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# WELFARE REFORM REPORT

The impact of  
welfare reforms  
on disabled people

January 2020

## Table of Contents

Executive Summary .....	3
1. Introduction.....	7
2. Context .....	8
3. The introduction of Personal Independence Payment.....	9
3.1 The cost to Government of Personal Independence Payment.....	10
3.2 Claim success rates in the transition from DLA to PIP.....	12
3.3 Award increases and decreases when moving from DLA to PIP.....	12
3.3.1 Award increases and decreases by age group.....	14
3.3.2 Award increases and decreases by gender.....	14
3.3.3 Award increases and decreases by health condition.....	15
3.4 Mandatory Reconsideration and tribunal outcomes.....	17
3.5 Lived experience of UK Government disability benefits.....	20
3.6 DWP Administrative exercise to identify underpaid claimants.....	24
4. Disability benefits for children and older people .....	26
4.1 Disability Living Allowance for children .....	26
4.2 Disability benefits for pensioners.....	28
5. The replacement of Employment and Support Allowance.....	30
5.1 Underpayment of Employment and Support Allowance.....	32
6. Scottish Government policy to support disabled people.....	33
6.1 A person-centred approach to designing disability assistance .....	33
6.1.1 Terminal illness.....	33
6.1.2 Supporting information and assessments.....	34
6.1.3 Award duration and reviews .....	34
6.1.4 Short-Term Assistance.....	34
6.2 Mitigation of the Bedroom Tax .....	35
6.3 A Fairer Scotland for Disabled People: Employment Action Plan.....	35

# EXECUTIVE SUMMARY

This report continues the Scottish Government's Welfare Reform Report series, and focuses on new evidence on the effect of welfare reforms on benefits for disabled people.<sup>1</sup>

Social security can be particularly important for many disabled people, as they face higher barriers to employment, lower pay when in work and higher living costs. All these barriers can lead to higher poverty rates for disabled people, who, in Scotland, are around 7 percentage points more likely to live in relative poverty after housing costs than non-disabled people.

## The transition from Disability Living Allowance to Personal Independence Payment

### Reassessments

Since the transition onto PIP began in 2013 25% of people undergoing a reassessment in Scotland have lost their DLA award without being awarded PIP<sup>2</sup>. This represents 39,000 people experiencing a loss per person of between £1,200 and £7,740 per year<sup>3</sup>.

### New claims

The success rates for new PIP claims are much lower than for people being reassessed when moving onto the benefit from DLA – in Scotland, only 46% of new PIP claims receive an award meaning that so far 167,000 new claims have been unsuccessful<sup>4</sup>. Official data show that the share of new claimants being awarded PIP following their assessment has decreased over the years since PIP was first introduced<sup>5</sup>.

### Age and gender

Across Great Britain, working-age people in all age groups have been more likely to see their benefit entitlement reduce than increase when from moving onto PIP. However, this is more pronounced the younger an age group is – 50% of claimants aged under 35 lost entitlement, compared to only 36% who gained. Women are 29% more likely to lose entitlement than to gain<sup>6</sup>.

### Conditions

When transitioning to PIP, over half of people with malignant diseases, such as cancer, were awarded less after their reassessment. Sufferers of musculoskeletal diseases (such as arthritis), neurological diseases (such as epilepsy) and psychiatric disorders (such as attention deficit hyperactivity disorder) have also been more likely to lose entitlement than to gain it. People with impaired sight and hearing have, on average, tended to benefit from moving to PIP – around 68% and 45% respectively will receive higher payments.

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- 1 This is the second Welfare Reform Report to focus on the impact of reforms on disabled people. The first report is available from Scottish Government (2017), [UK welfare policy: impact on disabled people](#).
  - 2 Department for Work and Pensions (2019), [Stat-Xplore](#)
  - 3 Department for Work and Pensions (2019), [Disability Living Allowance for adults](#)
  - 4 Department for Work and Pensions (2019), [Stat-Xplore](#)
  - 5 Department for Work and Pensions (2019), [Personal Independence Payment: April 2013 to July 2019](#)
  - 6 Statistics referring to DLA to PIP reassessment outcomes by age, gender and health condition are available from Department for Work and Pensions (2018), [Personal Independence Payment: April 2013 to October 2018](#).

## Mandatory Reconsiderations (MR)

Of the 355,000 PIP decisions which took place in Scotland between April 2013 and June 2019, 78,000 went to Mandatory Reconsideration (MR), where the DWP reviewed its initial decision. Despite the DWP upholding its original decision in 88% of these MR cases, 38,000 went to court, with decisions on 56% or 21,000 cases being overturned<sup>7</sup>.

## Appeals

Combining overturned decisions from MRs (9,000) and tribunals (21,000) shows that there have been around 30,000 PIP cases in Scotland where claimants have undergone an appeals process to receive their correct entitlement.

## The lived experience of the disability benefits system

To better understand people's experiences of disability benefits, we have looked at evidence from three main sources: the Scottish Government Experience Panel surveys<sup>8</sup>, the DWP's 2018 PIP claimant experience survey<sup>9</sup> and the DWP's 2017/18 claimant service and experience survey<sup>10</sup>. To provide a consistent comparison of the evidence we have summarised the broad range of concerns expressed in those surveys into four categories:

- **A system that causes stress and anxiety for claimants:** The strain felt by claimants through the process of applying for benefits was identified as an area of major concern by the Scottish Government's Experience Panels. The appeals process is also considered stressful, with some claimants deciding not to go through it for fear of the related stress and losing the benefits they already have.
- **A lack of trust in the benefits system:** Many participants of the Scottish Government's Experience Panels did not trust their assessors had a sufficient knowledge of their condition to make an accurate assessment. The DWP PIP claimant experience survey showed that distrust in DWP was one of the reasons why participants did not request help from DWP with their application, especially during the dispute process.
- **A complex or unsuitable application process:** The PIP application process was highlighted as too long, difficult and repetitive by Experience Panels participants. The DWP PIP claimant experience survey showed that some claimants felt the application process failed to appreciate the individuality of each person's condition, with 39% stating that there were things they wanted to, but were not able to explain at the assessment.
- **A lack of help and communication:** The DWP's PIP claimant experiences survey reported that 59% of claimants required help completing the PIP application form and of those only 2% would choose to get it from the DWP. Once the PIP decision letter was received, only 41% of claimants fully understood how the DWP reached their decision, while 56% said their letter did not refer to medical evidence. Over two thirds of the Scottish Government's Experience Panels participants identified the need for better advice and support when claiming benefits, making this their number one priority for improvement of the benefits system.

7 Mandatory Reconsideration and tribunal decisions data is available from Department for Work and Pensions (2019), [Personal Independence Payment: April 2013 to July 2019](#).

8 Experience Panels findings are drawn from the publications "About your benefits and you" and "Personal Independence Payment health assessments", both of which are available at Scottish Government (2017), [Social Security Experience Panels: publications](#).

9 Department for Work and Pensions (2018), [Personal Independence Payment: claimant experiences of the claim process](#)

10 Department for Work and Pensions (2019), [DWP claimant service and experience survey 2017 to 2018](#)

## Court decisions against PIP regulations

In recent years, two court decisions have found the DWP's PIP assessments led to claimants being underpaid. As a result, the DWP was required to undertake exercises to identify and pay back arrears to the people affected.

When announcing this exercise the UK Government estimated that around one in every seven PIP claimants, or 220,000 cases, could be affected by the underpayments<sup>11</sup>. However recent Great Britain-level management information data from the exercise show that in fact, only 1 in every 125 cases reviewed has received a back payment, or only 4,400 cases in total<sup>12</sup>.

## Child Disability Living Allowance

The number of children qualifying for Child DLA has increased by 36% between the PIP rollout in 2013 and May 2019<sup>13</sup>.

However, in recent years the average child DLA award entitlement has reduced in cash terms. Much of this reduction can be explained by the fact that children with learning difficulties, behavioural disorders and hyperkinetic syndrome (conditions that represent 71% of the benefit caseload) are now less likely to receive the highest care component and more likely to be awarded the middle rate, which is lower in value.

## Disability benefits for pensioners

The rollout of PIP has made the composition of pension-age disability benefits more complex in recent years. Older disabled people may now be in receipt of either PIP, DLA or Attendance Allowance (AA) depending on the date of their claim, and whether they were above or below pension-age at the time of PIP rollout in 2013. For example, when a disabled person over pension-age makes a new claim to disability benefits, they will be referred to claim AA rather than PIP or DLA.

## The transition from Employment and Support Allowance to Universal Credit

In addition to non means-tested benefits, working-age disabled people can also claim income-related Employment and Support Allowance (IR ESA) and Universal Credit. These benefits are reserved to UK Government and their level has reduced for many disabled people in recent years. New claimants of these benefits since April 2017 will no longer receive an additional £29.05 per week, when qualifying for the Work Related Activity Group of IR ESA, or Limited Capability for Work Group of UC. Over the next few years all IR ESA claimants are scheduled to move onto UC.

## Underpayment of Employment and Support Allowance

In 2018 the National Audit Office (NAO) reported that an estimated 70,000 ESA claimants had been underpaid since 2011 due to errors made by the DWP when transferring them onto ESA from other benefits<sup>14</sup>.

11 Hansard (2018), [PIP Back Payments](#)

12 Department for Work and Pensions (2019), [PIP administrative exercise: progress on cases cleared, at 14 June 2019](#)

13 Department for Work and Pensions (2019), [Stat-Xplore](#)

14 National Audit Office (2018), [Investigation into errors in Employment and Support Allowance](#)

With only 62% of the DWP exercise to repay affected claimants complete, management information data show that already 88,000 (24% of the cases checked) cases across Great Britain have been found eligible for a repayment, averaging £6,000 each. We estimate that around 10,000 people in Scotland may now have been paid, with a total payment value of around £60 million<sup>15</sup>.

## Scottish Government policies to support disabled people

Starting in 2020, the Scottish Government will commence Disability Assistance replacing DLA, PIP and AA. Each form of assistance has been designed in a person-centred way using input from people with lived experience of the benefit system and a public consultation with 189 individuals and 74 organisations<sup>16</sup>.

### Terminal illness

For someone to be defined as terminally ill, the DWP require people to be likely to die within 6 months. The Scottish Government will remove this arbitrary timescale, and make sure the decision on who can be considered terminally ill is made by clinicians.

### Supporting information and assessments

Existing sources of information will be used by Case Managers to make a decision regarding an individual's claim, where possible, with the aim to reduce the administrative burden on clients. Where necessary, Case Managers will seek one source of supporting information from a formal source, such as confirmation of a diagnosis or letter from a support worker.

The Scottish Government will significantly reduce the number of clients who undergo face-to-face assessments. When assessments do occur they will be at a time and place accessible to the client, with the option to take place in the client's home when required.

### Short-Term Assistance

A non-recoverable payment will be provided to clients who disagree with the outcome of their ongoing claim's reassessment, which will top up a client's payment to match what they previously received until a decision can be made on their appeal.

### Mitigation of the bedroom tax

The Scottish Government invests over £50 million per year to mitigate the effect of the UK Government's bedroom tax. We estimate that 68% of Housing Benefit claimants who would otherwise be affected are disabled<sup>17</sup>.

### Improving employment outcomes for disabled people

The Scottish Government is taking action to reduce the disability employment gap in Scotland. It has set targets for 25% of external Scottish Government recruits to be disabled people, while investing up to £7 million in finding solutions to the barriers disabled people face in finding sustainable employment.

15 Department for Work and Pensions (2019), [ESA underpayments: progress on checking July 2019](#)

16 Scottish Government (2019), [Disability assistance in Scotland: analysis of consultation responses](#)

17 This refers to the proportion of people with the Housing Benefit bedroom tax applied who also claim ESA, taken from DWP Stat-Xplore. Statistics are not published on the number of UC claimants who are subject to the bedroom tax.

# 1. INTRODUCTION

Since 2013 the Scottish Government has produced a series of annual reports examining the impacts of UK Government welfare reforms on people in Scotland. In 2017 a supplementary report was published focusing on the effect of welfare reforms on disabled people<sup>18</sup>. This report updates that analysis by focusing on new evidence which has become available.

Several welfare reforms over recent years have made it more difficult for many disabled people to access the support they need. This report examines the impacts of the introduction of Personal Independence Payment (PIP) for working-age disabled people, how disability benefits are changing for children and older people, and the changes in means-tested benefits for disabled people. It also draws on evidence from surveys reporting people's lived experience. The report concludes with discussion of the Scottish Government's approach to providing disability benefits and policies to support disabled people.

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18 Scottish Government (2017), [UK welfare policy: impact on disabled people](#)

## 2. CONTEXT

Disability benefits play a crucial role in reducing poverty and supporting social inclusion for disabled people, because disabled people can be faced with higher barriers to employment, lower pay when in work and higher living costs.

When welfare reforms reduce household incomes, the effect can be particularly negative for disabled people, who can find it more difficult to increase their earnings to compensate. Higher barriers to work mean that disabled people are much less likely to be employed – in 2018 the Scottish employment rate for disabled people was 45.6%, much lower than the 81.1% employment rate of people who were not disabled<sup>19</sup>. That was despite economically inactive disabled people being more likely to want to work than economically inactive non-disabled people – in 2017 two thirds of inactive disabled people stated they were inactive because of poor health<sup>20</sup>.

Disabled people who are employed also, on average, receive lower pay. The Equalities and Human Rights Commission estimated that between 1997 and 2014 disabled men were paid an average of 13% less per hour worked than other men, while disabled women were paid an average of 7% less per hour than other women<sup>21</sup>.

Everyday living expenses can also be higher for disabled people. Extra costs can arise, such as the cost of specialist equipment to help live independently, or higher energy and transport costs. Families with disabled children across the UK are much less likely to be able to afford to take a holiday away, or replace worn out furniture, clothes or important household electrical goods<sup>22</sup>.

