chair of the British Medical Association warned that the NHS will not be able to cope unless the Government gets to grips with the current social care crisis:

<https://www.bma.org.uk/news/media-centre/press-releases/2016/december/new-year-message>

³⁷ Chair of the Local Government Association's community wellbeing board, Izzi Seccombe, said extra funding through the Better Care Fund and extra Council tax raising powers would not be an adequate response to "worst ever funding crisis" in social care:

<https://www.theguardian.com/society/2016/dec/10/tory-plans-making-social-care-worse>

³⁸ Social care for older people, a report published by the Kings Fund and Nuffield Trust in September 2016, highlights the severity of the crisis facing the care system:

<https://www.kingsfund.org.uk/publications/social-care-older-people>

³⁹ In October 2016 the Care Quality Commission raised concerns that the sustainability of the adult social care market is approaching a tipping point: <http://www.cqc.org.uk/content/adult-social-care-approaching-tipping-point>

⁴⁰ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/news-parliament-2015/prime-minister-health-and-social-care-correspondence-16-17>

In November a report by the Health Select Committee called on the Government to urgently address the underfunding of adult social care to relieve pressure on NHS A&E departments:

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/inquiries/parliament-2015/planning-for-winter-pressure-in-accident-and-emergency-departments-inquiry-16-17/>

2.3.3 Inadequacy of other initiatives

The Response cites a number of initiatives which it claims “protect the rights of disabled people in article 19” (paragraph 26) but provides no evidence of progressive impacts for any of them⁴¹. ‘Building the Right Support’ and ‘No Voice Unheard, No Right Ignored’ both relate to an ambition to close inpatient facilities and support people with learning difficulties and autism to live in the community. Not only did the Government miss its target that by 1 June 2014 anyone with a learning difficulty and challenging behaviour who would be better off supported in the community, should be moved out of hospital, but a National Audit Office (NAO) report published in February 2015 found that in the nine months to June 2014, there were 300 more admissions to hospital than there were discharges⁴². Neither of these initiatives will succeed without adequate funding for community based services.

Despite research that shows how every £1 spent in home adaptations can save £4 in health and social care spending, the Disabled Facilities Grant remains underfunded⁴³. Long waiting lists and the £30,000 limit mean that Disabled people in need of adaptations do not get them when they need them and many people who could benefit from it are unaware of its existence.

The Care and Support Specialised Housing Fund has been linked to developments that threaten Disabled people’s rights under Article 19. This scheme commits capital funding to support and accelerate the development of purpose-built, specialist housing for older people and disabled people including “extra care homes”. Disabled people are extremely concerned about Councils investing in large, specialist housing units as an alternative to funding support to live independently in the community. This represents a return to segregation. Southampton Council consulted on proposals to cap community care support packages at the same time as investing £12 million in a “super care home”, with accommodation for up to 95 disabled people⁴⁴. A review by Lambeth Healthwatch

⁴¹ For a fuller analysis of the inadequacies of these initiatives see Appendix D

⁴² <https://www.nao.org.uk/report/care-services-for-people-with-learning-disabilities-and-challenging-behaviour/>

⁴³ Appleton, A, Leather P and Mackintosh S. ‘Evaluation of the Independent Living Grant (ILG)’ - commissioned by The Welsh Assembly (2012)

⁴⁴ http://www.dailyecho.co.uk/news/14042827.Southampton_s_super_care_home_moves_closer_to_becoming_reality/

of local extra care housing facilities found that many residents seemed lonely and isolated⁴⁵.

The Response gives examples of how the Government is addressing barriers in the built environment. Part M regulations for accessible and adaptable dwellings referred to in paragraph 27 are a dilution of the 'Lifetimes Homes' standard⁴⁶. The Government has also rejected recommendations and legislative amendments to enforce accessibility⁴⁷.

Initiatives to encourage accessibility and inclusion are welcome but without support to participate in the community Disabled people are unable to benefit from them. Considerable resources have been invested in engaging more Disabled people in sport since the 2012 London Paralympics and yet research shows that participation continues to decrease⁴⁸. The latest figures published by Sport

<http://www.disabilitynewsservice.com/threat-to-independent-living-as-council-plots-raid-on-high-cost-care/>

⁴⁵ <http://www.healthwatchlambeth.org.uk/extracarereview/>

⁴⁶ Innovators and champions of the Lifetime Homes standard, Habinteg, issued a briefing comparing the technical specification provided in the 2015 Building Regulations M4(2), that incorporated the 2016 amendments, 'accessible, adaptable dwellings', with the 16 design criteria set out in its predecessor, the Lifetime Homes Standard (2011):

<http://www.lifetimehomes.org.uk/pages/lifetime-homes-and-part-m.html>

⁴⁷ The Government rejected a recommendation from the Lords' disability committee that local authorities should follow the example of London and revise their planning policy to require a significant proportion of new dwellings to comply with Part M accessibility standards. The Equality Act 2010: the impact on Disabled people: recommendation 51.

<https://www.publications.parliament.uk/pa/ld201516/ldselect/ldeqact/117/11702.htm>

<https://www.parliament.uk/documents/lords-committees/equality-act/Govt-Response-to-HoL-SC-Report-on-the-EA2010.pdf>

The Government also recently voted down an amendment to the policing and crime bill which sought to implement another of the Lords' recommendations which would have forced bars, shops and restaurants to ensure their premises obey laws on accessibility when renewing their alcohol licences. <https://hansard.parliament.uk/Lords/2016-12-07/debates/71350001-A57A-4C90-B8FB-D9199A6776CD/PolicingAndCrimeBill>

⁴⁸ <http://www.independent.co.uk/news/uk/politics/huge-drop-in-women-and-disabled-people-participating-in-sport-after-the-olympics-10011771.html>

A survey conducted in January 2016 suggested that more than 80% of Disabled people still feel prejudice when participating in sport and leisure activities.

<https://www.theguardian.com/sport/2016/feb/03/paralympic-legacy-failed-widen-access-exercise>

England in December show that 20,900 fewer Disabled people now play sport once a week, than 12 months ago⁴⁹. We look forward to the Government's promised formal report to Parliament setting out progress in implementing Sport England's 'Towards an Active Nation' strategy (paragraph 30).

Disabled people still face barriers to transport access⁵⁰ with funding for access too often de-prioritised. Research published in November 2015 found that nine out of ten wheelchair users had been refused a space on a bus⁵¹. In May 2016 Disabled People's Organisations wrote to transport secretary Patrick McLoughlin⁵² calling on him to ignore a spending review recommendation from head of Network Rail, Sir Peter Hendy, that Access for All funding for 2014-19 should be cut from £102 million to £55 million, with the rest carried over to the next spending period, 2019-24⁵³.

2.3.4 Choice and control

According to the Government's own figures, the proportion of Disabled people who said they frequently had choice and control over their lives fell from 76% in 2008 to 65% in 2015. This data was not collected for 2016⁵⁴. Disabled people can

⁴⁹ <https://www.sportengland.org/news-and-features/news/2016/december/8/record-numbers-of-women-getting-active/>

<http://www.disabilitynewsservice.com/campaigners-call-on-minister-to-reject-rail-access-funding-delay/>

⁵⁰ Campaigner Doug Paulley recently won a partial victory in the Supreme Court requiring bus drivers to give wheelchair users priority over pushchairs. How this will be implemented by bus drivers remains to be seen. The question over who has priority has arisen due to bus overcrowding and the inadequate provision for wheelchair users. The ramps on single-deckers are often broken and only one wheelchair user can travel per bus.

<https://www.supremecourt.uk/cases/uksc-2015-0025.html>

<http://www.bbc.co.uk/news/uk-england-leeds-38795688>

⁵¹ <https://www.leonardcheshire.org/support-and-information/latest-news/news-and-blogs/research-reveals-difficulty-for-wheelchair-users>

<http://www.disabilitynewsservice.com/campaigners-call-on-minister-to-reject-rail-access-funding-delay/>

⁵³ <https://www.networkrail.co.uk/who-we-are/publications-resources/our-plans-for-the-future/the-hendy-review/>

⁵⁴ <https://www.gov.uk/government/statistics/opinions-and-lifestyle-survey-fulfilling-potential-outcomes-and-indicators-2014-data>

only access their rights to choice and control under the Care Act 2014 if they have the knowledge, confidence and resources to challenge their Local Authority. Changes in Legal Aid have left many individuals unable to access the legal support required to do this⁵⁵. We are aware of examples where Disabled people have been told by social workers that if they cannot manage with reductions to their support packages they will need to go into residential care⁵⁶. The DWP Post ILF Closure review included one such example:

“one social worker said, you’ll have to sell the house and move into a nursing home. Well, [the former recipient] is only young, she doesn’t want to be in a nursing home”⁵⁷.

Social care professionals and Disabled people are united in the view that personal budgets are not delivering on the promise they were introduced with – flexibility, choice and control. The Disabled People’s Organisation Equal Lives made a formal complaint against Norfolk County Council to the Care Quality Commission for ‘disregarding’ its duties under the Care Act 2014. A local social worker wrote in support of the complaint saying:

“Our service users do not have the freedom to choose the care they want or need. The general feeling among frontline social workers at Norfolk County Council is this is just another move towards the dismantling of statutory services”⁵⁸.

⁵⁵ Research carried out by Inclusion London looking at the situation for ex-ILF recipients one year after closure points to the lack of enforcement measures in the Care Act 2014 and due to the loss of entitlement to legal aid the difficulty people face in making a legal challenge against cuts:

<https://www.inclusionlondon.org.uk/news/ilf-one-year-on/>

⁵⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584417/independent-living-fund-post-closure-review.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584417/independent-living-fund-post-closure-review.pdf p.53

⁵⁸ <http://www.communitycare.co.uk/2016/07/18/time-pressure-compromising-social-work-practice-council-finds-review/>

<http://www.communitycare.co.uk/2016/03/08/dear-senior-managers-feels-deliver-cuts-cast-service-users-adrift/>

<http://www.communitycare.co.uk/2016/02/10/councils-disregard-care-act-triggers-user-group-complaint-cqc/>

2.3.5 Closure of the Independent Living Fund (ILF)

Some of the statements in the Response referring to the situation following closure of the ILF are misleading. LAs are not “being fully funded” as the Response claims (paragraph 37). Under pressure from campaigners the Government extended funding to Local Authorities through a “Former ILF Recipient Grant” until 2020. The grant is tapering and does not represent the full costs of maintaining support packages at pre-ILF closure levels⁵⁹. A Cabinet paper from Brent Council dated January 2017 says:

“The long term funding settlement for ILF is now clear with the Government reducing the ILF grant provided to Brent Council every year until it completely ceases in 2020”⁶⁰.

Despite repeated calls from Disabled People’s Organisations, the funding is not ring-fenced. Many Councils have chosen to reassess and make cuts⁶¹. Reports assessing the impact of the closure have documented the distress that this process has caused and the degrading outcomes that Disabled people are faced with as essential daily living support is removed⁶².

⁵⁹ See Annex B of the technical consultation paper for proposed grant amounts:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499151/Former_ILF_Recipient_Grant_Consultation.pdf

⁶⁰

<http://democracy.brent.gov.uk/documents/s48259/Independent%20Living%20Fund%20Report.pdf>

⁶¹ Freedom of Information requests submitted by Channel Four found that 80% of Local Authorities had made cuts following closure of the ILF.

<https://www.youtube.com/watch?v=JGrSn7t3TIQ>

In response to Freedom of Information requests submitted by Inclusion London in June 2016 four London boroughs reported reductions to over 50% of the social care packages for former ILF recipients. Eight boroughs reported cuts to individual packages of 50% or more.

<https://www.inclusionlondon.org.uk/news/ilf-one-year-on/>

⁶² The Post-ILF Closure Review study commissioned by the Department for Work and Pensions found that former recipients of the Independent Living Fund (ILF) in England experienced a loss of support, a greater reliance on unpaid care and an “adverse” impact on their physical and mental health after its closure due to worry, or the physical demands of having to perform everyday activities without the support of a carer; heavy reductions in care produced effects including loneliness, weight loss and frailty and denied opportunities to participate fully in society including less support for engaging in leisure activities, work and volunteering.

The Response says that “LAs should not set arbitrary upper limits on expenditure to meet a person’s care needs”. LAs are increasingly introducing maximum expenditure policies⁶³, for example a ‘fair care policy’ approved by North Somerset council promises to review new applications for home care packages that exceed the cost of meeting the same eligible needs through a care home placement⁶⁴. Recent research has revealed that many Clinical Commissioning Groups already have in place policies that would move Disabled people eligible for continuing NHS healthcare into institutions against their wishes, even if the cost of the homecare package was only slightly more expensive than residential care⁶⁵. The Government has not taken action to stop this practice and the Department of Health has to date failed to respond to concerns⁶⁶.

