

Briefing on social security for the UN CRDP Committee
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Note: We refer to the convention as the Convention on the Rights of Disabled People (CRDP) rather than the given name - Convention on the Rights of People with Disabilities (CRPD) - as we follow the social model of disability. The convention allows us to do this.

Introduction

1. I am a social security adviser who has worked on the front line of the UK advice sector from 2007 to date. The majority of my work to date has been advising individuals on their rights and representing them in appeals.
2. For the past decade I have worked as an in-house social security adviser for Equity, the UK’s largest trade union for performers and creative professionals. Equity is the only UK trade union to offer this service.
3. 3% of members identify as deaf or disabled. Most are self-employed. Work opportunities in the entertainment industry are offered on this basis. The work is usually short term and project based. The creative industries currently make up nearly 6% of the UK economy.
4. Prior to working for Equity, I worked for various charities and local authorities that no longer provide services due to cuts. I am deeply concerned about the future of the advice sector and availability of much needed advice for citizens, particularly Deaf and Disabled People (DDP).

5. I have experience of social security prior to and post welfare reform and there are a multitude of issues. For the purposes of this testimony, I will only focus on the key issues I have experienced as an adviser to those I have worked with the most – those are either unemployed or in fluctuating work, particularly those with ill health or disability.

Context

6. A key principle of advice giving is to empower citizens by providing clear information about their rights and responsibilities, so that they are able to fully understand their options and take action independently.
7. This has become increasingly difficult since the introduction of Universal Credit operating alongside older social security. The system as a whole is now too complex for the lay person to comprehend. A recent study¹ by Policy in Practice has revealed that the total amount of unclaimed income related social security and social tariffs is now £18.7 billion a year. Reasons for this include stigma, administrative complexity, lack of awareness and increasing fragmentation of support. Notably the majority of underclaimed social security is Universal Credit.²

Issues

1) Work Capability Assessments (WCA) and Personal Independence Payment (PIP) assessments

8. A large part of my work is helping people through Work Capability and Personal Independence Payment (PIP) assessments and appeals. This part of my work would not be necessary if the claim process and assessment were fit for purpose. The claim forms do not accurately reflect the law. The assessments are conducted by private providers. The assessment reports we see are almost always inaccurate and the claimants we advise produce many pages of inaccuracies when asked.
9. I have never seen a DWP decision that did not simply follow and cite the private provider's recommendation despite the fact DWP are meant to look at all the evidence provided, including the claimant's evidence which is largely disregarded.
10. This is not a controversial position. The unacceptably high appeal success rates³ reflect the fact that the assessment process and decision making is fundamentally flawed.
11. Before PIP there was Disability Living Allowance (DLA). In practice this better helped support disabled people as it was not based on fixed activity and descriptor system. It

¹ [Clegg, A, Ghelani, D, Charlesworth, Z and Johnson T-M \(2023\). Policy in Practise Report: 'Missing out: £19 billion of support goes unclaimed each year.' Policyinpractice.co.uk, \[online\], April.](#)

² Ibid, p.5. 1,255,000 households not claiming, leaving an estimated £7,565 million underclaimed.

³ Most recent official statistics: PIP at 68% overturn at appeal ([Tribunal Statistics Quarterly: July to September 2023 - GOV.UK \(www.gov.uk\)](#)); UC: Three in ten of all claimants are claiming universal credit on health grounds: Almost 70 per cent of universal credit claimants with a health condition or disability were assessed as having limited capability for work and work-related activity at June 2023 ([Universal Credit Work Capability Assessment, April 2019 to June 2023 - GOV.UK \(www.gov.uk\)](#)); ESA - 65 per cent resulted in a support group outcome, 13 per cent were placed in the work-related activity group, and 22 per cent were found fit for work ([ESA: outcomes of Work Capability Assessments including mandatory reconsiderations and appeals: September 2023 - GOV.UK \(www.gov.uk\)](#))

allowed for the unique experience of each disabled person to be more accurately reflected. DWP decision making was in house (no private assessments) and generally better, and appeal success was lower.⁴ Notably government planned savings as a result of the replacement of DLA with PIP have not manifested, and in fact PIP has cost more.⁵

12. In practice, PIP cases take a considerable time to be decided correctly. There is considerable wait for an initial decision, and then even longer to be heard at appeal tribunal. I have a handful of cases that have taken 5-10 years to have been correctly decided.
13. Most advice services are now not able to assist with assessment form filling and/or representation at appeal due to cuts. Form-filling advice used to be commonplace. I worry for the DDP who advisers don't have to support them through this process or advise them about appeal rights. Many unadvised claimants simply accept the first stage of the appeal process (a decision from a second decision-maker within the DWP) rather than pursue their case to an independent tribunal.

