

# Social Security: A Consultation on Disability

## Assistance in Scotland

### Response from Citizens Advice Scotland

May 2019

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*Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB), and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.*

*In 2017-18 the Citizens Advice Service network helped over 295,100 clients in Scotland and dealt with almost 800,000 advice issues. With support from the network clients had financial gains of over £138 million and our self-help website Advice in Scotland received approximately 3.2 million page views.*

### Key points

Citizens Advice Scotland (CAS) supports the 'safe and secure transition' approach, but would like to see commitments to short and long-term improvements, including:

- substantial reductions in the number of face-to-face assessments in practice, as well as in commitments
- improvements to the descriptors and points system – in particular increasing the distance for the mobility component from 20 to 50 metres
- a shorter statutory timescale for making decisions on redetermination requests – 28 days, rather than the proposal of 40 – 60 working days
- design of forms, letters and other communication that ensures redeterminations and appeals are one seamless process from the applicant's perspective
- keeping the criteria and assessment process under close review, with a view to improving the accuracy of decision-making where possible
- setting out considerations for longer-term changes to Disability Assistance alongside proposals for initial transition, including:
  - moving from a needs-based system that asks what people are unable to do, to a more rights-based model focused on what a person is entitled to, able to do and the support that enables them
  - the creation of a 'whole-of-life' benefit, to replace the three current and proposed age-based benefits
  - providing mobility support to people over the state pension age, which is not available to people receiving Attendance Allowance or the proposed Disability Assistance for Older People

## Introduction and context of response

Citizens Advice Scotland welcomes the opportunity to respond to this consultation. The devolution of disability benefits to Scotland presents a golden opportunity to create a system that provides adequate social security support for the extra costs associated with a disability or health condition, sufficient for people to participate in society and to live as independently as possible.<sup>1</sup> It also presents an opportunity to address some issues with the current reserved disability benefits system, and move to a system based on dignity, fairness and respect.

Scotland's Citizens Advice network provides a considerable, and growing, amount of advice on disability benefits. In 2017-18 Scottish CAB provided advice on 58,489 issues related to PIP (Daily living), 47,189 related to PIP (Mobility), 12,888 related to Attendance Allowance, 6,439 DLA (Care) issues and 5,136 related to DLA (Mobility). Collectively, these represent around 90% of advice provided on the benefits due to be devolved. During 2018-19, the two components of Personal Independence Payment (PIP) have become the two most common issues that CAB provide advice about in any topic area.

This growing need for advice and the substantial number of problems caused for clients by aspects of PIP has provided a wealth of CAB evidence of how the current system can be improved upon. The devolution of social security benefits, and in particular disability benefits, have been a priority for Citizens Advice Scotland's policy activity since 2015, and we have undertaken an exhaustive amount of consultation with CAB clients and advisers on what disability assistance in Scotland should look like (detailed as Appendix A). This response draws on evidence from that consultation.

### ***Question 1. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 0-18 years old Disability Assistance for Children and Young People (DACYP)?***

No, CAS disagrees with the proposed names for the three benefits.

### ***Question 2. If you disagreed, please could you explain why.***

CAS is concerned that the proposed names do not meet the legislative commitment towards inclusive communication. This is mainly due to the length of the names, together with their relative complexity. This would be likely to lead them to be referred to by inaccessible acronyms, increasing rather than reducing the jargon associated with the social security system.

CAS also understands that the reason for changing the proposed name for Funeral Expense Assistance to Funeral Support Payment was due to concerns about the original name being inaccessible, which is likely to be mirrored in testing for the three proposed names for disability benefits.

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<sup>1</sup> Page 3, Designing a Social Security System for Scotland: Disability and Carers' Benefit – Citizens Advice Scotland, December 2015 <https://www.cas.org.uk/publications/designing-social-security-system-scotland-disability-and-carers-benefit>

In our 2019 survey of CAB advisers, only 26% of respondents agreed with the proposed names, with 34% disagreeing, and the remaining 40% not sure. Respondents particularly commented that the proposed names were too long, and that even the acronyms were too long.

There was no one dominant suggestion for an alternative name from respondents, but suggestions mainly focussed on shortening the names. Some participants suggested including the age related element in the name itself, whilst others felt the benefits could all have the same name.

In particular, the following options were suggested by more than one respondent:

- Disability Payment
- Disability Benefit
- Disability Living Allowance
- Disability Assistance (without the additional words/acronyms)

Where an age-related qualifier was suggested for the name, advisers suggested that it was no more than one additional word, and potentially included in brackets.

*“It should be clearer that we are talking only about a payment, not general 'assistance'. The names should be Disability Payment ... The acronyms are horrible - if my suggestion were to be accepted they would be DPC, DPW and DPO.”* CAB adviser.

With particular regard to the benefit for children and young people, it is notable that a number of respondents favoured a continuation of, or reversion to, the name Disability Living Allowance.

**Question 3. Do you agree or disagree with the proposal to name Disability Assistance for clients aged 16 years old to state pension age Disability Assistance for Working-Age People (DAWAP)?**

No, CAS disagrees with the proposed names for the three benefits.

**Question 4. If you disagreed, please could you explain why.**

As detailed in our response to question 2, CAS is concerned that the proposed names do not meet the legislative commitment towards inclusive communication, in particular the length of names and acronyms proposed.

With particular regard to the benefit for working age people, as part of our 2015 consultation with CAB clients, participants did not particularly object to the current name of Personal Independence Payment. However, given that many clients have had negative experiences of the PIP assessment process, or being transferred from DLA, together with the fact that the new benefit will be different from the continuing PIP in the rest of the UK, there is a strong case for the name being changed.

**Question 5. Do you agree or disagree with the proposal to name Disability Assistance for clients who are state pension age or older Disability Assistance for Older People (DAOP)?**

No, CAS disagrees with the proposed names for the three benefits.

**Question 6. If you disagreed, please could you explain why.**

As detailed in our response to question 2, CAS is concerned that the proposed names do not meet the legislative commitment towards inclusive communication, in particular the length of names and acronyms proposed.

With particular regard to the benefit for people over pension age, previous consultation with CAB advisers and clients has suggested that the current name of Attendance Allowance is unclear as to its purpose, and may be a barrier to take-up due to people believing that the benefit requires some form of 'attendance'.

**Question 7. Do you agree or disagree with the proposal to enable multiple application channels for Disability Assistance?**

Yes, CAS agrees with the proposal that there should be multiple application channels. Based on evidence of how CAB clients have coped with the introduction of digital technologies in the UK social security system,<sup>2</sup> CAS has previously recommended that the Scottish Government avoids a 'digital by default' strategy, and instead ensures that claimants have access to a number of different communication methods. We also recommended that all Scottish Social Security Agency phone lines are Freephone numbers, and escalation routes are provided for intermediaries to contact the Agency on the claimant's behalf.<sup>3</sup>

In particular, people should have a choice about how they apply for disability benefits. This should include online, by telephone, on paper and in person. CAS recommends that a 'digital by default' approach would be particularly inappropriate for applications for disability benefits. This is based on CAS research with CAB clients indicating that claimants of disability benefits find it harder to use a computer and the internet when compared with all benefit claimants. For example, 35% of disability benefit claimants said that they could not use a computer at all, compared with 19% of all respondents. 52% of disability benefit claimants said that they could not make an application for benefits online, compared with 30% of all respondents. On this basis, whilst we would support an online option being available, CAS does not recommend a 'digital by default' approach is used for this purpose.<sup>4</sup>

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<sup>2</sup> Citizens Advice Scotland response to 'A New Future for Social Security' consultation – October 2016 <https://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

<sup>3</sup> Ibid, pages 22 - 25

<sup>4</sup> Ibid, pages 65 - 67

**Question 9. Do you agree or disagree with the proposal to broadly replicate the current temporary absence rules?**

Yes, CAS agrees with the proposal to broadly replicate the current temporary absence rules, which would enable people to continue to receive disability assistance if they are temporarily absent from Scotland for less than one year. The rules should also allow this to be extended in particular circumstances – for instance if someone was temporarily overseas for medical treatment.

As detailed in our response to question 64, whilst CAS is broadly content with the proposed approach to residency, we would recommend that the past presence test is removed, as it is an unnecessary barrier to people receiving social security support.

**Question 11. Do you agree or disagree with the proposal to implement a person-centred approach to making decisions about entitlement for Disability Assistance?**

CAS agrees in part with the proposals outlined in the consultation document. Whilst we strongly agree that a person-centred approach is the right method for making decisions about entitlement, we would recommend some further considerations and additions to the proposals outlined in the consultation document.

Whilst it is right that the Scottish Government makes much-needed improvements to the process for face-to-face assessments, CAS would strongly recommend that the Scottish Government prioritises substantially reducing the numbers of face-to-face assessments being carried out in the first place. As detailed in our response to question 18, this could be achieved by giving far greater weight to the client's own account, those that know them, and already-available supporting evidence. This should reduce the number of face-to-face assessments to a small minority of cases.

This will help improve the relatively small number of face-to-face assessments that are carried out, by increasing time available to assessors from the limited window afforded to Healthcare Professionals for assessments in the current system. Similarly, the reduced number will enable Social Security Scotland to better ensure that assessors with knowledge of the individual's particular conditions can carry out the assessment. Both of these would address concerns from CAB clients, advisers and others that PIP assessors are not given sufficient time to fully consider a client's case and their evidence, and often do not have specialist knowledge of how the individual's specific condition(s) are likely to affect their functionality.

CAS has some concerns that the circumstances proposed in the consultation document (pages 23-24) in which Social Security Scotland might decide a face-to-face assessment is necessary may be too broad to ensure that, in practice, a substantial reduction in face-to-face assessments occurs. In particular we are concerned that point 4, which gives the agency an open-ended power to *'identify other circumstances where a face-to-face assessment is required for the purposes of robust decision making... [including claims where] there is a high risk that an incorrect award is made without a face-to-face assessment'* may be too broad to reduce the

number of face-to-face assessments. CAS would recommend that this circumstance is altered to make it more specific and less open to interpretation.

Similarly, we also have some concerns about the proposal that a face-to-face assessment is carried out *'where there are inconsistencies in the information provided. This could be where the functionality described in the account is not consistent with the diagnosis or condition.'* From discussions with PIP assessment providers, this appears to be one of the main reasons for the number of face-to-face assessments carried out rather than making a paper-based decision on the evidence.

CAS would recommend that the guidance developed in this area stresses that decisions should be made on the balance of probabilities, and that the individual's account should be believed unless there is good reason to doubt it. This is at the heart of a person-centred approach, and will be key to meeting the commitment in the social security Charter to listen to, trust, and treat people as individuals.<sup>5</sup>

Whilst the proposed division of responsibilities between a Case Manager and Assessor in the consultation document appears broadly appropriate, CAS would recommend the Scottish Government ensure clear accountability for decision-making and the handling of an individual's case. This should avoid replicating some of the current issues where it can be unclear whether a DWP Decision-Maker or a contracted assessor is responsible for the accuracy of a decision.

There was a clear view amongst CAB clients and advisers that private companies should not have a role in assessments, due to the lack of specialist expertise, the inflexibility of assessments carried out in a 'box-ticking' manner, and a lack of clear lines of accountability in certain situations where it is unclear whether the DWP or contractor is responsible for particular actions. It was for these reasons that CAS supported the restriction of the involvement of private contractors in assessments in the Social Security (Scotland) Act.

CAS would agree with the proposed list of training and skills for Case Managers to hold, though would also suggest that training in human rights and the right to social security; and being able to demonstrate empathy should also be added to the list.

***Question 13. Do you agree or disagree with our proposed approach to the involvement of Specialist Advisors in Decision Making?***

***Question 15. What factors should Case Managers take into account in deciding when a Specialist Advisor should be involved?***

Yes, CAS agrees with the proposed approach, although would recommend consideration is given to ensure that assessors, as well as Specialist Advisors are also fully trained in the impact of particular conditions.

<sup>5</sup> Our Charter – Scottish Government, January 2019 <https://www.gov.scot/publications/charter/>

Participants in our 'Empowering Scotland' consultation stressed the importance of assessors being properly trained and qualified. Some thought assessments should only be done by doctors. Overall, participants' key concern was that the assessor should have knowledge and understanding of the claimant's specific condition. This point was frequently raised in relation to mental health conditions.

The assessment must be based on principles of dignity and respect. Claimants should not be made to feel they are 'lying'; the emphasis should be on helping them to fully express their needs so as to get appropriate support.

In terms of the content of the assessment, participants felt there should be a more flexible approach and a focus on asking questions appropriate to the claimant's condition and circumstances. There should be less of a focus on box ticking and criteria which do not apply in every case.

*"[Face-to-face assessments] could be improved by getting rid of pre-programmed questions and tests. This information should be on the form and face-to-face assessments should be about an expert using their judgement. This can only be done properly if the assessor is free to conduct the assessment by way of getting to know the claimant". CAB adviser.*

Many of these issues would be improved if assessors and Specialist Advisors had a more specific knowledge of how a person's specific conditions would typically affect their functionality. CAS believes that a substantial reduction in the number of face-to-face assessments conducted in practice would allow Social Security Scotland to employ and train assessors in the impact of specific conditions, as well as allowing them the time to consider all existing evidence fully.

***Question 16. Do you agree or disagree that the decision making process for Disability Assistance for Children and Young People, and for Older People should use existing supporting information and not through face-to-face assessments?***

Yes, CAS agrees that face-to-face assessments should not be used to for children, young people or older people as is currently the case for DLA and Attendance Allowance. As detailed in our responses to question 18 and elsewhere in this response, CAB evidence has overwhelmingly shown that the use of face-to-face assessments for PIP have resulted in supporting evidence not being taken into account, been stressful and undignified for clients, as well as leading to inaccurate decision-making.

CAS recommends that in the short term, the number of face-to-face assessments for working age people is substantially reduced by existing supporting information. In the long term, consideration should be given to whether any face-to-face assessments are needed in the system at all, as part of the development of a 'whole-of-life approach' to disability benefits, with criteria developed to move to a more rights-based model that focuses on what a person is able to do, better supports independent living, and avoids the need for face-to-face assessments, as detailed in our response to question 64.

**Question 18. What types of supporting information would be relevant in assessing an application for Disability Assistance eg. social work report, medical report?**

Further detail on issues CAB clients have encountered with Personal Independence Payment is provided throughout this response, but in summary the major issues have been:

- Problems with medical assessments which have not treated clients with dignity or respect.
- Poor quality of initial decision-making on entitlement, with a high rate of decisions overturned on reconsideration or appeal.<sup>6</sup>
- Further medical evidence not being sought by decision-makers, causing clients to be charged by GPs for evidence to be provided.

CAS recommends that in assessing people's eligibility for disability benefits, much greater emphasis should be given to evidence from people who know the individual, including health and other relevant professionals, carers and family members.

Social Security Scotland should be responsible for gathering this information and covering any associated costs. The agency should ensure that they routinely gather medical evidence from a wide range of relevant health and social care professionals (not solely GPs, as in many cases where a person has a long-term condition they may not often see their GP, and a GP may not be best placed to comment on the functional impact of a client's condition). Medical evidence should be gathered at the initial assessment phase to inform the decision regarding the claimant's eligibility. This would improve accuracy of decisions and therefore avoid the administrative costs associated with reconsiderations and appeals.