The Response claims that the “Court of Appeal did not make any finding on the merits of the ILF’s closure”. The ILF legal challenge was brought under the Public

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584417/independent-living-fund-post-closure-review.pdf

DPAC has collected testimonies from former ILF recipients detailing their experiences.

<http://dpac.uk.net/2016/09/the-abuse-disabled-people-face-from-social-services-and-cuts-to-funding-since-closure-of-ilf/>

⁶³ Following a judicial review, the High Court rejected a challenge to Worcestershire Council’s “maximum expenditure policy”, which would set a limit on the amount the council will spend on supporting a disabled adult in the community equivalent to the cost of meeting their eligible needs in a care home.

⁶⁴ The policy will apply to packages costing the council £500 a week or more. Where reviews find “insufficient” council funding is available for a person’s “preferred” package, the council will propose an alternative placement or offer the option of paying top-up fees. The council estimates the policy will save £700,000 over the next four years. An impact assessment suggests the changes could lead to an increase in residential care placements and a reduction in community care packages among the service user group affected, although the council believes this would be “marginal”.

<http://www.communitycare.co.uk/2017/02/22/care-package-savings-drive-risks-shift-care-home-placements/>

⁶⁵ Research by Fleur Perry found that 44 out of 122 CCGs who responded to her request has policies of concern:

<http://disabilityunited.co.uk/2017/01/nhs-staff-can-decide-disabled-people-live-even-choice/>

<http://www.disabilitynewsservice.com/more-than-40-nhs-organisations-have-policies-of-concern-on-institutional-care/>

⁶⁶ <http://www.disabilitynewsservice.com/department-of-health-ignores-nhs-continuing-healthcare-human-rights-warnings/>

Sector Equality Duty and concerned the consultation process and whether the Department for Work and Pensions had complied with its duty to pay “due regard” to the impact of the closure on Disabled people. The Court of Appeal ruling was not able to prevent the Government from retaking its decision to close the Fund but the judgement did comment on the retrogressive effects of the policy decision⁶⁷. Justice Andrews, who dismissed the second application for judicial review, similarly referred in her judgement to “the inevitable and considerable adverse effect which the closure of the fund will have, particularly on those who, as a consequence, will lose the ability to live independently”⁶⁸.

2.3.6 Worsening situation

Access to social care support necessary to uphold Disabled people’s right to independent living is continuing to decrease since the introduction of the Care Act. The Care Act 2014 brought in national criteria which restricted eligibility to only critical or substantial needs and meant around 340,000 older and disabled people may be without support to do things as basic as getting up, getting washed, getting out of the house and managing bills. Research has shown that in the first year of the Care Act over half (55%) of England’s local authorities spent less overall on services for disabled people and carers than the year before to the tune of a £397 million⁶⁹.

Cuts to central government funding for Local Authorities have resulted in year on year cuts to social care provision. A survey of Councils 2015/16 found that that £228 million (28%) of reported “efficiencies” were met by reducing levels of care packages.⁷⁰ Research from the Home Care service sector shows the amount being paid by LAs is inadequate with 90% paying below the hourly minimum price set by the UK Home Care Association⁷¹. Increasingly care agencies are handing back

⁶⁷ The judges found that found that briefings given to then disability minister Esther McVey by officials did not adequately make clear “the potentially very grave impact” the closure of the ILF could have on service users. Lord Justice McCombe said responses to the consultation indicated that “independent living might well be put seriously in peril for a large number of people”.

https://www.scomo.com/documents/Bracking_v_DWP.approved%20Judgement.pdf

⁶⁸ <http://www.bailii.org/ew/cases/EWHC/Admin/2014/4134.html>

⁶⁹ <http://revitalise.org.uk/news/care-act-fails-in-first-year-finds-revitalise-study/#.V1CO0TKl6lg.facebook>

⁷⁰ <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhealth/139/13902.htm>

⁷¹ http://www.ukhca.co.uk/pdfs/ukhca_homecare_deficit_2016_final.pdf

contracts forcing Councils to find alternative arrangements for provision, supporting growing evidence that the sector is unsustainable⁷². Updated research shows 34 Councils still commissioning 15 minute visits.⁷³

Since the introduction of the Care Act, some Councils have tightened up their charging policies⁷⁴ to remove 100% of what they deem to be disposable income to pay towards care costs. Research found that more than 27% of respondents reported an increase or significant increase in the amount of money they have to contribute towards the cost of their support⁷⁵, for example in Newcastle a woman on ESA and DLA was paying £150 per month towards her social care support but changes to charging policies mean she is now paying £400 per month. Of the few Councils who currently do not charge, Tower Hamlets will start to from April 2017.⁷⁶

A number of surveys and reports have evidenced the extent of social care cuts and the negative impacts on Disabled people's independent living.⁷⁷ The number of

⁷² A September 2016 Kings Fund report looking mainly at the situation for older disabled people aged over 65 found: social care system struggling to meet needs of older people after 6 years of cuts; huge pressures on the social care market; many social care providers dependent on LA contracts in difficulty; situation for older people compounded by pressures in the NHS especially community services. The most visible manifestation of pressures on health and social care budgets is the rapid growth in delayed discharges from hospital.

<https://www.kingsfund.org.uk/publications/social-care-older-people>

⁷³ <https://www.leonardcheshire.org/support-and-information/latest-news/press-releases/flying-15-minute-care-visits-still-bleak-reality>

⁷⁴ Even when eligible needs have been agreed and social care support offered, most Councils have in place charging policies. Many expect Disabled people to contribute half of their Disability Living Allowance or Personal Independence Payment Care component and all of the Severe Disability Premium in Employment and Support Allowance towards the cost of care provided to them. In Bristol, Disabled people may be expected to contribute up to £300 a week towards their care funding: <https://www.bristol.gov.uk/social-care-health/what-you-may-have-to-pay-for-your-care-and-support>

In Scotland cuts to allowances before charging has been reduced by £45 per week in some LAs. <http://www.ldascotland.org/index.php/stop-the-care-tax/316-right-to-a-real-life-without-unfair-care-charges>

⁷⁵ <http://revitalise.org.uk/news/care-act-fails-in-first-year-finds-revitalise-study/>

⁷⁶ https://www.whatdotheyknow.com/request/care_charging_84#incoming-909785

⁷⁷ Findings from a recent survey by In Control show: 33% of respondents said level of choice and control they enjoyed over support had reduced /reduced significantly; significant numbers reported more restrictions on how support money could be used; 58% reported their quality of life

hospital beds in England taken up by patients being treated for malnutrition has almost trebled over the last 10 years, with official figures revealing that people with malnutrition accounted for 184,528 hospital bed days in 2015, a huge rise on 65,048 in 2006-07⁷⁸. In February 2016 public health experts warned about the dramatic jump in the number of deaths per year⁷⁹. Social care cuts including the ending of Meals on Wheels provision⁸⁰ in many Councils have been blamed. Research published in February 2017 explores why there has been a substantial increase in mortality in England and Wales in 2015 and concludes that failures in the health and social care system linked to disinvestment are likely to be the main cause⁸¹. There were 30,000 excess deaths in 2015, representing the largest increase in deaths in the post-war period. Understaffing in care homes have also been linked to record numbers of applications under Deprivation of Liberty Safeguards⁸².

had reduced or reduced significantly over the past 12 months; 38% have to rely more on family and friends; 25% told support would be reduced because of cuts/savings and/or limits to the amount of money for a particular service. The survey also asked former ILF recipients about their experiences since its closure and found: 41% former ILF recipients had less/a lot less support; 33% said quality of support was worse/ a lot worse; 34% of former ILF recipients reported new restrictions placed on support. <http://www.in-control.org.uk/news/in-control-news/report-on-the-independent-living-survey-2016.aspx>

⁷⁸ https://www.theguardian.com/society/2016/nov/25/huge-rise-in-hospital-beds-in-england-taken-up-by-people-with-malnutrition?CMP=share_btn_tw

⁷⁹ Figures in the Health Service Journal suggested there had been 5.6% more deaths in England and Wales in 2015 than in the previous year, the biggest increase in the national death rate since the 1960s. This supported the picture presented by a separate report by Public Health England which reveals a large number of local authorities showed a fall in life expectancy at age 85 in 2014.

<https://www.hsj.co.uk/topics/policy-and-regulation/exclusive-rocketing-death-rate-provokes-calls-for-national-investigation/7002408.article>

<https://www.gov.uk/government/publications/life-expectancy-recent-trends-in-older-ages>

⁸⁰ Freedom of Information requests published in 2015 showed a 63% decrease in Council Meals on Wheels provision since 2010: <https://www.theguardian.com/society/2015/jan/03/meals-on-wheels-elderly-declined-coalition>

⁸¹ Hiam Lucinda, Dorling Danny, Harrison Dominic, and McKee Martin Why has mortality in England and Wales been increasing? An iterative demographic analysis and What caused the spike in mortality in England and Wales in January 2015?, *Journal of the Royal Society of Medicine*.

<https://www.rsm.ac.uk/about-us/media-information/2017-media-releases/new-analysis-links-30000-excess-deaths-in-2015-to-cuts-in-health-and-social-care.aspx>

⁸² In 2015/16, care homes in England asked local Councils to approve 195,840 applications to deprive a resident of their liberty – most of them older people – under the deprivation of liberty

Government proposals to end grants to Local Authorities by the end of this Parliament, instead allowing them to keep 100% of the business rates collected, will exacerbate the funding crisis and worsen the situation still further⁸³.

2.4 Article 27 – Work and Employment

2.4.1 Dominance of work focus

The Response emphasises the importance of work and employment to the Government’s approach to disability. The “championing” of work “underpins the Government’s programme of welfare reforms” (paragraph 5).

We agree that a focus on moving Disabled people off benefits and into employment is central to the Government’s legislative and policy changes. We disagree that this amounts to upholding Disabled people’s rights under Article 27. Article 27 stresses: “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”.

The Government’s approach to welfare reform continues to be based upon the academically discredited Waddell and Aylward BPS model discussed above⁸⁴. Improving Lives, the recently published Work, Health and Disability Green Paper repeatedly cites the same paper by Waddell and Burton (Is Work Good for Your Health and Wellbeing? 2006), a paper commissioned by the DWP, to justify proposals that threaten to widen the harmful impacts of the sanctioning regime. The government has not produced any other evidence to substantiate its policy

safeguards (DoLS) legal framework. The figure was the highest since the system began in 2009 and a big jump on the 137,540 applications in the previous year.

<http://content.digital.nhs.uk/catalogue/PUB21814>

⁸³ The Government is currently analysing feedback from its “Self-sufficient local government: 100% business rates retention” consultation. <https://www.gov.uk/government/consultations/self-sufficient-local-government-100-business-rates-retention> The decision not to devolve Attendance Allowance to LAs has already been taken and is welcome:

<http://researchbriefings.files.parliament.uk/documents/CBP-7729/CBP-7729.pdf>

⁸⁴ https://ueaeprints.uea.ac.uk/58235/1/1351_Shakespeare.pdf

stance.⁸⁵ The sweeping statement that “work is good for you” is also not supported by the findings in that report.⁸⁶

The use of punitive and coercive measures to dis-incentivise benefit claims impacts adversely on Disabled people’s rights in other areas such as rights to standard of living and social protection and independent living. There is a vast body of evidence concerning the removal of financial and social care support from Disabled people that does not support the Government’s claim that it aspires to ensure “that people who cannot work because of a disability or health condition receive the support they need” (paragraph 5). The Response fails to acknowledge the seriousness of these impacts and their retrogressive nature.

Meanwhile, Government disability employment support initiatives are inadequate to address workplace disability discrimination and exclusion of Disabled people from the labour market. Despite funding of £5 billion for the Work Programme and the DWP’s much vaunted Disability Confident initiative launched in 2013 the disability employment gap has remained fairly static, decreasing by just 1.3 percentage points in the four years since 2013⁸⁷.

There is also a failure by Government to acknowledge the negative effects of unsuitable employment. Figures from Work related Stress, Anxiety and Depression Statistics in Great Britain 2016 show a rise in prevalence up from last year with the highest number of days taken off since 2008-9⁸⁸. In 2015/16 stress accounted for

⁸⁵ This report is the only supporting evidence named in response to this Freedom Of Information request:

<https://www.whatdotheyknow.com/request/324369/response/799048/attach/html/2/FoI%201104%20reply.pdf.html>

⁸⁶ As research by DPAC has uncovered, the only evidence to support the claim that “work makes you better” is a single review which “focused on adults of working age and the common health problems that account for two-thirds of sickness absence and long-term incapacity” [page viii of *Is Work Good for your Health and Wellbeing*]. The remaining third of the relevant population were not considered in any detail. <http://dpac.uk.net/2015/09/the-ids-files-better-off-in-work-idsfiles/>

⁸⁷ According to the latest report by the Institute for Fiscal Studies, 17% of people of working age are disabled. 49% of them are in paid work, compared with 81% of non-disabled people. <https://www.ifs.org.uk/uploads/publications/budgets/gb2017/gb2017ch6.pdf>

⁸⁸ The total number of cases of work related stress, depression or anxiety in 2015/16 was 488,000 cases, a prevalence rate of 1510 per 100,000 workers. This is up from 440,000 cases in 2014/15, a prevalence rate of 1380 per 100,000 workers. The total number of working days lost due to this condition in 2015/16 was 11.7 million days.