2) Universal Credit

a) Recognition of representatives

14. One of the first issues we experienced in relation to Universal Credit, was the refusal to recognise the role of the advice representative within UC. Paradoxically, DWP guidance for existing social security ('Legacy Benefits') recognised the key role that advice representatives play and outlined the process that could be used to act for the claimant.⁶ The advice sector lobbied UC on this issue however our concerns were ignored. We had to complaint to the Information Commissioners Office (ICO), and it was only when our complaint was upheld and the DWP were ordered to review their processes that progress was made.⁷ To get to this point took nearly two years. Practical difficulties remain with the processes in place.
15. Access to independent advice and representation is more important than ever in relation to UC as detailed research has found that flaws in the digital design of UC breach principles of law and stop many claimants from access the right level of support.⁸
16. Prior to UC I was actively invited to DWP stakeholder groups in relation to both operations and policy. This gave me a really good opportunity to feedback on issues in practice and work with DWP to bring about change. Under UC, stakeholder engagement is extremely limited. So too is forthcoming information with advisers increasingly

⁴ See for example, Social security and child support tribunal statistics 1/4/11 to 31/10/11; 39% of DLA/AA appeals were successful ([Social Security and Child Support Statistics: 1 April 2011 to 31 October 2011 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)).

⁵ PIP has cost up to £2 billion more than keeping DLA: Government disability benefit spending has increased by 15% to 20% cent despite the aim of reducing it by a fifth according to a new Office for Budget Responsibility (OBR) report: [PIP has cost up to £2 billion more than keeping DLA | Disability Rights UK](https://www.draughton.co.uk/news/PIP-has-cost-up-to-2-billion-more-than-keeping-DLA/)

⁶ The most recent version can be found here: [Working with representatives: guidance for DWP staff - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/Working_with_representatives_guidance_for_DWP_staff.pdf)

⁷ [DWP's approach to explicit consent is 'unduly restrictive' and puts people at risk of 'significant prejudice', says ICO - Rightsnet](https://www.ics.org.uk/news/2016/07/dwps-approach-to-explicit-consent-is-unduly-restrictive-and-puts-people-at-risk-of-significant-prejudice-says-ico/)

⁸ [You reap what you code | CPAG](https://www.cpag.org.uk/news/2016/07/you-reap-what-you-code/)

having to use Freedom of Information Requests to get basic and fundamental information.

b) The treatment of self-employed workers

17. Tax Credits are being replaced by Universal Credit. Tax Credits provide payments to those in low paid work, both the employed and self-employed. There are limited conditions placed on recipients. You need to show that you are actually in work, and for the self-employed, that your self-employment is legitimate, i.e. not a hobby. If your earnings increase year by year, you are financially rewarded.
18. By contrast, UC subjects' claimants to considerable conditions in exchange for payments. Government plans to increase them for those who are in employment, which are problematic (see below section on in work conditionality). Those affecting the self-employed have already been introduced with devastating consequences.
19. Under UC if you are found to be in legitimate, Gainful Self-Employment (GSE), you are usually provided with one year of financial support depending on attending appointments with a work coach to show what you are doing to increase your work.
20. After one year, your UC calculation then usually includes an earnings assumption of 35 x national minimum wage per week – known as the Minimum Income Floor (MIF). From April 2024 this comes out at an earnings assumption of over £855 per month and has the effect of severely reducing or stopping UC payments.
21. The financial penalty of the MIF is worse than the highest sanction for failure to comply with any work-related requirements, yet it is applied to working people. For example, a higher-level sanction applied to a jobseeker with £500 rent would result in a monthly UC payment of around £500 whereas applying the MIF would result in a UC payment of £92.⁹
22. The Equity members I represent are professionally trained and highly motivated workers who love their work. It is their vocation. Their work is characterised by fluctuation and is mostly only offered on a short-term self-employment basis. Therefore, unlike other self-employed groups, they do not necessarily choose to be self-employed but have to work as self-employed in order to work in the industry. They have far less control than those working in mainstream self-employment.
23. Following an unsuccessful judicial review of the MIF¹⁰, the policy was then suspended during covid after considerable lobbying from organisations like Equity. Its reintroduction and effect on Equity members has been examined by the University of Warwick.¹¹ Key findings were as follows:
 - 63% of Equity members have been in receipt of social security at some point in their life, largely intermittently or for short periods.