The key message that emerged from participants in CAS' consultations with CAB clients and advisers<sup>7</sup> was that, in assessing people's eligibility for disability benefits, **much greater emphasis should be given to evidence from people who know the claimant**, such as carers, family and friends, support workers, social workers, occupational therapists, community psychiatric nurses, employers, as well as GPs etc. It was widely thought that evidence from

<sup>6</sup> Between October and December 2018, 73% of Tribunal appeals against a PIP decision were upheld. In January 2019, 20% of PIP new claim decisions, and 23% on reassessments from DLA were overturned following a mandatory reconsideration. Tribunals and gender recognition statistics quarterly: October to December 2018 – Ministry of Justice, March 2019 <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2018> and Personal Independence Payment statistics: April 2013 to July 2016 – Department for Work and Pensions, September 2016 <https://www.gov.uk/government/collections/personal-independence-payment-statistics>

<sup>7</sup> Designing a Social Security System for Scotland: Disability and Carers' Benefit – Citizens Advice Scotland, December 2015 <https://www.cas.org.uk/publications/designing-social-security-system-scotland-disability-and-carers-benefit>

such sources gave a much better insight into how a person's disability or health condition affects them than a one-off face-to-face assessment.

***An East of Scotland CAB reports of a client who was reassessed for PIP a year in advance of the end date for his award. The client was awarded PIP Care Enhanced Rate and Mobility Standard Rate. Previously the client had Mobility Enhanced Rate, meaning he now faces losing his Motability Car which he needs on a daily basis. The client is very anxious and stressed because of this decision. The client suffers from Hereditary Angioedema (HAE) which is a very rare and potentially life-threatening genetic condition. He was diagnosed when he was 5 years old. HAE symptoms include episodes of edema (swelling) in various body parts including the hands, feet, face and airway. The client has flare-ups every day and this can result in him having to go to the hospital for injections. His mobility is severely impaired when the flare-up occurs. When he goes to the hospital his notes state what treatment he needs and this means he can get treatment straightaway.***

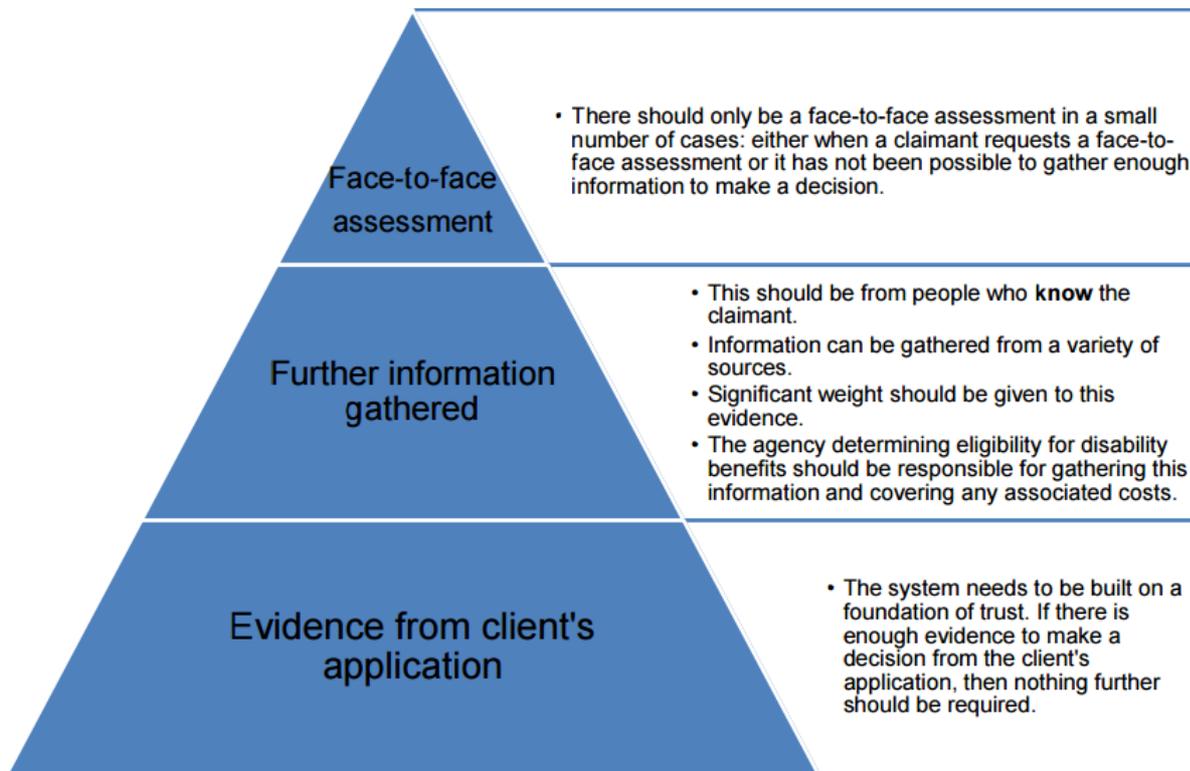
Overall, participants in our consultations thought there should be a tiered approach to assessment, with a face-to-face assessment only carried out in a small number of cases.

*"The starting point should always be the client's own evidence; you need to accept what people say as prima facie truthful. In some circumstances, there will be a need for further investigation and gathering further evidence. A face-to-face assessment should be rare". CAB adviser.*

*"Evidence provided by medical experts who the claimant has been dealing with should be weighted more than the medical assessment as they will know how the client's condition affects them more than a short medical assessment will determine". CAB adviser.*

This tiered approach is illustrated below.

## A tiered approach to assessment



Participants in our 'Empowering Scotland' consultation were clear that much more weight should be given to evidence from people who know the claimant. Most participants also thought that **the agency making a decision on eligibility should be responsible for gathering further information, and it should be that agency, not the claimant, who bears any associated costs.**

*"The onus on the applicant to provide the evidence and information for the claim is just putting pressure on people who are already struggling."* CAB adviser.

The current assessment providers, Independent Assessment Services, have produced a list of what evidence they find most useful in deciding whether to produce conduct a paper-based assessment, or a face-to-face assessment. The following is currently listed as 'useful evidence'<sup>8</sup>:

- Letters from hospitals, GPs or specialists (but not appointment letters, we don't need to see them)
- X-Ray, ultrasound or scan results
- Diagnostic Report (for example, Autism)
- Special Educational Needs Reports
- Prescriptions
- Occupational Therapy Reports or letters

<sup>8</sup> Gathering Evidence – A Guide for Claimants – Independent Assessment Services  
<https://www.mypipassessment.co.uk/supporting-evidence/claimants-guide/>

- Summary of conditions
- Letters from Specialists (for example, MacMillan)
- Carers Assessment
- Social Worker Assessment
- Care Plans
- Psychiatrist or CPN report
- Evidence from Support Workers
- Evidence from family members/friends – people who are closest to you may be able to give us an insight in to how you function day to day

In CAS' September 2016 survey of CAB adviser on Personal Independence Payment, when asked who clients tend to obtain evidence from in support of a benefits claim, PIP survey respondents answered with the following, in order of most common<sup>9</sup>:

GPs	44
Specialist Doctors	35
Community Psychiatric Nurses	31
Mental Health Service providers (both NHS and other)	30
Physiotherapists	17
Occupational Therapists	14
Social Workers	7
Other Allied Health Professionals	5
Carers	2
Friends and family	2

Despite this, a significant majority of PIP assessments are currently conducted face-to-face. Evidence from CAB clients and advisers suggests that people are frequently called for a face-to-face assessment despite having submitted relevant supporting evidence. Additionally, further evidence can be difficult to acquire, and in some cases has led to clients being charged a fee. Both these issues are detailed below.

### Use of further evidence in the current system

One of the emerging issues with PIP has been the difficulties claimants can face in obtaining evidence to support their claim, particularly as a result of health professionals charging claimants for providing this evidence.

***An East of Scotland CAB reports of a client who handed in a report from her GP to substantiate her PIP application. Her partner had had to pay £75 to obtain this medical report.***

Under current guidance to both health professionals and individuals it is clear that, during the assessment phase, claimants should not be approaching their GP to gather further evidence.

<sup>9</sup> Citizens Advice Scotland response to Second Independent Review of Personal Independence Payment, September 2016 <https://www.cas.org.uk/publications/cas-response-personal-independence-payment-call-evidence>

Guidance on the PIP claimant journey states that, at the stage the claimant is sending in their 'How your disability affects you' form they should also send any supporting evidence, but that should only be things that the individual already has available. It advises: 'You are not expected to pay to get hold of your evidence. If you are unable to get it, please provide contact details for the people who look after you and know you best on your PIP application form (for example; GP, consultant, psychiatrist, specialist nurse, psychiatric nurse, teacher, carer or support worker).'<sup>10</sup>

Guidance for health professionals similarly states: 'Claimants are only required to send in evidence they already hold, such as copies of clinic letters, they are not told to contact their GP or health professional to obtain further evidence'.

On receiving the claimant's PIP2 form, it is for the Assessment Provider to request further information from a claimant's GP or other health professional. This is done by sending a Factual Report for completion. The GP/health professional will receive a payment for completing this report from the Assessment Provider.

However, case evidence from bureaux as well as the views gathered from CAB clients and advisers as part of our 'Empowering Scotland' consultation in 2015, strongly suggests that the DWP/Assessment Provider do not seek information from an individual's GP or other relevant professional, and instead decisions are too often based solely or primarily on the report from the face-to-face assessment.

*"Many decisions for PIP are made purely on medical assessment report and the DWP state that this is sufficient information, and will not seek a report from other professionals who have possibly known and treated the claimant for many years. It is difficult to see how this can possibly be the best approach to deciding a person's eligibility". CAB adviser.*

***A West of Scotland CAB reports of a client who had chronic rheumatoid arthritis and requires three monthly injections to help her alleviate the pain. She went for her assessment one week after she had made sure that she would receive her hydrocortisone injection to enable her to attend. Her mobility benefit was removed despite her previously receiving a High Mobility DLA award and no cognisance was taken of the medical information supplied by her rheumatology nurse, nor was she contacted.***

<sup>10</sup> Paragraph 2.3.4 of Department for Work and Pensions PIP Assessment Guide  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/547146/pip-assessment-guide.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547146/pip-assessment-guide.pdf)

***A South of Scotland CAB reports of a client who on his form stated he found it difficult to discuss his condition and requested that his GP and consultant should be contacted. However, no contact was made and a DWP Decision Maker suggested to the bureau adviser that the responsibility for getting such evidence lies with the client. This was despite the fact that DWP guidance to claimants specifically states that new medical evidence should not be sought.***

As part of a September 2016 survey of CAB advisers on their experiences of PIP, when asked what further evidence assessment providers request on claimants' behalf, 19 survey respondents, unprompted, said Atos<sup>11</sup> 'rarely' seek further evidence in regards to a claim, and six further respondents said that Atos 'never' seeks additional evidence (together, they made up 69% of those who answered the question). This reflects a similar picture to the one provided by advisers in 2014, when 56% of survey respondents said that assessment providers were not requesting evidence. Only two respondents said that Atos do sometimes obtain further evidence, and both mentioned GPs. The comment from a bureau tribunal representative below summarises the difficult position this puts clients in:

*"Less than 1 in 10 set of appeal papers contains medical evidence that ATOS has sought themselves. Clients are often very upset or frustrated by this as they have given the details and are happy for the medical professional to be contacted. Moreover a lot of services that can provide medical evidence are reluctant to give this to the client themselves."*

***A North of Scotland CAB reports of a client who had a face-to-face assessment for PIP carried out as a home visit. The health care professional did not have with her the additional medical evidence that had been sent in to support his claim. On this occasion the client was pro-active and checked, and was able to provide his own copies of the medical evidence for the HCP. Another client might not know to check, and might be disadvantaged because the HCP was unaware of all the evidence.***

Even if the claimant ignores the DWP guidance and attempts to gather supporting evidence, there are numerous barriers associated with trying to obtain evidence in support of a benefits claim from healthcare professionals, which are explored below.

## **Gathering supporting evidence in the current system**

In 2016 and 2017, CAS carried out research exploring the use of medical evidence to assess ill health and disability benefits. The findings reveal a complex picture, but suggest that in many

<sup>11</sup> Atos are contracted to provide assessments for PIP in Scotland. Since the survey was conducted, they have since changed their name to Independent Assessment Services

cases, not enough information is available at initial claim stage, or at Mandatory Reconsideration stage, to make fully informed and accurate decisions.<sup>12</sup>

The research found that – while the system works for the majority of claimants - improvements could be made to how incapacity and disability benefits are assessed, and the role that medical evidence plays.

Different Government departments and public sector services have different responsibilities in relation to assessment of ill health and disability benefits, which are not always clearly aligned. For example, DWP decision makers and assessment providers have an interest in gathering as much evidence as possible at an early stage so that they can get the decision right first time.

GPs are primarily concerned with the health of their patients, and the resources at their disposal. They experience demands from the DWP, patients, advice and advocacy organisations to provide details of patients' conditions and how these conditions impact on their everyday lives. GPs, however, may not have frequent contact with the patients in question, and do not always feel qualified to make a judgement regarding how conditions are experienced by the individual.

These responsibilities and interests are equally valid and important, but make for a system in which the claimant can receive mixed messages, and means that there is not always the same degree of evidence available at the initial claim stage as there is at the appeal stage. If the decision maker has inadequate evidence to make an accurate decision, and the decision is appealed, the onus and financial burden of gathering this medical evidence then transfers to the claimant.

### **Initial claim stage**

Clients rarely gather further medical evidence at initial claim stage. This is likely to be due to a number of factors:

- The DWP advise claimants not to gather additional evidence at this stage;
- GP practices sometimes refuse to provide supporting medical evidence direct to claimants, or may charge fees which can act as a financial barrier for claimants;
- The one month timescale within which to return the self-assessment form can be too tight a timescale to gather additional evidence.

Respondents to the CAB adviser survey indicated that it is 'difficult' or 'very difficult' for claimants to obtain supporting evidence from GPs at initial claim stage.

The results of the survey of medical professionals suggest that GPs and other health professionals spend a significant proportion of their time providing evidence to the DWP or assessment provider at the initial claim stage, filling in ESA113 or PIP forms.

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<sup>12</sup> Findings below are from Burden of Proof: The role of medical evidence in the benefits system, Citizens Advice Scotland, June 2017 <https://www.cas.org.uk/publications/burden-proof>

CAB advisers, however, presented a different picture. When asked “what further evidence does Atos request from healthcare professionals, in addition to the PIP2 and consultation,” 69% of respondents said Atos ‘rarely’ or ‘never’ seeks additional evidence.

### **Assessment forms and face-to-face assessments**

Responses to the CAB adviser survey, as well as case evidence from bureaux, suggests that the application process is currently difficult to navigate for many claimants.

The manner of healthcare professionals during assessments is an issue for bureau clients, which may affect their ability to express themselves during the consultation and could impinge upon the quality of information gathered.

Regarding the accuracy of the healthcare professional’s report, 59% of CAB adviser survey respondents said that clients ‘rarely’ agreed that the healthcare professional’s report accurately reflected the discussion that took place.

Some comments made in response to the GP survey also raised concerns regarding the assessment process.