These additional costs are recognised by the Social Metrics Commission's poverty measurement tool, which shows that across the UK poverty rates for people living in families with at least one disabled person are significantly higher (28%) than they are for those living in families with no disabled people (19%)<sup>23</sup>. The Commission estimate that almost half, or 48%, of people in poverty live in a family where someone is disabled.

Official statistics on poverty in Scotland also show that households with someone disabled in the family are around 7 percentage points more likely to live in relative poverty after housing costs<sup>24</sup>. However, these statistics also show just how important disability benefits are. When the value of any disability benefits received are deducted from household disposable incomes, the poverty rate for disabled households is almost twice (30%) that of others (16%).

19 Scottish Government (2019), [Equality Evidence Finder](#)

20 Scottish Government (2018), [A Fairer Scotland for Disabled People: employment action plan](#) p. 33 and p. 23

21 Equality and Human Rights Commission (2017), [The disability pay gap](#) p. 44

22 Scope (2019), [Disability Price Tag policy report 2019](#), p. 9

23 Social Metrics Commission (2019), [Measuring Poverty 2019](#) p. 32 and 33

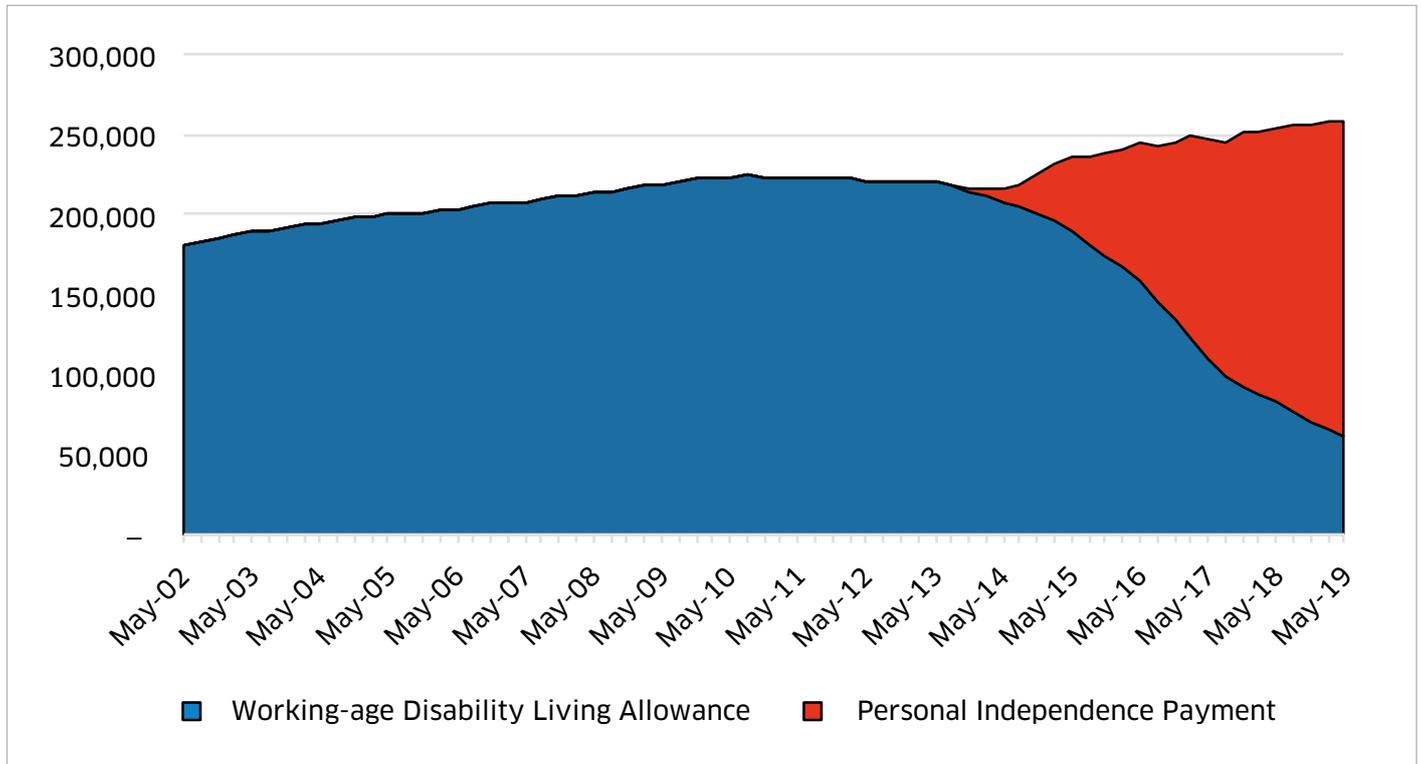
24 Scottish Government (2019), [Poverty and income inequality in Scotland: 2015-2018](#) associated tables

### 3. THE INTRODUCTION OF PERSONAL INDEPENDENCE PAYMENT

Personal Independence Payment (PIP) was first announced in the UK Government's 2012 Welfare Reform Act and is currently replacing Disability Living Allowance (DLA) for people who were under the state pension age when PIP was introduced<sup>25</sup>.

When it was first introduced in 2013 the UK Government had expected that PIP would be fully rolled out by 2015/16. In fact, rollout is still not complete, and for working-age people PIP caseload only overtook the DLA caseload in Scotland in February 2017<sup>26</sup>. The most recently available data show that PIP claimants represented 76% of working-age claimants of the two benefits in May 2019. The transition from working-age DLA onto PIP is shown in Figure 1 below.

**Figure 1 - Number of working-age people in Scotland claiming DLA or PIP**



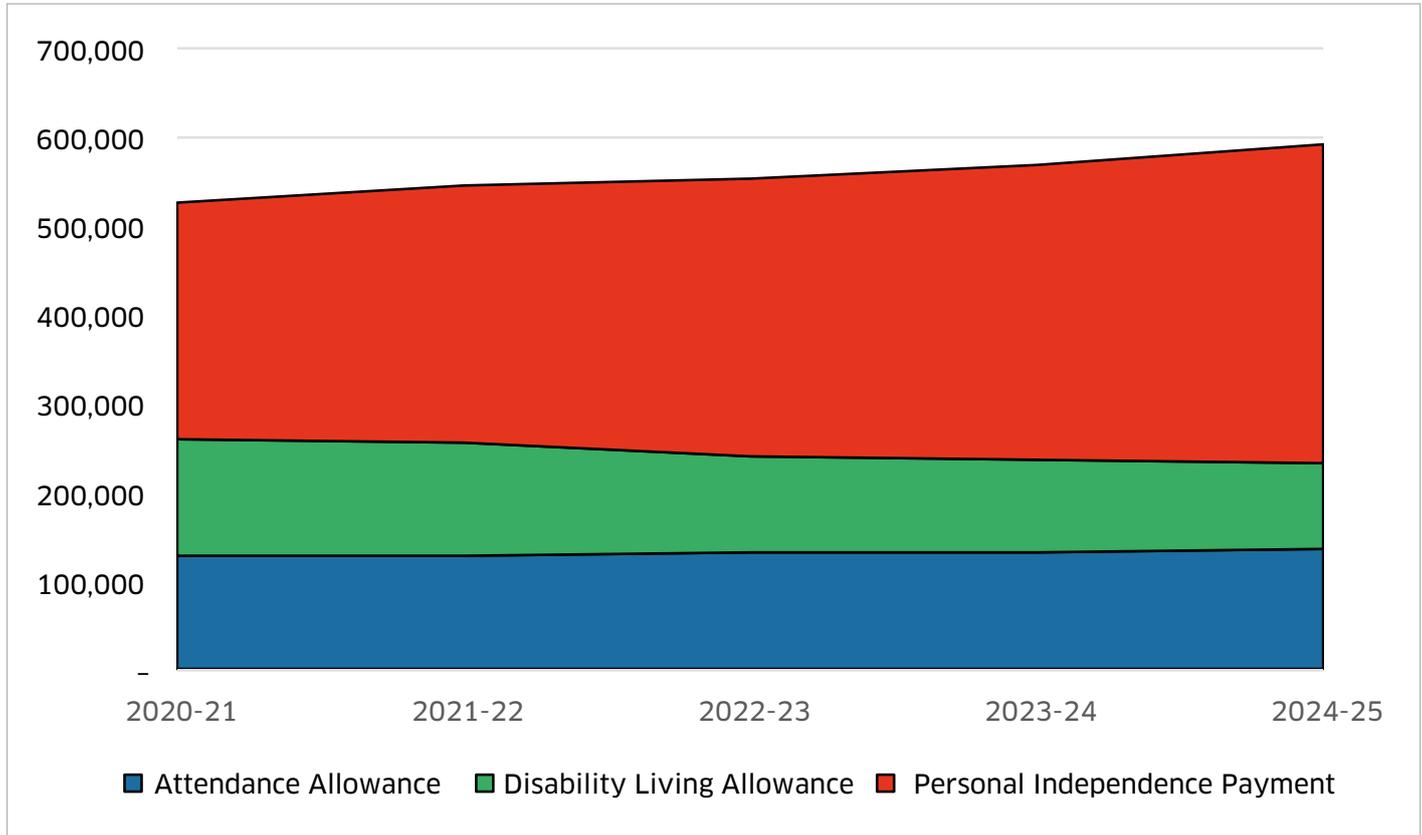
Source: DWP Stat-Xplore

25 For new claimants, PIP is a working-age benefit, meaning people can no longer make a new claim to it when they reach pension age. However, DLA claimants who were under pension age when PIP was first rolled out in 2013 are still in the process of being moved onto the benefit. Some of these people were close to state pension age in 2013, meaning that they were, or will be, pensioners by the time they move on to PIP. Because of this, and because PIP entitlement does not automatically end when a claimant reaches pension age, over time the number of pension-age PIP claimants is continuing to increase. Disability benefits for pensioners are discussed in more detail in section 4.2

26 The state pension age has changed over recent years. To ensure comparability of results across the multiple years we examine, the 16-64 age group has been selected as a proxy for working-age households. Scottish Government analysis throughout this report therefore treats people aged 16-64 as working-age, and people aged 65 or over as pension-age.

Over the coming years PIP is estimated to become the largest benefit administered by the Scottish Government, both by expenditure and by the number of people receiving the benefit. The Scottish Fiscal Commission (SFC) estimate that the number of people claiming PIP will almost double to around 357,000 in 2024/25, from 196,000 in May 2019. Figure 2 presents the SFC's forecasted caseload for the three largest disability benefits being devolved to Scottish Government: PIP, DLA and Attendance Allowance (AA).

**Figure 2 – Forecasted number of PIP, DLA and AA claimants in Scotland**



Source: Scottish Fiscal Commission estimates, May 2019<sup>27</sup>

### 3.1 The cost to Government of Personal Independence Payment

The cost of running PIP has continually exceeded estimates. Like other policies introduced in the UK's 2012 Welfare Reform Act, such as Universal Credit and the Benefit Cap, PIP was initially expected to reduce social security spending.

The Office for Budget Responsibility's December 2012 estimate of the impact of PIP predicted that by May 2018, the switch from working-age DLA to PIP would save £2.8 billion per year in UK welfare spending<sup>28</sup>. However, in 2019 the Office for Budget Responsibility (OBR) estimated that PIP has, and will, cost substantially more than it would have to continue DLA. The OBR estimated that continuing working-age DLA across the UK since 2013, rather than implementing PIP, would have cost around £9.5 billion in 2018/19. Instead, by rolling out PIP, the DWP now forecast they will spend £11.6 billion<sup>29</sup>.

27 Scottish Fiscal Commission (2019), [Scotland's Economic and Fiscal Forecasts May 2019](#)

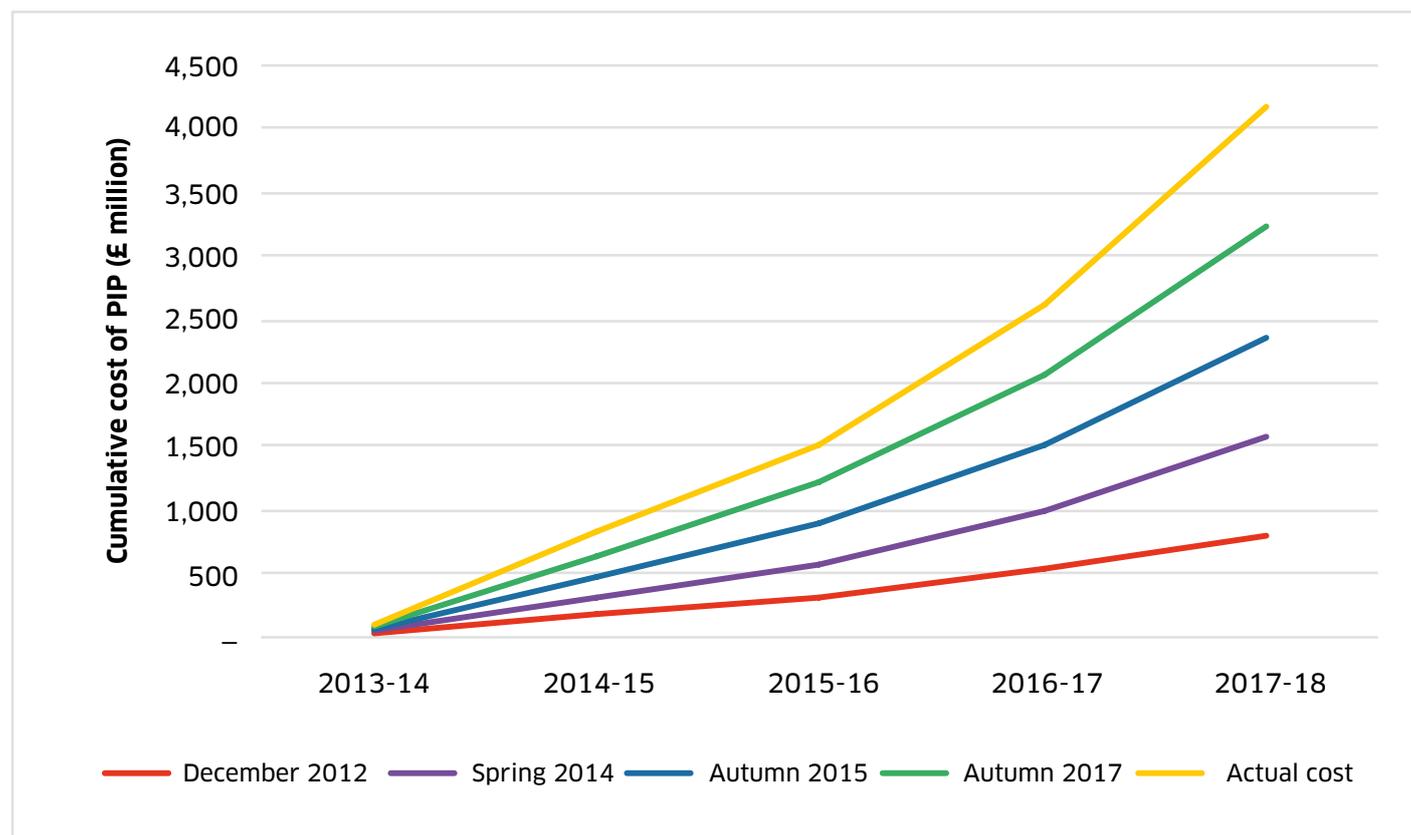
28 Office for Budget Responsibility (2019), [Welfare trends report – January 2019](#) p. 63

29 Combined 2018/19 UK-wide spending on PIP and working-age DLA, taken from Department for Work and Pensions (2019), [Benefit expenditure and caseload tables 2019](#) Outturn and forecast: Spring Statement 2019, table 2a

We have estimated that PIP has also cost much more than expected in Scotland. A Scottish share of the OBR's original PIP cost forecast in December 2012 places the cost of PIP in Scotland at £810 million in 2017/18<sup>30</sup>. Forecasts from the OBR's report in January 2019 show that, in fact, PIP spending in Scotland was around £930 million.