⁹ 2023/24 figures – a £12 per day deduction to the standard allowance applied for the duration of the month, for 91 days (approximately 3 months) for the first sanction in any 12-month period, and 182 days (approximately 6 months) for a second high level sanction. High level sanctions apply, for example, where a claimant refuses the offer of a job.

¹⁰ [Judicial Review of minimum income floor fails | Equity](#)

¹¹ ['Not here to help' - Equity members experiences of UC and the MIF. A report for Equity by Dr Heidi Ashton, Centre for Culture and Media Policy Studies, University of Warwick](#)

- Four out of five members report that UC has not helped them to work in the industry.
- In contrast, three quarters of those with experience of our previous social security systems report that these had helped them to find work in the industry.
- 41% of those subject to the MIF have gone without essential items such as food or utilities.
- 46% have been unable to pay bills for their household.
- 5% of respondents have been forced to leave their home as a result of the MIF.
- Nearly half of those who have been subject to the MIF are considering leaving the industry altogether.
- Case studies demonstrated the high levels of stress and anxiety being generated by the MIF rule.

24. The report concluded that the MIF is damaging to claimants and counter to the main aims of UC because in reality, it is increasing ill health or low skilled, subsidized in work UC claims, thereby increasing the welfare bill. This is what I am seeing in practice.

25. If you are affected by the MIF your only viable option is to agree to find any employment work, which is usually not available in the entertainment industry. You have very little legal right to challenge what you are being asked to do in relation to work search.¹²

26. In addition, any self-employment pay you manage to achieve around an onerous UC work search is disregarded when deciding whether you are ‘working enough’.¹³ This makes fulfilling work requirements even more difficult for the self-employed.

27. The irony is that UC would work well for those in fluctuating self-employment if the MIF were removed because it is the first time that technology has enabled claimants to report monthly earnings and receive a top up depending on what is earned, thereby providing financial support exactly when required and avoiding over or under payments. The removal of this safety net from Equity members will directly impact who we see on our stages and screens.¹⁴

c) The regressive treatment of disabled workers

28. Tax Credits give disabled workers additional payments to ensure that they are financially better off in work.

29. Perversely, under UC, the only way claimants can get additional financial support as a disabled worker is to go through a work capability assessment and be found to have

¹² The four-week rule – reduced from three months in 2022 by statutory instrument ([S.I. 2022/108](#)). [Regulation 97\(4\) UC Regulations 2013](#). Those who are not GSE and so subject to all work-related requirements can be permitted to limit their work search and work availability to work of a particular nature that they have previously carried out but only if the Secretary of State is satisfied that they will have reasonable prospect of obtaining work despite such limitation.

¹³ [Regulation 99\(6\), UC Regs 2013](#) – Administrative Earnings Threshold. The claimant may be exempt from some work-related requirements if earnings above a certain threshold, currently set at 15 hours per week x national minimum wage of an individual and 24 hours for a couple. The monthly earnings ‘exclude any that are not employed earnings.’

¹⁴ See [Huge decline of working class people in the arts reflects fall in wider society | Culture | The Guardian](#) and [Nearly half of UK award nominees in last decade were privately educated | Awards and prizes | The Guardian](#)

LCWRA - a limited capability for work- and work-related activity, i.e. not be required to undertake any work at all.

30. Many DDP will already have PIP or DLA and do not want to undergo yet another assessment of their ill health/disability so may opt out of electing to undertake a WCA to get additional support.
31. Once you have passed the assessment and found to have either a Limited Capability for Work (LCW) or Limited Capability for Work- and Work-Related Activity (LCWRA), you can work and earn without automatically losing your ill health status. You are also exempt from the Minimum Income Floor (MIF). If put in the LCWRA group, you also get an additional financial component included in your UC award (the LCWRA element) and a financial disregard of earnings (the Work Allowance) which results in your being financially better off while claiming UC on this basis and doing work. The Government now plans to restrict access to the LCWRA group - see [work capability consultation](#) section below.
32. There are additional considerations for those transferring from Tax Credits to Universal Credit - see next section – [Managed Migration to UC](#).

d) Managed Migration to UC

33. The government are now requiring those on older social security regimes to make a claim for UC – they call this Managed Migration. If the claimant does not respond, their payments stop. They are ramping up this process despite serious concerns from the advice sector.
34. In my casework to date I have already seen multiple instances of members claiming UC mistakenly due to no or incorrect information/advice. Many have lost out considerably as a result.¹⁵
35. It is impossible to provide standardised advice as the legislation and process is so complex. Considerations for claiming and calculations require multiple steps and considerable work, and in order to maximise their entitlement or avoid significant financial hardship they need very detailed/involved advice.
36. They are also told that they will be better off or at least no worse off on UC.¹⁶ Regulations provide for transitional protection in the form of a Transitional Element (TE) to be calculated to ensure your basic payment of UC is the same or more. You are also allowed to claim despite having savings of £16,000 or more (couple or individual) a capital threshold that usually prevents a UC claim. This is referred to as the transitional capital disregard.