### **Appraisal of evidence at initial claim stage**

The CAB adviser survey results showed that almost half (48%) of survey respondents said that, in their experience, DWP decision makers ‘rarely’ or ‘never’ make decisions regarding PIP claims based on all the available evidence.

Some respondents to the GP and health professionals’ survey also raised concerns around the appraisal of evidence at initial claim stage.

### **Mandatory Reconsideration**

Many clients experience barriers when obtaining evidence at Mandatory Reconsideration stage, including tight timescales, physical and mental health conditions, as well as financial barriers.

Respondents to the CAB adviser survey raised concerns about there being no proper reconsideration of the original decision, and decision maker bias.

### **Appeals**

It is much more common for supporting medical evidence to be provided at appeal stage, and for advisers and representatives to be involved in gathering this evidence.

Appellants can, however, experience barriers at appeal stage too. The case studies showed evidence of GPs refusing to provide evidence because they have a policy to only provide this to the DWP. In fact, it is possible for the claimant to go the whole claiming and appeal process without ever having had medical evidence considered as part of their claim. For example, if the DWP or assessment provider did not request it at initial claim stage or Mandatory Reconsideration stage, and the GP has a policy of not providing evidence directly to the claimant.

## Impact on clients

Receiving an inaccurate decision when first assessed has been shown, in some cases, to have detrimental financial and health impacts on CAB clients.

- Sixteen of the clients represented in the 45 case studies were without benefit entitlement prior to having the decision changed on appeal. This meant they had to manage on less despite incurring the same costs related to their health condition or disability, such as having to travel by taxi.
- This and previous CAS research<sup>13</sup> has found that clients can experience a period of acute income deprivation due to benefits not being payable pending a Mandatory Reconsideration decision.
- The analysis of the case studies showed some evidence of the impact of the assessment and appeals process on clients' mental and physical health. In two cases, clients mentioned suicidal thoughts.

## Information available to clients

Limited information is available to clients regarding what support they can expect from health professionals in relation to benefit claims.

- The results from the online mapping exercise showed that at least 25 (28%) of the 81 GP practices for which data was gathered had no information on their website in relation to medical evidence, while 64 GP practices (67%) provided information about certification of fitness for work.
- Very few practices provided a list of fees charged for providing letters, and they tended not to detail whether these referred to letters related to benefit claims.

### ***Question 19. Do you agree or disagree with the proposal to have no set award durations but to set an award review date when a decision on a Disability Assistance application is made?***

Yes, CAS agrees with this proposal. In our August 2015 'Empowering Scotland' consultation with CAB clients and advisers, participants were of the view that reassessments under PIP were too frequent and resulted in additional distress for clients as well as a waste of public resources.

*"Some of the reassessment timetables are ridiculous – we see people who have a degenerative illness or disability who are reassessed far too quickly".*

*"PIP is often awarded for a very short period, even when someone has a lifelong condition that is not expected to change. Then the DWP will also send out a new PIP2 form a full year before the end of the award period".*

<sup>13</sup> Citizens Advice Scotland, *Living at the Sharp End: CAB clients in crisis*, July 2016. Available from: [www.cas.org.uk/publications/living-sharp-end](http://www.cas.org.uk/publications/living-sharp-end)

The majority of CAB advisers consulted (79%) thought that the timing of any reassessment should depend on the claimant's impairment or health condition.

*“A sensible balance has to be struck between open-ended awards which could result in overpayments/fraud etc. versus claimants having to go through the process every few years. The claimant's condition and age should be the key factors in determining the length of award”.*

Citizens Advice Scotland chaired the dedicated short-life working group on award duration referred to in the consultation document, and we as such we agree with this proposal, which was specifically recommended by the group. Awards should be made on a 'rolling' basis, continuing without a fixed end date. As part of the initial decision a date of review should be set, however the award would continue, rather than being stopped and requiring a reassessment, as is currently the case for PIP. Fixed-term awards should not be used in the new system.

As part of the initial decision a date of review should be set. This should be set at a point where it is likely that there would be a significant change in the person's condition – either a deterioration necessitating additional support, or a significant improvement. This would be based on a prognosis derived from the evidence on which the initial award is made. Whilst decisions would be made on a person-centred basis, guidance should be developed for decision-makers, including information on the typical prognosis for particular conditions.

For individuals in receipt of PIP at the point of transfer to Scottish Government administration, unnecessary reassessments should be avoided, and their award should therefore be continued in line for the new rules for duration of awards.

***Question 21. Do you agree or disagree with the proposal to set an award review date 5-10 years in the future for a person with a condition unlikely to change***

Yes, CAS agrees with this proposal, which was recommended by the short-life working group. In addition to the award continuing on a rolling basis, in practice, this process would also be more likely to lead to longer periods before a review than is currently the case before a fixed-term award ends under PIP.

In some cases, where there is no likelihood of a person's condition improving due to it being permanent (e.g. congenital learning difficulties, blindness, brain injury) or progressive (e.g. secondary progressive Multiple Sclerosis, Motor Neurone Disease, Parkinson's, dementia), the minimum period before any light touch review should be at least five years. Additionally, in these cases there may be no review date set unless requested by the individual if the individual is already receiving the maximum award.

Additionally, it may be appropriate that no review date is set for individuals who receive an award under Special Rules for terminal illness, as opposed to the three year fixed-term award approach under PIP.

Award reviews should not involve a disability benefit stopping, it would continue throughout the review and beyond unless superseded by a revised decision. This would include the completion of any appeals process, in line with the creation of Short-Term Assistance for this purpose.

The process of review should not involve a full re-assessment, and should be on a 'light-touch' basis, that aims to minimise stress. It would seek to establish whether there had been any significant changes to the impact of a person's condition (either deterioration or improvement), from how it was described in their original award.

Reviews should use the most appropriate form of assessment to obtain information about changes in condition. It is anticipated that in many cases this would consist of a paper-based questionnaire providing people with the information presented in the original decision and asking them whether the impact of their condition had got worse, got better or there had been no change.

In some cases no further information might be required, and use could be made of existing evidence without needing to be supplied separately. Some of this will depend on the nature of assessment, evidence-gathering and decision-making for making original awards for Disability Assistance, as detailed elsewhere in this response.

***Question 23. Do you agree or disagree with the proposal that a change of circumstances should be defined as a change which has an impact on the level of assistance a person receives?***

Yes, CAS agrees that the proposal would be a reasonable way to define a change of circumstances. However, care must be taken to ensure that people whose condition had gradually and subtly improved over a long period of time (such as the 5-10 years between award reviews), and would not reasonably be expected to report a 'change of circumstances' as a consequence, are not penalised for failure to report the change, or be required to repay Disability Assistance they have previously received.

In addition, the short-life working group also recommended that if an individual's award changes in a way not beneficial to the claimant, there should be a period of eight weeks before their payment amount changes to give them time to prepare for a negative change in their financial situation.

Individuals should have the option to request a review of their award at any time, including a face to face assessment if they wish. For instance, this may be if their condition had deteriorated and they felt they may be entitled to a higher award. People would also be expected to report any changes of circumstances. Clear guidance on what would constitute a change of circumstance should be provided, and care should be taken not to penalise a person whose condition had gradually improved. The group felt that, given the nature of the benefit, moving into work should not be regarded as a change of circumstance.

**Question 25. Do you agree or disagree with the proposal that clients have 31 days to request a redetermination?**

No, CAS disagrees with this proposal. We recommend the period should be six weeks (42 days).

**Question 26. If you disagreed, please could you explain why.**

Citizens Advice Scotland would recommend that the timescale to make a re-determination request should be extended to six weeks (42 days). This would enable individuals to gather and submit further evidence, as well as being able to seek and receive independent advice if they need it. This is challenging in the current reserved benefits system, where the timescale is set at four weeks, and consultation with CAB advisers has suggested that six weeks would be a more appropriate period across the new Scottish social security benefits.

CAS has previously recommended that, under the new Scottish social security system, there should be statutory time limits for an internal review to be requested as well as for the agency to make a re-determination. We had recommended that the periods for both could have been set out in the Social Security Act to provide consistency, although we accept the Scottish Government's rationale for not doing so was that different periods might be appropriate for different benefits. Disability Assistance is one area where it might be appropriate to vary the timescale from the 31 days that has been introduced for other benefits introduced to date, based on experience of advising clients on making Mandatory Reconsideration requests for PIP.

CAB evidence has revealed that there is room for improvement in the timescales within which a claimant must challenge a decision. In a survey carried out by CAS on Mandatory Reconsideration, two advisers raised their concerns:

*“There is not enough time to get supporting evidence [at mandatory reconsideration stage]. The onus is on the client but a lot of health professionals will not supply a letter unless it is requested [by DWP]. Clients are disadvantaged as they feel they are not believed so need to get medical evidence but are unable to do so.”*

*“Unfortunately the majority of cases are not successful at mandatory reconsideration without medical evidence (and more than 50% are won at tribunal).”*

As the Scottish Government has recognised, advice and advocacy will play a key role in supporting the new Scottish social security system, so processes must be designed with this in mind, allowing enough time for people to access services and book appointments with advisers.

Although it is important to ensure that there is enough time to gather supporting evidence and access advice, it is also important that a timescale exists; otherwise people will be less likely to act on a decision while it is still relevant to their current circumstances and condition.

Therefore, CAS recommends that a re-determination request, including any additional evidence the individual wishes to submit, should be returned to Social Security Scotland within six weeks of the date of receiving the decision. In addition to this, as is the case under the current

mandatory reconsideration process, if the six week deadline is missed then Social Security Scotland should use its discretion to allow reasonable late requests.

**Question 27. We have proposed that Social Security Scotland have a period of between 40 and 60 days to consider a redetermination of Disability Assistance? Do you agree or disagree with this proposal?**

No, CAS disagrees with this proposal. We recommend the period should be four weeks (28 calendar days).

**Question 28. If you disagreed, please explain why.**

CAS recommends that redeterminations should be made as soon as is practically possible, but no longer than four weeks.

In general, setting a statutory time limit for a re-determination to be made is important in the context of experience of the current reserved benefits system. CAS has previously raised concerns that no statutory time limit exists within which the DWP must provide a decision in response to a mandatory reconsideration request<sup>14</sup>. The DWP indicated that a mandatory reconsideration should be processed within 14 working days, although data on the time taken to reach a decision has been described by the Work and Pensions Committee as “sporadic and incomplete”<sup>15</sup>. Department ‘targets’ do not constitute a time limit, and in reality some claimants can wait weeks to receive a decision. This presents a problem both for claimants and for advice agency staff, who do not know how long to wait before contacting the DWP regarding a reconsideration request.

***A West of Scotland CAB reports of a client who lives alone and has Type 2 diabetes, arthritis and a hip injury. He previously received Disability Living Allowance, but when he was re-assessed for Personal Independence Payment he was not awarded either component. He had submitted a mandatory reconsideration request 11 weeks ago, but had not yet received a response and sought assistance from the CAB to see if a decision had been made. When the CAB tried to contact the DWP on the client’s behalf it took 37 minutes for the call to be answered, only to be immediately disconnected.***

<sup>14</sup> Response to Social Security Advisory Committee Consultation on Decision Making and Mandatory Reconsideration – Citizens Advice Scotland, March 2016 <http://www.cas.org.uk/publications/social-security-advisory-committee-consultation-decision-making-and-mandatory>

<sup>15</sup> Benefit delivery: Fourth Report of Session 2015-16 – UK Parliament Work and Pensions Committee [www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/372/372.pdf](http://www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/372/372.pdf)

***An East of Scotland CAB reports of a client who has had his PIP withdrawn after assessment. He completed a mandatory reconsideration request three months ago and heard nothing. He has just received a letter from the DWP saying that they have carried out an assessment of his PIP and have decided that it should stay the same. He took this letter to mean that his PIP was being restored but, in fact, the letter referred to a legal ruling on PIP which has seen many clients underpaid over recent years.<sup>16</sup> It was not a letter in response to his reconsideration request and, as a result, the client was very confused. On being contacted the DWP claimed they had not received his reconsideration request until two months after it had been sent First Class Recorded Delivery. They had no explanation for the discrepancy. The client was still waiting to hear the outcome of his reconsideration.***

From previous consultation with CAB advisers with experience of advising clients with mandatory reconsideration requests, a period of four weeks (28 calendar days) was seen to be a fair and reasonable period for a response to a request. There was also a feeling that it would be fair to expect the agency to be given the same period as is expected of individuals making the request (28 days for PIP).

CAS would consider the proposal of 40 – 60 working days, equivalent to 8 – 12 weeks, would be too long to set as a reasonable timescale in law to meet the intent of setting a statutory limit. The Social Security (Scotland) Act already provides for the time for a redetermination to be extended if the individual agrees to it, so it would be possible for a longer period to be taken for a decision if the person is content for it to take that long.

It must be borne in mind that an individual lodging a redetermination request will have already had to wait for a period of time for an original determination to be made on their application prior to lodging a request, so any long redetermination period has the potential to leave a disabled person without social security support for several months. Additionally, an individual cannot lodge an appeal to a tribunal until their re-determination decision has been received within the statutory time limit, which creates a barrier to justice if the re-determination is not carried out in a timely manner.

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<sup>16</sup> Welfare: Written statement – HCWS414, January 2018 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-01-19/HCWS414/>

***Question 29. Do you agree or disagree that STA should not be paid to people who are not living or present in Scotland?***

Yes, CAS agrees with this proposal. It would be fair that if someone were appealing to have Disability Assistance re-instated, that they would continue to be subject to the same residency requirements for it to receive Short Term Assistance.

***Question 31. Do you agree or disagree that STA should not be recoverable except where it is later established that the principal assistance type was claimed fraudulently when STA was awarded?***

Yes, CAS would agree that the only circumstances Short Term Assistance should be recoverable would be if it had been proven that it was claimed fraudulently.

In general however, it is important to draw a clear distinction between intentional fraud and unintentional error, recognise that despite public perceptions, the overall levels of benefit fraud are low, and that the process of investigating alleged fraud is shaped by the social security principles related to dignity, respect and human rights. Further information regarding how fraud should be investigated and handled in the social security system can be found in CAS' response to the consultation on the Investigation of Offences regulations and Code of Practice for Investigations.<sup>17</sup>

***Question 33. Do you agree or disagree that STA should not be available where an investigation by Social Security Scotland has determined that the original payment was claimed fraudulently?***

No, CAS disagrees with this proposal. Short Term Assistance should be available if a person is appealing a decision that their benefit claim was fraudulent.

***Question 34. If you disagreed, please could you explain why.***

It is important that people accused of fraud have a right to appeal a decision against them, which may be subsequently overturned. In line with the principles of the social security system - in particular the recognition that social security is in itself a human right and essential to the realisation of other human rights – as well as the principles of justice, people accused of fraud must be treated as innocent until proven guilty.

The introduction of Short Term Assistance is a hugely important feature in the Scottish social security system, and one that CAS called for.<sup>18</sup> A major concern regarding the mandatory reconsideration process has been that disputed benefit entitlement is not payable pending a

<sup>17</sup> Citizens Advice Scotland response to consultation on the Investigation of Offences regulations and Code of Practice for Investigations – October 2018 <https://www.cas.org.uk/publications/cas-response-consultation-investigation-offences-regulations-and-code-practice>

<sup>18</sup> Page 196 – 197, Citizens Advice Scotland response to 'A New Future for Social Security' consultation, October 2016 <https://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

mandatory reconsideration, which can lead to people experiencing sometimes severe financial hardship as a result.