As more information becomes available, the estimated cost of PIP has increased with each round of OBR forecasts. Despite a slower than expected rollout of PIP, the actual cost of the policy has continually surpassed these estimates, as shown in Figure 3.

**Figure 3 - Estimated and outturn cumulative PIP spending in Scotland, by date of OBR forecast**



Source: Scottish Government calculations, based on OBR Welfare Trends Report - January 2019 background data

The OBR's initial spending estimate in December 2012 was underpinned by one key study, the results of which would not later be matched by outturn data. In this study the DWP conducted a test of draft PIP assessment criteria on 900 volunteer DLA claimants. The results suggested PIP would be a much more difficult benefit to claim than DLA, leading to a PIP caseload with 600,000 fewer claimants than working-age DLA. For example, the test suggested that only 35% of new PIP claims would be successful.

<sup>30</sup> Scottish figures in this section are based on Scottish Government calculations made using background data from Office for Budget Responsibility (2019), [Welfare trends report - January 2019](#).

Once PIP rollout began, outturn data provided a stronger evidence base which allowed the OBR to improve the accuracy of their forecast. The most recent Welfare Trends Report, published by OBR in December 2019, explains that in practice the success rate of PIP claims has not been quite as low as originally anticipated during its design, while the number of new claims for the benefit has been higher than expected<sup>31</sup>. The report explains that average awards were also higher than expected, in large part because a higher-than-expected share of the PIP caseload received a care component in their award. This is because PIP does not include an equivalent to DLA's lowest care rate, which was expected to reduce the benefit caseload as people with less serious care requirements ceased to qualify. However, OBR report that instead this appears to have led to more PIP cases being awarded the equivalent of DLA's middle care rate.

### 3.2 Claim success rates in the transition from DLA to PIP

The DWP is currently undergoing the process of migrating working-age DLA claimants onto PIP. People who receive DLA will not automatically receive PIP entitlement when they are moved over, but are reassessed to check whether they fit the new PIP award criteria. Since the rollout of PIP, official statistics show that 25% of people undergoing their reassessment in Scotland have lost their disability benefit entitlement entirely<sup>32</sup>. In total, 39,000 people have lost entitlement to disability benefits, representing a minimum loss per claimant of £1,200 per year, scaling up to £7,740 per year, depending on which elements of DLA they were entitled to<sup>33</sup>. As of May 2019 there were 61,000 working-age DLA claimants in Scotland. Given that 25% of people who have gone through reassessment lost entitlement, then historic trends suggest around 16,000 of these 61,000 DLA claimants could lose entitlement during the reassessment process.

While many people have lost DLA through reassessments, the success rate for new claims is in fact far lower. More than half of new claims to PIP are unsuccessful and thus far 167,000 unsuccessful new claims to PIP have been made across Scotland. That means that despite representing 67% of all assessments, new claims represent only 56% of PIP awards while accounting for 81% of all claims which are refused, or 'disallowed'.

### 3.3 Award increases and decreases when moving from DLA to PIP

As discussed above, people can lose out during the PIP transition by having their disability benefit entitlement end because they do not fit the stricter PIP award criteria. However, many more people have lost entitlement by receiving a lower award under PIP than they did under DLA. This section summarises the available evidence on the number of people gaining (through receiving a higher award) and losing entitlement (by receiving a reduced award, or having their entitlement end altogether) in the transition from DLA onto PIP<sup>34</sup>. Across Scotland, the number of people gaining or losing entitlement from the reassessment process is fairly evenly split, as shown by Figure 4.

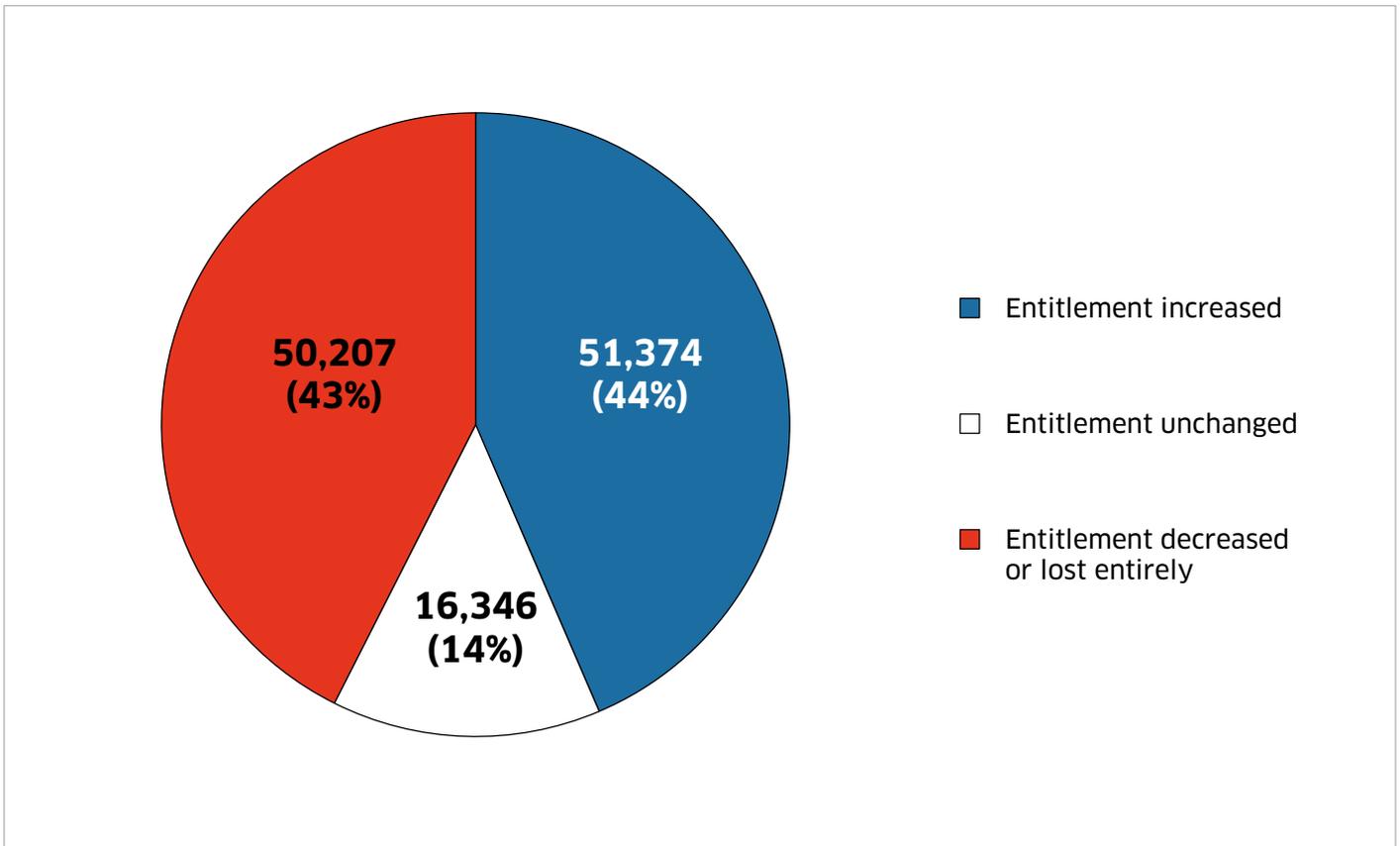
31 Office for Budget Responsibility (2019), [Welfare trends report – December 2019](#), p. 30

32 Calculations in this section are made using official figures from Department of Work and Pensions (2019), [Stat Xplore](#). This data refers to initial decisions at the assessment centre. Official data is unavailable to determine how many of these cases resulted in an appeal which overturned the initial decision.

33 Department for Work and Pensions (2019), [Disability Living Allowance for adults](#).

34 Statistics in this section are based on DLA to PIP reassessment outcomes October 2018 data available from Department for Work and Pensions (2018), Personal Independence Payment: April 2013 to October 2018. Breakdowns of claim success rates by age, gender and health condition are available at Great Britain level only. Statistics in this section refer to the cumulative total of all reassessment outcomes between October 2013 and October 2018.

**Figure 4 - Number of people in Scotland gaining or losing from DLA to PIP transition between 2013 and 2018**



Source: DWP PIP Statistics<sup>35</sup>

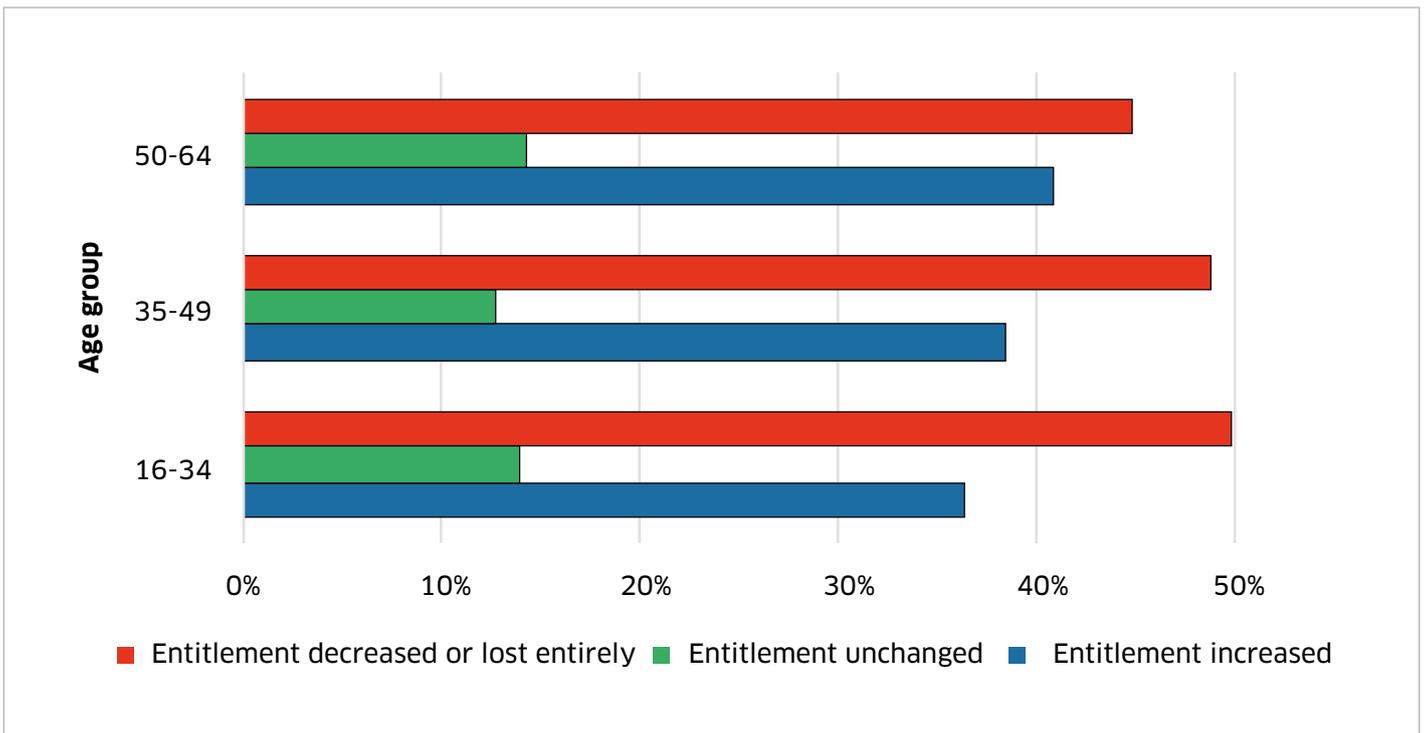
Of people being reassessed in Scotland, 44% were eventually entitled to a higher PIP award than they received on DLA, while 43% lost entitlement or saw their entitlement decreased. This 43% failure rate of PIP claims in Scotland is somewhat lower than across the rest of Great Britain, where 46% of reassessments result in a decreased or entirely lost award. Finally, 14% of claimants experienced no change in their entitlement during the transition.