<http://www.hse.gov.uk/statistics/causdis/stress/stress.pdf?pdf=stress>

37% of all work related ill health cases and 45% of all working days lost due to ill health. These figures must be understood within a context of rising insecurity in employment where increasing numbers of workers on zero-hours contracts have no entitlement to sick pay. In September 2016 figures from the Office for National Statistics showed a 21% increase with 903,000 people reporting that their main job did not guarantee a minimum number of hours between April and June 2016, up from 747,000 for the same period the previous year. This means that 2.9% of people in employment are on such contracts, compared with 2.4% last year⁸⁹.

There is evidence that the dominance of a work focus underpinned by the Waddell and Aylward BPS model is undermining the ethics and efficacy of treatment and therapeutic services⁹⁰. As we have seen above, rates of mental health detentions are dramatically rising alongside a rise in the suicide rate.

2.4.2 Update since UN inquiry

2.4.2.1 Change to ESA Regulation 29 and 35 guidance

Guidance intended to protect Disabled benefit claimants from health risks was changed with the result that much fewer Disabled people have been found eligible for the highest rate of ESA since January 2016.

The latest Litchfield review⁹¹ highlighted that a higher number of claimants than expected were placed in the SG. In response, the DWP changed the guidance related to Regulations 29 and 35 in January 2016⁹². This change in interpretation

⁸⁹ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/september2016>

⁹⁰ A summary of concerns are outlined by the Mental Wealth Foundation here: https://allianceblogs.wordpress.com/2016/03/21/mwf_jobcentretherapy_letter/

In relation to ME/CFS treatment there is ongoing controversy surrounding the PACE trial, a study part-funded by the Department for Work and Pensions and carried out by researchers with links to the insurance industry. In 2015, Dr David Tuller, of the University of California, wrote a comprehensive investigative report into the PACE study called Trial by Error. This report documented many flaws including violation of the declaration of Helsinki and unsuitable use of statistical methods. <http://www.virology.ws/2015/10/21/trial-by-error-i/>

⁹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380027/wca-fifth-independent-review.pdf

⁹² Regulations 29 and 35 provided protection to claimants whose mental health would be at risk if denied benefits or told to engage in work-related activity, and specifically include people at risk of

has led to the highest level of people being refused disability benefits for three years. Between December 2015 and June 2016 the number of ESA applicants placed in the SG fell from 56% to 33%, numbers placed in the WRAG increased from 8% to 18% and numbers found fit for work increased from 36 to 48%⁹³. Until now, the DWP has refused to say how many claimants were affected by this change.⁹⁴

2.4.2.2 Lack of improvement in the WCA

There is no evidence of significant improvement of the WCA since the UN inquiry findings.

An NAO report in January 2016 highlighted that only 13% of PIP and ESA assessment reports reached a satisfactory standard⁹⁵. Recent DWP statistics show

suicide or self-harm. Government issued new guidance to staff carrying out WCA tests on how to interpret the regulations. Under the guidance used in 2015, if the rules meant a claimant should not return to the workplace due to the risk to their health, they would likely mean they should not participate in work-related activity either: "...it is unlikely that someone who is at substantial risk for work would not be at substantial risk for work related activity and therefore for all practical purposes it is likely that it will apply to both." <https://www.rethinkingincapacity.org/wp-content/uploads/2016/09/WCA-Handbooks-revisions-2016-vs-2015.pdf>

This statement was removed in the new guidance which now says: "The flexibility in the DWP approach, tailoring work-related activity to each claimant's circumstances and health condition, and the requirement that claimants must not be asked to do anything that could put their health at risk, make it unlikely that many claimants will be at substantial risk if required to carry out work-related activity."

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535065/wca-handbook-july-2016.pdf

⁹³ <https://www.gov.uk/government/statistics/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-december-2016>.

⁹⁴ The DWP was asked in a Freedom of information request in November 2016 "about the number of ESA claimants in either the WRAG or Support group that the DWP has found fit to work in 2016 despite having in its possession at that point a letter from the claimant's doctor or consultant or psychiatrist or psychologist, etc that returning to work may put the claimant's life at risk". In response, the DWP acknowledged it held some information falling within the description specified in the request, but estimated that the cost of complying with the request would exceed the appropriate limit of £600.

⁹⁵ National Audit Office (NAO) <https://www.nao.org.uk/wp-content/uploads/2016/01/Contracted-out-health-and-disability-assessments.pdf> (Published January 2016)

the majority of FFW appeals are successful (58%)⁹⁶, another indication that the assessment and decision-making process is faulty. Disabled people have mentioned many times that decision makers ignore medical reports as well as their own accounts and that this evidence is given proper attention only at appeal stage.

The Public Accounts Select Committee's report highlighted that assessors have "an incomplete understanding of particular conditions, especially fluctuating and mental health conditions" and recommended the DWP ensures it has "well-trained, knowledgeable assessors sensitive to the complex issues that claimants are dealing with, particularly those with mental health conditions."⁹⁷ In May 2016 the Government accepted the Committee's recommendation to make significant progress with a target date of spring 2017.⁹⁸ To date there is no evidence indicating improvement.

An increasing number of people are disagreeing with the assessment decision as demonstrated by a continuing rise in the numbers of Mandatory Reconsiderations. 16,600 MRs were registered in October 2016 compared to 13,200 for a year earlier in October 2015.⁹⁹ As 69% of these MRs concerned FFW decisions¹⁰⁰ a fall in the number of MRs from the previous year would be expected if the quality of assessment had improved.

We have observed a downward trend in the in the number of revised MR ESA decisions: in October 2016, 89% (14,900) of MRs left the decision unrevised compared with 1,800 decisions revised. Only 4% of the 13,200 MR decisions made on disputes about Fit for Work (FFW) were revised.¹⁰¹

⁹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575604/esa-wca-summary-december-2016.pdfn

⁹⁷ <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubacc/727/727.pdf>
(Published April 2016)

⁹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525714/treasury_minutes_web.pdf

⁹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575604/esa-wca-summary-december-2016.pdf

¹⁰⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575604/esa-wca-summary-december-2016.pdf

¹⁰¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575604/esa-wca-summary-december-2016.pdf

Considering the low percentage of revised MR decisions, it is of concern that the number of Disabled people going to appeal has dropped dramatically in recent years: in 2009/10 more than 25,000 Disabled people were appealing each year, while less than 5,000 each year from 2013 – 2015 appealed. The DWP said “fewer appeals were expected” after the MR system was introduced¹⁰² in April 2013. This indicates that Disabled people’s access to justice has been deliberately and successfully blocked.

We are concerned that the emotional toll of going through an appeal may be too much after the MR process, so many Disabled people no longer appeal.

These concerns are mirrored in the United Kingdom Administrative Justice Institute (UKAJI) evidence to the SSAC¹⁰³ committee, which raised concerns, “that claimants with strong cases may in practice be deterred from appealing and that vulnerable users have experienced difficulties in navigating the process.”

Some people ‘have reportedly been unable to cope with reconsideration telephone calls.’¹⁰⁴ Evidence from Disabled people in January 2016 raised difficulties with MR phone calls including no advance warning of when the MR call will take place. This is particularly difficult for people with mental health support needs, who do not always answer phone calls from unrecognised numbers.

The Response states that “an eight month minimum period between a successful appeal and a subsequent re-assessment” has been introduced (paragraph 62). Given the emotional toll and the lack of support needed to go through the WCA process, this minimum period should be extended further.

The Government announcement in October 2016 that it would exempt some ESA claimants with the ‘most severe’ impairments or health conditions from future

¹⁰² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/558953/esa-wca-summary-september-2016.pdf

¹⁰³ SSAC: Social Services Advisory Committee

¹⁰⁴ ‘...concerns have been raised that claimants with strong cases may in practice be deterred from appealing and that vulnerable users have experienced difficulties in navigating the process. Another concern is that individuals with severe medical conditions have reportedly been unable to cope with reconsideration telephone calls.’ (Published March 2016) https://ukaji.org/2016/03/09/decision-making-and-mandatory-reconsideration-response-to-ssac-consultation/#_ftn3

reassessments.¹⁰⁵ It is still unclear to which ‘severe’ conditions/impairments this will apply.

2.4.2.3 Sanctions

The sanctions regime continues to have negative impacts on Disabled people¹⁰⁶.

The total number of ESA sanctions from December 2012 to June 2016 was 82,369.¹⁰⁷ The monthly figures for ESA sanctions peaked at 3,695 in March 2014 then gradually dropped to a low of 900 in January 2016, but by June 2016 the number had risen to 1,749, nearly double the January figure.¹⁰⁸

From October 2012 to June 2016, 24.7% of JSA recipients sanctioned were Disabled people.¹⁰⁹

Evidence collated by Inclusion London in Nov/Dec 2016¹¹⁰ shows clearly that sanctions leave Disabled people struggling to pay for food, fuel and rent as well as having a destructive impact on mental and physical health. People with mental health support needs or learning difficulties are particularly affected. Sanctions drive disabled people further away from employment and are not an incentive.

The evidence shows how Disabled people are being asked to do tasks for the “claimant commitment”¹¹¹ which their impairments prevent them from doing, for example a person with learning difficulties was unable to fill in various forms and

¹⁰⁵ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7820>

¹⁰⁶ Appendix E contains three case studies from emails sent to DPAC during November/December 2016. They evidence the brutal impacts of sanctions on individual Disabled people and their families.

¹⁰⁷ <https://www.gov.uk/government/statistics/jobseekers-allowance-and-employment-and-support-allowance-sanctions-decisions-made-to-june-2016> See table 2.3.

¹⁰⁸ <https://www.gov.uk/government/statistics/jobseekers-allowance-and-employment-and-support-allowance-sanctions-decisions-made-to-june-2016> (Published in November 2016)

¹⁰⁹ <https://www.gov.uk/government/statistics/jobseekers-allowance-and-employment-and-support-allowance-sanctions-decisions-made-to-june-2016> calculated from data on table 1.6

¹¹⁰ <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/welfare-reform/benefit-sanctions-inquiry-inclusion-londons-evidence/>

¹¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473425/admu3.pdf

was sanctioned as a result. The necessary reasonable adjustments under the Equality Act 2010¹¹² are not being made.

The Government does not record the number of sanctions by impairment, we believe that this data should be collected and published. Information obtained through FOI¹¹³ requests shows that people with ‘Mental and Behavioural Disorders’ in receipt of ESA have been consistently disproportionately sanctioned compared to people with other impairments since 2010.¹¹⁴ Various organisations have voiced concern about both the number and impact of sanctions.¹¹⁵ In November 2016 the British Psychological Society and four other organisations signed a statement, expressing their concern that ‘the sanctions process is undermining mental health and wellbeing – there is no clear evidence of pay-off in terms of increased employment.....’¹¹⁶

Of the 49 peer reviews into deaths linked to benefit cuts published by the DWP, 1 in 5 was associated with a sanction.¹¹⁷

A NAO report found that:

“sanctions for disabled people claiming ESA were not effective as they ‘reduced claimants time in work’ and ‘may have discouraged some claimants from

¹¹² <http://www.legislation.gov.uk/ukpga/2010/15/part/4/crossheading/reasonable-adjustments>

¹¹³ FOI – Freedom of Information

¹¹⁴ <https://www.whatdotheyknow.com/request/375140/response/916042/attach/3/FOI%202016%204602%20Response.pdf> (Figures given from Jan 2015 – Jun 2016)

<https://www.whatdotheyknow.com/request/376109/response/916780/attach/3/FOI%202016%204696%20Response.pdf> (Figures from April 2014-June 2016)

<https://www.whatdotheyknow.com/request/192084/response/494453/attach/3/FOI%202014%2079%20response%20final.pdf> (Figures from October 2008 – June 2013)

¹¹⁵ <http://www.methodist.org.uk/news-and-events/news-releases/new-data-more-than-100-people-per-day-with-mental-health-problems-are-having-their-benefits-sanctioned>

¹¹⁶ <http://beta.bps.org.uk/news-and-policy/british-psychological-society-signs-statement-opposing-welfare-sanctions>

¹¹⁷ <http://www.disabilitynewsservice.com/one-in-five-benefit-related-deaths-involved-sanctions-admits-dwp/>

working'¹¹⁸ also there was limited evidence regarding the effectiveness of Jobseekers Allowance (JSA) sanctions".¹¹⁹

On the strength of the evidence pertaining to the negative effects of sanctions, the NAO recommended that Disabled people are exempt.