CAS believes that if a person is appealing a decision to reduce or remove their benefit entitlement for whatever reason, then they should continue to receive the benefit at the existing level until the appeal process is exhausted. This is the purpose of Short Term Assistance, and should also be available to someone who is challenging a decision that their payment was made fraudulently.

Whilst there is a risk of an overpayment if the decision is upheld on appeal, the person should be offered the option of STA to prevent them experiencing hardship. Given the possibility of overpayment, as well as the nature of the situation, it is particularly important that people who wish to challenge a decision that they have claimed a benefit fraudulently always have access to good quality independent advice.

***Question 35. Do you agree or disagree that any deductions being made from an on-going assistance type to service an overpayment liability should also be applied to STA?***

Yes, CAS agrees with this proposal. In general however, it is important to ensure that any deductions to repay overpayments do not leave individuals in hardship, as detailed in our response to question 41 below.

***Question 37. Do you agree or disagree that for successful process decision appeals where the tribunal has overturned Social Security Scotland's decision, STA should become available at the point the decision is overturned rather than the date of the original request?***

No, CAS disagrees with this proposal. STA should be available at the date of the original request.

***Question 38. If you disagreed, please could you explain why.***

Short Term Assistance should be available for process appeals in the same manner as for appeals against other decisions by Social Security Scotland. Ideally, this should be available when the request is made to the Tribunal, but at very least, it should be backdated to the date the request was made if it was successful. As detailed in our response to question 26 above, there are a number of legitimate reasons why a redetermination request might be late, or not valid. To prevent hardship, CAS recommends that STA is paid to people appealing process decisions.

**Question 39. Do you agree or disagree with the proposed approach that, generally, where there is a break in a client's eligibility to receive the benefit, e.g. due to being in residential care, they will cease to receive the benefit?**

CAS agrees in part. Whilst it is reasonable that in the event of a long period in hospital, residential care or prison where a person's need for social security support to aid independent daily living and mobility would reduce, stoppages of the benefit can cause knock-on issues. There is also some inconsistency in the proposals between the three benefits without a clear rationale for why this is. These issues and recommendations to address them are detailed in our response to question 40 below.

**Question 40. If you disagreed, please could you explain why.**

The consultation document proposes that, generally where there is a break in a person's eligibility that the benefit will cease after 28 days. However, there is no detail provided on how the benefit would resume after the break has ended (e.g. when a person is discharged from hospital).

In these circumstances CAS would recommend that the benefit claim is suspended, rather than terminated, to allow for a smooth and prompt resumption once the break has ended, as opposed to requiring the individual to re-apply and be assessed for the benefit again. If the impact of the individual's condition on their daily living and mobility has changed as a result of the stay, this could be addressed through the process for changes of circumstances and duration of awards detailed in our response to questions 22 and 23, as opposed to requiring a new application.

The consultation document also proposes different rules for particular stoppages for the three different benefits:

- For working age people and older people requiring a hospital stay, the benefit will be stopped after 28 days, but will continue for children and young people.
- In the event of a person being sentenced or on remand, payments to children and young people will continue, but be stopped after 28 days for working age people, and be suspended immediately for older people with the possibility of resumption.

There is no immediate rationale for the distinctions between the age groups, other than reflecting the rules for the previous reserved benefits. It is not immediately obvious why a person's age would determine whether they continue to receive payment if sentenced or on remand, or why payments for a hospital stay should continue indefinitely for children and young people, but be stopped for other groups.

CAS would recommend the Scottish Government consider whether the rules for stoppages could be harmonised for the three groups. For instance, in the event of an in-patient hospital stay, the benefit could continue for all groups, and be suspended or continued for people who are sentenced or on remand. This would also have the advantage of reducing unnecessary

complexity in the system, and aid the process of providing clear information and advice to clients.

As noted in the 'A New Future for Social Security' consultation document<sup>19</sup>, stoppages of Carer's Allowance when the person who is cared for is in hospital were raised as a significant problem by participants in several CAB client focus groups. This was seen as unfair, as the carer could not be expected to find work for a short spell, only to then leave it to return to caring once the person was discharged. It was also viewed to be complicated.

*"Transitions were unclear and "a bit of a minefield". For example, when you care for someone who goes into hospital or a care home, you have to declare this and benefits stop after 4 weeks, but you're still doing the same tasks when they're in hospital (paying bills, washing their clothes, even feeding them). The role is different but you haven't stopped caring". CAB client*

This is an issue that citizens advice bureaux frequently advise clients on. In some cases they do not receive full information or advice from the DWP.

***An East of Scotland CAB reports of a client who contacted the Carer's Allowance contact centre and reported that his mother was in hospital for four weeks. They informed him that Carer's Allowance would stop but didn't tell him that Income Support would remain for a further eight weeks. The client was distressed and feared that he would be unable to manage.***

***An East of Scotland CAB reports of a client who has struggled with maintaining his debts and has been using his credit cards to fill in income gaps. The client is a full time carer for his wife and their income was severely disrupted at the beginning of the year when his wife was hospitalised and several income streams were suspended including all his benefit payments.***

CAS would recommend that people in receipt of carer's benefit should continue to receive it whilst the person they care for is in hospital, rather than losing entitlement due to a stoppage of the disability benefit of the person they care for, as is the case in the current system.

<sup>19</sup> A New Future for Social Security: Consultation on Social Security in Scotland, Scottish Government, 2016  
[https://consult.gov.scot/social-security/social-security-in-scotland/user\\_uploads/consultation-on-social-security-in-scotland---full-version.pdf](https://consult.gov.scot/social-security/social-security-in-scotland/user_uploads/consultation-on-social-security-in-scotland---full-version.pdf)

**Question 41. Please outline any comments or experience you would like to share with us about overpayment recovery and the current DWP approach to deductions?**

Improvements could be made to the way in which overpayments are recovered from people who receive social security support compared with the current DWP approach. CAS recommends that there should be a 'tell us once' system in which information on changes of circumstances gets shared between different agencies, such as between Social Security Scotland, local authorities and the DWP.

CAS recommends that more clarity is introduced into communications around the rules of entitlement than at present, so that people know what is expected of them, and that Social Security Scotland promptly acknowledges receipt of information regarding changes in circumstances and acts on this information as quickly as possible.

CAB advisers and clients told CAS that there are problems with the way in which overpayment debt is recovered under the current system, and that there is too little flexibility in the approach that the DWP currently takes.

*"The attitude that HMRC and DWP can take away at source, misses the point of the reason that people need benefit in the first place."* CAB adviser

Under the current system, when a benefit claimant experiences overpayments, it is possible for the DWP to recover the debt repayment directly from the benefit at source. This is known as direct deductions. The amount directly deducted from the benefit payment can be considerable. In the case of Universal Credit (UC) for instance, a maximum of 40% of a claimant's UC monthly standard allowance may be deducted, with no more than three deductions made at a time. Most deductions can be made without the individual's consent.

CAS recognises that deductions may be a suitable way for claimants to manage their arrears and overpayments. However, evidence from CAB across Scotland suggests that the maximum deduction rate of 40% is too high and is frequently applied without taking a holistic overview of the individual's circumstances. This can leave clients in significant financial hardship, often either unable to afford or having to choose between essentials such as food and energy. Claimants can easily become reliant on foodbanks and Scottish Welfare Fund Crisis Grants as a result. Reduced monthly payments can also make it difficult to pay rent and bills, trapping claimants in a cycle of debt.<sup>20</sup>

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<sup>20</sup> Voices from the Frontline: The impact of deductions from Universal Credit Payments – Citizens Advice Scotland, August 2018  
[https://www.cas.org.uk/system/files/publications/the\\_impact\\_of\\_deductions\\_from\\_universal\\_credit\\_payments.pdf](https://www.cas.org.uk/system/files/publications/the_impact_of_deductions_from_universal_credit_payments.pdf)

***A North of Scotland CAB reports of a distressed client who could not afford to heat her home or buy food after a 40% deduction to her UC, leaving her with only £110 for the month. She managed to pay her electricity bill; however, her broadband and phone lines were cut off. This made it extremely difficult for her to meet her UC job search requirements. The client is now relying on food parcels and is suffering from the cold in her home. The DWP advised that it would be impossible to lower the deduction rate.***

CAS research exploring the causes and impact of gaps in income found that direct deductions from benefits was shown to be both a trigger of acute income deprivation, and also a consequence of it: following a situation in which the clients involved in the study had to seek crisis support or emergency food aid, they were then faced with a period of reduced benefit payments, which in some cases meant surviving on as little as £7.83 per day.<sup>21</sup>

### **Minimising error**

Departmental error can lead to overpayments as well as underpayments. For example, if a claimant communicates a change of circumstances but the Department do not record this information effectively, or act on the change of circumstances, it can mean that claimants continue to receive payments after they have let the department know about the change.

There is also lack of knowledge and understanding of the rules around eligibility and which changes of circumstances need to be communicated. Advisers told us that the most common causes of overpayments are when people are unaware of what is expected of them. Circumstances noted by advisers in which people are more likely to be unaware of the rules or their responsibilities in relation to them included:

- Confusion when it comes to HB and housing providers. Many clients think that they should inform the housing provider with relevant changes rather than the council who is responsible for issuing the payments.
- Not understanding the rules around capital.
- Those who are undergoing relationship breakdown/reconciliation and do not realise they have a responsibility to contact the agency about the change of living arrangements.

There needs to be clear communications around the rules so that claimants know what is expected of them, and more could be done to raise awareness around which kinds of information it is necessary to communicate.

Advisers also noted that there is sometimes fear around reporting changes in circumstances, because the claimant knows that the award will be stopped immediately. The Scottish Government may need to raise awareness of the consequences of not reporting a change of

<sup>21</sup> Living at the Sharp End: CAB Clients in Crisis - Citizens Advice Scotland, July 2016  
<http://www.cas.org.uk/publications/living-sharp-end>

circumstances and make it as easy as possible for people to do so by providing clear guidance. Sometimes, when claimants do call to report changes in circumstances, agencies do not log these communications:

*"Sometimes, people report changes in circumstances, but the records are not updated to reflect these changes. The system needs updated and simplified."* CAB adviser

### **Improving communications and information sharing**

Clients often assume that if they inform one agency of a change in circumstances, other relevant agencies will also be informed. Ideally, there should be a 'tell us once' system in which information on changes of circumstances gets shared between different agencies, as participants in CAB adviser consultation events emphasised:

*"Clients need to know that they need to tell ALL agencies if there are changes in their circumstances. Data sharing would remove that need as telling one means all will have that information."*

Social Security Scotland also needs to acknowledge receipt of information regarding changes in circumstances, and to act on this information quickly to avoid overpayments occurring.

### **Debt recovery**

CAS recommends that the Scottish Government explore use of a Common Financial Statement to assess an individual's ability to repay. CAS recommends that direct deductions from benefits should be an option for the individual and should never be deducted at more than 10% of their total benefit entitlement.

As with other debts, there needs to be flexibility in how overpayments can be recovered. People should be assessed on an individual basis, and not on general principles. The latter leads to financial detriment, as people often have several deductions from their benefits at one time. The agency needs to be open to negotiations around reducing the amount owed and the Scottish Government should explore use of a Common Financial Statement to assess an individual's ability to repay.

Direct deductions from benefits should be an option for the claimant and should never be deducted at more than 10% of their total benefit entitlement. The Scottish Government must work closely with the DWP to ensure that an individual is not in financial hardship due to overpayments being recovered from reserved benefits and devolved benefits simultaneously.

Allowing one month before any overpayment begins to be recovered is a good system, allowing claimants the opportunity to challenge the decision. Recovery should not commence immediately, as is the case under Universal Credit.

Additionally, Social Security Scotland should not seek recovery of historic debt which was accrued more than 5 years previously. Similarly, overpayment debt should not be carried over from one benefits system to another. For example, if someone has historic debt related to any of the benefits being devolved, Social Security Scotland should make no efforts to recover this debt on behalf of the DWP.

### **Ability to challenge a decision**

There should always be the opportunity for a claimant to challenge the decision regarding an overpayment debt. In order to have the opportunity to challenge a decision, the claimant will require clear information regarding what the overpayment is in relation to and the reasons why Social Security Scotland has reached the decision it has reached.

Social Security Scotland should not recover overpayments if the claimant wishes to appeal and should instead wait until the outcome of the appeal before recovery of overpayments begins. CAS supports the current approach in which the claimant has one month from receiving the letter regarding their overpayments in which to challenge the decision before the Department begins to recover overpayments. The Agency should *not* begin to recover overpayments immediately, as is the case under Universal Credit.

*"Tell clients when an overpayment has been made, so that they can challenge if necessary. This should be done swiftly and prior to the recovery process."* CAB adviser

### **Question 42. Do you agree or disagree with our proposal to provide entitlement to Disability Assistance for Children and Young People to clients aged 0-18 years?**

Yes, CAS agrees with the proposal to extend entitlement to young people aged up to the age of 18. Consideration should be given to whether it might be appropriate to further extend eligibility to the age of 21, given evidence from specialist organisations that this may fit better with transition support for learning disabled young people.

In the long-term, consideration should be given to whether it is appropriate for a 'whole-of-life approach' to disability benefits. This approach should take the form of one disability benefit, but with slightly differing criteria for children and young people, those of working age, and those over State Pension age.

In our 2016 consultation with CAB advisers, most participants supported the idea of a 'whole-of-life' disability benefit, which was felt to be less complex, and would ease the transition and remove the need for some reassessments. In our online survey of 43 CAB advisers, 85% agreed that 'this approach would be helpful for clients', with just 5% disagreeing.

*"Means less regulations to master and everyone know what to apply for instead of being unsure."* CAB adviser.

*"I think this approach would be more meaningful to people."* CAB adviser.

*“Would benefit people with long-term disabilities most.”* CAB adviser.

*“Common-sense. Practical. Wise.”* CAB adviser.

***Question 44. Do you agree or disagree with our proposal to extending eligibility, for those in receipt of Disability Assistance for Children and Young People before the age of 16, to age 18?***

Yes, CAS agrees with the proposal to extend the age range of eligibility for DACYP to 18, from the current upper age limit of 16 for DLA. This recognises the difficulties faced by young people in transferring from DLA to PIP – in particular young people with learning disabilities for whom transitioning to a working age benefit which includes descriptors related to their ability to live independently is inappropriate. As detailed above, in the long term CAS recommends the Scottish Government explores the possibility of a single whole-of-life disability benefit.

***Question 46. Do you agree or disagree with our approach to the eligibility rules for the different components of Disability Assistance for Children and Young People?***

Yes, CAS broadly agrees with the proposed approach to the eligibility rules for disability benefit for children, although there are a number of areas in the current eligibility criteria that could be changed or added.

As part of our 2019 survey of CAB advisers, 63% agreed that the proposed criteria were appropriate, with 8% disagreeing and 28% unsure.