¹⁵ See for example [Ombudsman orders Department for Communities to pay claimant amount of tax credits he lost after being advised to make a claim for universal credit which was unsuccessful - Rightsnet](#). See also <https://www.rightsnet.org.uk/welfare-rights/news/item/secretary-of-state-confirms-that-there-will-be-no-recompense-for-tax-credit-claimants-who-were-advised-to-claim-universal-credit-and-lost-out>

¹⁶ [What will I get on Universal Credit? - Understanding Universal Credit](#) – ‘On Universal Credit, many people will be entitled to the same amount they received from their previous benefits, or more. If the amount you are entitled to on Universal Credit is less than your existing benefits, a top up amount is available. This is called Transitional Protection.’

37. In practice, many claimants with savings are surprised to find that their UC payments are less than their previous tax credits award. This is because if you have savings of £6,000 - £16,000 at the point you are transferred, there is a notional deduction taken from the award to reflect savings. For the self-employed, savings are crucial to keep afloat.

A hypothetical example

A self-employed disabled worker claiming tax credits with savings of £16,000 is required to claim UC under managed migration. They do so and are provided with a transitional element to ensure that their basic amount of UC is no less than their TC payments, however the fact they have savings of £16k means that a £ for £ deduction of £174 per month is taken from their UC award.

If the claimant is found Gainfully Self-Employed, their transitional element should not change. However, if their savings go below £16k then above it at a later date, they lose transitional protection, and their UC could stop on that basis.

If this does not happen, after a year of being on UC their payments are either severely reduced or stopped as the MIF will be applied.

Before this happens, they could elect to undergo a work capability assessment. If they pass, then they avoid the MIF, but the receipt of a LCWRA element means the erosion of their transitional element £ for £.

3) Concerns about the Government's future plans

a) Health and disability white paper

38. The plan to use the PIP assessment in order to determine in work support is illogical. PIP looks at fundamental functions rather than those required in a work context. PIP entitlement can take years to be decided properly, as explained above.
39. The white paper recognises that the benefit system can be difficult to navigate and refers to the piloting of an 'enhanced support service' to assist individuals who 'do not have friend or family to support them.'¹⁷ Once again, this reinforces the lack of acknowledgement of the important role that the advice sector plays.
40. Plans to abolish the Work Capability Assessment altogether and replace with mandatory work-related requirements to be decided by a work coach is of serious concern as for the first time it will mean that ill health work related judgements are not appealable to a judicial authority. High appeal success rates reflect the lack of correct decision making already, so to remove the option to appeal further would be disastrous for individuals, leaving them subject to the unregulated decisions of a work coach.
41. Recent history has illustrated how discretion can be abused – see for example the mental health inpatients who were recently told to attend the job centre or else lose

¹⁷ p.22 [transforming-support-health-and-disability-white-paper-cp807.pdf](#)

their benefits.¹⁸ The number of claimants serving a sanction at a point in time is at an all-time high.¹⁹

42. It is only recently that we have seen better decision making in practice in relation to the work capability assessment, over a decade after its inception. It seems that it takes time for the DWP to properly understand and apply principles in practice. The WCA has its issues, but removing or reducing the rights of the sick and disabled is not the answer and will only create more issues.

b) Work capability assessment consultation outcome

43. We provided a comprehensive response to the Governments WCA consultation in October 2023.²⁰ We have serious concerns about the oversimplified presentation of the issues, and the veracity of claims being made, and how they justify the proposed cuts/changes.
44. The changes will create more difficulty for DDP by taking away rights to protection under the law from mandatory work activity, as well as the removal of the LCWRA component and the Work allowance (the financial incentive to work). It removes protection from sanctions even though the DWPs own research shows that sanctions do not work.²¹

We were particularly concerned with the following:

- The total lack of reference to the current position in which LCWRA claimants (who are not mandated to participate with work related activity with the DWP) can nonetheless volunteer to do so. The fact that claimants do not do so needs to be looked at by DWP. Such support should be voluntary and sold on its merits, not imposed by benefit cuts and sanctions.
- Reasons for cutting support for those with mobility issues and or mental/cognitive issues getting around are underpinned by the assumption that home working is now readily available. In fact, it is not across many industries, including entertainment. As stated by the Resolution Foundation ‘not every job can be done remotely, and for those for whom low-paid work is the only option, the vast majority will be unable to work from home.’²²
- The consultation claimed that ‘too many disabled people and people with health conditions are stuck on incapacity benefits, without the support they need to access work.’²³ It is our experience as advisers that we are the support they need to access work in relation to understanding their rights and that they can work while claiming social security on grounds of ill health. For example, members in receipt of Employment and Support Allowance (ESA) regularly contact us about their right to work under permitted work rules as self-employed workers and we regularly make representation to

¹⁸ [‘Seriously ill’ mental health inpatients told to attend jobcentre or risk losing benefits | Welfare | The Guardian](#)

¹⁹ https://www.rightsnet.org.uk/pdfs/Sanctions_Stats_Briefing_D_Webster_Feb24.docx

²⁰ [equity_wca-consultation-response_october-2023_final-301023.pdf](#)

²¹ [The Impact of Benefit Sanctions on Employment Outcomes: draft report - GOV.UK \(www.gov.uk\)](#)

²² [Reassessing the Work Capability Assessment • Resolution Foundation](#)

²³ Para 2, [Government Response to the Work Capability Assessment: Activities and Descriptors Consultation \(publishing.service.gov.uk\)](#)

the DWP on the law that allows for this as it does not appear to be commonly understood and certainly is not made public.²⁴

- Worryingly they also plan to restrict the use of decisions finding that those who's physical and/or mental health would be at substantial risk if they were required to undertake work- or work-related activity – the ultimate safety net provision which is specifically designed to avoid substantial harm.

c) In work conditionality

45. Under current Government plans, Universal Credit claimants who earn under 18 hours a week on minimum wage will be treated as if they are not in work and subject to full work-related requirements. In practice this measure will hit part time workers, many of whom are women and/or disabled.
46. This compulsory in-work progression will require claimants to work or earn more rather than training to qualify for better opportunities. They will risk sanctions if they do not comply. In practice these conditions threaten to interfere with work (e.g. attendance at the job centre).
47. Unite, the Union, is campaigning against this policy²⁵ because it will mean those in work will need to make time to comply with the UC work-related requirements as well, which are usually during working hours. Unite believes this puts current employment at risk for its members and increases workplace stress. We support this campaign. It will affect our members who are pushed out of industry work.

Conclusion

48. Working in advice under welfare reform has been to watch a disaster unfold. The removal of rights leaves us powerless to help people. It is of constant disappointment that the legislation that underpins social security can be easily changed without proper scrutiny, leaving it open to political manipulation.
49. We understand that the state is entitled to make rules and change social security, but it is not entitled to misrepresent the reality. In the run up to a General Election we continue to see the distortion of social security by politicians²⁶ despite the CRDP recommendation for the Government to promote positive images of disability benefit claimants among the public and in the media. The true picture is complex, and the lack of understanding is being abused.
50. In conclusion I am horrified at the short sighted and continuing cuts to the UK safety net since 2016. The importance of social security was demonstrated during Covid, now quickly forgotten. It is a race to the bottom. A serious sea change is required and the scapegoating of DDP must stop.

²⁴ See for example [Permitted work factsheet - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614442/Permitted-work-factsheet-2020.pdf) – there is no mention of self-employment or the regulations that allow for averaging of hours and earnings.

²⁵ <https://www.unitetheunion.org/campaigns/unite-against-sanctions>

²⁶ [Thousands on disability benefits to lose extra £5,000 a year in autumn statement | Disability | The Guardian](https://www.theguardian.com/society/2020/oct/29/thousands-on-disability-benefits-to-lose-extra-5000-a-year-in-autumn-statement), [Life on benefits will not be an option under Labour, says Liz Kendall | Welfare | The Guardian](https://www.theguardian.com/society/2020/oct/29/life-on-benefits-will-not-be-an-option-under-labour-says-liz-kendall) and [Rishi Sunak: I'll slash benefits to fund plan to scrap national insurance | The Independent](https://www.independent.co.uk/news/health/and-wellbeing/rishi-sunak-ill-slash-benefits-to-fund-plan-to-scrap-national-insurance-b1111111.html)