<sup>35</sup> Awards which have decreased include awards which were disallowed before and after visits to assessment centres, as well as withdrawn claims.

### 3.3.1 Award increases and decreases by age group

Official data on the number of people gaining or losing entitlement by age group, gender and health condition are unavailable at Scotland level. However, reviewing the available Great Britain-level data can indicate the likely trends in Scotland. These data consistently show that the younger the person in receipt of DLA, the more likely they have been to receive less after the transition to PIP, as shown in Figure 5.

**Figure 5 - Proportion of people in Great Britain gaining or losing from DLA to PIP transition, by age group, between 2013 and 2018**



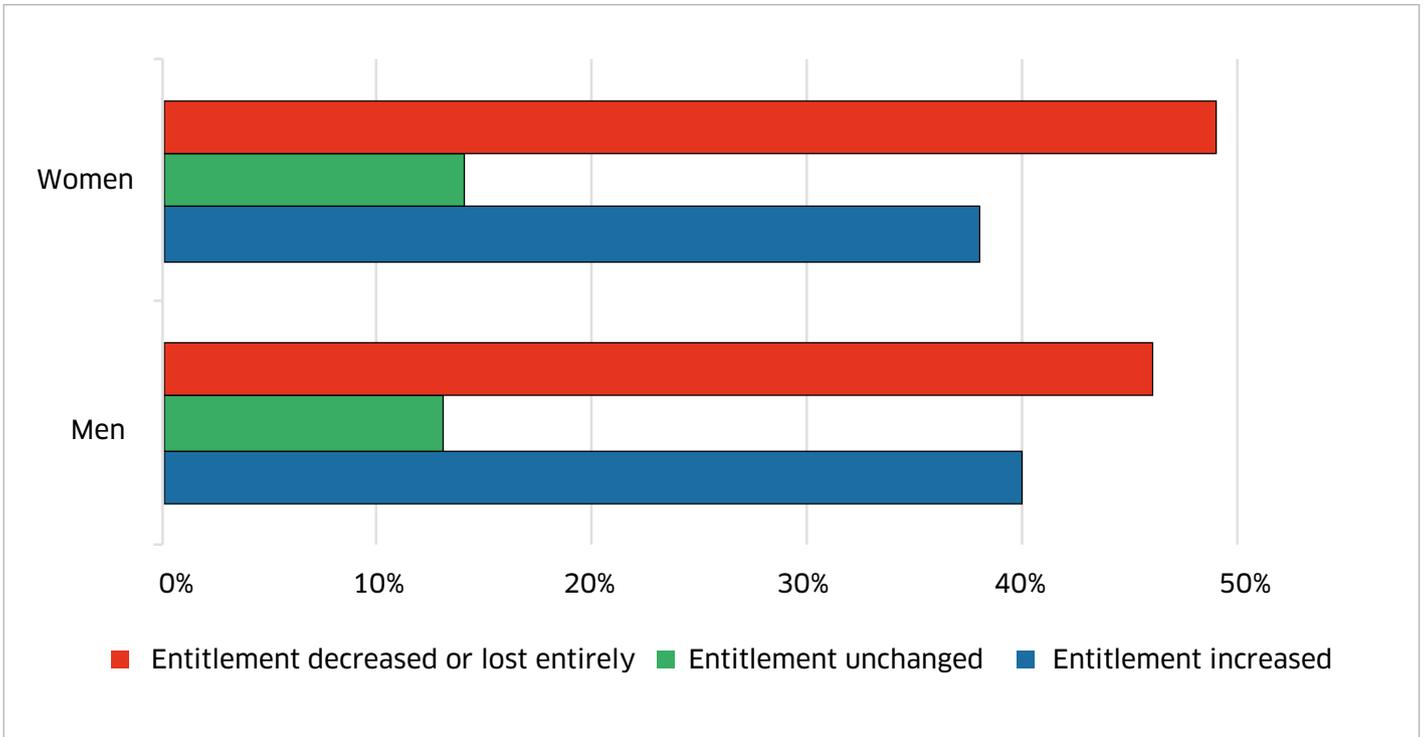
Source: DWP PIP Statistics

Regardless of age group, across Great Britain people transitioning from DLA to PIP are more likely to see their award decreased or lost than increased. However, the risk of decreased income is most pronounced for adults aged under 35. Among this age group 50% saw their award reduce or lost entitlement entirely, compared to only 36% being awarded more.

### 3.3.2 Award increases and decreases by gender

Across Great Britain women have been more likely to lose entitlement during the PIP transition than men, as shown by Figure 6.

**Figure 6 – Proportion of people in Great Britain gaining or losing from DLA to PIP transition, by gender, between 2013 and 2018**



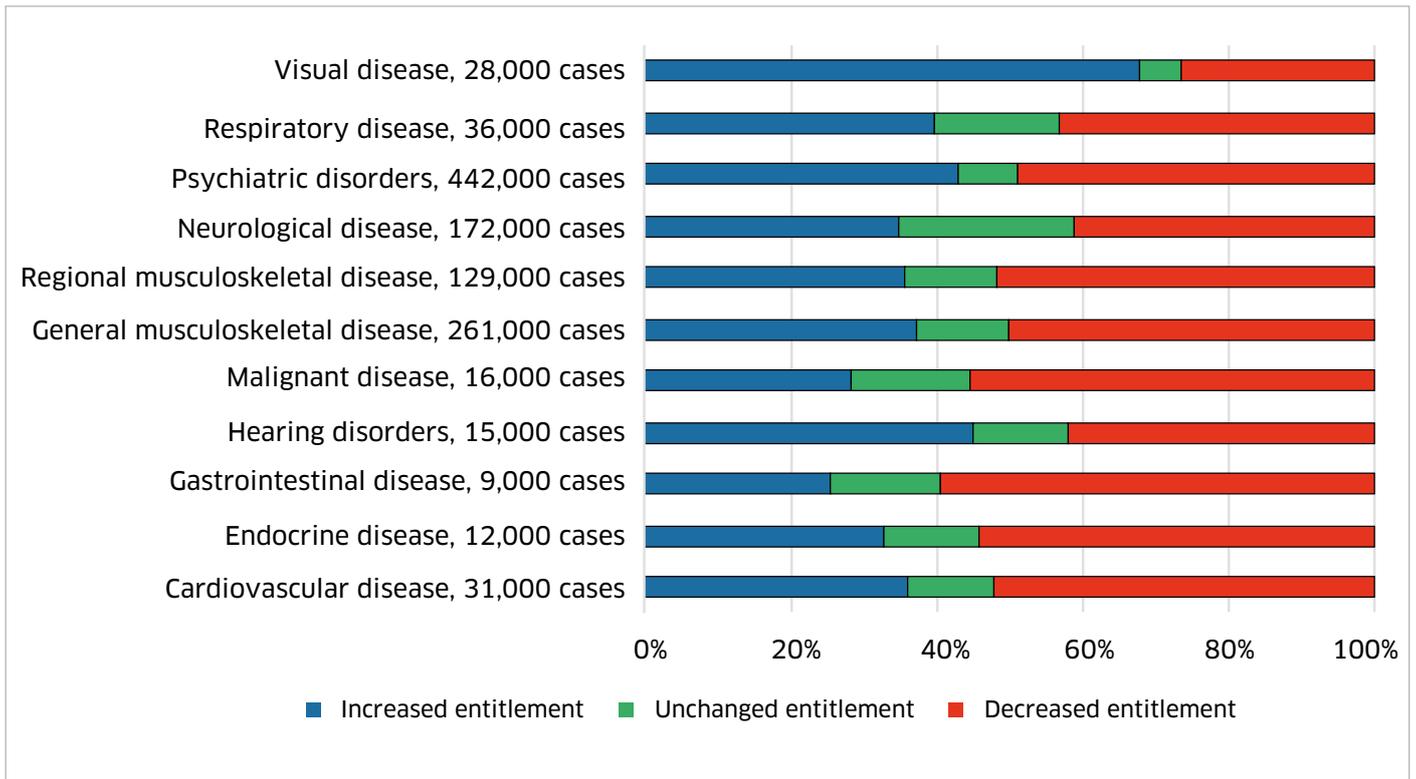
Source: DWP PIP Statistics

Although both male and female DLA claimants are more likely to lose than gain entitlement, women are more likely to lose entitlement than men. Across Great Britain women were 29% more likely to lose entitlement than gain it, while men were 15% more likely to lose than gain.

### 3.3.3 Award increases and decreases by health condition

Figure 7 summarises the outcome of DLA to PIP transition across Great Britain, this time broken down by each claimant's main disabling condition as recorded in the claimant's pre-existing DLA award.

**Figure 7 – Proportion of people in Great Britain gaining or losing from DLA to PIP transition, by health condition, between 2013 and 2018**



Source: DWP PIP Statistics<sup>36</sup>

As shown above, people with impaired sight have, on average, tended to benefit from moving to PIP – around two thirds will receive higher payments from PIP than they did from DLA. People with impaired hearing have also been more likely to gain than to lose from the transition - 45% gained entitlement while 42% lost. However the picture is quite different for people who suffer from other common types of disease. The data show that, across Great Britain, the transition to PIP has caused:

- 56% of claimants with malignant diseases (such as cancer) to lose income, representing 9,000 people.
- Over half of claimants with musculoskeletal diseases (such as arthritis) to lose income, representing 197,000 people.
- 41% of claimants with neurological diseases (such as epilepsy) to lose income, representing 71,000 people<sup>37</sup>.
- 49% of claimants with psychiatric disorders (such as attention deficit hyperactivity disorder) to lose income, representing 216,000 people<sup>38</sup>.

36 This chart examines categories of disease for which at least 5,000 reassessments have taken place across Great Britain. The categories of disease included in this chart represent around 94% of all PIP reassessment outcomes.

37 It is noted that within this category, there are some types of neurological disease where people have been more likely to gain than to lose. This includes people with Parkinson's disease, of whom 40% saw their entitlement increase and only 26% decrease, and multiple sclerosis (33% gained while 32% lost). However, this is outweighed by the impact of epilepsy sufferers, who are among the claimants most likely to lose entitlement. Of claimants with epilepsy, 63% lost entitlement (representing 24,000 people), while only 28% gained. This means that, as a category of disease, neurological disease had more losers (41%) than gainers (35%).

38 Within this category, people with learning difficulties or dementia were substantially more likely to gain entitlement than lose it. However, the effect of this is outweighed by people with other categories of psychiatric disorder, such as attention deficit hyperactivity disorder being much more likely to lose entitlement as a whole

### 3.4 Mandatory Reconsideration and tribunal outcomes

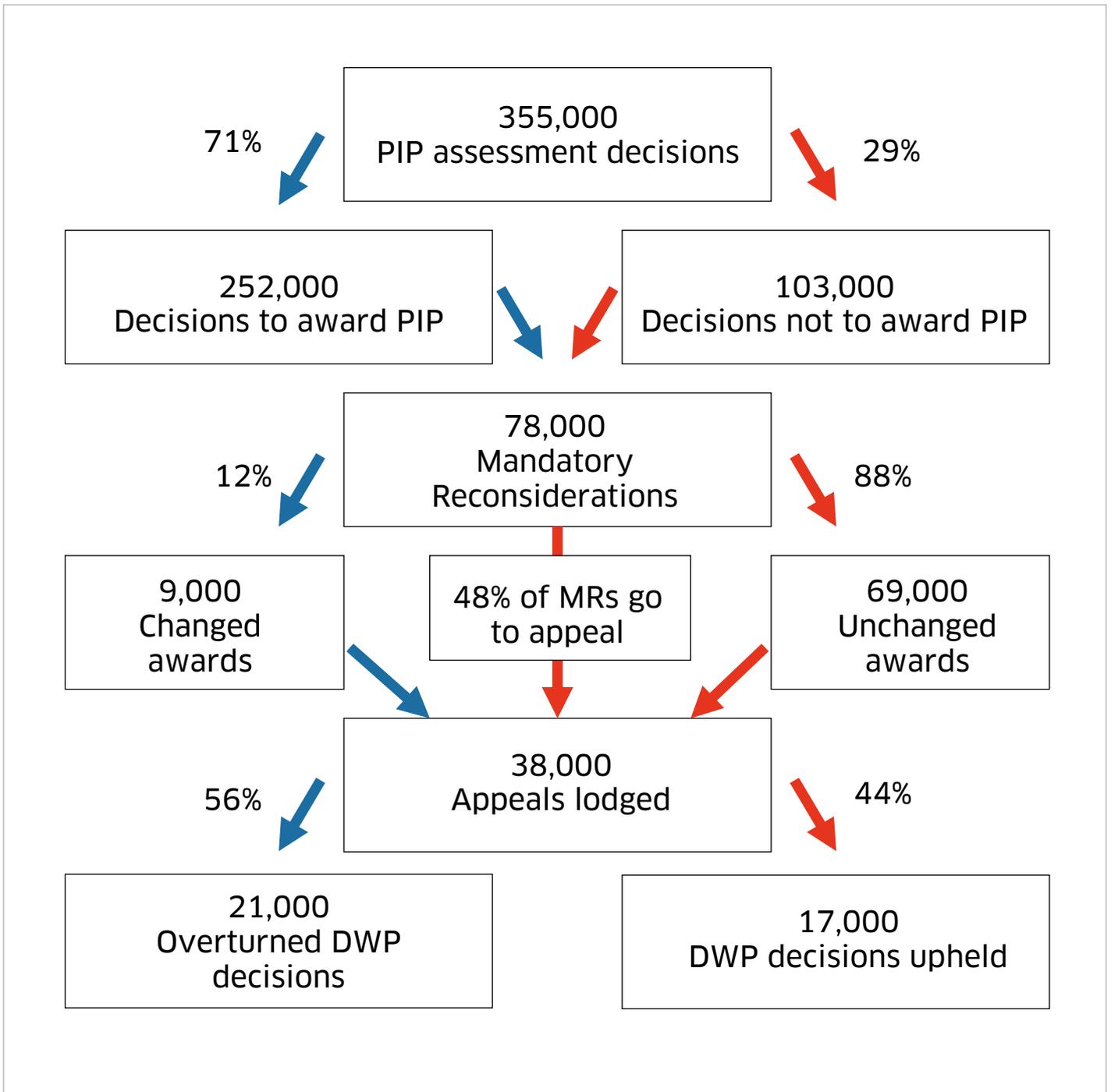
PIP claimants may choose to make an appeal if, for example, they feel they have been incorrectly refused entitlement or if they feel they should have received a higher award.