The advisers who participated suggested a number of areas where the current eligibility rules for DLA for children could be improved upon. A number commented that the current definition of the needs of the child being ‘substantially in excess’ of what is normally required by a child of the same age could be clarified further, as it can be difficult to judge, given differences in children’s development.

*“I think basically the idea that this child needs more help /supervision than another child of the same age is correct - but hard to judge. Needs for toddlers and teenagers with the same condition are different. Not sure how to address this. Currently young people frequently reach 16 and expect to migrate to PIP. In fact some have learnt to manage their conditions before this age (e.g. diabetes) and many no longer need the support they needed as children. There is scope for managing expectations.”* CAB adviser.

A few of the respondents also commented that they felt that the criteria for the higher rates of the benefit – particularly the mobility component – were set at too high a level, and a number of children with substantial support needs were assessed at the middle rate as a result.

A number of advisers also felt that the current rules made it difficult for children with mental health conditions to qualify, in particular children and young people on the autistic spectrum, or with ADHD (Attention deficit hyperactivity disorder). This was in part due to difficulties in being able to provide suitable evidence from schools and CAMHS (Child and Adult Mental Health Services), in part due to long waiting lists for provision of additional support.

CAB advisers also frequently commented that the length of the current DLA form for children was excessive, and is a potential barrier to people applying for the benefit.

***Question 48. Do you agree or disagree with the proposal to make a £200 Winter Heating Assistance payment to families in receipt of the highest rate care component of Disability Assistance for Children and Young People?***

Yes, CAS agrees with this proposal. This is in keeping with our position on the Fuel Poverty Bill where we have called for more vulnerable people (including households with a disabled member of the family) to be defined as requiring an 'enhanced heating regime' and thus qualify for enhanced support to tackle fuel poverty<sup>22</sup>. This is in recognition of the increased heating costs faced by families with a disabled child who are likely to be spending more time at home.

***Question 50. Do you agree or disagree with our proposal to use a points based system to assess eligibility in relation to Disability Assistance for Working-Age People?***

CAS agrees with this proposal, although would recommend a number of changes to improve flexibility and remove discrepancies between conditions from the current system.

In an online survey of CAB advisers in April 2019, two-thirds of respondents (24 of 36) agreed that a points-based system, with one-sixth (6) disagreeing. However, the majority of respondents also recommended a number of improvements should be made to make the system more flexible, to broaden the criteria and to add clarity.

This echoes previous consultation with CAB clients and advisers from 2015 and 2016 in which it became clear through our consultation with bureaux and clients that the vast majority did not want a complete overhaul of PIP. However, most did think improvements could be made to the PIP descriptors and points system. They recommended the current PIP descriptors and points system should be reviewed to enable the new system to operate more flexibly and be suitable for all disabilities and health conditions, particularly fluctuating conditions.

In the 2019 consultation, most respondents mentioned a need to improve flexibility in the way points were awarded, feeling that the current system was too rigid, with problems for particular

<sup>22</sup> Speaking up: Understanding Fuel Poverty Support Needs – Citizens Advice Scotland, June 2018  
[https://www.cas.org.uk/system/files/publications/2018-06-12\\_speaking\\_up\\_-\\_understanding\\_fuel\\_poverty\\_support\\_needs.pdf](https://www.cas.org.uk/system/files/publications/2018-06-12_speaking_up_-_understanding_fuel_poverty_support_needs.pdf)

conditions in particular. In particular, the participants suggested the following improvements to improve flexibility and broaden the system to better reflect the nature of particular conditions which are not well-served by the current system:

- Clients who are only 1 or 2 points away from qualifying should have their application looked at again.
- Points for aids and adaptations.
- Awarding of points should be more flexible to reflect fluctuating conditions
- Mental health conditions cannot be assessed on a point-based system
- Increase specificity of the descriptors
- *“Not so specific as [it is] hard to cover any every care need when it comes to thousands of health conditions and disabilities which are limited to around 4 or 5 point categories in each descriptor.”*
- Expand mobility questions, which would improve chances of getting the required 8 points
- Increased flexibility for mobility, such as around upper limb issues. It was suggested this could also be incorporated into the descriptors.
- Adding additional descriptors and points for mobility – in particular the ability to climb stairs, and taking into consideration whether a person can drive or not
- Make a broader range of descriptors and points available
- Awarding points for needing help in the night
- *“In both Daily Living and Mobility activities all points should be even numbers because an odd number does not help towards a total of 8 or 12 points. The Mobility award of 10 points should be changed to either 8 or 12 depending on the degree of disability. The prompting award of 1 point for activity 3b should be increased to 2 points and activity 4e to 4 points.”*
- Award odd numbers as well as even to introduce more flexibility
- Award points on a sliding scale (e.g. 1 to 10)
- Weight all descriptors the same

While a majority of participants supported improvements to the system, there are diverse and occasionally conflicting views on this. CAS would recommend the Scottish Government undertake further work in this area to understand how best to make improvements.

In addition, the participants suggested a number of conditions were not reflected well by a points system. In particular the following were raised as particularly problematic to assess using the current PIP points.

- Learning disability,
- Mental health conditions. It was felt that the current descriptors and points were geared towards physical disability, and the complexity and fluctuating nature of mental health conditions made them difficult to assess.
- COPD (Chronic Obstructive Pulmonary Disease) – This will typically score for washing, dressing and food but nothing else, which can be unrepresentative of the impact of the condition.
- It was also suggested that certain conditions should carry a mandatory award of benefit (e.g. acute hearing loss) following case law from DLA.

**Question 52. Do you have any suggestions about the most appropriate way to assess eligibility in relation to mobility for Disability Assistance for Working-Age People?**

CAS recommends the criteria for entitlement to the enhanced mobility component should be changed so that the relevant distance is increased from 20 metres to at least 50 metres, as was previously the case for DLA.

As part of our 'Empowering Scotland' consultation with CAB clients and advisers in August 2015, one of the priorities for changes to PIP was identified as changing the mobility descriptors. Participants thought restricting eligibility for the enhanced mobility component to those who could walk less than 20 metres was resulting in significant hardship for many disabled people. Most wanted to see the distance increased to at least 50 metres (as under DLA).

CAS has seen a number of cases where people who were in receipt of the higher mobility rate under DLA do not qualify for the enhanced rate under PIP. This is particularly detrimental as people can lose their entitlement to the Motability Scheme.

***A West of Scotland CAB reports of a client who has recently been transferred over from DLA to PIP. He previously received High Rate Mobility and Middle Rate Care. Following his face to face assessment he has been awarded Standard Rate Mobility and Daily Living which means he will lose his Motability car. The client was happy with the Daily Living component but thinks he should be on higher rate Mobility. The client wishes help to challenge the decision as he feels it will impact on his independence. He does not feel that the medical report accurately reflects the assessment and wishes to dispute some of the statements.***

Many respondents to our September 2016 survey of CAB advisers on PIP mentioned that for clients who were previously on DLA, the less generous mobility component rates means that many lose their entitlement to their Motability vehicle. One respondent mentioned the effect that this can have on employment:

*“Many clients because of the changes to the mobility test (re. DLA) are totally disadvantaged now. Many people having to give up mobility car and some clients rely on this for getting to work and have had to give up work as a result.”*

***An East of Scotland CAB reports of a client who is seriously disabled following an illness over 20 years ago. He has been in receipt of high rate DLA mobility and low rate care and uses a Motability car. He lives on his own, holds down a job and has nobody caring for him. The client manages very well but could not function at all without his car. He applied for PIP and was awarded standard rate mobility and no care component. He has already phoned and asked for a Mandatory Reconsideration to try to upgrade the mobility to the enhanced rate. The client was concerned he would be housebound and unable to work without his car.***

As CAS and others noted when the original proposals for Personal Independence Payment were first made, the decision to reduce the qualifying distance from 50 metres to 20 metres had very little justification, and was at odds with international evidence.<sup>23</sup> Evidence from the MS Society amongst others has also demonstrated that the changes to the distance required has negatively affected the health, finances and independence of disabled people<sup>24</sup> and that the total knock-on costs to the UK Government outweigh the savings by reducing PIP support through the 20 metre rule.<sup>25</sup>

Some participants in 'Empowering Scotland' thought that, rather than enhanced mobility being a passport to the Motability Scheme, all claimants should be able to use their PIP award to access Motability.

In our 2016 consultation events with CAB advisers, a number of advisers from rural bureaux raised the point that the loss of a Motability vehicle was particularly detrimental to clients in remote and rural areas, due to the absence of convenient and suitable public transport.

There is also a particular issue for claimants who are requesting a mandatory reconsideration in cases where they have lost their entitlement to the Motability Scheme. Once a claimant loses that entitlement, they have to return the car within 21 days of their DLA payments stopping. This can often be before a decision on mandatory reconsideration has taken place, which can put the claimant in a difficult position.

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<sup>23</sup> Citizens Advice Scotland response to the consultation on Disability Living Allowance reform, February 2011 <https://www.cas.org.uk/publications/disability-living-allowance-consultation-response>

<sup>24</sup> PIP: A step too far – The impact of the 20 metre rule on people with MS – MS Society, June 2018 <https://www.mssociety.org.uk/get-involved/campaign-with-us/ms-enough/scrap-pip-20-metre-rule>

<sup>25</sup> The cost of the PIP 20 metre rule – MS Society, April 2019 <https://www.mssociety.org.uk/get-involved/campaign-with-us/ms-enough/scrap-pip-20-metre-rule>

***An East of Scotland CAB reports of a client whose enhanced mobility award of PIP has been reduced to the standard rate and this means he will lose his Motability car which enables him to get out and about. He has been given eight weeks to return his Motability car. There is no transitional protection for people appealing the decision and the client's independence will be greatly reduced due to losing the car. The client will lose out financially as well as the difficulties of being able to get around. He disagrees with the decision as his mobility is actually worse, he experiences more pain as his GP took him off the painkillers he was taking due to the high risk of addiction to these. He experiences anxiety and distress due to PTSD, has been injured in two accidents - one at work and a bus crash, and also witnessed a bombing, all of which has given him extreme anxiety especially when he hears sirens.***

***A North of Scotland CAB reports of a client whose Motability car was taken away as his PIP was re-assessed from higher rate mobility to lower rate mobility. This appeared to be because he travelled 40 miles to the face-to-face assessment, and managed to walk up the stairs in the assessment centre. This forced him to buy a car on a car loan as he lives in the country and needs to get to his work. The client is finding it very difficult to keep up repayments on the car loan as well as the credit card. As he is now having to stop working due to being advised by his GP, he is feeling suicidal because of his financial situation.***

Some participants thought that, rather than enhanced mobility being a passport to the Motability Scheme, all claimants should be able to use their PIP award to access Motability.

***Question 53. Do you have any comments on the full list of descriptors (provided at page 36) currently used to assess claims for Personal Independence Payments?***

As detailed in our response to question 52 above, CAS recommends the criteria for entitlement to the enhanced mobility component should be changed so that the relevant distance is increased from 20 metres to at least 50 metres, as was previously the case for DLA.

In addition, we would also share the Scottish Government's concerns about the '50% rule' which requires an individual to meet each descriptor on half of the days in a month for it to count towards their award. One of the concerns raised consistently by CAB clients and advisers is that



the PIP descriptors and points system are not as suitable for people with fluctuating conditions and mental health conditions.<sup>26</sup>

The 50% rule contributes to this, as it can be difficult to accurately gauge and assess whether a person's condition affects them on 50% of days. Additionally it is problematic for fluctuating conditions where a person is occasionally affected by their condition, but intensely when it occurs (e.g. some clients with epilepsy or Multiple Sclerosis).

In these circumstances, the need for daily living and mobility support can be required due to the barriers faced on 'worst days', but would not currently be provided by PIP because of the 50% rule. CAS would recommend this rule is reconsidered to ensure it does not create a barrier to people with fluctuating conditions or mental health conditions from qualifying for Disability Assistance.

In terms of specific issues with particular descriptors, CAB advisers who took part in our April 2019 survey suggested a number that currently present difficulties when assisting clients to apply for PIP. This can be because they were difficult for clients to provide evidence to support; are likely to be assessed or applied incorrectly; or are unfair or unsuitable for assessing the barriers a client faces because of their condition. The numbers of participants who expressed comments about particular descriptors are summarised in the table below:

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<sup>26</sup> Pages 83 – 87, Citizens Advice Scotland response to 'A New Future for Social Security' consultation – October 2016 <https://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

Descriptor	Difficult for client to provide evidence to support	Likely to be assessed or applied incorrectly	Unfair or unsuitable for assessing barriers a client faces
<b>Daily Living Activities</b>			
1. Preparing food	5	3	2
2. Taking nutrition	3	4	4
<i>2(d) Needs prompting to be able to take nutrition</i>	2		
3. Managing therapy or monitoring a health condition	2	4	2
4. Washing and bathing	1		
5. Managing toilet needs and incontinence	1	3	3
6. Dressing and undressing	3	1	
7. Communicating verbally	3	1	2
8. Reading and understanding signs, symbols and words	6	2	4
9. Engaging with other people face-to-face	8	5	4
10. Making budgeting decisions	5	6	1
<b>Mobility Activities</b>			
1. Planning and following journeys	7	12	5
2. Moving around	3	8	4
<b>All, several, none, other</b>			
All Daily Living and Mobility descriptors	1	6	5
Most/all for people with mental health conditions	5	5	2
Most/all for people with other fluctuating condition		1	1
Descriptors relating to caring for themselves	1		
Descriptors relating to dexterity		1	
None	1		1
None – evidence is not used properly	1		
Difficult to secure medical evidence	3		
Proving that clients need prompting/encouragement for any descriptor	1		
Client's appearance at assessment		1	1
In particular variability and repeatability		2	1
Fatigue		1	
<b>Total responses<sup>27</sup></b>	<b>32</b>	<b>32</b>	<b>27</b>

<sup>27</sup> Some respondents selected more than one descriptor, so totals do not sum.

Some respondents provided detailed explanations of their answers, as follows:

### **1. Preparing food**

*"The cooking test, as many clients do not cook; it may be better to use descriptors from ESA on starting and finishing tasks and manual dexterity."*

*"Eating sandwiches, or ready meals is consistently enough to score nothing on this descriptor"*

*"Ones involving dexterity or mobility - if client is seen to answer mobile phone, for example, assessor assumes they can cut food well."*

*"DWP don't apply their own guidelines about meals from scratch"*

### **2. Taking nutrition**

*"Should look at what nutritious food is - decisions seem to have regard to claimant's build to determine if they are nourished - and have no regard to quality/range of food consumed."*

*"Doesn't appear to take enough account of eating disorders or severe depression and lack of care about eating properly."*

*"There is no points for people under this description who have eating disorders, as pointed out to me when challenging a decision recently."* [This was also suggested as a descriptor that could be changed to reflect this].

#### **2(d) Needs prompting to be able to take nutrition**

*"Many clients have difficulty eating safely and regularly. Clients who have been victims of abuse or have mental health conditions which cause them to not eat safely and reliably often do not get the points for this activity. Often if clients are not visibly underweight they will not get the points for this activity. Many clients lack appetite due to side effects from medication and therefore requiring prompting to eat. These clients don't look malnourished or underweight however they are relying on family members or carers to cook and prompt them to eat meals. These clients never get points for needing prompting to take nutrition."*

### **3. Managing therapy or monitoring a health condition**

*"Especially with antidepressants and anti-anxiety medication unless client gets meds dispensed at the pharmacy, there is assumption they take it OK-which often is not the case"*

*"Misleading and vague for ordinary people. It also does not cater for the people who, although they get meds in a blister pack, still have to have it monitored i.e. Senile dementia, risk of suicide, etc."* [This was also suggested as a descriptor that could be changed to reflect this].