In February 2017, the Committee of Public Accounts published a report stating that unexplained variations in the use of benefit sanctions are unacceptable and must be addressed. In the report, the Committee urges the Department for Work & Pensions to review the use of sanctions, which it finds "have increased in severity in recent years and can have serious consequences". It concludes the Department has poor data with which to evaluate what works and is unable to estimate the wider impact of sanctions – including their overall cost or benefit to the public purse. The Committee highlights the inconsistent imposition of sanctions by different jobcentres and providers, with some Work Programme providers referring twice as many people for sanctions as other providers in the same area. It is also concerned that the Department does not know whether vulnerable claimants, some of whom can be excused from having to meet benefit conditions, receive the protection to which they are entitled¹²⁰.

2.4.2.4 Deaths linked to benefit cuts

Since the UN inquiry was conducted, further evidence has come to light concerning the connection between benefit changes and deaths and of the Government's failure to act on it.

In February 2016, it was discovered that ministers had ignored warnings from a coroner contained in a letter sent on 30 March 2010 concerning serious flaws in how the WCA was used to test the eligibility of people with mental health conditions for out-of-work disability benefits. The WCA was rolled out to hundreds of thousands of claimants in the summer of 2010 and the opportunity to prevent further similar suicides was missed¹²¹. Ministers also failed to show the Rule 43

¹¹⁸ <https://www.nao.org.uk/report/benefit-sanctions/> (Published 30 November 2016)

¹¹⁹ <https://www.nao.org.uk/report/benefit-sanctions/>

¹²⁰ <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/775/77502.htm>

¹²¹ In February 2016 Department for Work and Pensions (DWP) unearthed a "draft" report that ministers failed to send to a coroner six years previously, following concerns he raised about a suicide linked to flaws in the "fitness for work" test. Coroner Tom Osborne wrote to the DWP on 30 March 2010 linking the suicide of Stephen Carré in January 2010 with serious flaws in how the

letter from coroner Tom Osborne to Professor Malcolm Harrington, even though they had commissioned him to review the “fairness and effectiveness” of the WCA.

In May 2016, after 21 months of campaigning by Disability News Service, ministers were finally forced to publish 49 “peer reviews”, internal reports written by civil servants after investigations into suicides and other deaths linked to benefit claims¹²². The documents have been heavily redacted but most of the un-redacted information relates to recommendations for improvements. This shows that ministers were repeatedly warned by their own civil servants that their policies to assess people for out-of-work disability benefits were putting the lives of “vulnerable” claimants at risk.

The Response fails to comment on why ministers ignored these recommendations but does say they “represent a very small proportion of deaths of benefit recipients”. The fact that only a very few circumstances led to peer reviews does not excuse the imposition of retrogressive policy measures in the face of clear evidence of their adverse impacts.

WCA was used to test the eligibility of people with mental health conditions for out-of-work disability benefits. Osborne ruled that the trigger for Stephen Carré’s suicide had been DWP’s rejection of his appeal against being found “fit for work”, and he called in his Rule 43 letter for a review of the policy not to seek medical evidence from a GP or psychiatrist if the claimant has a mental health condition. Ministers never produced an official response to the Rule 43 letter, as they were legally obliged to do. The DWP has admitted that it did exchange letters with Osborne during the summer of 2010, and even produced a “draft final response” to his letter in September 2010 but they are unable to confirm whether it was sent or whether the coroner received it. Ministers made key decisions in the summer of 2010 about the WCA process including that it would be rolled out to hundreds of thousands of long-term claimants of incapacity benefit (IB) the following year. They also failed to show the Rule 43 letter to Professor Malcolm Harrington, even though they had commissioned him to review the “fairness and effectiveness” of the WCA. The following year, in December 2011, a long-term IB claimant – Ms D E – took her own life after being told she was not eligible for ESA, a death later linked by the Mental Welfare Commission for Scotland to similar WCA failings to those that led to Stephen Carré’s death. In 2014, another coroner wrote an almost identical letter to Osborne’s, again warning of concerns about the safety of the WCA, after the death of a north London man, Michael O’Sullivan, who also took his own life after being found fit for work.

<http://www.disabilitynewsservice.com/dwp-media-reports-ignore-benefit-deaths-and-ids-resignation/>

¹²² <http://www.disabilitynewsservice.com/comment-long-awaited-peer-reviews-suggest-ministers-failed-to-act-after-deaths-of-vulnerable-claimants/>

In November 2015, a study published by researchers in Liverpool and Oxford universities associated the WCA reassessment process for IB claimants with an extra 590 suicides, 279,000 additional cases of self-reported mental health problems, and the prescribing of a further 725,000 anti-depressants across England as a whole.¹²³

The Government continues to claim that there is no “causal link” between welfare reform policy and deaths of benefit claimants. Meanwhile, cases of individual deaths linked to benefit cuts continue to occur.¹²⁴

2.4.3 Improving Lives: the work, health and disability green paper

The Response cites the green paper as an example of progress. We would argue that instead the green paper represents a threat of further retrogression alongside a failure to address ongoing barriers to employment for Deaf and Disabled people.¹²⁵

¹²³ The study shows that that, for every 10,000 IB claimants who were reassessed in England between 2010 and 2013, there were an additional six suicides, 2,700 cases of self-reported mental health problems, and an increase of more than 7,000 in the number of anti-depressants prescribed. The most significant increases took place in the most deprived local authority areas of England.

<http://jech.bmj.com/content/70/4/339>

¹²⁴ In February 2017, we heard how a Disabled woman took her own life just two days after being told her Personal Independent Payment appeal had failed. The body of Susan Margaret Roberts was discovered by a care worker at her warden-assisted flat near Tunbridge Wells, Kent, surrounded by letters telling her that she had been found ineligible

<http://www.disabilitynewsservice.com/pip-investigation-woman-took-her-own-life-two-days-after-learning-of-failed-pip-appeal/>

In January, Lawrence Bond collapsed and died just minutes after leaving a back-to-work appointment. He was reportedly awaiting the result of an appeal against being found fit for work and therefore ineligible for employment and support allowance (ESA). An inquest will be heard later this year.

<http://www.disabilitynewsservice.com/coroner-orders-inquest-into-fit-for-work-man-who-collapsed-after-leaving-jobcentre/>

¹²⁵ Consultation feedback invited by the DWP was limited to a questionnaire format which made it difficult to draw attention to the most worrying aspects of the proposals not covered by the set questions.

The green paper states that the original intention was that only 10% of WCA applicants would go through the WCA to the Support Group. It has been proved that this is a misinterpretation of data and that the 10% related in fact to the percentage it was assumed would go straight through to the Support Group¹²⁶. The Government therefore continues to set policy determining the lives of millions of Disabled people on a serious misreading of the DWP's own figures.

An opportunity has been missed to move away from the BPS model, which as a basis for benefit cuts has been described by leading academics as 'cavalier, un-evidenced and misleading'. Key to the BPS model is the idea that "it is the negative attitudes of many ESA recipients that prevent them from working, rather than their impairment or health condition", essentially branding many benefit claimants "scroungers".¹²⁷

The following are particular concerns regarding the green paper proposals:

- Extending conditionality through requiring Disabled people in the Support Group to undertake work focused interviews and be subject to Claimant Commitments.
- Extending co-location of work coaches in health and treatment settings which could discourage claimants from accessing treatment and undermine the effectiveness of therapeutic interventions.

For Inclusion London's full report see: <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/employment/improving-lives-work-health-disability-green-paper-inclusion-londons-response/>

Spartacus Network have produced a 237 response entitled "Smokescreen" that carefully details the dangers posed by the green paper: <https://spartacusnetwork.wordpress.com/>

A joint response by professional bodies representing the psychological therapies highlights the dangers of pushing Disabled people into unsuitable employment and calls for an end to: <http://www.bps.org.uk/system/files/consultationpapers/responses/final%20joint%20Green%20Paper%20response%20BPS%20BACP%20UKCP%20BPC%20BABCP.pdf>

The response from anti-poverty charity Z2K highlights ongoing problems with ESA: <http://z2k.org/wp-content/uploads/2017/02/Z2K-response-to-%E2%80%98Improving-Lives-the-Work-Health-and-Disability-Green-Paper.pdf>

¹²⁶ <http://dpac.uk.net/2013/02/11-was-never-intended-to-be-the-number-of-people-in-the-support-group-dwp-big-blunder-annie-howard/>

¹²⁷ Blaming the victim, all over again: Waddell and Aylward's biopsychosocial (BPS) model of disability: Tom Shakespeare, Nicholas Watson, Ola Abu Alghaib

<http://journals.sagepub.com/doi/abs/10.1177/0261018316649120>

- Lack of involvement of social care. Given the current crisis in social care with increasingly inadequate support provision it is unclear how Disabled people in the Support Group will be able to action any Claimant Commitment tasks¹²⁸.
- The dominance of IAPT as a therapeutic model tied to targets to move claimants off benefits. This is within the context of severe cuts to mental health support services for people with complex needs.

The green paper meanwhile offers nothing new or innovative in terms of measures to move closer to its ambition of halving the disability employment gap. The funding attached to the proposals is one fifth of the funding that the Work Programme had. The companies who will be involved in delivering the new Health and Work Programme are largely the same. The many failings of the Work Programme were considered by the original inquiry.

The green paper fails to address the substantive employment barriers faced by Deaf and Disabled people including the following:

- ESA WRAG cut (see next section).
- Fundamental failings of the assessment processes for both ESA and PIP.
- Growth of insecure employment¹²⁹ with reduced employment rights and protections and increased barriers to seeking redress through imposition of tribunal fees.
- Problems with Access to Work.

¹²⁸ The Response states that the green paper proposals “cover the roles played by the welfare system, the health and care system” (paragraph 8). This is inaccurate. Social care is conspicuous by its complete absence.

¹²⁹ The Response under Article 27 states that 22% of people supported to start their own business by the New Enterprise Allowance are self-declared disabled. We are concerned whether Disabled people are being pushed into self-employment to reduce claimant figures and how many are able to earn an adequate income. New Access to Work rules tie support for Disabled people in self-employment to the ability to produce a “sustainable business plan”. We wonder how many Disabled people supported through the New Enterprise Allowance meet the criteria.

2.4.4 Access to Work (AtW)

At its best, AtW has been proven to enable Deaf and Disabled people to fulfil the “high hopes and expectations” referred to in the green paper. Sadly, changes to AtW over the past few years have reduced its effectiveness while undermining employment opportunities for Deaf and Disabled people.

A forthcoming report from Inclusion London evidences the positive impacts of support through AtW:

“I can hold down a job. It’s changed my life. Simple as”.

“Access to Work is good because I would not be able to have a paid job without the scheme.”

Despite an announcement in the November 2015 Autumn Statement of a real terms increase in funding for AtW, the strategic direction of travel for AtW has consistently been to reduce the value of individual packages. This is an enormous shame given the potential of the scheme to transform lives. In terms of wider economic benefits, AtW has been proven to produce a surplus on investment for the Treasury before taking into account savings to health and social care.

Deaf and Disabled people report that the approach of AtW has changed over the past few years to a focus on reducing support regardless of negative impacts on the customer’s employment accompanied by hostility from advisors including accusations of for example “Deaf fraud” and being “a burden on the taxpayer”.

Rule changes such as the introduction of the cap discriminate against Deaf and Disabled people with high support needs and limit career progression, literally placing a cap on the ambitions and aspirations of Deaf and Disabled people to, in the words of the green paper “go as far as their talents can take them.”

Meanwhile, everyday administrative and financial problems are creating considerable barriers for customers. A 2017 online survey received 280 responses:

- 65.7% of respondents had experienced payment problems over the past 12 months
- 60.3% were not satisfied with how quickly the problems were resolved
- 66.5% experienced difficulties in contacting Access to Work

- Respondents encountered problems contacting Access to Work 68% of the time¹³⁰.

Individuals have lost jobs, sometimes after many years of building up a successful career, as a result of rule changes such as imposing non-communication days on BSL users. Many individuals, including Deaf and Disabled people as well as BSL interpreters and Personal Assistants employed through AtW funding, have been financially harmed due to administrative changes and errors.

2.5 Article 28 – Adequate standard of living and social protection

2.5.1 Government spend

The Response refers to the amount the UK Government claims to spend on support and benefits for Disabled people, which it says is £6.5bn more than in 2010. As outlined above, the £50bn figure quoted covers much more than just out-of-work benefits for Disabled people. It is also not surprising to find an increase in spending in cash terms. The important figure indicative of how the Government is treating Disabled people is what we spend as a share of our national wealth. A recent report from the Institute for Fiscal Studies (IFS) shows that, in fact, that figure has halved.^{131 132}

The report says that spending on disability benefits 2014/15 was 0.8% of national income, and says, "this is half the level of disability benefit spending when it was at its peak in 1995/96."

The report makes another point which disproves the rhetoric about large numbers of scroungers and malingerers who could work, but prefer to claim disability

¹³⁰ From StopChanges2AtW report due to be published March 2017.