Where PIP claimants feel the DWP did not make the right decision on their award, they must first ask for the DWP to review their decision. This is called Mandatory Reconsideration (MR). Once the MR decision has been made, either in the claimant's favour or not, claimants are then entitled to lodge a further appeal, with the aim of having DWP's decision overturned at an independent tribunal. Figure 8 shows the outcome of PIP assessments (including both new claims and reassessments) in Scotland over the six years to June 2019, how many of these later led to an appeal, and what the final outcome was<sup>39</sup>.

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39 These figures relate to unique cases, not unique people. It is possible that one person could make more than one claim to PIP, and therefore appear more than once.

Figure 8 – PIP assessment and appeal outcomes in Scotland between April 2013 and June 2019



Source: DWP PIP statistics<sup>40</sup>

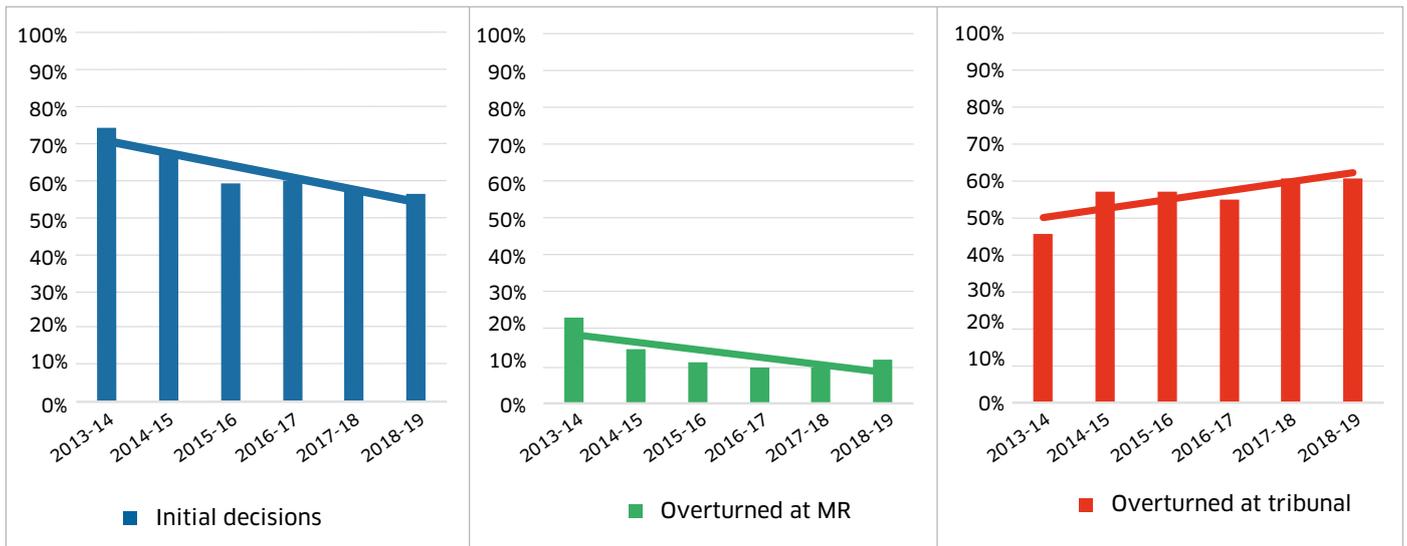
40 Statistics in this diagram are taken from Department for Work and Pensions (2019), [Personal Independence Payment: April 2013 to July 2019](#). The statistics here refer to PIP decisions that have reached the assessment stage, i.e they exclude claims which DWP disallowed before the assessment stage. They also exclude award reviews and change of circumstance decisions.

With 71% of PIP decisions leading to an award, Scotland actually has a higher award success rate than any country in Great Britain, or any of the regions of England. However, of all these geographical areas Scotland also has the lowest success rate of MR decisions, at 12%. Scotland also has the highest number of appeals lodged as a share of total MRs registered – at 48% this is more than 5% higher than the equivalent rate in Wales, or any region of England. Although 56% may seem to be a relatively high success rate of appeals, this is in fact lower than most other regions of Great Britain, where the success rate of appeals is often even higher.

Taken together, this evidence suggests that there have been 30,000 cases in Scotland where claimants have undergone an appeal process in order to receive their correct entitlement. Importantly, tribunal decisions indicate that in 21,000 cases the DWP made an incorrect decision twice, i.e. despite having had the opportunity to reconsider the decision.

Whilst not available for Scotland, Great Britain level data on claimant success rates at initial assessment, MR and appeals over time provide useful insights. Figure 9 shows what proportion of assessment, MR and tribunal decisions were made in the claimant’s favour for new claims in each year since 2013/14.

**Figure 9 – Success rates of assessments, MRs and tribunal appeals for new claims across Great Britain, by year, with trend lines showing change over time**

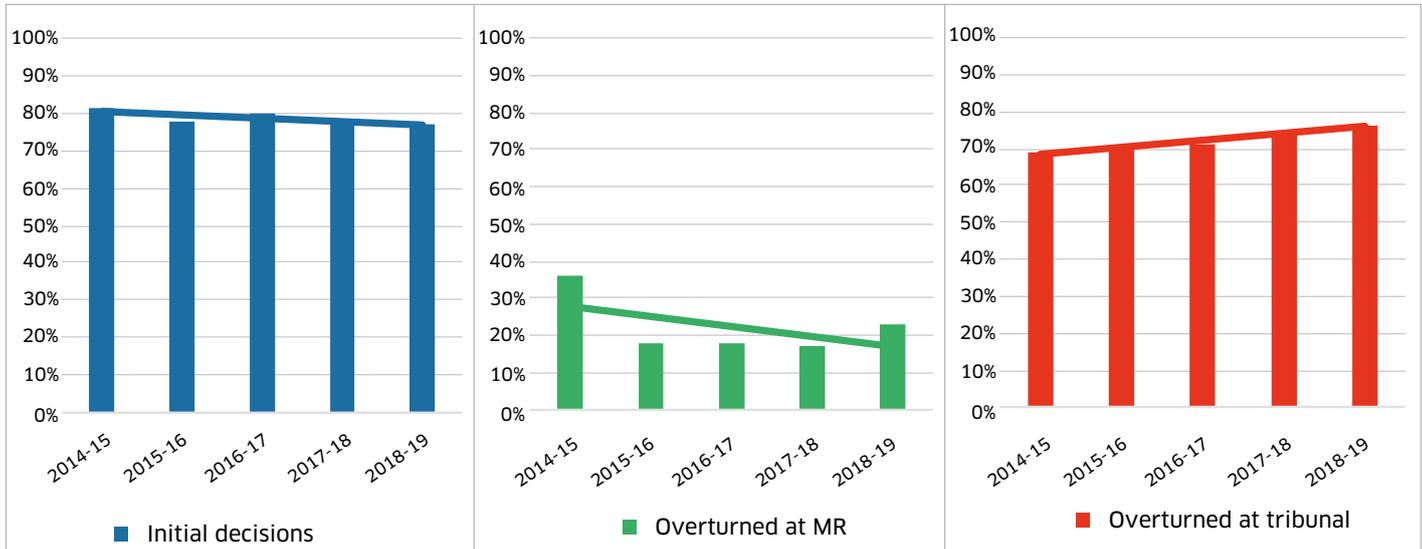


Source: DWP PIP statistics

Figure 9 shows the average change over time in the success rate of each type of decision. For new claims, it is clear that claimant success rate at initial decision, and during the DWP’s MR decision, are declining over time. Conversely, tribunal success rate has broadly increased over time. This would suggest that over time the DWP has been rejecting a greater proportion of new claims. Meanwhile, tribunal courts are finding in favour of the claimant, and against the two earlier DWP decisions, in an increasing share of the tribunal cases presented to them.

Figure 10 presents the equivalent figures for reassessment decisions of claimants moving onto PIP from DLA, beginning in 2014/15 due to the small number of reassessed claims in 2013/14.

**Figure 10 - Success rates of reassessed claim assessments, MRs and tribunal appeals across Great Britain, by year, with trend lines showing change over time**



Source: DWP PIP statistics

A similar, although less pronounced trend is visible when examining the success rates of reassessment cases over time. On average, success rate at initial decision has declined moderately over the five years, while MR success rates are also somewhat lower than they were at their peak in 2014/15. Like new claims, success rate at appeal is increasing over time, suggesting that tribunals are increasingly likely to find that DWP made an incorrect decision.

### 3.5 Lived experience of UK Government disability benefits

This section examines the available evidence on claimants' lived experience to gain more insight into people's views of the disability benefit system.

As part of its programme to prepare for taking on responsibility for social security benefits, the Scottish Government has set up Social Security Experience Panels to better understand the needs, experiences and views of benefit claimants. Over 2,400 participants with recent experience of DWP benefits have registered as panel members<sup>41</sup>.

The DWP has also undertaken two surveys to explore disabled claimants' experiences of the system and the PIP claim process. The DWP claimant service and experience survey<sup>42</sup> provides a high-level view of overall claimant satisfaction. This survey shows that the majority (89%) of respondents who did not have a disability were satisfied with the service DWP provided. Although the majority of disabled respondents were also satisfied, disabled people were almost twice as likely to report they were not (only 80% of disabled people reported satisfaction with the DWP service).

41 Quantitative statistics around the Experience Panels in this section refer to the "About Your Benefits and You" survey conducted between July and September 2017. 1,144 people with experience of social security completed the survey. However the composition of respondents is not representative of the wider Scottish population, so the results here should only be considered as representing the views of the respondents themselves.

42 Department for Work and Pensions (2019), [DWP claimant service and experience survey 2017 to 2018](#), p. 33

The DWP PIP claimant experience survey<sup>43</sup> provides a more detailed view of claimants' experiences of specific areas of the PIP system, such as how they felt about the application, assessment and appeal processes.

In understanding why claimants of disability benefits are less likely to be satisfied with the benefit system, the available evidence from lived experiences points towards several key issues. We have summarised the issues as: a system that causes stress and anxiety for claimants; a lack of trust in the benefits system; complex or unsuitable application processes; and a lack of help and communication. Evidence discussed in the remainder of the section is taken from two main sources:

1. Scottish Government Experience Panel results<sup>44</sup>
2. DWP 2018 PIP claimant experience survey<sup>45</sup>

#### **BOX A: A system that causes stress and anxiety for claimants**

The most concerning aspect of the feedback gathered from the Scottish Government's Experience Panels is the level of stress and worry that the process of claiming disability benefits can cause. Some participants suggested that the stress from the process can leave people feeling "suicidal". One participant said:

*"I spend from the time I write any form to the time I get the response on my knees mentally with fear, anxiety and stress."*

Comparable information is not available in the DWP's PIP claimant experience survey as it does not include questions on whether the application process can cause stress and anxiety. Nonetheless, only 14% of survey respondents said that completing the PIP claim form was easier than they expected. A further 49% found the experience as difficult as they expected, and 34% found it more difficult than expected.

Many Experience Panels participants identified the health assessment stage of the process as particularly stressful – some participants called the assessments degrading and humiliating. Reasons for this stress include claimants having little or no control over the assessment's time and location, poor transport links to the assessment centre and assessment centres not being fully accessible. Some participants stated the assessor themselves made inappropriate comments, for example:

*"[The assessor] didn't agree my daughter had problems using the toilet as she didn't wet/soil herself in the interview."*

A number of Experience Panels participants specifically identified the appeals process as a source of stress. Improving the appeals process was the third most common priority identified for improvement of the benefit system and was mentioned by 45% of respondents. Some claimants identified a fear of losing the benefit they had already been awarded as a reason why they declined to appeal. One participant said:

*"I know their decision is wrong, but do not have the time nor capacity to fight this further - I need to spend all my time / energy caring for her. The appeal stage beyond mandatory reconsideration is too complex and stressful and I feared losing what I already had."*

The DWP's PIP claimant experience survey also identifies stress as the most important factor in why people declined to appeal their PIP award – 37% felt the process would be too stressful to continue. Some survey respondents provided additional information, stating that the stress and anxiety of the appeal process could make their condition worse, and that they did not feel they had the physical and emotional energy it would take to see the appeals process through.

43 Department for Work and Pensions (2018), [Personal Independence Payment: claimant experiences of the claim process](#).

44 Experience Panels findings are drawn from the publications "About your benefits and you" and "Personal Independence Payment health assessments", both of which are available at Scottish Government (2017), [Social Security Experience Panels: publications](#).

45 Findings are taken from the final and technical reports available from Department for Work and Pensions (2018), [Personal Independence Payment: claimant experiences of the claim process](#).

### **BOX B: A lack of trust in the benefits system**

The Scottish Government's Experience Panels survey revealed that some participants not only distrusted the benefits system, but also felt distrusted by DWP staff, and went through the process of claiming disability benefits while feeling as if they were "on trial". Some Experience Panel participants felt that the disability benefit assessment process presented incentives for assessors to disallow claimants in order to help the government to reduce costs.

MRs were specifically described by one participant as a tick-box exercise with little or no prospect of success, which can delay the claimant's appeal. Other participants felt that DWP staff were unlikely to disagree with their colleague's assessments, and MRs simply added to the length and stress of the appeal process.