#### **4. Washing and bathing**

*"Washing and dressing are difficult as often clients are assessed as being 'well kempt' at assessments where they have received help or support to wash and dress that day or made a special effort as they are going out."*

#### **5. Managing toilet needs and incontinence**

*"Assessors keep asking if GP prescribed pads-GP's don't prescribe them any more-and client is a result scored down"*

*"Because people are not willing to describe in detail and if they do not get incontinence pads they will be turned down. Lots of people buy their own or don't buy /wear them through pride."*

*"Doesn't address the issues people face due to urgency for needing to go to the toilet. A lot of people can't go anywhere because they know that if they do that they could get caught short at any time and no amount of incontinence pads can hide a complete evacuation of the bowel or bladder. Not catered for under this descriptor."* [This was also suggested as a descriptor that could be changed to reflect this].

*"Very little support is available from GP in terms of this-hence client's don't even try to get it sorted; and that backfires in the assessment as little proof is available"*

#### **7. Communicating verbally**

*"Hearing loss should carry a mandatory award of benefit, as per Fairley and Mallison caselaw"*

#### **8. Reading and understanding signs, symbols and words**

*"We are finding we have many clients who cannot 'prove' they are illiterate or that they cannot read or write to an acceptable standard and there get no points at all. It is also a problem where someone has never learned to read or write because of circumstances but the DWP look at it as if they are able to they just haven't bothered. This is quite a punitive view."*

*"For illiterate people it is difficult to prove their inability to read/write."*

*"The "needs prompting" to understand written information is not well worded. If a client cannot read complex information due to literacy problems then prompting will not help them."*

*"Reading and communicating (8 and 7) aren't realistic in the qualifying criteria. Reading one sentence or saying 'hello' currently qualifies as being able to do the activity."*

*"This is unfair to those people who are illiterate. Appeal panels have argued that if they can read a word like "cat" then they have the ability to be able to read if they were taught. The*

*thing is that right now they can't read a full sentence and understand the context therefore there should be a descriptor that encompasses this.* [This was also suggested as a descriptor that could be changed to reflect this].

*"People who do not wear glasses or use other aids to read with have difficulty with actual reading words and numerical digits, some don't understand overall and either put it in a drawer or bin it."*

*"The wording of "needs prompting" to understand written information implies that with prompting the client could do it. If a client has literacy difficulties then prompting will not help but they may well understand common signs and therefore don't meet the highest points for this. Being unable to read at all other than recognising signs should be worth more points as it is a significant disability in an increasingly online world."*

### **9. Engaging with other people face-to-face**

*"Mixing with people and managing budgeting decisions are also difficult to prove as the interaction at assessment is not true of life in general."*

*"No distinction between familiar and unfamiliar others nor within home or outwith. Level of engagement - is saying "I'm OK" in response to a shop assistant asking "How are you today" engagement?"*

*"[Likely to be assessed or applied incorrectly] because they are not accessing mental health services, often because they are unavailable."*

*"Mentally most people with depression anxiety/ stress try to avoid engaging with other people even with prompting, most withdraw and shut themselves away, won't answer phones or doors."*

*"[Unfair or unsuitable] because clients are judged on the mental health treatment they get. They may not be offered treatment or may be offered treatment that is unsuitable (e.g. group therapy that they cannot cope with)"*

### **10. Making budgeting decisions**

*"The entire descriptor needs to be revamped. It is very difficult to get points for clients who have addiction issues and who are unable to control their spending habits due to the nature of their addiction. Clients have been noted to clearly have debts- be in trust deeds, declared bankrupt and or be getting support from debt advisers and still not get points for this activity."*

*"Client might have DD [Direct Debit] set up by a family member and that is classed as being OK with this descriptor-never I have seen assessor asking what would happen if the client would not get this help, or DD would get cancelled."*

*"[Likely to be assessed or applied incorrectly] because clients do not understand the question."*

*"Definitions of "simple" and "complex" both too simple - need more levels."*

*"Some people with learning difficulties can recognize the different money coins/notes but not have the full understanding of how long this has to last them or tell whether they receive correct change in shops."*

### **1. Planning and following journeys**

*"Difficult to quantify the level of distress this causes."*

*"Does not represent the fact that someone may intellectually be able to plan a journey but anxiety etc. would prevent them ever carrying that journey out"*

*"Taking in to consideration both mental health and learning difficulties, some people with learning difficulties can identify numbers of buses but can get stressed traveling alone and needs someone with them. Some are unable to ask for directions or following given directions."*

### **2. Moving around**

*"[Difficult to provide evidence to support] distance a client can walk."*

*"This descriptor is often based only on observing how client walked in the corridor in the assessment centre-no reliability, safety or consistency factors are taken into account."*

*"If they are noted to walk normally between waiting room and assessment room it is assumed they can walk 200 metres + without problems."*

*"Taking into account stopping to rest/sit down/recover afterwards"*

*"Clients with depression are encouraged to get out, walk, meet people-but even if they follow this advice and they do it with difficulty hoping to improve their condition-this is used against them in the assessment, as they are assessed as not having problems; clients with chronic conditions do downplay their symptoms, as they just get on with things because they have to-it does not mean that it is safe for them, they can do it repeatedly or reliably, and those aspects of each and every descriptor often is not checked at all."*

*"When driving a manual car is used as an informal descriptor and in fact the bus stop is too far away to walk to."*

### **Multiple/mental health conditions**

*"Most of the descriptors for clients who have mental health conditions, like depression or anxiety- GP will say that they don't see client's home circumstances and cannot comment on"*

*food preparation, managing treatments, washing, managing toilet needs, making decisions about money, mixing with others, going out."*

*"Mental Health criteria are much more subjective. Are there any better measures of ability to cope with mood changes or sustain relationships?"*

*"Anything linked to a claimant's mental health or cognitive function [is likely to be assessed or applied incorrectly], limited knowledge of HCPs [Healthcare Professionals/assessors], plays a large part in this at the assessments."*

*"More clarification needed on all descriptors as they can be assessed incorrectly or not applied because of lack of understanding."*

*"Descriptors are very open to interpretation which often leads to inconsistent decisions."*

*"Some clients have fluctuating conditions and all of them can be difficult to prove on any given day. I think PIP successor should take into account fluctuating conditions which may not cause problems 50% of the time but enough of the time to have an impact on applicant's life"*

In addition to the above, CAS asked respondents whether there were any descriptors they would add, change or remove. The advisers who took part suggested the following:

### **Descriptors to Add**

*"There should be more specific questions and points in relation to the effects of epileptic seizures. There should also be more obvious questions relating to a person's mental health."*

*"The autism spectrum is vast and varied and does not seem to be catered for within the current descriptors. More and more people are being recognised as being on the spectrum and this should be recognised and addressed. There is also no descriptor for people who take blackouts/fits. Whilst I recognise that most people with epilepsy are managed by their meds some aren't and they live a life of hell and fear as they never know when the next fit will come, how long it will last and how long they will have to recover from it."*

*"Getting in and out of bed should be added. An inability to write should also be considered both from a physical and mental health perspective."*

*"Add - climbing stairs, going food shopping, housework"*

*"I would add to every descriptor-can you do this every day, on your own, safely and without paying the price later, i.e. extreme fatigue, etc."*

*"Add ones that have a main focus on Mental Health to enable clients with no physical problems be more fairly assessed"*

*"Clients' abilities to perform daily household chores such as washing up, cleaning, laundry and shopping should be included."*

*"Add descriptor for housework and shopping, as these are things that people frequently struggle with and indicate that they are not managing."*

*"Would include something for needing assistance during the night."*

*"Maybe we need two mental health descriptors? Add dealing with change or similar? Something in mobility that takes account of stairs and uneven surfaces."*

*"Would add something about ability to get out of bed - this can be a physical difficulty but also a mental health one about needing prompting or about being unaware of the correct time due to cognitive difficulties."*

*"Also a general supervision criteria - if a client cannot be left alone due to cognitive impairment or seizure risk this should be considered."*

*"Difficulty with memory is not tested and has a big impact on many clients."*

## **Descriptors to Change**

*"The reading and understanding must be changed, just because somebody recognises and so therefore would appear to read common signs like enter or stop does not mean that they can read."*

*"Managing Therapy and Monitoring a Health Condition should be overhauled. The title of this activity is confusing. Managing Medication should be a category on its own maybe with 3-4 options, for e.g.:*

- 1. Need no help (0 points)*
- 2. Need a dosette box / blister pack, aid or appliance to manage (2 points)*
- 3. Need assistance with or without a blister pack, aid or appliance (more points). Managing therapy and treatments should be a category in its own right."*

*"Do not agree in principle with descriptors that attempt to have a "catch all" emphasis, when health conditions massively vary from person to person"*

*"Mobility 20 metre rule."*

*"The mobility descriptor should include a limit of 100 meters and should ask for more details about how they walk as speed, manner and time are supposed to be a factor in this descriptor."*

*"Change - 9 and Mobility 1"*

*"Preparing food-this would only be assessed as OK if it means that client can prepare a meal made from scratch."*

*"Walking should be assessed over a longer period. E.g. some people can walk say 200 metres once a day but then have to rest for the remainder of the day"*

*"Wider consideration of what constitutes barriers to mobility"*

*"The mobility component is almost impossible for anyone to be awarded points as it implies that if you can drive a car then you shouldn't have one on mobility yet what does the Motability Scheme exist for? To give disabled [people] cars. Over half a million cars have been taken off clients which is horrendous as most of those people really need their own transport. The descriptor that asks how far you can walk used to ask if you could walk [50 metres] but now [20 metres] has been introduced."*

*"Also the descriptor that awards the highest mobility points only awards 12 points if a person cannot follow the route of a familiar journey without an assistance dog or orientation aid but if you say you can follow a sat nav then you are awarded nothing basically meaning to get the top points you need to be mentally damaged to the extent that you are totally unable to leave the house basically."*

*"Also the descriptor that states that you cannot undertake any journey because of overwhelming psychological distress is stopping people who are physically disabled but cannot undertake a journey on public transport getting any award. These descriptors need altering to make the system fair to all."*

*"Reading - not being able to learn to read counts, never having learnt to read does not count. The end effect is the same and not having learned to read is rarely a lifestyle choice. Can this be made fairer?"*

*"I would change Activity 2, Activity 3, Activity 10 and especially mobility activity 1- Planning and Following Journeys. The entire descriptor is flawed. Clients score less for being unable to undertake any journey (10 Points), than those who need assistance to follow the route of a journey (12 Points). It is silly that clients who cannot undertake a journey as scored less than those who can with assistance? This really needs to be reviewed as vulnerable mental health clients who cannot undertake a journey are being scored less than those able to journey with support."*

*"Under managing health condition, include recognition of health condition, if claimants have no insight into condition and are more likely to be non-compliant with medication leading to serious consequences then higher points should be given"*

*"Activity 1 needs to be clear that making a cup of tea and a piece of toast is NOT preparing a meal!"*

*“Again most need the wording examined and made more realistic to represent what people actually DO.”*

## Descriptors to Remove

*“I would remove Taking Nutrition and Managing Therapy or Health Condition and would keep them outside the points system. High scores on these are rare in my experience.”*

### **Question 54. What types of observations, as part of a face to face assessment, do you believe are inappropriate?**

CAS believes that if observations are made as part of a face-to-face assessment, then an assessor should ask the client about them and give them an opportunity to comment.

As part of our 2019 survey of CAB advisers, 69% of respondents thought that the assessor should be permitted to ‘make observations, but must ask the client about them, and give them an opportunity to comment or explain.’ 25% of participants thought that assessors should ‘include no observations in their report beyond the assessment questions’, with just 6% feeling that assessors should be able to ‘make informal observations as part of their report that aren’t mentioned to the client.’

A particular issue with current PIP face-to-face assessments is that observations made by assessors are included in the assessment report without the client having any opportunity to explain them. This can result in the observations being made being an inaccurate reflection of the impact of a person’s condition on their daily living and mobility, and ultimately be a source of inaccurate decisions being made on eligibility.

In particular, CAB advisers raised a number of particular observations that would be considered inappropriate in the current system. In particular, observations that the client was clean, well-kempt or well-dressed were viewed as inappropriate, given the lack of relevance to the criteria. It was also noted that this approach failed to take account of a client wanting to ‘look their best’ in public, and failing to recognise that people will have ‘good’ and ‘bad’ days, particularly for people with fluctuating conditions.

*“I do not believe that because somebody presents clean and well kempt does not mean that they should be assessed due to this. The chances are somebody is helping that person with their care. Also just because somebody speaks to them does not mean that they engage in everyday life, people are so nervous about these assessments and feel that if they don’t co-operate it will go against them. There have also been reports of assessors standing in waiting rooms or leaving people to wait and then watching them outside the assessment room and including this in their report which is shocking.”* CAB adviser.

Another particular observation that was regarded as inappropriate were ones related to the person’s mobility. Assessors will currently include observations of how far a person walked to

the assessment centre, or their perceived ease or difficulty in moving about during the interview. As one participant explained, this can lead to unfair and inaccurate reports.

*"If the assessor states client walked 30 metres to interview room, but does not go on to ask the client about their overall walking ability and effects of repeatedly walking/moving around. Most assessors state [the] client can walk to kitchen bedroom or toilet in house but never take in to consideration that clients move about their home using furnishings to get about or sit down from room to room."*

**Question 55. In relation to assessments, what are your views on acceptable distances to travel?**

CAS believes that decisions on the location of assessments should be made on a person-centred basis. Rather than a set distance, if a person requires a face-to-face assessment, they should be consulted on possible options for venues for the assessment to take place in. Additionally, the option of a home visit for assessments should always be offered and provided on request.

**Question 56. What other circumstances should the Agency take into account?**

A significant issue for CAB clients applying for PIP has been clients being asked to travel inappropriate distances for an assessment. In the present system, PIP claimants are not supposed to be required to undertake a journey of more than 90 minutes; however, bureaux regularly see cases within that time limit where the journey would still be inappropriate for the claimant to make.

In our September 2016 online survey of CAB advisers focussing on experiences of Personal Independence Payment<sup>28</sup>, when asked if there are any barriers that clients face when attending an assessment, 28 of the 40 comments made (70%) referred to barriers associated with geographical distance and accessibility by public transport.

Citizens advice bureaux are located in 29 of Scotland's 32 Local Authorities and serve some of the country's most rural and remote communities. For clients living in these areas, there can be substantial geographical distances to assessment centres, which are not always easily accessible by public transport. The table below gives an indication of some of the distances clients are required to travel to assessment centres.