¹³¹ 'The changing characteristics of UK disability benefit recipients' can be seen here <http://www.ifs.org.uk/publications/7756>

¹³² See analysis by Bernadette Meaden: <http://www.ekklesia.co.uk/node/21740>

benefits. Whilst the overall number of individuals receiving disability benefits has fallen only slightly since the mid-1990s,

"this is in the presence of underlying demographic change that would have tended to push up the numbers receiving considerably – both overall population growth and the baby boomer generation reaching older working ages. The proportion of older men receiving disability benefits has actually fallen sharply since the mid-1990s... Disability benefit receipt among men increases much less steeply with age than it used to."

The UK has therefore become less generous and less supportive.

2.5.2 Poverty

2.5.2.1 Increasing poverty among Disabled people

We disagree with the claim in the response that “The Government takes its duty to reduce poverty seriously”. Evidence points to the contrary.

Poverty is worsening for Disabled people. In 2013/14 this increased the poverty rate among people in families with a disabled person by four percentage points, to 31%¹³³ A detailed report commissioned by the Joseph Rowntree Foundation and published in August 2016 found that once account is taken of the higher costs faced by those who are disabled, half of people living in poverty are either themselves disabled or are living with a disabled person in their household¹³⁴.

Answers to Parliamentary Questions before Christmas revealed that the Child Poverty Unit set up in 1999 has been subsumed into the DWP after seeing its staffing halved in three years. This is after the IFS projected a 50% increase in relative child poverty by 2020.¹³⁵ The rate of material deprivation amongst

¹³³ <https://www.jrf.org.uk/mpse-2015/disability-and-poverty> 2015

¹³⁴ <https://www.jrf.org.uk/report/monitoring-poverty-and-social-exclusion-2016>

¹³⁵ From 17.0% in 2014/15 to 25.7% in 2020/21 – and an increase in absolute child poverty from 16.7% in 2014/15 to 18.3% in 2020-21. Both figures are remarkable in their own way: the increase in relative poverty will undo almost all of the work done reducing poverty from 1999-2010. And the increase in absolute poverty (also up from 17.6% in 2010/11) will mean that, over a decade, the income of families towards the bottom has actually gone down – something without precedent in modern times.

<https://www.ifs.org.uk/publications/8171>

children living with at least one disabled adult is twice as high as those living without disabled adults¹³⁶ while the average income of families with disabled children is 23.5% below the UK mean.¹³⁷

2.5.2.2 Insufficient protections for “vulnerable” people

The Response claims that, “All welfare reforms protect the vulnerable groups least able to increase their earnings, including people needing additional support as a result of disability. These include provisions such as the exemptions to the benefit cap and benefit freeze discussed...”

This is inaccurate. ESA WRAG, JSA, housing benefit, and Universal Credit which are all claimed by Disabled people are not exempt from the benefit cap or benefits freeze.

A lower household benefits cap reduced in November 2016 to £23,000 for households in London and £20,000 for those outside the capital city. Claimants entitled to DLA/PIP, ESA in the Support Group are exempt but that leaves many disabled people still potentially affected. Specifically, this includes those in the Work Related Activity Group (WRAG) of ESA who do not receive either highest rates of DLA or PIP, and those who view themselves as disabled but are found fit for work. Analysis by the DWP suggests that 3,100 households with someone claiming ESA were already affected by the benefits cap, and they and others are now affected by its further reduction.

A Parliamentary Research Briefing¹³⁸ quotes the Equality Impact Assessment undertaken in 2012 which says:

“Of the households who lose from this policy, based on internal modelling, we expect roughly half will contain somebody who is classed as disabled under the Equality Act.”

¹³⁶ 45.1% and 22.4%: Institute for Fiscal Studies, 2012, Living standards, poverty and inequality in the UK: 2012 report, pp.114-115, (online), available at:

<https://www.ifs.org.uk/comms/comm124.pdf>

¹³⁷The average income of families with disabled children is £15,270, which is 23.5% below the UK mean income of £19,968. 21.8% have incomes that are less than 50% the UK mean: Contact a Family, Research (online), available at: <http://www.cafamily.org.uk/get-involved/campaigns-and-research/research/>

¹³⁸ <http://researchbriefings.files.parliament.uk/documents/SN06294/SN06294.pdf>

These people are the least likely to move into work to escape the benefit cap and to offset the shortfall in income by moving into work or cutting their expenditure.

The risk of eviction was also recognised in the initial Impact Assessment:

“The cap is likely to affect where different family types will be able to live. Housing Benefit may no longer cover housing costs and some households may go into rent arrears. This will require expense and effort by landlords and the courts to evict and seek to recoup rent arrears. Some households are likely to present as homeless, and may as a result need to move into more expensive temporary accommodation, at a cost to the local authority. It is not possible to quantify these costs because they are based on behavioural changes which are difficult to assess robustly”.

No data is collected relating to disabled people but overall five families in the UK are made homeless every hour. The number of families accepted as homeless increased by 32% in the last year.¹³⁹

2.5.2.3 Foodbanks

The Government does not collect statistics on the number of, or use of, foodbanks^{140 141} and has always denied any link between benefit sanctions and food bank usage. It placed DWP work coaches in foodbanks without publishing any feedback on this initiative.¹⁴²

Figures collected by the Trussell Trust, the largest UK foodbank provider, has shown the use of foodbanks expanding rapidly over the past decade.¹⁴³ Three-day

¹³⁹ <http://www.independent.co.uk/news/uk/politics/homeless-rough-sleeping-figures-increase-rise-conservatives-housing-shelter-vertical-rush-a7550251.html>

¹⁴⁰ As confirmed by a Parliamentary Briefing published December 2016 ‘ Household food insecurity measurement in the UK’: <http://researchbriefings.files.parliament.uk/documents/CDP-2016-0238/CDP-2016-0238.pdf>

¹⁴¹ <https://www.theyworkforyou.com/wrans/?id=2016-11-16.53439.h&s=foodbanks#g53439.q0>

¹⁴² <https://www.theyworkforyou.com/wrans/?id=2016-04-08.33196.h&s=foodbanks#g33196.q0>

¹⁴³ The Trussell Trust publishes statistics on foodbank users at the UK and regional level. In 2015/16, 1.11 million three -day emergency food parcels were distributed by Trussell Trust foodbanks. Usage of Trussell Trust foodbanks expanded rapidly over the past decade: the number of three-day emergency food supplies given out went from 2,814 in 2005-2006 to a record number of 1,109,309 in 2015/2016. Although this number does not represent the number of unique users, likely to be around 554,000 in 2015/2016, the Trussell Trust is far from being the only foodbank

emergency food parcels distributed in the six months to September 2016 were up by 13,000 compared to the same period the year before. The most common primary reasons for referral to Trussell Trust foodbanks during this period were benefit delays (27% of referrals); low income (25% of referrals); and benefit changes (16% of referrals).

A study by the University of Oxford, October 2016 established a strong link between sanctions and referrals to foodbanks.¹⁴⁴

Lack of monitoring makes it impossible to know the number of disabled people using foodbanks, but if benefit delays and sanctions are such a big driver of foodbank usage, considering the number of sanctioned ESA and JSA claimants (of whom 25% are self-declared Disabled and particularly vulnerable to sanctions), Disabled people are likely to be regular foodbank users.

2.5.2.4 New measures threatening further impoverishment

There is wide consensus that a number of planned welfare reform measures will further increase poverty. To date the Government has failed to produce any convincing proposals for how it will mitigate adverse impacts.

Universal Credit

Disabled people and their families will be worse off through cuts to the child disability additions and to the Severe Disability Premium. This includes:

- up to 230,000 severely disabled people who do not have another adult to assist them;
- 100,000 disabled children and their families;

provider. More recent statistics show 519,000 three-day emergency food parcels were distributed in the six months to September 2016, 13,000 higher than the same period last year.

<https://www.trusselltrust.org/news-and-blog/latest-stats/>

¹⁴⁴ Between 2012, and 2015, 'For every 10 additional sanctions applied in each quarter of the year, on average five more adults would be referred to foodbanks in the area. As sanctioning decreased, foodbank use also decreased, which the report suggests is evidence of a strong link between sanctioning and people not having enough money to meet basic needs. The researchers used foodbank data from the Trussell Trust, the only source of routinely collected surveillance for the past decade'.

<http://www.ox.ac.uk/news/2016-10-27-strong-link-between-increased-benefit-sanctions-and-higher-foodbank-use>

- 116,000 disabled people who work.

Despite the intention of Universal Credit to make work pay, evidence shows that the changes could make it harder for disabled people to remain in work¹⁴⁵.

2.5.2.5 ESA WRAG

The UK Government proposed in its Summer budget 2015¹⁴⁶ to align Employment Support Allowance (ESA) rates for those in the Work Related Activity group (WRAG) with Jobseeker Allowance (JSA)¹⁴⁷ for new claims from April 2017, describing the extra money claimants in the WRAG received as a 'perverse incentive', while providing 'new funding for additional support to help claimants return to work'.

This cut represents around 1/3 of the income of people in the WRAG. The Government said that no existing claimants will be affected, and there will be transitional arrangements for claimants in the WRAG when they transfer to Universal Credit. These have not been legislated, and will be left to the discretion of the Secretary of State. Existing claimants who move off ESA into employment but then find their job does not work out and they need to re-apply for ESA will go back on at the reduced rate.

This proposal was forced through by government in spite of much opposition including two rebellions in the House of Lords and opposition from Conservative backbench MPs.¹⁴⁸

The Equality and Human Rights Commission has stated its concerns that the proposed reduction will "cause unnecessary hardship and anxiety to people who have been independently assessed and found unfit for work"¹⁴⁹.

The main arguments against this proposal are:

¹⁴⁵ <https://www.disabilityrightsuk.org/sites/default/files/pdf/holesinthesafetynet.pdf>

¹⁴⁶ <http://researchbriefings.files.parliament.uk/documents/CBP-7251/CBP-7251.pdf>

¹⁴⁷ Currently £73.10 for people aged 25 and over.

¹⁴⁸ <http://researchbriefings.files.parliament.uk/documents/CBP-7649/CBP-7649.pdf>

¹⁴⁹

http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/Welfare%20Reform%20and%20Work%20Bill%20Lords%20Report%20Stage%20Briefing%20Clauses%2011%20to%2014%20FINAL.pdf

- On average, claimants claim JSA for six months, while more than half of ESA WRAG recipients are on welfare support for more than two years¹⁵⁰. Such long time periods are linked to higher associated costs of illness and disability.
- The rate of the new benefit does not factor in the costs of disability. Half the claimants in the WRAG don't claim Personal Independence Payments¹⁵¹ and therefore have no other income.
- The decision is not evidence-based – there are no studies or evidence of the effect of different disability benefits levels on the likelihood to enter work, in the UK or internationally.¹⁵²
- Research has shown that the cut will move Disabled people further from the Labour market.¹⁵³

One-third of Disabled people with progressive illnesses have been placed in the WRAG since 2008¹⁵⁴. Most were subsequently moved onto the Support Group but without any descriptor changes to the WCA, it is likely that Disabled people with serious, progressive and expensive conditions will continue to be placed in the WRAG with even less money to survive on than now.

ESA claimants in the WRAG are subject to the benefit cap, which limits the total amount of benefits claimants receive, while claimants in the SG are exempt. The latest figures in August 2016 show that 14% of capped households were claiming ESA meaning these claimants were in the WRAG¹⁵⁵.

¹⁵⁰ <https://hansard.parliament.uk/commons/2016-11-30/debates/7E82E75D-63A3-460C-952E-0B29BE98620B/ESAAndPersonalIndependencePayments>

¹⁵¹ <http://www.mind.org.uk/media/3170647/esa-wrag-review-december-2015.pdf>

¹⁵² For more detail on this see section on ESA WRAG cut in Inclusion London response to the green paper: <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/employment/improving-lives-work-health-disability-green-paper-inclusion-londons-response/>

¹⁵³ <http://www.mind.org.uk/media/3170647/esa-wrag-review-december-2015.pdf>

¹⁵⁴ <https://www.theyworkforyou.com/wrans/?id=2016-03-21.31811.h&s=speaker%3A24778#g31811.r0>

¹⁵⁵

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564759/benefit-cap-statistics-to-august-2016.pdf

50% of people in WRAG are not able to claim PIP to meet the additional needs of being disabled.

The Government's rationale for cutting ESA was to incentivise claimants 'languishing' on ESA to look for work while offering them more employment support. The ESA cut is worth 1,365m over four years¹⁵⁶, while the money made available for employment support is just a fraction of this figure¹⁵⁷.

The Minister for Disabled People has claimed that the full value of the money saved by the cut will be placed into employment support but there has been no further information on how this will be achieved. As our response to the green paper highlights¹⁵⁸, we have extensive concerns about the Government's current proposals for disability employment support and do not expect these to succeed in mitigating the negative impacts of the WSA WRAG cut on Disabled people and their families.