A number of Experience Panels participants highlighted how important it is for DWP staff to have a good working understanding of how disability can affect people. One participant explicitly pointed to the difference that having a good assessor made to their claim:

*"The assessor who came to assess my son for his PIP understood his condition and helped him through the assessment by her attitude - she stood out amongst everyone else I have had to deal with."*

However, many felt that assessors did not have a sufficient level of knowledge of their particular health condition to make an accurate assessment. They said that this led the assessors to ask inappropriate questions, caused stress for applicants and left the claimants less confident of receiving an accurate, fair and thorough assessment. One participant said:

*"I have attended PIP interviews with my children and been appalled at how little the person knew about their conditions. They wrote ridiculous comments on the report."*

Participants in the DWP's PIP claimant experience survey reported that a lack of trust in DWP to provide impartial advice was one of the reasons for not requesting help with their application from DWP. This was more pronounced during the MR and appeals process.

### **BOX C: A complex and unsuitable application process**

Of the Scottish Government's Experience Panels participants, 52% stated that the process of applying for a benefit was an important area for improvement. Feedback from PIP claimants highlighted the complexity of the process, such as:

*"P.I.P form is nearly 40 pages and very complicated. I was able to get help from somebody from Citizens Advice. Without their help I wouldn't have been able to apply successfully."*

The length and repetitiveness of the form was also highlighted, with the nature of some claimant's disabilities making it difficult for them to complete the forms provided. One claimant replied:

*"As my MS progresses, I find writing and typing increasingly difficult. The thought of having to fill out a PIP form yet again next year fills me with dread."*

A further concern was the inability of application forms to take into consideration the individuality of each person's condition. Experience Panels participants said it was difficult to explain invisible health conditions, or conditions which come and go. One participant stated:

*"Long phone calls & forms. If you do not fit into the set categories or your disability is hidden, you miss out on help. Perhaps things could be simplified and claimants not automatically assumed to be lying if a disability is not obvious."*

For face-to-face assessments, the majority of respondents to the DWP's PIP claimant experience survey were satisfied with their assessment's time and location. However, significant numbers of respondents were not - 31% of claimants felt the assessment was not in a location they could get to easily and 13% felt that the assessment venue was not accessible.

Many Experience Panels participants pointed out that travelling to an in-person health assessment was difficult because of their health condition. Some reported that the location picked for their assessment was not suitable for a variety of reasons e.g. because they were asked to travel an unreasonably long distance, or suitable parking was unavailable at the assessment centre.

Many respondents to the PIP claimant experience survey reported that the assessor did not ask them pertinent questions about how their illness affects them. For example, only around 40% said the assessor asked if they can repeat activities, while only around 60% said the assessor asked whether they can carry activities out safely. Although 72% of respondents felt the assessor listened to what they had to say, 22% felt that the assessor did not, and the same proportion stated that the assessor did not understand their application form and supporting evidence.

**BOX D: A lack of help and communication**

The Scottish Government's Experience Panels survey flagged the need for better advice and support when claiming benefits as the number one priority for improvement of the benefits system, having been identified by 71% of survey participants. More specifically, participants mentioned having issues with the clarity of letters received from the DWP, while others found the letters threatening. Several respondents noted the difficulty of reaching DWP over the phone, adding that the cost of the call is prohibitive for people on low incomes. Many participants had difficulty finding clear and understandable information about what benefits they were entitled to. One Experience Panels participant said:

*"..we were unaware my father was entitled to attendance allowance until a nurse informed him. He was lucky to have assistance to fill in the form through help at the Maggie's Centre. I know he would not have done this without help."*

The DWP's PIP claimant experiences survey found that over half (59%) of claimants required help completing the application form. However, of those looking for help, only 2% would choose to get help from the DWP.

The same survey found that when respondents received their decision letter, 50% thought it contained the right amount of detail, 26% thought it contained too little detail, while a further 21% thought it focused on the wrong kind of detail. Although a majority of claimants said they had at least some partial understanding, only 41% fully understood how DWP had reached their award decision, while 43% fully understood how the evidence they had provided to the DWP was taken into account. For example, only 19% of respondents said their decision letter referred to medical evidence, while 56% said it had not. Among the 32% of respondents who sought help in understanding the decision letter, only 23% decided to contact the DWP. Of those who contacted the DWP, 51% said that contacting the DWP did not give them a clearer understanding of the decision.

### 3.6 DWP Administrative exercise to identify underpaid claimants

This section focuses on two Upper Tribunal decisions which went against the UK Government. As a result of these decisions the DWP was required to undergo an administrative exercise to identify PIP claimants who have been wrongfully underpaid or excluded from PIP<sup>46</sup>.

The first relates to the decision of the England and Wales High Court that it is unlawful for DWP to treat claimants differently when their mobility problems are caused by mental, rather than physical, health conditions. Before this judgement, the DWP mobility descriptors, which are used to determine a claimant's level of entitlement, meant that claimants could receive a lower entitlement if their mobility issues were caused by 'overwhelming psychological distress'<sup>47</sup>. In his finding against the Secretary of State for Work and Pensions, Mr Justice Mostyn referenced the UK Government's defence that treating mental health conditions similarly to physical conditions could have "serious costs consequences", stating:

*"In my judgement, the 2017 regulations introduced (and I emphasise introduced) criteria to descriptors c, d and f, which were blatantly discriminatory against those with mental health impairments and which cannot be objectively justified. The wish to save nearly 1 billion a year at the expense of those with mental health impairments is not a reasonable foundation for passing this measure<sup>48</sup>."*

46 A brief explanation of the background of this decision is available at Department for Work and Pensions (2019), [PIP administrative exercise: progress on cases cleared, at 14 June 2019](#)

47 More information on the decision is available from Child Poverty Action Group (2018), [PIP and psychological distress](#).

48 The High Court's decision can be read in full at British and Irish Legal Information Institute (2017), [RF v Secretary of State for Work and Pensions](#), case number [2017] EWHC 3375.

The second decision relates to the ability of PIP claimants to undertake activities safely<sup>49</sup>. During the tribunal, the counsel representing the Secretary of State contended that PIP regulations meant that a claimant can be considered able to undertake an activity safely, unless it is “more likely than not” to cause them to suffer harm<sup>50</sup>. The tribunal judgement, however, disagreed, stating that:

*“An assessment that an activity cannot be carried out safely does not require that the occurrence of harm is “more likely than not”.”*

Because the court judgements both applied retrospectively, the DWP was required to identify claimants who may have been underpaid. As a result, the then Minister for Disabled People, Health and Work announced an exercise would be launched to review the cases of all people claiming PIP at that time, totalling 1.6 million claimants<sup>51</sup>. It was initially announced that an estimated 220,000 people could be affected by the judgement, and that the costs of implementing the exercise could be up to £3.7 billion by 2022/23. With 220,000 people affected from a caseload of 1.6 million, this would suggest that around 1 in every 7 claimants could be affected.

However, recent statistics published by the DWP show that in fact, out of 440,000 reviewed cases, only 3,500 arrears payments have been made, with an average value of £4,500 each<sup>52</sup>. This suggests that so far the exercise has only issued a back payment to around 1 in every 125 cases reviewed, far fewer than the 1 in 7 estimated to be affected during the announcement of the exercise.

49 More information on the decision is available from Child Poverty Action Group (2018), [‘Safely’ in Personal Independence Payment](#)

50 British and Irish Legal Information Institute (2017), [RJ, GMcL and CS v Secretary of State for Work and Pensions](#), case number [2017] UKUT 105 (AAC), paragraph 24.

51 Hansard (2018), [PIP Back Payments](#)

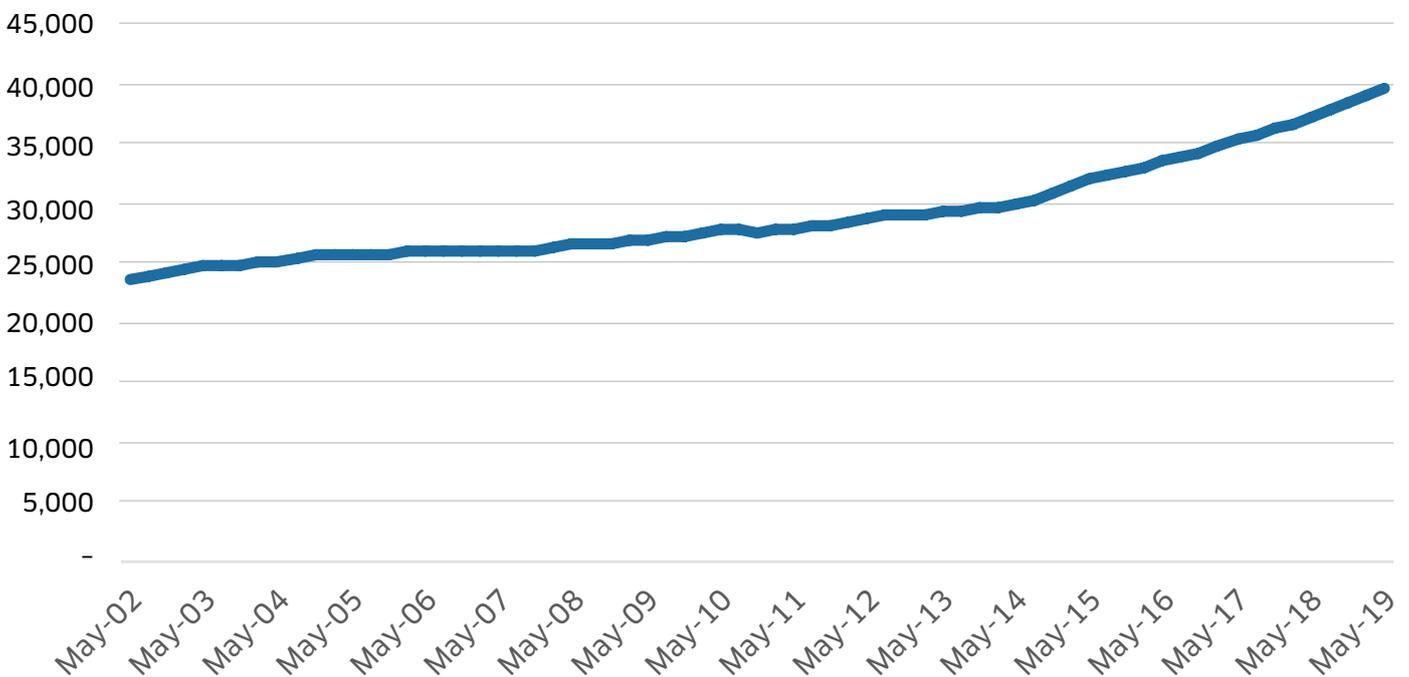
52 Department for Work and Pensions (2019), [PIP administrative exercise: progress on cases cleared, at 14 June 2019](#)

## 4. DISABILITY BENEFITS FOR CHILDREN AND OLDER PEOPLE

### 4.1 Disability Living Allowance for children

While PIP has been replacing DLA for working-age people, the guardians of disabled children can continue to make new claims to DLA and DLA claims for disabled children will remain valid until they reach the age of 16. While the replacement of DLA for working-age and pension-age people has greatly reduced the DLA caseload for those groups, the caseload for child DLA has continued on the same upward trajectory. In fact, in the six years to February 2019 (i.e. since the rollout of PIP) the caseload of child DLA has increased by 36%, as shown in Figure 11.

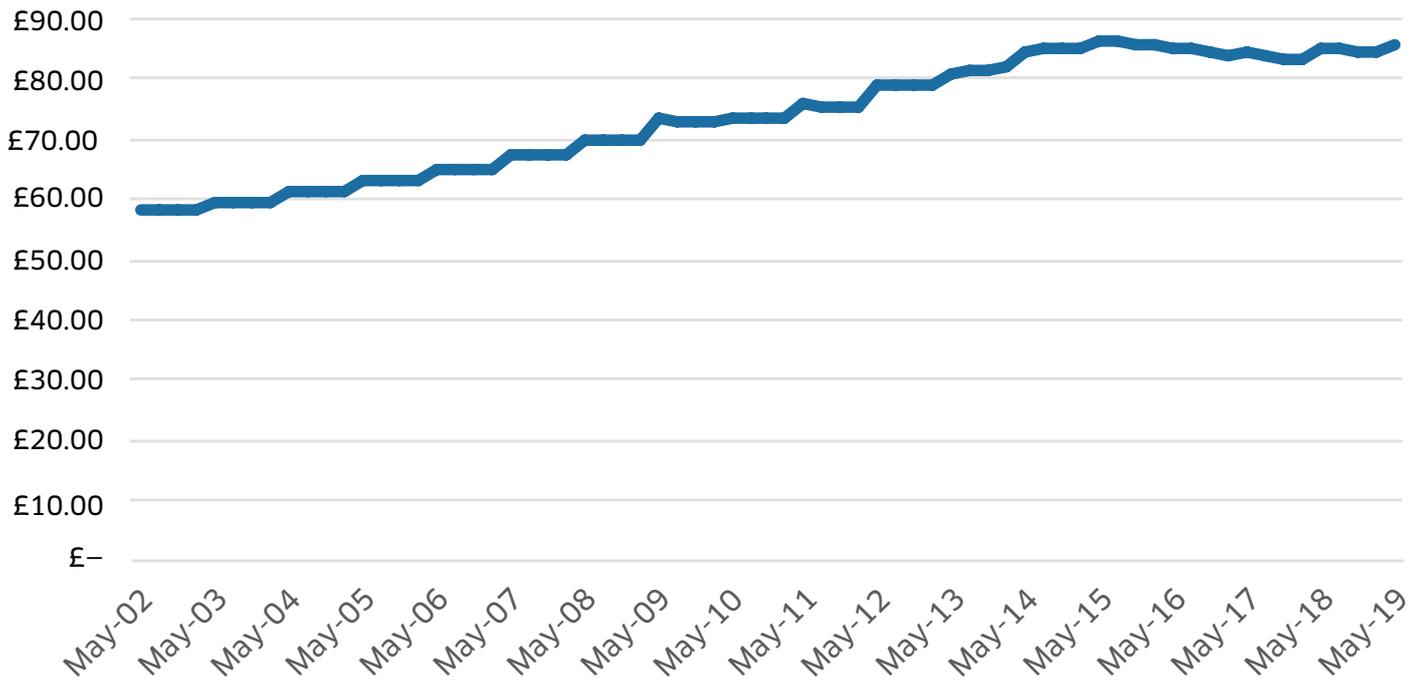
**Figure 11 - Child DLA caseload over time, Scotland**



Source: DWP Stat-Xplore

On the other hand, the average award of child DLA has seen a much slower increase over the same time period. Because disability benefits were exempt from the benefit freeze, the rate for each element of entitlement has kept pace with inflation e.g. the monetary value of the middle care component increased from £53 per week in 2013/14 to £58.70 per week in 2018/19. This represents a cumulative increase of over 10% in nominal terms.