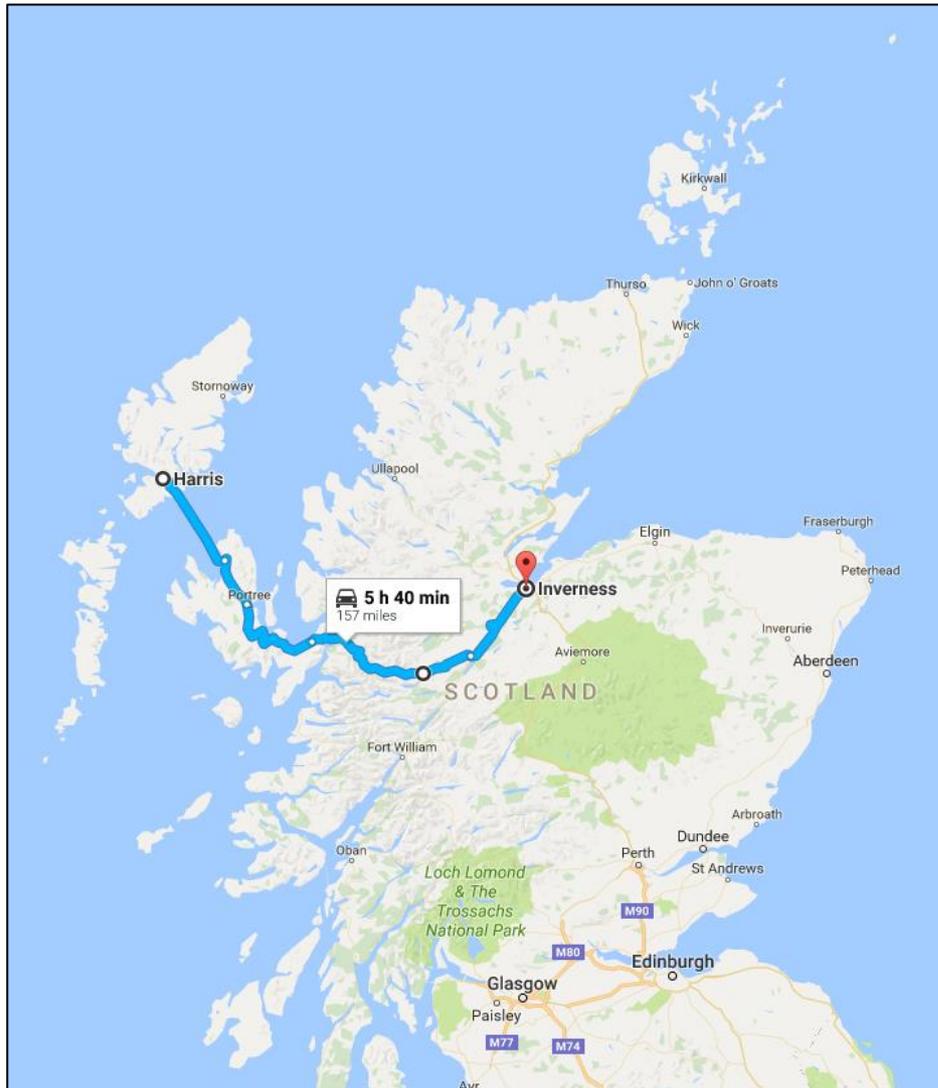
<sup>28</sup> Response to the Second Independent Review of Personal Independence Payment – Citizens Advice Scotland, September 2016 <http://www.cas.org.uk/publications/cas-response-personal-independence-payment-call-evidence>

### Distances clients are required to travel to assessment centres.

CAB	Nearest assessment centre	Number of miles (by car, as calculated by Google Maps)	Survey respondent's comments
North and West Sutherland CAB – located in Kinlochbervie	Inverness	94 miles	"over 50 miles"
Harris CAB	Unknown	Unknown	"37 miles (74 roundtrip) from bureau but up to 120 miles (roundtrip) from home for some clients."
Lewis CAB – located in Stornoway	Inverness	111 miles	
Perth	Dundee	22.5 miles	"Dundee, about 30 miles away from the main town in the county but this could involve two long bus journeys for those who live outwith the main town."

The image below is a screenshot taken from Google Maps to give an idea of the geographical distances that clients in Harris would be expected to travel if they had an assessment in Inverness.

## Distance from Harris to Inverness



In their comments, some bureaux mentioned that clients are being routinely referred to assessment centres in another town or city which can mean long journeys on public transport to places they are unfamiliar with.

*"In the Dumfries and Galloway area our clients can be sent to Carlisle or Glasgow for an assessment. This is too far when there is an assessment centre in Dumfries."*

*"Appointments are routinely made in Edinburgh. This is 30 miles away and for most people involves two buses and a train. There is an assessment centre in Stirling which is 7 miles away."*

*"Clients are often offered appointments outwith Glasgow area, such as Edinburgh, Kilmarnock, Stirling and Ayr. There is also a protracted process to obtain medical*

*evidence to obtain a taxi to the venue, GPs seem to be unaware of their role in this process."*

***A West of Scotland CAB reports of a client who has received an appointment for his PIP medical assessment in Carlisle (a 58 mile round trip), even after his serious condition was explained in the PIP application and in the assessment assistance section it clearly stated an appointment in Dumfries (21 mile round trip) or a home visit was required, due to the risk to the client's health.***

A number of respondents to our September 2016 PIP survey were concerned that, for those with mental health issues, medical assessments can be stressful and anxiety can prevent them from engaging with the process.

*"Mental health issues are the biggest problem - those with anxiety who struggle to engage with others"*

*"People with mental health problems find it extremely stressful"*

*"Clients cannot always access the assessment centre due to mental health difficulties and being house bound"*

*"Those with mental health issues may not be able to open the mail notifying of the ATOS medical appointment"*

Other barriers mentioned by the survey respondents included the financial cost to clients of having to travel by public transport to another town or city, language barriers, and inconvenient dates and times of appointments that don't take in to account the client's medical circumstances. One respondent mentioned the accessibility of the facility and the 'intimidating environment':

*"Assessment centres are not always easy to reach, find or access. Parking can be difficult near the assessment centre. There is (anecdotally) an intimidating environment in the centres which upsets clients."*

***Question 57. In relation to assessments, how many times to do you think an individual should be able to reschedule, or fail to attend, an appointment?***

CAS believes that a person-centred approach should be taken to rescheduling assessments. Based on consultation with CAB advisers, if the reason for rescheduling is due to the impact of a person's condition then a flexible approach should be taken, rather than a specific figure being set. In addition, if several requests to reschedule are made, a home visit should be offered as an option.

If the request is for a reason unrelated to someone's condition, then a person should be able to request their assessment be rescheduled at least three times.

Again, a person-centred approach should be taken towards a failure to attend an assessment, if the reason for doing so is related to a person's condition. If no good reason is given then the most commonly-suggested figure by CAB advisers was that a person should be allowed to fail to attend an assessment twice.

Additionally, a number of advisers suggested that if a person phones in on the day of the assessment as they are too unwell to attend, that this should not be considered as a 'failure to attend'.

***Question 58. In relation to a missed assessment. do you have any comments on what should amount to exceptional circumstances (e.g. hospital admissions)?***

As detailed in our response to question 57 above, a person-centred and flexible approach should be taken to circumstances for a missed assessment. In general, if the reason for rescheduling, or failing to attend an assessment is due to the impact of a person's condition, this should not affect their ability to schedule future assessments. In addition, events such as family illnesses, bereavements, and attending funerals should be considered, although a prescriptive list may not be conducive to a person-centred approach.

***Question 59. Please provide any comments you wish to make about the audio recording of assessments.***

CAS agrees that any face-to-face assessments should be recorded as standard, unless the person undergoing the assessment does not want the assessment to be recorded.

In addition to the assessor and any tribunal, CAS recommends that recordings of assessments are sent to the individual being assessed. This is important in improving the transparency and integrity of the process, as well as being useful to the person if they wish to make a redetermination request.

It is important that any recording device is discreet, and the process of recording is done in such a way that does not add additional stress to a person, at an already-stressful assessment.

In addition, the Scottish Government should give consideration to whether video recording of assessments would further enhance trust and transparency in the process. This would be particularly important if an assessor was permitted to make informal observations. The DWP

previously announced plans to pilot video recording of PIP assessments with a view to making it a standard part of the assessment process across Great Britain.<sup>29</sup>

***Question 60. Do you agree or disagree with our proposal that Disability Assistance for Older People is provided to those who are state pension age or older?***

Yes, CAS agrees with this proposal. CAB advisers who participated in our 2016 consultation events raised concerns about the age limits for PIP and Attendance Allowance not keeping pace with the State Pension age, with some clients at risk of having to claim AA whilst not receiving any pension. Participants also felt that some people were unfairly losing out as a result, especially as no mobility component exists in AA, as detailed below. They felt that the cut-off point for a change of criteria should rise with the State Pension, rather than being the age of 65. As detailed above, in the long term CAS recommends the Scottish Government explores the possibility of a single whole-of-life disability benefit.

***Question 62. Do you agree or disagree with the proposed eligibility criteria for Disability Assistance for Older People?***

CAS agrees in part with the proposed eligibility criteria, but believes that further consideration should be given to introducing a mobility component.

In 2017-18 Scottish CAB provided advice on 12,888 issues related to Attendance Allowance Advice in this area has increased in recent years, although this is likely to reflect increasing demand for the benefit rather than any particular policy change.

Many of the current policy issues related to Attendance Allowance largely relate to administrative problems faced by clients, such as delays in claims being processed, and poor communication about decisions. There also appears to be a lack of understanding for what purpose the benefit is awarded in some cases (particularly that it is intended to help with care costs) as well as clients not being aware of other passported support they could receive as a result of receiving Attendance Allowance, such as Blue Badges or the Severe Disability Premium of Pension Credit.

An issue raised by various commentators on Attendance Allowance is the perceived unfairness of there being no mobility component in the benefit, compared with DLA or PIP. This issue is discussed further in our response to question 63 below.

***Question 63. If you disagreed, please could you explain why.***

Participants in our 2016 CAB consultation events drew a distinction between the mobility needs of people over State Pension age and those of working age. Currently Attendance Allowance

<sup>29</sup> PIP assessments: Atos and Capita on notice to “start delivering or else” – House of Commons Work and Pensions Select Committee, June 2018 <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2017/PIP-it-capacity-chairs-comments-17-19/>

does not have a mobility component, unlike DLA and PIP. However, if someone is in receipt of DLA or PIP prior to the age of 65, then this can continue, drawing a distinction in the system between people who have additional mobility needs as a result of a disability or condition starting in childhood or working age, and mobility needs as a result of the ageing process.

Participants were conscious that equalising the mobility rules for older people and working age people would be expensive, pointing out that the introduction of a mobility component for everyone over the age of 65 would increase the costs considerably. However, in the current system the distinction often appears to be unfair and discriminatory, as in some situations clients with significant mobility needs are ineligible for mobility support purely because they are over State Pension age and cannot claim PIP.

***A North of Scotland CAB reports of a client who was already getting the higher rate Attendance Allowance but not the Motability Scheme. The client's neighbour had a Motability vehicle, and the client wanted to join the Motability Scheme, but was unable to because she received AA. The client is going to be attending hospital regularly and it is going to be costly for her to travel there.***

Whilst understanding the possible financial costs involved in doing so, CAS would recommend the Scottish Government give further consideration to how mobility support for older people could be included in disability assistance for older people. This might include adding a mobility component similar to those proposed for DAWAP and DACYP.

Some participants in the consultation events also suggested ways that, despite having different criteria, a 'whole-of-life' benefit could support the mobility needs of older people. One suggested that a lower rate of mobility support could be provided – a mobility scooter through the Motability scheme, as opposed to a car. Others suggested that it may be an opportunity to be able to distinguish between mobility needs as a result of a disability received in later life, and those as a consequence of the ageing process.

***Question 64. If you have any further comments you would like to make relating to Disability Assistance benefits not covered by this consultation document, please provide them below.***

### **Past presence**

As outlined in our response to question 9, whilst CAS is broadly content with the proposed approach to residency, we would recommend that the past presence test is removed, as it is an unnecessary barrier to people receiving social security support.

The past presence test requires a person to have been present in Great Britain for two out of the last three years to be eligible to claim PIP, DLA or Attendance Allowance, and is proposed

to be replicated in the new system. However, CAS recommends that the requirement is removed.

The past presence condition is not currently included in any of the other benefits due to be devolved with the exception of Carer's Allowance, and has not been proposed to be included in any of the Scottish social security payments introduced so far.

The condition can mean that disabled people who are in need of social security support, and who would otherwise be entitled to Disability Assistance would miss out. For instance, if a person living abroad who became disabled in an accident and moved home to Scotland to be closer to family for support, they would not become eligible for Disability Assistance until two years later.

The past presence condition does not seem to serve a reasonable purpose other than to reduce the number of people who are eligible to claim. This seems somewhat at odds with the Scottish Government's welcome ambitions for the new system, and the duty placed on Ministers to promote take-up.<sup>30</sup> CAS would recommend the past presence condition is removed to ensure that people who would be otherwise eligible to receive Disability Assistance are allowed to claim it.

### **Redetermination and appeals process and forms**

CAS promoted and warmly welcomed amendments to the Social Security (Scotland) Act, which removed the need for people to have to lodge a separate appeal and resubmit evidence if they wish to continue to appeal. This removes a barrier, and makes it one seamless process from the individual's perspective.

The complexity of the current system of reconsiderations and appeals has the potential to deter people from appealing, with official statistics<sup>31</sup> and CAB evidence<sup>32</sup> indicating that a substantial number of PIP applications are appealed in a mandatory reconsideration, but not further appealed to a Tribunal, illustrating that the current two-step system acts as a barrier to justice.

Care must be taken to ensure that this positive approach is continued in practice, through the design of forms and letters, to present the appeal to a Tribunal as a continuation, rather than an additional step. In particular, forms to lodge an appeal should avoid repeating questions requesting information that has already been asked as part of a redetermination request.

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<sup>30</sup> Part 1, Section 3 – Social Security (Scotland) Act 2018

<http://www.legislation.gov.uk/asp/2018/9/section/3/enacted>

<sup>31</sup> Work and Pensions Select Committee PIP and ESA assessments inquiry: supporting statistics – Department for Work and Pensions, December 2017 <https://www.gov.uk/government/statistics/work-and-pensions-select-committee-pip-and-esa-assessments-inquiry-supporting-statistics>

<sup>32</sup> Pages 191 - 199, A New Future for Social Security: Response from Citizens Advice Scotland, October 2016 [https://www.cas.org.uk/system/files/publications/social\\_security\\_consultation\\_-\\_response\\_from\\_citizens\\_advice\\_scotland.pdf](https://www.cas.org.uk/system/files/publications/social_security_consultation_-_response_from_citizens_advice_scotland.pdf)

Consideration should be given to whether the appeal form could be reduced to a box to tick in response to a question 'do you want to continue your appeal?'<sup>33</sup>

## **Incorporation of existing regulations, guidance and caselaw**

It is important that as part of a transition from the existing disability benefits to the Scottish system that individual rights are maintained and no unintentional gaps in the law are created. CAS would echo the Child Poverty Action Group in Scotland's recommendation that a comprehensive review of existing regulations, guidance and caselaw is undertaken to ensure that important detail and rights are not lost upon transition.<sup>34</sup>

## **Longer-term changes**

CAS recognises the importance of prioritising a 'safe and secure transition' from existing disability benefits to a new system of Disability Assistance. It is crucial that people do not experience a stoppage or delay to their payments as a result of their claim transferring from the Department for Work and Pensions (DWP) to Social Security Scotland. Additionally, CAB clients who receive Disability Living Allowance (DLA) have found being re-assessed for Personal Independence Payment (PIP) distressing and undignified. The transition to Scottish Government administration must avoid unnecessary stress, or reassessment, as detailed elsewhere in this response.