The Minister has also talked about work she is undertaking with businesses to reduce the living costs faced by people in the WRAG including household bills. There is no evidence that any of this is being targeted at costs that will mitigate the impacts of the cut. It represents an attempted shift of responsibility from state support to charitable measures.

2.5.3 Personal Independent Payment (PIP)

2.5.3.1 Savings driven

The Response claims that PIP was introduced to "address fundamental flaws in DLA" and "provide support for people with the greatest barriers to independent living" (paragraph 77). From 2010, the Government has consistently made clear

¹⁵⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443195/Policy_costings_summer_budget_2015.pdf

¹⁵⁷<https://www.theyworkforyou.com/wrans/?id=2017-01-09.59210.h&s=speaker%3A10596#g59210.q0>

¹⁵⁸<https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/employment/improving-lives-work-health-disability-green-paper-inclusion-londons-response/>

the key aim for PIP is to make savings and reduce the working age caseload for disability benefits¹⁵⁹.

The first statistics to be published in January 2017 on the PIP outcomes for the 361,000 reassessed DLA claimants show that 48% received a lower award or were disqualified¹⁶⁰. Of those who received a lower award, over 35% had been awarded the enhanced mobility rate under DLA, and of those who have been disallowed after assessment, almost 11% were also receiving the enhanced mobility rate. This explains the high number of claimants losing their mobility car.

The high success rate of PIP appeals suggests flawed assessment and decision-making processes at considerable extra cost to the taxpayer meanwhile causing distress and anxiety to the individuals affected. Figures from the Tribunal Service for the last quarter of 2015 – 16 show a success rate for PIP appeals of 63%¹⁶¹.

2.5.3.2 PIP Mandatory reconsiderations (MR)

The introduction of the MR process discourages claimants from appealing while essentially just rubberstamping the initial PIP decision. DWP figures show that of 467,900 registered MRs, only 16% led to a change in award¹⁶². The view commonly

¹⁵⁹ PIP originally expected to reduce working-age DLA caseloads and expenditure by 20%, giving savings of around £1.5 billion a year by 2016/17. Estimates published by DWP, December 2012 suggested by 2018, around 607,000 fewer people would receive PIP than would have got DLA (a 28% reduction in the caseload). DWP also estimated once fully introduced, 428,000 fewer people would qualify for enhanced mobility rate than would have qualified for the higher rate DLA mobility component. <http://hqnetwork.co.uk/document/6365> Page 29

Latest statistics published by DWP up to October 2016 show between the introduction of PIP in April 2013 and October 2016, there were: 2,255,500 registrations (this figure includes new claimants and DLA reassessments); 2,042,500 clearances; 1,091,200 claims in payment. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577399/pip-statistics-to-october-2016.pdf

¹⁶⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577399/pip-statistics-to-october-2016.pdf

¹⁶¹ <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2016>

¹⁶² 299,900 related to new claims, and 168,000 to reassessed DLA claims. Only 42,400 (15%) led to a change in new claimant's awards, and 32,200 (22%) MRs for reassessed DLA claimants led to a change in award.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577399/pip-statistics-to-october-2016.pdf Page 5

expressed by benefit advisers is that further evidence is not properly considered at the MR stage.

As we have seen above, of those going on to appeal, nearly two thirds successfully over-turned the original decision. In 2015/16 only 49,742 claimants appealed¹⁶³. A Social Security Advisory Committee study in July 2016 found : “The introduction of the [MR] policy has coincided with a dramatic reduction in the number of appeals going to tribunal across the benefit system. Although there may be a number of factors driving this, concern has been raised by stakeholders that the new process is not always working as well as it should and that it may cause claimants, particularly those who are vulnerable, not to appeal even when they appear to have a strong case”.¹⁶⁴

2.5.3.3 The PIP process

Delays in the processing of PIP claims became so bad that in June 2015, a judge found that the cases before her were "not only unacceptable" but unlawful¹⁶⁵.

Since then, the clearance time has improved, but a report by the Public Accounts Committee in March 2016¹⁶⁶, whose remit was to assess whether taxpayers were getting value for money and claimants an acceptable service with disability assessment contractors, highlighted the following points:

- Unacceptable local and regional variations in the performance of the Department’s contractors.
- Reported delays and problems with the assessment process which still creates anxiety for claimants.
- Claimants still not receiving an acceptable level of service from contractors, with particular concerns for claimants with fluctuating and mental health conditions.

¹⁶³ <http://www.tynwald.org.im/business/hansard/20002020/2017-NN-0013.pdf> Table SSCS.2

¹⁶⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538836/decision-making-and-mandatory-reconsideration-ssac-op18.pdf

¹⁶⁵ <http://www.bbc.co.uk/news/uk-33020987>

¹⁶⁶ <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubacc/727/727.pdf>

- Claimants faced with unreasonable journey times of up to 60 to 70 miles; appointments being over-booked; delays and problems with the process creating anxiety, stress and undue financial hardship.
- Too many assessments fail the standard required

2.5.3.4 Loss of Motability cars

The Government's decision, despite widespread opposition, to tighten a key eligibility criterion for enhanced mobility rate from being able to walk less than 50 metres under DLA to 20 metres under PIP has led to the ineligibility of people previously entitled to independent living support through the Motability scheme.

Motability reported disabled people are being forced to hand back their Motability vehicles at a rate of up to 700 a week and expected 35,000 vehicles to be handed back during 2016 as a direct result of the reassessment of DLA claimants for PIP¹⁶⁷.

Figures show that, of Motability customers reassessed for PIP so far, 44% of them have lost their entitlement to the scheme and have had to hand their vehicle back¹⁶⁸. This adds considerably to the barriers those Disabled people face to independent living and especially for those in rural areas with even poorer access to regular, accessible transport.

The situation is compounded as PIP claimants have to hand their vehicles back if they lose their eligibility even if they decide to appeal against that decision. This means that even if they win their appeal, they have already long since lost their cars. In a Parliamentary debate before Christmas, the Minister for Disabled People claimed she was "discussing with relevant departments ways to enable PIP claimants to keep their vehicle pending appeal"¹⁶⁹, but we have to date heard nothing further.

¹⁶⁷ <http://www.disabilitynewsservice.com/pip-reassessments-mean-35000-will-lose-motability-vehicles-in-2016/>

¹⁶⁸ <https://www.disabilityrightsuk.org/sites/default/files/word/DR%20UK%20response%20to%20%20Second%20Independent%20Review%20of%20PIP.docx>.

¹⁶⁹ Westminster Hall Debate on Employment and Support Allowance (ESA) and Personal Independence payment (PIP), 30 November 2016: <https://hansard.parliament.uk/Commons/2016-11-30/debates/7E82E75D-63A3-460C-952E-0B29BE98620B/ESAAndPersonalIndependencePayments>

For claimants who lose their cars there is a £2,000 transitional grant available but this is completely inadequate to cover the cost of a vehicle, adaptations needed, insurance and running costs.

2.5.3.5 Loss of passported benefits

One feature of PIP is it entitles claimants to extra money on top of existing benefits, a reduction in council tax or road tax bills and discounts on travel. Claimants may get a top-up (called a premium) on the following benefits if they are entitled to PIP:

- Housing Benefit
- Jobseeker's Allowance
- Income Support
- Working Tax Credit
- Employment and Support Allowance - but only if you get the PIP daily living component
- Pension Credit - but only if you get the PIP daily living component
- Carer's Allowance

There has been no monitoring of the added financial loss for DLA claimants found ineligible for PIP. In the first PIP review, passported benefits are only mentioned in terms of knock-on effects of delays in getting the benefit¹⁷⁰, but insufficient attention has been given to this issue with no collection of relevant statistics or figures to evaluate numbers affected.

2.5.3.6 New announcement

The DWP just announced changes to PIP regulations, using emergency legislation and an exemption to bypass scrutiny by the Social Security Advisory Committee. This will deny PIP to at least 160,000 claimants, after a three-judge Upper Tribunal clarified which claimants with mental health conditions were entitled to PIP under the descriptor "Following a journey".¹⁷¹

¹⁷⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/pip-assessment-first-independent-review.pdf

¹⁷¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593392/pip-assessment-criteria-equality-analysis.pdf

In fact, the Upper Tribunal just confirmed what had always been understood during the consultation and after the descriptors were agreed.¹⁷²

¹⁷² <http://www.ibtimes.co.uk/conservatives-halt-pip-disability-payments-160000-people-1608554>

Conclusion

We agree with the Committee’s conclusion that “the threshold of grave or systematic violations of the rights of persons with disabilities has been met” (paragraph 113). We disagree with the UK Government’s suggestion that progress in areas not included in the Report cancel out adverse impacts under the three Articles on which the Committee inquiry was focused and that sufficient mitigations have been put in place. As the Response clearly shows there is no evidence to back up these claims. There is by contrast a considerable weight of robust evidence demonstrating retrogression.

The Response expresses the Government’s belief that “though welfare provides necessary social protection, it is not the only way to help disabled people live independent, inclusive lives” (paragraph 81). Social protection and an adequate standard of living are indeed just one of the 33 Articles of the Convention, however, people are unable to meet their most basic human needs if left with no income and no means to obtain one. Serious breaches under Articles 19 and 28 combined with insufficient support and protections under Article 27 therefore have the potential to cause fast and dramatic retrogression. This has been the experience of Disabled people in the UK since 2010.

We follow the UK Independent Mechanism (UKIM) in urging the UK and devolved governments to enhance the status of the CRPD in domestic law, including a domestic mechanism for scrutiny of policy and legislation to ensure compliance with the CRPD.¹⁷³

We agree with the eleven recommendations of the Committee. Appendix F sets out the minimum measures that the UK Government should now implement in order to comply with the Committee findings.

¹⁷³ Annex outlining key concerns – UKIM Letter to the Minister of State for Disabled People <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

Appendix A

There is substantial evidence of retrogression in each of the areas cited in paragraph 7 of the UK Government Response as “significant measures” reflecting “wider improvements to better implement disabled people’s rights”:

- **“personal budgets to increase choice and control of care and living arrangements”**

Decreasing choice and control is linked to cuts and restrictions to personal budgets resulting from social care budget shortfalls. A third of respondents (33%) to the Independent Living Survey run by In Control in 2016 said that the level of choice and control they enjoyed over their support had reduced or reduced significantly¹⁷⁴.

Information recently obtained from a whistle-blower has demonstrated how in one local authority area, Disabled people in receipt of personal budgets were targeted for cuts to their support packages¹⁷⁵.

Many disabled people who have used personal assistance to live independently in the community for years are reporting increasing difficulties in recruiting and retaining staff. Two important changes have happened since April 2016 with Disabled employers of PAs now being responsible for the provision of pensions for some coupled with a rise in the minimum wage payable. There will be a further increase in the minimum wage from April 2017. In many cases the rates paid to Disabled people by LAs has not risen to help cover these extra, for example, DP rates in Sunderland have not increased since 2008.

Current ongoing research by DPAC shows that direct service provision is still more prevalent than Disabled people being given a Direct Payment, for example in West Sussex, 8,446 people have a social care package but only 1717 get a DP.¹⁷⁶

¹⁷⁴ <http://www.in-control.org.uk/news/in-control-news/report-on-the-independent-living-survey-2016.aspx>

¹⁷⁵ <https://www.disabilitynewsservice.com/immoral-capita-offered-200-bonuses-to-social-workers-to-slash-care-packages/>

¹⁷⁶ <https://www.whatdotheyknow.com/request/373860/response/903991/attach/html/2/WSCC%20Response%20751900.docx.html>

Other research shows 21.5% of adults with learning disabilities aged 18-64 are in residential or nursing care rising to 42.1% for over 65s¹⁷⁷.

- **“improvements to the accessibility of housing and transport”**

Government says Disabled people have priority for social housing but the last available figures showed a total of 1.9 million families waiting for public housing. Between 2010-15 the number of Disabled people on waiting lists increased 17%.¹⁷⁸ Islington had 19,196 people on waiting list (no breakdown for disability) but only 268 accessible properties in total and only 68 accessible one bed properties. (total number of properties and not the number of properties available). An LSE report from 2016 also found that 1.8 million disabled people have an unmet housing need – 580,000 of whom are of working age.¹⁷⁹ Muscular Dystrophy UK’s “Breaking Point” report revealed that 70% of the homes offered to people waiting for accessible housing by their Council were actually unsuitable for their needs¹⁸⁰.

Staffing cuts on transport networks are reducing access for Disabled passengers. Transport for All reported a 118% increase in lifts out of service on the London Underground in October 2016 due to shortage of staff compared to 2015¹⁸¹. The growing practice of introducing Driver Only Operated trains on the rail network has implications for customers needing assistance to travel¹⁸².