Despite this, when we look at changes in the average entitlement to child DLA over time, the peak occurred in August 2015 when the average weekly award was worth £86.19. This is shown in Figure 12, which presents the long-term change in average child DLA awards in Scotland.

**Figure 12 - Child DLA average weekly awards over time, Scotland**

Source: DWP Stat-Xplore

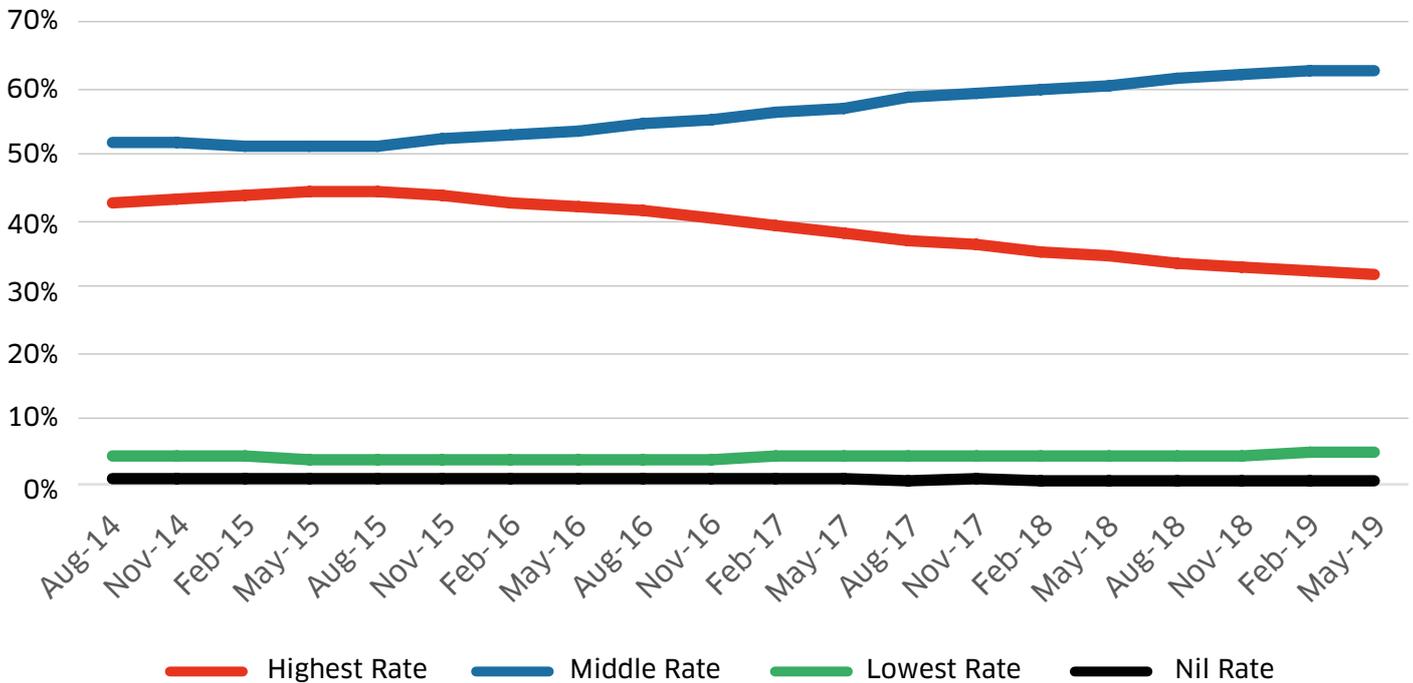
The most recent May 2019 data show that the average award is now worth slightly less than it was four years earlier. DLA awards are made up of care and mobility components, with components for people with more severe disabilities providing a higher level of award. For average awards to decrease despite components being updated by CPI each year requires that, on average, children are being awarded with less valuable benefit components at DLA assessments than they were before.

Our analysis indicates that much of this decrease in awards relates to changes in the composition of the benefit caseload, and how children with certain conditions have become less likely to receive the highest rate of the care component in recent years.

In August 2014, i.e. one year before the peak in the average child DLA award, the majority (around 60%) of the child DLA caseload had one of three main disabling conditions: - learning difficulties (40% of the caseload), behavioural disorders (10%) and hyperkinetic syndrome (10%). Five years later, the most recent May 2019 data show that around 70% of the caseload qualified for child DLA through one of these main disabling conditions.

Over the same time period, children with these conditions have increasingly been awarded a lower care component than they did before, as shown in Figure 13.

**Figure 13 – Breakdown of Child DLA caseload with main disabling condition categorised as “Learning Difficulties”, “Behavioural Disorder” or “Hyperkinetic Syndrome” by care component awarded, Scotland**



Source: DWP Stat-Xplore

Since mid-2015, children with these conditions have become significantly less likely to receive the highest care component, and more likely to be awarded the middle rate. This has, in turn, affected the average child DLA award over recent years, as more children with these conditions (representing most of the child DLA caseload) are awarded the £58.70 per week middle rate, rather than the £87.65 highest rate.

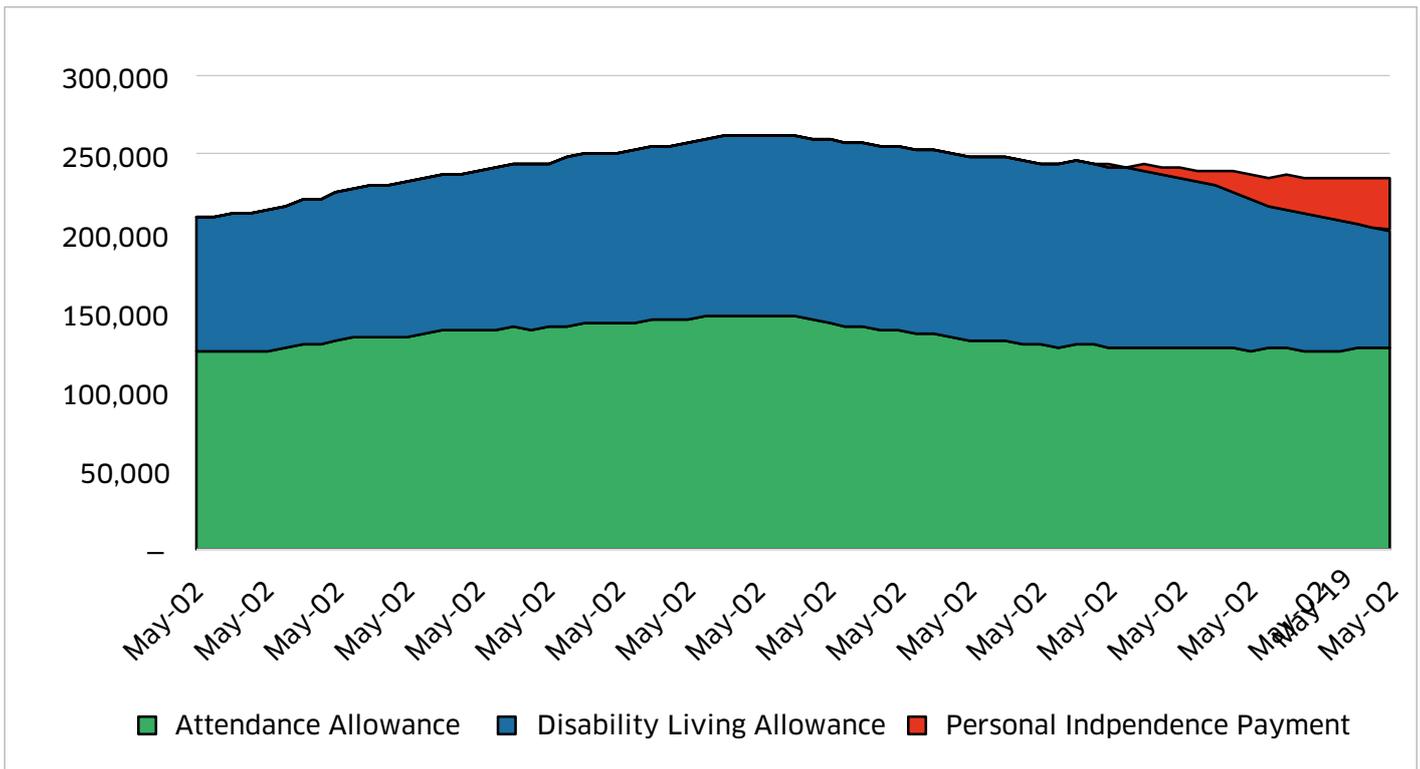
## 4.2 Disability benefits for pensioners

Disability benefits for people of state pension age are somewhat more complex than for children or working-age adults. Disabled pensioners can be on one of three benefits, depending on their circumstances:

- DLA: If already on DLA and older than state pension age in 2013 when PIP rolled out, people can continue their DLA claim.
- PIP: If younger than state pension age when PIP rolled out, people could have made a new PIP claim before reaching pension age. Alternatively, if they were already on DLA then the DWP will eventually migrate them onto PIP, even if they are now older than pension age.
- AA: If people make a new disability benefit claim when they are older than pension age, they will be referred to claim Attendance Allowance (AA).

This combination of rules means pension-age disability benefit claimants are spread across three different benefits, as shown in Figure 14.

Figure 14 - Caseload of pension-age disability benefit claimants over time, Scotland



Source: DWP Stat-Xplore

As shown above, AA has consistently been the most common disability benefit amongst older people. However, an increasing number of pension-age people are claiming PIP, as people who were younger than pension-age in 2013 move over from DLA. A further influx also occurs as people who claimed PIP while working-age reach pension-age.

## 5. THE REPLACEMENT OF EMPLOYMENT AND SUPPORT ALLOWANCE

The previous sections of the report have focused on the non-means tested disability benefits over which control is being devolved to the Scottish Government. However, working-age disabled people can also claim means-tested benefits, which are not devolved. The first of these, income-related Employment and Support Allowance (IR ESA) is gradually being replaced by Universal Credit (UC). People can still make a new claim to IR ESA, however only if they have recently been entitled to the severe disability premium (SDP) through IR ESA or another means-tested benefit<sup>53</sup>.

When applying for ESA, claimants undergo a Work Capability Assessment which determines what barriers to work they face. Depending on the outcome of this assessment, successful claimants can be placed in either the Work Related Activity Group (WRAG) or the Support Group. The Support Group provides a higher benefit award to claimants who are determined to not be able to undergo any work-related activity. The DWP's most recent estimates suggest that, as of 2016/17, around 84% of households who were entitled to claim income-related ESA or Income Support did so<sup>54</sup>.

However, the Full Service of UC, which is replacing ESA, is now live across Scotland. This means that people who are disabled, but have not recently qualified for the SDP, are now redirected to claim UC instead of ESA. When applying for UC, disabled people will undergo a similar assessment process to that used in ESA. They will either be declared fit for work, allocated into the Limited Capability for Work group (LCWG) where they may be expected to prepare to work in the future, or into the Limited Capability for Work and Work-Related Activity Group (LCWRAG). If assigned to the LCWRAG they will not be expected to take part in any work related activity, and will receive an additional element of UC of £336.20 per month.

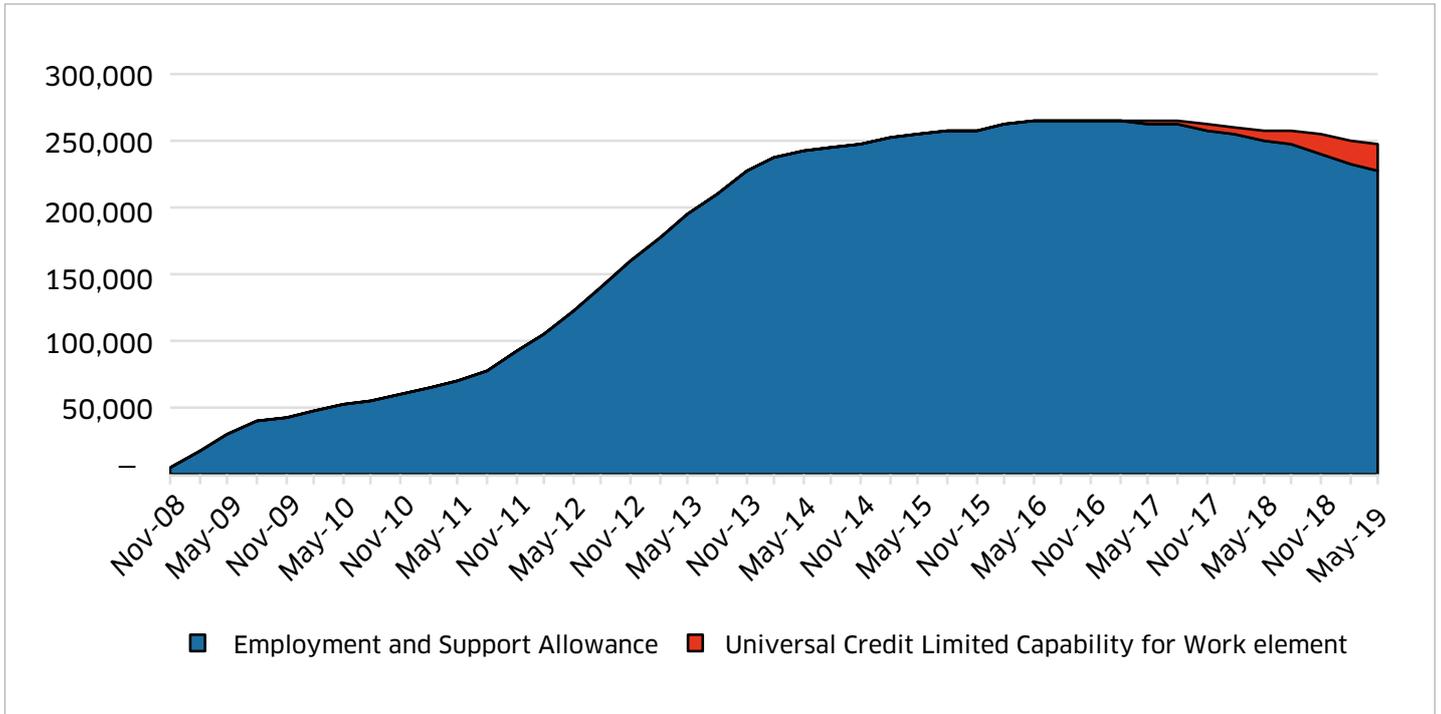
People who are allocated to the ESA WRAG may or may not qualify for the work-related activity component of ESA, depending on whether they claimed before or after 3 April 2017. ESA recipients in the WRAG who claimed before that date will receive a £29.05 per week addition to their ESA award, which is no longer provided to those who claimed after. Disabled claimants of UC can be similarly disadvantaged if they claimed after April 2017 – only those who claimed before April 2017 are entitled to the limited capability for work element, which has the same value as the work-related activity component.