However, CAS also believes that a safe and secure transition should not be a barrier to more substantial improvements to disability benefits in the longer term. The Scottish Government's proposals for Disability Assistance largely replicate the current structure and rules for PIP, DLA and Attendance Allowance<sup>35</sup>. CAS would encourage the Scottish Government to set out considerations for longer-term changes to Disability Assistance alongside proposals for initial transition.

Examples of more far-reaching changes which CAS would recommend include:<sup>36 37</sup>

<sup>33</sup> For further information on how this could operate in practice, please see pages 191 - 199, A New Future for Social Security: Response from Citizens Advice Scotland, October 2016

[https://www.cas.org.uk/system/files/publications/social\\_security\\_consultation\\_-\\_response\\_from\\_citizens\\_advice\\_scotland.pdf](https://www.cas.org.uk/system/files/publications/social_security_consultation_-_response_from_citizens_advice_scotland.pdf)

<sup>34</sup> Disability Assistance consultation briefing – Child Poverty Action Group in Scotland, May 2019  
<http://www.cpag.org.uk/sites/default/files/CPAG-Scot-Briefing-Disability-Regulations.pdf>

<sup>35</sup> Social Security: A Consultation on Disability Assistance in Scotland – Scottish Government, March 2019  
<https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

<sup>36</sup> Pages 83 - 90, A New Future for Social Security: Response from Citizens Advice Scotland, October 2016  
[https://www.cas.org.uk/system/files/publications/social\\_security\\_consultation\\_-\\_response\\_from\\_citizens\\_advice\\_scotland.pdf](https://www.cas.org.uk/system/files/publications/social_security_consultation_-_response_from_citizens_advice_scotland.pdf)

<sup>37</sup> Designing a Social Security System for Scotland: Disability and Carers' Benefit – Citizens Advice Scotland, December 2015 <https://www.cas.org.uk/publications/designing-social-security-system-scotland-disability-and-carers-benefit>

- The creation of a 'whole-of-life' benefit, to replace the three current and proposed age-based benefits.
- Providing mobility support to people over the state pension age, which is not available to people receiving Attendance Allowance or the proposed Disability Assistance for Older People.
- Moving from a needs-based system that asks people what they are unable to do, to a more rights-based model that focuses on what a person is entitled to, is able to do and any support required enabling them to do that.
- Continuing to keep the criteria and assessment process under close review, with a view to making further changes to ensure that the accuracy of decision-making is improved.

***Do you think the partial Equality Impact Assessment has correctly identified the impact of our proposals on those with protected characteristics? What would you add or change?***

The Equality Impact Assessment appears to have broadly identified the impact of the proposals on people with protected characteristics. We do not have any particular additions or changes to suggest.

***How do you think the devolution of Disability Assistance might impact upon disabled households? Particularly people on low incomes, people living in deprived areas, people in material deprivation, or people with no / or low wealth and people from different socio-economic backgrounds?***

***How do you think the devolution of Disability Assistance might impact upon children living in low income households, in deprived areas, children in material deprivation, or children from different socio-economic backgrounds?***

Although Disability Assistance and its predecessor benefits are designed as universal, rather than low income benefits, they can have a positive impact on disabled people in poverty. On average, disabled people have lower lifetime earnings than non-disabled people, and are more likely to be in poverty, with a poverty rate of 24% after housing costs for people in families containing a disabled person, compared with 17% for those without in Scotland.<sup>38</sup> This increases to 30% if the value of disability assistance is taken into account.<sup>39</sup>

Additionally, it is not uncommon for people receiving Personal Independence Payment to use it to pay for living costs through other means. For instance, citizens advice bureaux have advised clients who have struggled to pay for living costs from the income replacement benefit for people who cannot work because of ill health or disability (Employment and Support Allowance, being replaced by Universal Credit), or whose other benefits have been stopped pending an appeal.

<sup>38</sup> Poverty and income inequality in Scotland: 2015-18 – Scottish Government, March 2019  
<https://www.gov.scot/publications/poverty-income-inequality-scotland-2015-18/>

<sup>39</sup> Ibid.

***Do you think the partial Business and Regulatory Impact Assessment has identified where the devolution of Disability Assistance might impact on public agencies and businesses? What would you add or change?***

CAS agrees with the acknowledgement in the Business and Regulatory Impact Assessment that “the introduction of these benefits could cause additional requests for information and support from existing advice services.” As detailed in our response to the Scottish Government’s 2016 consultation on social security<sup>40</sup>, this is for a number of reasons:

- The introduction of a new system in Scotland – alongside the UK system – has the potential to increase complexity for claimants
- Changes to benefits make clients concerned, as recent changes have involved reassessments and/or reductions in payments
- Two substantial benefit changes – Universal Credit and Personal Independence Payment – are still to be rolled out to hundreds of thousands of claimants in Scotland. Demand for advice on these issues will inevitably increase at the same time as the new Scottish system is embedded
- Tens of thousands of claimants are likely to be worse off as a result of the UC and PIP roll out<sup>41 42 43</sup>
- The move to digital public services will cause access problems to those who lack online access and skills<sup>44</sup>

Advisers commented on the impact that these factors would have on the demand for their services:

*“More confusion and help needed, with separate systems running in parallel. Clients now do not always know what benefits they are receiving so the new powers will add complexity.”*

*“The confusion resulting from the changes will mean much greater numbers seeking advice and help.”*

*“They will be anxious about losing their benefits or having to claim again under a new system. They will also be worried that they will be paid less or there will be a delay in payment.”*

*“Even more complicated for advisers to give correct advice.”*

<sup>40</sup> See pages 177 - 181, A New Future for Social Security consultation – Response from Citizens Advice Scotland, October 2016 [https://www.cas.org.uk/system/files/publications/social\\_security\\_consultation\\_-\\_response\\_from\\_citizens\\_advice\\_scotland.pdf](https://www.cas.org.uk/system/files/publications/social_security_consultation_-_response_from_citizens_advice_scotland.pdf)

<sup>41</sup> P. 232, Green Budget 2016 – Institute for Fiscal Studies <https://www.ifs.org.uk/publications/8129>

<sup>42</sup> Universal Credit in East Lothian: Impact on Client Income – Musselburgh and Haddington Citizens Advice Bureaux, August 2017 [https://www.cas.org.uk/system/files/28.09.17\\_report\\_for\\_website.pdf](https://www.cas.org.uk/system/files/28.09.17_report_for_website.pdf)

<sup>43</sup> Up to 31 October 2017, 16,970 claimants in Scotland were not awarded PIP under normal rules after undergoing a DLA to PIP reassessment. Response to Freedom of Information request, Department for Work and Pensions, May 2018 <https://assets.documentcloud.org/documents/4493586/Letter-From-Department-of-Work-and-Pensions.pdf>

<sup>44</sup> Disconnected: Understanding digital inclusion and improving access – Citizens Advice Scotland, February 2018 [https://www.cas.org.uk/system/files/publications/cas\\_disconnected\\_report.pdf](https://www.cas.org.uk/system/files/publications/cas_disconnected_report.pdf)

*“This will definitely lead to an increase in enquiries as clients try and get used to another new benefits system and more financial resources will be required by CABx without having hopefully to go through all the extra work we have to do to access funding.”*

While advisers were very clear about the impact of changes on the need for advice, they also saw opportunities to improve the system that would help to support their work and potentially to reduce the need for advice. However, it must be noted that advisers saw this as a long-term ambition. Advisers commented:

*“I believe that, so long as we adopt a caring and holistic approach, then the benefits to clients (and CAB) will be huge.”*

*“If the proposed changes are made it is likely benefit enquiries would increase in the short term but ideally long term we'd see more people out of poverty and potentially lower demand on services.”*

The changes to the UK benefits system from 2010 may provide a relevant example of the impact of changes to benefits on the demand for advice. In the period, 2011/12 to 2014/15, bureaux advised on 93,000 *additional* new issues compared to what would have been expected under 2011/12 levels – this equates to around 600 *additional* benefit issues every week since the implementation of the welfare reforms. In that three year period, bureaux advised on over 666,000 new benefit issues in total.

***Do you think the partial Children’s Wellbeing and Rights Impact Assessment has identified where the devolution of Disability Assistance might impact on young people? What would you add or change?***

The Children’s Wellbeing and Rights Impact Assessment appears to have broadly identified the impact of the proposals on young people. We do not have any particular additions or changes to suggest.

## **Appendix A – Consultation activities with CAB clients and advisers**

In December 2015, CAS published a suite of five reports named ***Fair, Equal and Responsive: Designing a Social Security System for Scotland***.<sup>45</sup> These reports provided recommendations to the Scottish Government on how it might use the new social security powers based on extensive consultation activities with bureaux carried out that year. These consultation activities included:

### **2015 ‘Empowering Scotland’ consultation on disability benefits**

<sup>45</sup> Fair, Equal and responsive: Designing a Social Security System for Scotland – Citizens Advice Scotland, December 2015 [www.cas.org.uk/publications/fair-equal-and-responsive](http://www.cas.org.uk/publications/fair-equal-and-responsive)

- Focus groups run by bureaux during September 2015. Bureaux were offered a small grant to conduct a focus group with clients with a disability or health condition, advisers and/or representatives from local agencies. 10 bureaux organised a focus group.
- Client interviews conducted during September 2015. Bureaux were offered a small grant to conduct 10 telephone or face-to-face interviews with clients with a disability or health condition. 7 bureaux conducted these interviews.
- Additional interviews conducted during September – October 2015. Participating bureaux were offered a small grant to carry out a further 8 telephone or face-to-face interviews with clients. 9 bureaux conducted these additional interviews.
- A full-day focus group was held at CAS with 14 benefits advisers from different bureaux.
- An online adviser survey between 18 September – 9 October 2015. Bureaux advisers were invited to respond to an online survey (via SurveyMonkey). 37 advisers responded.

## 2016 CAB client focus groups

Fourteen Citizens Advice Bureau across Scotland carried out focus groups with clients on specific areas of the 'A New Future for Social Security' consultation, including fixing the principles in legislation, outcomes and the user experience, carers benefits, and the Best Start Grants. Participating bureaux were provided with a focus group toolkit which included guidance on how to arrange and carry out the focus groups as well as specific questions relating to the topic. In total, CAB consulted with 144 clients.

<b>CAB</b>	<b>Number of clients</b>	<b>Topic</b>
Airdrie CAB	10	Best Start Grant
Caithness CAB	10	User experience
Central Borders CAB	9	Best Start Grant
Clackmannanshire CAB	8	Carers benefits
Coatbridge CAB	14	User experience
Dumfries CAB	10	User experience
Dalkeith CAB	12	User experience
Drumchapel CAB	6	User experience
East Ayrshire CAB	6	Carers benefits
Grangemouth CAB	8	Claimant Charter
Motherwell CAB	11	Claimant Charter
Nairn CAB	14	User experience
Parkhead CAB	20	Carers benefits
West Dunbartonshire CAB	6	Carers benefits

## 2016 CAB adviser Regional events

CAS hosted three regional events in Edinburgh, Glasgow and Inverness which were attended by staff and volunteers from citizens advice bureaux across Scotland as well as Scottish Government officials. At each regional event, advisers had the opportunity to discuss different topics, and the views and experiences shared were collated by CAS to inform our response to the 'A New Future for Social Security' consultation.

<b>Location</b>	<b>Participants</b>	<b>Discussion topics</b>
Serenity Café, Edinburgh	21	Fixing the principles in legislation Delivery options Overpayments and debt Fraud
RSS Centre, Glasgow	15	Advice and representation Equality and low income Fixing the principles in legislation
Eden Court, Inverness	12	Carers benefits Benefit delivery in rural areas Disability benefits Cold Weather Payments Winter Fuel Payments

In addition to these regional events, CAS also hosted an adviser focus group at our offices in Edinburgh, to seek advisers' and tribunal representatives' views regarding how the complaints, reviews and appeals process should work under the new system. This was attended by 11 CAB advisers.

## **2016 Adviser surveys**

During September and October 2016, CAS carried out an online survey of CAB advisers on 'Designing a New Social Security System for Scotland' which included 60 questions about a number of consultation topics. The survey was answered by 43 respondents from 25 bureaux across Scotland, from Dumfries and Galloway to Caithness. The majority of respondents were advisers, welfare rights advisers and managers, but the survey was also completed by specialists such as Armed Services Support Service staff, Kinship Care Project staff, Debt Advisers and Money Advice staff.

To inform CAS's response to the Second Independent Review of Personal Independence Payment, CAS conducted an adviser survey which was carried out in August 2016 and received a total of 61 responses from 40 CAB offices, which represents 65% of the bureaux across Scotland. This survey has also been referred to throughout the consultation response.

## **Policy Forum**

In July 2016, CAS hosted a meeting of representatives from bureaux who make up the Policy Forum – a Standing Committee to the Board of Directors. This meeting was attended by 18 CAB managers, staff and volunteers, who discussed the implications of the devolved social security powers for advice, representation and advocacy carried out by the Scottish CAB Service. The report from this event was sent directly to the Scottish Government, but has also informed CAS's response to the consultation.

### **2019 CAB adviser survey**

To specifically inform this response, CAS carried out an online survey of CAB advisers on some of the areas in the consultation document. This included 18 questions about on number of aspects of the consultation document. The survey was answered by 36 respondents from 24 bureaux across Scotland, from Stranraer to Orkney. The majority of respondents were specialist welfare rights advisers.

### **2019 consultation with Armed Service Advice Project (ASAP) workers**

We also specifically received specific comments from Armed Service Advice Project workers. ASAP is provided by the Scottish CAB service to support people who are serving in the Armed Forces, Regular or Reserve or their dependents; ex-service, Regular or Reserve and their dependents; and members of the Merchant Navy who served in a commercial vessel in support of legally defined UK military operations, or a dependent.

Most clients are veterans (80%) and their dependants (10%) with the remaining 10% currently serving or their dependants. There is an average of 5 issues per client, so these are often complex cases. Benefits make up 49% of issues, including 12% PIP (Daily Living) and 9% PIP (Mobility).

### **2019 consultation event with CAB advisers and the Cabinet Secretary**

In April 2019, Citizens Advice Scotland hosted a consultation event which allowed three CAB managers and advisers to share their views on disability benefits directly with the Cabinet Secretary for Social Security and Older People.

### **Citizens Alerts**

Citizens advice bureaux in Scotland routinely collect statistical data on the number of pieces of advice given on any particular issue. CAB also annually survey clients to establish a demographic profile of who visits a bureau for advice and on which issue.

Throughout this document, we also highlight 'Citizens Alerts'. These are cases that have arisen across the Citizens Advice service in Scotland – examples of real issues faced by real people that bureaux advisers have supported. They provide clear illustrations of the impact set out in this report. You'll see them across this report, in black boxes.



Within the last year, CAB advisers flagged 757 cases related to Personal Independence Payment as Citizens Alerts, and 125 related to DLA or Attendance Allowance.