- **“the wide range of work-related support available to disabled people”**

Funding available for disability employment support through the Work and Health Programme will be just one-fifth of that given to the Work

¹⁷⁷ <http://chrishatton.blogspot.co.uk/2017/01/the-riddle-of-model.html?m=1>

¹⁷⁸ <https://www.habinteg.org.uk/download.cfm?doc=docm93jjm4n1390.pdf&ver>

¹⁷⁹ <http://www.lse.ac.uk/website-archive/newsAndMedia/news/archives/2016/07/1.8-million-disabled-people-struggling-to-find-accessible-housing.aspx>

¹⁸⁰ http://www.housinglin.org.uk/_library/Resources/Housing/OtherOrganisation/Housing-adaptations-briefing-final.pdf

¹⁸¹ <http://www.transportforall.org.uk/news/shocking-upsurge-in-tube-lift-closures-due-to-shortage-of-trained-staff->

¹⁸² <https://www.rmt.org.uk/news/rssb-admits-doo-trains-disadvantage-disabled-passengers/>

Programme, despite IPPR North saying that even the Work Programme's budget was insufficient. The failings of the Work Programme in supporting Disabled people into work are well-documented¹⁸³.

- **“financial protections, such as tax and pension credits and the exemption of disability-related benefits from the benefit cap and benefits freeze”**

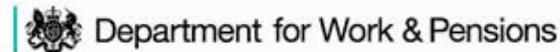
ESA WRAG, JSA, housing benefit, and Universal Credit which are all claimed by Disabled people are not exempt from the benefit cap or benefits freeze.

¹⁸³ <http://researchbriefings.files.parliament.uk/documents/CBP-7845/CBP-7845.pdf>

<http://www.ippr.org/publications/welfare-earnback>

<https://www.disabilityrightsuk.org/news/2014/january/work-programme-still-fails-disabled-people>

Appendix B



Website: www.gov.uk

By email

Your Reference:

Our Ref: **Fol 4653**

Date: 1 December 2015

Dear [redacted]

Thank you for your Freedom of Information request received on 30 October 2015. Please accept my apologies for the delay in replying. You asked:

1. *Ministers have repeatedly stated that the government spends "about £50 billion" a year on services and support for disabled people. Could you please tell me how this figure is calculated ie broken down into its constituent parts such as spending on ESA, spending on Access to Work, spending on adult social care, etc*

In relation to question 1 above, the Department calculated the following breakdown based on data from 2012/13.

Government Spending on Disability

Spending	2012/13	
	Forecast spend (£ billion)	Actual spend (£ billion)
Benefits		
Disability Living Allowance	13.6	13.4
Personal Independence Payments	0.0	0.0
Attendance Allowance	5.6	5.5
Employment and Support Allowance	6.5	6.8
Incapacity Benefit	2.8	3.3
Severe Disablement Allowance	0.9	0.9
Industrial Injuries	0.9	0.9
Other government support for disabled people		
Adult Social Care	15.4	15.4
Specialist Disability Employment Provision	0.3	0.3
Supporting People. Please note, this was a part of Right to Control that was stopped in 2013	1.6	1.6
Concessionary travel	1.0	1.0

Disabled Facilities	0.2	0.2
Motability	0.2	0.2
Total expenditure	49.0	49.5

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

Ben Savage

Work & Health Joint Unit, Department for Work & Pensions, Caxton House,
Ground Floor, Tothill Street, London, SW1H 9NA.

ben.savage@dpw.gsi.gov.uk

Appendix C

Examples of mitigating measures cited in the UK Government Response that were the result of public pressure campaigns following initial dismissal of our concerns include:

- Paragraph 32 of the Response refers to inclusion of CRPD Article 19 in the Care Act 2014 statutory guidance. An amendment proposing to put Article 19 onto the Care Act statute itself was voted down by the Government at Committee stage during passage of the bill¹⁸⁴.
- Paragraph 34 of the Response says “An additional bedroom is also allowed for disabled children who cannot share with siblings and non-resident overnight carers, protecting vulnerable people who might otherwise be disproportionately affected.” This exemption was only introduced following a legal challenge. In November 2016 the Supreme Court ruled that ministers’ decision to apply the Removal of the Spare Room Subsidy to families who need an additional bedroom for a disabled child who requires overnight care was unlawful discrimination¹⁸⁵. Disabled children who cannot share with siblings were not initially exempt but pressure mounted on the Government after misleading statements from Prime Minister David Cameron were made in Parliament claiming that the RSRS did not apply to families with severely disabled children when there was at that time no exemption in the regulations¹⁸⁶.
- Paragraph 36 of the Response states that “Supported housing is exempt from the application of the local housing allowance rates in the social rented sector until 2019/20, when a new funding model will be

¹⁸⁴<https://www.publications.parliament.uk/pa/cm201314/cmpublic/care/140109/pm/140109s01.htm>

¹⁸⁵<https://www.supremecourt.uk/cases/docs/uksc-2014-0125-judgment.pdf>

¹⁸⁶<http://www.cafamily.org.uk/news-and-media/new-housing-benefit-regulations-wont-help-all-disabled-children-unable-to-share-a-bedroom/>

<http://www.itv.com/news/story/2013-03-08/mencap-bedroom-tax-david-cameron-campaign/>

introduced.” Under the Government’s initial proposals there was widespread concern that the LHA cap would trigger bed closures and trigger a massive increase in rough sleeping. In September 2016 the Secretary of State for Work and Pensions issued a statement saying that after “extensive input” the Government was deferring the imposition of the LHA cap on supported housing until 2019/20, after which a new system would keep funding at current levels. The decision was also made to go ahead with the 1% annual reduction in social housing rent which will cause hardship¹⁸⁷.

¹⁸⁷ <https://www.theguardian.com/society/2016/mar/13/local-housing-allowance-cap-evictions-hostels-supported-housing>

<https://www.theguardian.com/society/2016/sep/15/housing-benefit-cap-exemptions-hostels-supported-housing-uk-government>

Appendix D

Building the Right Support (October 2015)

This initiative sets the national ambition to close 35-50% of inpatient capacity for people with a learning disability in three years, building community capacity instead and reducing inappropriate hospital admissions. It is a response to frustration at a lack of action following a number of high profile cases involving abuse and deaths due to neglect in inpatient facilities¹⁸⁸ and the Government's failure to meet its own target that by 1 June 2014 anyone with a learning difficulty and challenging behaviour who would be better off supported in the community, should be moved out of hospital. A National Audit Office (NAO) report published in February 2015 found that in the nine months to June 2014, there were 300 more admissions to hospital than there were discharges¹⁸⁹.

According to the 2015 Learning Disability Census¹⁹⁰ there were 3,000 people held in Assessment and Treatment Units.

- 43% in Units more than 50km from their homes.
- 72% were being prescribed antipsychotic medication as a means of containing them.
- 30% had been in ATUs for more than 5 years.
- The average cost of being kept in an ATU is £3500 per week.

Building the Right Support has been criticised for very little focus on changing policy and practice around children and young people – which is where services

¹⁸⁸ <http://www.bbc.co.uk/news/uk-england-bristol-20078999>

<http://www.bbc.co.uk/news/uk-england-oxfordshire-34548638>

<http://www.telegraph.co.uk/news/health/news/10865390/NHS-breaks-promise-after-Winterbourne-View-scandal.html>

<http://www.disabilitynewsservice.com/nhs-long-stay-closures-are-too-little-and-too-late/>

¹⁸⁹ <https://www.nao.org.uk/report/care-services-for-people-with-learning-disabilities-and-challenging-behaviour/>

¹⁹⁰ <http://content.digital.nhs.uk/catalogue/PUB20247/ld-census-further-sep15-rep.pdf>

start getting things wrong¹⁹¹. Many of those people held in ATUs are under inappropriate sections because local authorities and CCG commissioners cannot agree funding for appropriate housing and support. Unless local authorities receive the necessary funds to meet the costs of supporting people well in the community, including those funded through specialised commissioning, the current pressures on the social care system will mean people with complex needs will not leave hospital and yet again the target will be missed.

No Voice Unheard, No Right Ignored

This was a consultation which ran from March – May 2015 to explore options on issues such as how people with learning disabilities, autism or mental health needs can be supported to live independently, as part of a community. The consultation response published by the Government in November 2015 made a number of proposals intended to see everyone being treated with dignity and respect by health and care services, and all enjoying the same rights¹⁹².

A number of these proposals focus on implementation of the Care Act 2014 and sufficiency of supply of community-based services and are therefore unlikely to be successful due to the crisis in social care. It also made proposals to improve the situation of people being detained under the Mental Health Act being kept in police custody.

Recent figures and reports show that the number of incidents of police handling incidents with people with mental health issues is growing¹⁹³. The Government gave a commitment to ongoing monitoring and review, and that it Government would intervene further, including through legislation if necessary, if the

¹⁹¹ <https://www.ndti.org.uk/news/national-development-team-for-inclusion-responds-to-building-the-right-supp>

¹⁹²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475155/Gvt_Resp_Acc.pdf

¹⁹³ <http://www.itv.com/news/2017-02-03/shocking-numbers-of-police-incidents-involved-mental-health/>

The individual in this report is a Deaf man:

http://www.edp24.co.uk/news/health/mental_health_patient_kept_in_norfolk_police_cell_for_three_days_1_4884371

improvements sought continued not to be realised in practice. To date there has been no review.

Disabled Facilities Grants (DFGs)¹⁹⁴

Research into DFGs highlighted pressures around funding compared to levels of need for adaptation works. Research published by the Department for Communities and Local Government in 2011 found that only 10% of the DFG funding required to meet current needs was available¹⁹⁵. A survey carried out by the Papworth Trust in 2013 found that: one in four respondents reported that they could not get around their home safely; two in five respondents said the accessibility of their home meant they needed help to do everyday things like cooking; one in four of those who received a DFG said they waited over a year for it to be approved; two in three respondents who had not received a grant had never heard of DFGs¹⁹⁶.

In 2014 DFGs were incorporated under the umbrella of the Better Care Fund. When austerity measures were introduced in 2010 local authority contributions fell quite sharply which affected the number of grants given in subsequent years. Local authority contributions have begun to increase since the introduction of the Better Care Fund, but the picture is variable with some authorities contributing significantly more than others and some having long backlogs and delays¹⁹⁷. Freedom of Information requests by Leonard Cheshire Disability show that 25% of Councils do not contribute at all.

Underfunding continues to restrict the extent to which DFGs are able to present a solution to un-met housing need¹⁹⁸. Long waiting lists and a £30,000 grant limit

¹⁹⁴ A good over-view is presented in this House of Commons Briefing paper:

<http://researchbriefings.files.parliament.uk/documents/SN03011/SN03011.pdf>

¹⁹⁵ DCLG (2011) Disabled Facilities Grant allocation methodology and means test: Final report, London: DCLG. <http://www.communities.gov.uk/documents/housing/pdf/1850571.pdf>

¹⁹⁶ The Papworth Trust - Home Solutions to our Care Crisis (2013)

http://www.papworthtrust.org.uk/sites/default/files/homesolutionstoourcarecrisis_121113100850.pdf

¹⁹⁷ <http://wwwFOUNDATIONS.UK.COM/media/4665/dfg-report-final-interactive-converted-draft-6-small.pdf>

¹⁹⁸ Research by LSE showed that 1.8 million disabled people have an unmet housing need:

<https://www.habinteg.org.uk/hidden-housing-market>

mean that some Disabled people do not receive the adaptations they need when they need them. The Leonard Cheshire research published in April 2015 showed that demand for DFGs was growing at twice the rate that Councils were able to meet it: applications had risen by 6% since 2011/12 but the amount of adaptations funded in the same period only rose by 3%. They found that every year, almost 2,500 disabled people wait over a year to get vital funding to make their homes accessible while almost half of Councils (44%) had examples of Disabled people waiting more than two years for payment; and eight Councils reported waits of over four years¹⁹⁹.

In a report outlining common problems that applicants experience with the DFG process issued in March 2016 the Local Government Ombudsman said “People with disabilities are being left for too long in unsuitable homes because of problems with Councils’ Disabled Facilities Grants processes.”²⁰⁰

On 14 December 2016 the Equality and Human Rights Commission (EHRC) launched a formal inquiry on housing for disabled people. The inquiry will look at whether the availability of accessible and adaptable housing, and the support services around it, is fulfilling disabled people’s rights to live independently.

¹⁹⁹ <http://www.leonardcheshire.org/sites/default/files/Leonard-Cheshire-Disability-The-Long-Wait-for-a-Home.pdf>

²⁰⁰

http://www.housinglin.org.uk/library/Resources/Housing/OtherOrganisation/Making_a_House_a_Home.pdf

Appendix E – Personal testimonies of sanctions

The following are a selection of emails sent in to DPAC over November/December 2016 relating to the adverse and discriminatory impacts of sanctions on Disabled people and their families.

Case 1

Below is example involving a 21 year old autistic man, who was claiming benefits. He tried to commit suicide after his second sanction, which was imposed because he did not fill out all the forms due to his impairment. The email was written by his mother:

We live in South Wales, and jobs here are scarce. My son did not do very well in school, as he struggles with certain things (autistic spectrum).....