53 The full list of qualifying benefits which offer entitlement to an SDP is available from UK Government (2019), [Disability premiums](#).

54 These estimates are taken from the Income Support and Employment and Support Allowance tables available from Department for Work and Pensions (2018), [Income-related benefits: estimates of take-up: financial year 2016 to 2017](#). It is noted that this figure represents an estimate of take-up across both Income Support and income-related Employment and Support Allowance in 2016/17, rather than referring to income-related Employment and Support Allowance alone. Since 2016/17, Universal Credit rollout has progressed significantly, reducing the caseload of both ESA and Income Support. This means it is possible that current take-up of ESA deviates significantly from this estimate.

The rollout of UC is still at an early stage for disabled people, with the vast majority of means-tested disability benefit claimants still on ESA. This is shown in Figure 15.

**Figure 15 - Number of ESA and Universal Credit cases (with entitlement to the Limited Capability for Work element) from November 2008 - May 2019, Scotland**



Source: DWP Stat-Xplore<sup>55</sup>

Disabled people currently represent a small proportion of the UC cases, however, the number of disabled UC claimants is increasing quickly. Between May 2018 and May 2019 the share of UC Limited Capability for Work (LCW) claimants in the combined UC LCW and ESA caseload increased from 2% to 8%. Disabled people are also increasing as a share of the UC caseload over time, going from 3% of the caseload in May 2017 to 14% in May 2019.

<sup>55</sup> Official UC statistics do not currently distinguish between which claimants are entitled to a limited capability for work element and which are entitled to the limited capability for work & work related activity element. The UC figures presented above therefore represent people eligible for either.

## 5.1 Underpayment of Employment and Support Allowance

In 2018, the National Audit Office (NAO) reported that the DWP had underpaid an estimated 70,000 people since 2011 when they transferred onto ESA from other benefits. Because the DWP placed these people transferring over into contribution-based ESA, where additional disability premiums are not payable, rather than IR ESA, these people lost out on an average of £5,000 per person<sup>56</sup>.

A UK parliamentary inquiry into the DWP's response to their error criticised the DWP's decision to take six years to start addressing the error, stating that this "indicates its culture of indifference to underpayments"<sup>57</sup>. Front line staff raised the error as early as 2013, however, the DWP continued to underpay claimants. It took until 2017 for the DWP to recognise that they were legally required to identify and compensate the people affected.

In December 2017, the DWP decided that they would repay claimant arrears back, but only those that incurred since October 2014<sup>58</sup>. This would have saved the DWP from repaying an estimated £100 to £150 million of underpayments to claimants. However, this decision underwent legal challenge by the Child Poverty Action Group, who successfully argued that the DWP should attempt to repay all claimants who were underpaid due to their error, dating back to 2011<sup>59</sup>.

The exercise to identify and repay these claimants is still underway. The latest management information data, which are only available at Great Britain level, show that more than the initially estimated 70,000 people were due further payment<sup>60</sup>. Of the 600,000 cases to be checked, 371,000 or 62% have completed the reassessment. And, of these 371,000 cases, 88,000 or 24% have been found eligible for repayment. Given the average arrears repayment has been £6,000, this means that £528 million of arrears have been paid across Great Britain. In February 2019, DWP statistics showed that around 11.3% of ESA claimants in Great Britain lived in Scotland. If we assume that this share approximates the Scottish share of people repaid, we estimate that around 10,000 Scottish people have now been paid back DWP underpayments accrued since 2011, with a total value of around £60 million<sup>61</sup>.

The DWP also confirmed that 50,000 of the original 600,000 people who were transferred onto ESA are deceased. Progress on checking these cases is only 20% complete, but thus far it appears that only 10% of these cases have been identified as eligible for arrears repayments. So far, the DWP has paid a total of £5 million to the affected people's next of kin.

56 National Audit Office (2018), [Investigation into errors in Employment and Support Allowance](#)

57 UK Parliament (2018), [Employment and Support Allowance inquiry](#), p. 5

58 UK Parliament (2017), [Employment and Support Allowance: Written statement - HCWS356](#)

59 Child Poverty Action Group (2018), [CPAG legal action leads to full arrears for disabled claimants](#)

60 Department for Work and Pensions (2019), [ESA underpayments: progress on checking July 2019](#)

61 The Scottish share of people repaid may be more or less than this for several reasons. For example, only certain categories of claimants were underpaid and the Scottish share of these categories may be different to the Scottish share of the overall ESA caseload.

## 6. SCOTTISH GOVERNMENT POLICY TO SUPPORT DISABLED PEOPLE

### 6.1 A person-centred approach to designing disability assistance

The Scottish Government will commence Disability Assistance from 2020 including:

- Disability Assistance for Children and Young People – the devolved replacement for Disability Living Allowance for Children – from Summer 2020;
- Disability Assistance for Working-Age People – the devolved replacement for Personal Independence Payments – from early 2021; and
- Disability Assistance for Older People – the replacement for Attendance Allowance – in 2021.

Each form of assistance has been designed in a person-centred way, consulting people with lived experience and experts in the social security system to ensure that Disability Assistance is delivered in a way that meets the needs of the people it is intended to support. A full public consultation on proposals was undertaken earlier this year, closing on 28 May and with a wide range of stakeholders and individuals responding. This included 189 individuals and 74 organisations<sup>62</sup>.

The majority of respondents were broadly positive about the proposals set out in the consultation document. The Scottish Government has considered carefully the feedback provided by respondents, as set out in the Scottish Government response report, published on 28 October 2019. A number of amendments to proposals have been made in light of feedback including, for instance, the extension of the proposed number of days to request a redetermination from 31 to 42 calendar days. This change ensures that clients have a sufficient window to receive welfare rights advice, or other support, before considering whether to challenge their award.

#### 6.1.1 Terminal illness

The Scottish Government included provision in the Social Security (Scotland) Act 2018<sup>63</sup> to introduce a new definition of terminal illness that differs from the current UK Government definition. It removes the arbitrary timescale currently used by the DWP where the definition sets out that a client must be 'likely to die within 6 months'. Instead the judgement as to whether a person should be considered terminally ill for the purposes of determining eligibility for Disability Assistance will be made by clinicians, based on guidance prepared by the Chief Medical Officer. This decision has received support from a wide range of individuals and stakeholder organisations.

62 Scottish Government (2019), [Disability assistance in Scotland: analysis of consultation responses](#)

63 National Archives (2018), [Social Security \(Scotland\) Act 2018](#)

### 6.1.2 Supporting information and assessments

Existing sources of information will be used by Case Managers to make a decision regarding an individual's claim for Disability Assistance, where possible. This change will reduce the administrative burden on clients to source and provide supporting information. Case Managers will seek one source of supporting information from a formal source, where available, such as confirmation of a diagnosis or letter from a support worker. This supporting information need only be sufficient to determine, on the balance of probabilities, that the individual's condition is consistent with the general care and mobility needs detailed on their application.

The Scottish Government has committed to significantly reducing the number of people required to attend a face-to-face assessment as part of the decision making process. Individuals will only be invited to attend an assessment where it is the only practicable way to make an entitlement decision.

Where an assessment is deemed necessary, it will be at a time and place accessible to the individual who is to be assessed, including the option for assessments to take place in the individual's home when required. These assessments will be delivered by Social Security Scotland, ensuring that no one will have to be assessed by someone employed by a private company, as is the case with the current DWP system.

The assessors will be "suitably qualified" health and social care professionals with experience of working within a relevant role. This will include a proportion of assessors who will be trained specifically in the impact of mental health conditions and learning disabilities, to ensure individuals with such conditions are assessed by someone qualified to do so.

### 6.1.3 Award duration and reviews

The Scottish Government is aware that the formal award durations for current disability benefits cause anxiety and, to address this, awards for Disability Assistance in Scotland will have no set end date. Instead, individuals will be set a review date as part of the initial determination for Disability Assistance and awards will not be stopped while the review process is being undertaken. The time between reviews will be dependent on how likely an individual's condition is to change and, for clients with a condition that is unlikely to change, reviews will be between 5 and 10 years apart. Light-touch reviews will be carried out to minimise the stress that clients experience as a result of having an ongoing award reviewed.

### 6.1.4 Short-Term Assistance

To ensure that clients who do not agree with a determination are supported to challenge decisions relating to Disability Assistance, if as a result of a determination made regarding an ongoing claim, a client's award is reduced or stopped and they are challenging this decision, they can apply for Short-Term Assistance (STA). This is a non-recoverable payment made by the Scottish Government which will "top up" an individual's benefit to match the value previously set before the determination. The intention is to ensure an individual is not discouraged from challenging that decision or from accessing administrative justice, by having to manage, for a period, with a reduced income.

## 6.2 Mitigation of the Bedroom Tax

Introduced by the UK Government in 2013, the Spare Room Subsidy (more commonly known as the Bedroom Tax) is intended to reduce benefit payments to occupants of social housing which contains more bedrooms than is deemed necessary in the size criteria used by the DWP<sup>64</sup>. In Scotland, Discretionary Housing Payments (DHPs) are funded by the Scottish Government to mitigate the effects of the policy.

Across Scotland, at least 68% of people who would otherwise be affected by the Housing Benefit bedroom tax are disabled<sup>65</sup>. Around 39,000 households with disabled people would be affected, losing an average of around £685 per year, which is in total equivalent to around £26.7 million per year<sup>66</sup>. The Scottish Government has allocated £52.3 million of DHP funding to Local Authorities in 2019/20 to mitigate the impact of the bedroom tax.

## 6.3 A Fairer Scotland for Disabled People: Employment Action Plan

As noted in the introduction, in 2018 the Scottish employment rate for disabled people was 45.6%, compared to the 81.1% employment rate of people who were not disabled. This difference in employment rates between disabled people and the rest of the working age population is referred to as the 'disability employment gap'.

In December 2018, the Scottish Government published 'A Fairer Scotland for Disabled People: Employment Action Plan', which sets out the key actions Scottish Government will take to at least halve the disability employment gap by 2038<sup>67</sup>. These actions sit across three key themes that were identified through engagement with stakeholders during the development of the plan:

- Supporting Employers to Recruit and Retain Disabled People
- Supporting Disabled People to Enter Employment
- Young People and Transitions

Some of the actions within the plan that are currently being delivered include:

- The Scottish Government has set a target for external recruitment that, over the next 7 years until 2025, on average 25% of successful candidates will be disabled people. At the same time it will continue to drive towards the existing target for the proportion of disabled people entering the Senior Civil Service, currently set at 13% by 2025. The Scottish Government recruitment and retention plan was published in August 2019, and outlines the actions it will take as an employer in order to achieve these targets<sup>68</sup>.
- A new Public Social Partnership has been initiated, and up to £1 million is being invested in a partnership of employers, government and disabled people's organisations to develop, test and implement solutions to barriers that employers face in hiring and retaining disabled people. A lead partner has recently been identified and next steps are underway to develop the partnership and its work programme further.

64 More information on the size criteria used by the DWP is available at Citizens Advice (2019), [Housing Benefit size restrictions in social housing](#).

65 This refers to the proportion of people with the Housing Benefit bedroom tax applied who also claim ESA, taken from DWP Stat-Xplore. Statistics are not published on the number of UC claimants who are subject to the bedroom tax.

66 Scottish Government calculations, based on DWP Stat-Xplore.

67 Scottish Government (2018), [A Fairer Scotland for Disabled People: employment action plan](#)

68 Scottish Government (2019), [Recruitment and retention plan for disabled people: 2019](#)

- Up to £6 million of additional resource from the Child Poverty Delivery Fund has been invested and is targeted towards areas with the highest levels of child poverty and the lowest levels of employment of disabled people. This investment will allow policy makers to better understand and test solutions to the barriers disabled parents face to entering and sustaining employment.
- Through the implementation of the Equalities Action Plan for Modern Apprenticeships (MA) in Scotland, the Scottish Government provides young disabled people with the highest level of MA funding, and helps to remove the barriers that have previously prevented young disabled people entering Modern Apprenticeships.



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83960-280-1

Published by The Scottish Government, January 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS654442 (01/20)

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