He claimed benefit when he was first out of work, after he left school, but he was sanctioned, for forgetting to attend an interview, and told he could not claim any more money for a period of months, then he claimed again after this time, as he had still not found any work, and was sanctioned again, for a longer period, this time, for not filling out all of the forms he was supposed to, about looking for work. He can read and write just fine, but the forms are very complicated for him, and I feel they are inappropriate..... He felt this sanction as a personal blow, to both his dignity and his right to claim any money at all.

My son is a good man, he wants to work, he feels guilty that he cannot find a job, and though it pains me to speak of it, he tried to commit suicide, after the blow of being sanctioned a second time. I thank all our lucky stars, that we found him in time, and he is still with us.

Obviously after this, he could not claim benefits a third time, and none of his family could press him to, under the circumstances, and he tried to do all he could to help me at home instead.

He is looking for work again now, and has looked into working online as an artist, and tried to get work at a local stables, although neither opportunity came

through for him. But recently I was faced with having a reduction in my housing benefit. The housing benefit office told me, that if he was not in receipt of benefit, then they would assume that he was getting money from somewhere, and therefore would assess him as earning £26,000 a year, which would affect my housing benefit greatly, I would get none at all.....I simply cannot afford to live in this house without the housing benefit.

..... to return to my son's situation, I have had to persuade him to sign on again. He was not happy to do this, and I was not happy to ask him to, as I know that the interviews are humiliating and abusive, and do nothing at all to help him to get into work. And I was worried that the pressure of it may cause him to give up hope on life again.

.....He has been told, that if he fails to comply with the requirements this time, he will be sanctioned for 3 years..... I do not want him to attend any of the interviews, for fear that this will demoralise him, and put back the months of work I have done, encouraging him to have confidence in himself again.

.....My family believed in this country, my parents paid into this system, and I have done so too, for many years... and yet, when it comes to my children benefiting from it, as we all presumed... Well it is a disgrace.

As to the question, value for money? Cost effective? No, it is not

The 'help' we have experienced is certainly counterproductive to getting people into employment....

Case 2

Email sent in to Disabled People Against Cuts:

Hello..i am on universal credit and am due to get paid on the 17th of November, i got a letter from them last week telling me that i am being sanctioned £10.40 per day for 86 days due to a appointment i missed on the 25th of May.

I will get nothing until the 17th of January 2017 how can they get away with deciding to sanction me now just before xmas, its taken them 5 and a half months

to decide to sanction me.

I have been so ill with stress and i have put sick notes in to cover me from the 17th of September 16 to the 27th of October 16 and i have one to cover me from the 27th of Oct to the 29th of Dec 16 the sick note is for essential hypertension anxiety and dizziness,

i feel like i cant cope anymore, for about a year i was only getting £190 on the 17th of every month which caused me to get in huge debt and rent arrears, now i have been served with a eviction notice saying i have to be out of my council house by 12pm on the 6th of Dec 16 i just dont know what to do anymore. Thank you for reading my email and i hope to hear from you soon

Case 3

Below are extracts from a long email from a gentleman who was forced again and again to find employment, with disastrous impact on his health and relationship:

I have had sanction and it was not pleasant at all....

...I was sanctioned (weekly pay out dropped only to £25.00 per week) for not attending job related interview, the letter was supposed to be send to me in Mid-February, the day we had flooding as a result of river break its banks and for few days surrounding roads were closed due to flooding..... I have expressed I never received the letter, but they did not want to know, after 2nd week of sanction, we end up in CAB and the only help we had from CAB office was food vouchers.

I was forced even with my disabled condition to look for a job as it was no way we could have survived, £25,00 per week was not even enough to pay for heating for the house in farming field of harsh and cold winter, I was accepted and start working as vacuum cleaner call out engineer(I had to lie about my condition), which I end up collapsing after few days of work in doctor surgery , and finally my GP had to write to DWP and explain the situation as my partner committed suicide and I became very ill. Unfortunately it was too late by the time DWP accepted the appeal, my lady had total mental breakdown and she left me and I end up with psychological breakdown (suicidal behaviour) and became very sick.

DWP and their wrongful decisions created the irreversible damages to health, the appeal acceptance came too late

During all these events, my health deteriorated, I have developed lots of health problems, my eye sites changed prescriptions 4 times in less than 6 weeks period, Ulcer, some kind of digestive problem, and total mental breakdowns

I started a job as surveyor which I end driving for an average of 900 miles per week but thriving Rheumatoid and Osteo Arthritis as well as few other health issued which created by unbalanced walking... I became unemployed with even deeper mental and health issues as well as higher financial problems.

I had total breakdown when I was issued section 21 by my previous private land lord...

In Feb 2016 after moving to new place of residence with the help of the council, the local job centre and DWP forced me to change from ESA to JSA even they had all the medical reports and hospital treatments and investigations were given to them, (Diverticular Disease, eye site problems, Osteo and Rheumatoid Arthritis which effected my hips, neck, hand, knee, spine, Ulcer, Hiatal Hernia and unbalanced mental behaviour). In September 2016 in the court of law I was awarded the Work Related Activities and back dated it to March 2016...

Appendix F – Recommendations

1. Cumulative Impact Assessment

The Government continues to allege that it is not feasible to conduct a CIA. UKIM, among other experts, asserts that a CIA is possible and we respect their knowledge and experience. As stated in the Report recommendations, the assessment should be rights-based and meaningfully involve Disabled people and our organisations.

Carry out a cumulative impact assessment of all measures adopted since 2010 impacting on the rights to independent living and to be included in the community, social protection and employment, in relation to the effect upon Disabled people.

2. Future legislation and/or policy measures respect the core elements of rights under Articles 19, 27 and 28

Section 1 of the Equality Act 2010 requires all public bodies to take account of socio-economic disadvantage when making policy decisions. It was passed by Parliament but never brought into force. Scotland's First Minister, Nicola Sturgeon, has announced her government will legislate to bring the duty into force in Scotland but there are no such plans currently for Westminster or the other devolved nations.

Bring into force Section 1 of the Equality Act 2010 to introduce a Public sector duty regarding socio-economic inequalities.

3. Article 19 – independent living

The Response cites the Care Act 2014 as legislation that supports Disabled people's core rights under Article 19. Responsibility for social care has been devolved to English Local Authorities and the devolved administrations without adequate funding to meet their statutory obligations. The principles of the Care Act are not being implemented and it has been left to individual Disabled people to enforce the legislation. Changes to legal aid have left many social care users in the situation where they are unable to access justice.

In order to address the current crisis and move forwards towards a social care system that is able to support Disabled people's rights under Article 19 we call for:

- **Adequate levels of funding to be urgently devolved to Local Authorities (LAs) to fund social care and personal assistance**
- **Mechanisms to be set up by which LAs can be monitored for compliance with the Care Act 2014 and held to account for breaches.**
- **Establishment of an independent living task force with properly resourced involvement of social care users to explore how the lessons of the ILF can be built upon including the development of a national social care system independent of Local Authorities.**
- **Access to legal aid for anyone bringing a legal challenge under the Care Act 2014.**

4. Article 27 – Work and Employment

The Response claims that “the range of employment-related provision available to support equal opportunities to work and initiatives to improve employer attitudes such as Disability Confident” “support the core elements of rights” under Article 27. It is unclear what provision they are referring to. As we have seen, funding for the new Work and Health programme is just one fifth of that for the Work Programme which itself had poor outcomes for Disabled people. Disability Confident has had no tangible outcomes. Meanwhile, other measures as outlined above have negatively impacted on Disabled people's rights under this Article.

In order to address barriers to Disabled people's rights to “work on an equal basis with others” and “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”²⁰¹ we recommend the following as minimum measures:

- **Reverse the introduction of fees for employment tribunals in cases of disability discrimination**

²⁰¹ UN CRPD Article 27

- **Remove the Access to Work cap**
- **Cease DWP funding for any employment projects involving therapeutic interventions tied to employment targets**
- **End sanctioning of benefits for non-compliance with mandatory work activity**

5. Article 28 - Adequate standard of living and social protection

There is a weight of evidence linking welfare reform measures to unnecessary harm and adverse impacts to standard of living experienced by Disabled people both directly as a result of changes to benefits and loss of income and indirectly through stress, anxiety and fear. Welfare reform measures have disproportionately discriminated against Disabled people without sufficient mitigations put in place. Instead of supporting Disabled people's "right to the continuous improvement of living conditions", evidence instead shows retrogression.

We recommend the following minimum measures to ensure adequate mitigation:

- **That the planned £30 a week cut to income for those in the ESA WRAG is reversed.**
- **All Disabled people, including those not in receipt of DLA or PIP, should be exempt from the benefit cap.**
- **In the immediate term, PIP "Moving around" descriptor to be moved back to 50m and Upper Tribunal ruling on "Following a journey" descriptor to be implemented; for the longer-term PIP to stop being a points based, tick box assessment and be replaced with a needs based assessment with guidelines on the thresholds.**
- **Problems with MR need to be urgently addressed – either through removing MR altogether to enable claimants to go straight to appeal or by a) allowing benefits to be claimed during MR and b) reviewing the MR process so that is independent of the original assessment with new medical evidence properly considered.**

- **The WCA, which is based on the discredited bio-psycho-social model of disability must be replaced with an assessment based on a social model of disability.²⁰²**
- **Legal aid for welfare cases to be restored alongside adequate funding for welfare advice services.**
- **All new welfare legislation and policy measures to be considered in terms of impact on the most excluded groups of Disabled people as outlined in the Committee’s recommendation 114 (i).**

6. Access to justice

Since 2010 Disabled people’s access to justice has been curtailed. As well as the relevant recommendations above we also support the following recommendations by UKIM²⁰³ which call on the Government to:

- **Publish the findings of its post-implementation review of Employment Tribunal fees, and address any disproportionate impacts on disabled people.**
- **Review the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on access to justice and other CRPD rights for disabled people.**
- **Further review the operation of the telephone gateway service with regard to its accessibility and effectiveness for disabled people, and mitigate any adverse impacts identified.**

²⁰² There have been various attempts initiated by civil society to research what this could look like. For example, <https://www.rethinkingincapacity.org/author/ben/> and a research project currently under-way led by Stef Benstead at Ekklesia (<http://www.ekklesia.co.uk/>).

²⁰³ Annex outlining key concerns: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities>

7. Actively consult and engage with Disabled people and our organisations

We dispute the Government's claim to have a "strong record in engaging with disabled people, disabled people's organisations". The Response cites an overwhelming number of consultations that have taken place since 2010. We agree we have been given opportunities to submit our views and these have enabled the Government to consider the equality impacts of its legislation and policies, however engagement has not led to our views being taken on board in preventing retrogression and avoiding or adequately mitigating against adverse impacts. There is no greater testament to Disabled people's experience of not being listened to by the UK Government than the fact that this inquiry was triggered.

The recent announcement that the Government has abandoned its plans to devolve Attendance Allowance²⁰⁴ is extremely welcome and we hope that going forwards the views and experiences of Disabled people will be listened to in an open and constructive manner.

In order to prevent further retrogression we recommend:

- **A comprehensive review of proposals in the Government green paper "Improving Lives"²⁰⁵ in response to concerns raised by Disabled people and our organisations**

8. Appropriate measures to combat any negative and discriminatory stereotypes or prejudice against disabled people

The Response is strikingly silent on the issue of high ranking officials promoting an inaccurate message about the reasons for welfare reform and levels of benefit fraud mentioned in paragraph 85 of the Report. This has amounted to a deliberate scapegoating of benefit claimants and increased hostility towards Disabled people.

As minimum measures we call for:

²⁰⁴ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7729>

²⁰⁵

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/564038/work-and-health-green-paper-improving-lives.pdf

- **A public apology by the UK Government for its role in the demonising of benefit claimants.**
- **A Government-sponsored publicity campaign to promote the value of an inclusive society that values Disabled people who may at times be unable to work.**

9. Monitoring mechanism

The Response states that the “UK is a strong parliamentary democracy with a system that invites scrutiny and challenge” (paragraph 106) and cites Parliamentary procedures and Committees as examples of this. In its investigation, the Committee read a number of reports from Parliamentary Committees with long lists of recommendations related to welfare reform that the Government has ignored. There is clearly a need for more robust monitoring mechanisms within the UK.

We agree with the Committee’s recommendation that the Government should “Set up a mechanism and a system of human rights-based indicators” (paragraph 114 (j)).

We also call as a minimum measure for:

- **An independent inquiry into links between adverse trends in mental health and welfare reform.**

10. Response to Disability Committee Report and Recommendations

Other than a leak to the media to discredit the Report, the Government failed to disseminate the findings and recommendations in any way. It is also not available on the UKIM website.

As a minimum measure we recommend that the Committee:

- **Ask the UK government to submit a follow-up report.**
- **Publish this response in the inquiry section on the website alongside the Report.**

