

**BRIEFING PAPER**

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# Learning Disability - policy and services

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## Summary

This briefing provides an overview of policies and services for people with a learning disability in England.

The Government and NHS England have committed to reducing health inequalities for people with learning disabilities and have established national programmes to improve treatment and outcomes. The *Government's Mandate to the NHS 2018-19* set an objective for the NHS to close the health gap between people with mental health problems, learning disabilities and autism and the population as a whole.

In June 2015, NHS England commissioned the *National Learning Disability Mortality Review Programme* led by the University of Bristol, to review and learn from deaths of people with a learning disability with the aim of improving services, care and support nationally. The project is investigating the causes of premature mortality for people with a learning disability and has produced recommendations to reduce this inequality. The [second annual report](#) from the Learning Disabilities Mortality Review was published in May 2018. The Government provided its response in September 2018, accepting the review's recommendations and committing to several actions, including a public consultation on mandatory learning disability training for relevant staff by March 2019.

The Government and NHS England have also committed to reducing the number of people with a learning disability who are placed in inpatient services. NHS England's *Transforming Care* programme intends to improve the quality of life of those with learning disabilities by substantially reducing the number of people placed in hospital, reducing the length of time those admitted spend there, and enhancing the quality of both hospital and community settings.

In 2015, NHS England, in partnership with local government leaders, published a national action plan to develop community services and close inpatient facilities for people with a learning disability and/or autism. The *Building the Right Support*<sup>1</sup> plan aims to shift money from inpatient services to the community and reduce the use of inpatient beds by 35% - 50%. This target reduction is also set out in the *Government's Mandate to the NHS 2018-19*, to be achieved by March 2019.

Since June 2016, the Department of Health & Social Care has published independently assured, ratings of the quality of healthcare offered to people with learning disabilities in all CCG areas, to highlight variations and to allow rapid action to be taken when improvement is needed.

The briefing also looks at recent policy changes in the areas of employment, welfare, education and criminal justice.

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<sup>1</sup> NHS England, [Building the right support](#), October 2015

# 1. What is a learning disability?

A learning disability affects the way that someone communicates and understands information. This means that someone may have difficulties:

- understanding new or complex information;
- learning new skills; and
- coping independently

It is estimated that around 1.5 million people in the UK have a learning disability, and around 350,000 people have a severe learning disability.<sup>2</sup>

A learning disability can affect children and adults, although children and young people with a learning disability may also have special educational needs.

The broad term 'learning disability' can cover a spectrum of conditions, from a mild learning disability where someone can manage independently but might take longer to learn new skills, to a profound and severe learning disability where an individual may need substantial care and support with every aspect of their life.

Further information on severe, moderate and mild learning disabilities can be found on the NHS Choices page on [What is a learning disability?](#)

The UK Government supports the social model as a way of understanding disability. This model, unlike the medical model, says that disability is not caused by an individual's health condition or impairment itself, but by the way that society treats and creates barriers for people with health needs. The barriers generally fall into three categories:

- the environment – including inaccessible buildings and services
- people's attitudes – stereotyping, discrimination and prejudice
- organisations – inflexible policies, practices and procedures

Using the social model enables the Government and wider society to identify the barriers that prevent disabled people from fully participating in society or experiencing disadvantage compared to non-disabled people. The social model is supported by disabled people and their organisations, and encourages society to become more inclusive.<sup>3</sup>

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<sup>2</sup> NHS Choices, [What is a learning disability?](#) [last accessed 4 November 2014]

<sup>3</sup> Gov.uk, [Creating a fairer and more equal society](#), last updated 18 August 2014

## 2. Health policies

The Government has mandated the NHS to reduce the health gap between people with mental health problems, learning disabilities and autism and the population as a whole, and support them to live full, healthy and independent lives.<sup>4</sup>

In June 2016, NHS England introduced an assessment and improvement framework for Clinical Commissioning Groups (CCGs), setting out a range of performance metrics, including:

- Reliance on specialist inpatient care for people with a learning disability and/or autism;
- Proportion of people with a learning disability on the GP register receiving an annual health check;
- Completeness of the GP learning disability register.<sup>5</sup>

The framework is intended to highlight variations and to allow rapid action to be taken when improvement is needed.<sup>6</sup>

### 2.1 Premature mortality

There is evidence that people with a learning disability experience inequalities in healthcare. Research has found that men with a learning disability die on average 13 years sooner, and women with a learning disability 20 years sooner, compared to those without learning disabilities.<sup>7</sup>

The Department of Health established a [\*Confidential Inquiry into the Premature Deaths of People with Learning Disabilities\*](#) (2013). The Confidential Inquiry investigated the avoidable or premature deaths of people with learning disabilities through a series of retrospective reviews of deaths. The aim was to review the patterns of care that people received in the period leading up to their deaths, to identify errors or omissions contributing to these deaths, to illustrate evidence of good practice, and to provide improved evidence on avoiding premature death. The inquiry focused on five Primary Care Trust (PCT) areas of South West England.

The inquiry found that the most common reasons for deaths being assessed as premature were: delays or problems with diagnosis or treatment; and problems with identifying needs and providing appropriate care in response to changing needs:

for 29% there was significant difficulty or delay in diagnosis, further investigation or specialist referral, and for 30% there were problems with their treatment. The lack of reasonable adjustments to facilitate healthcare of people with learning

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<sup>4</sup> Department of Health & Social Care, [The Government's mandate to NHS England for 2018-19](#), page 11

<sup>5</sup> NHS England, [CCG improvement and assessment framework 2017/18, 21 November 2017](#), page 9

<sup>6</sup> [PQ HL443 \[on Health Services: Learning Disability\], 22 December 2015](#)

<sup>7</sup> Department of Health, [Premature Deaths of People with Learning Disabilities: Progress Update](#), September 2014

disabilities, particularly attendance at clinic appointments and investigations, was a contributory factor in a number of deaths...<sup>8</sup>

The inquiry made 18 recommendations, including:

- Clear identification of people with learning disabilities on the NHS central registration system and in all healthcare record systems;
- The establishment of a national mortality review programme for people with learning disabilities;
- A named healthcare coordinator to be allocated to people with complex or multiple health needs, or two or more long-term conditions; *and*
- Standardisation of Annual Health Checks and a clear pathway between Annual Health Checks and Health Action Plans.

The [Government's response to the Confidential Inquiry into premature deaths of people with learning disabilities](#) (July 2013), stated that the Department of Health is committed to addressing the issues identified by the Confidential Inquiry in order to improve the quality of care and outcomes for people with learning disabilities and family carers. The response set actions to be delivered by the Department of Health, NHS England, Public Health England and other statutory organisations, under each of the 18 recommendations. Progress on these actions is monitored by the [Learning Disability Programme Board](#).

In September 2014, the Government published the [Premature Deaths of People with Learning Disabilities: Progress Update](#) which summarised action taken or underway against each of the themes identified by the Confidential Inquiry.

The [Government's Mandate to the NHS 2014-15](#) set a specific objective to reduce excess mortality for adults under 60 with a learning disability. This was repeated in the 2015-16 Mandate.

In June 2015, NHS England announced a three-year national review of premature deaths of people with learning disabilities. Led by the University of Bristol, the *National Learning Disability Mortality Review (LeDeR) Programme* was commissioned by Healthcare Quality Improvement Partnership (HQIP) on behalf of NHS England and seeks to improve the quality of health and social care for people with learning disabilities through retrospective reviews of their deaths.<sup>9</sup>

The 2016-17 LeDeR annual report found that in 13% of its reviews into the deaths of people with learning disabilities, the person's health had been adversely affected by factors such as delays in treatment, organisational dysfunction and gaps in service provision. In response it set out nine national recommendations, including:

- Strengthening collaboration and information between care providers, including integration of health and care records;

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<sup>8</sup> [Confidential Inquiry into the Premature Deaths of People with Learning Disabilities \(CIPOLD\), March 2013, page 4](#)

<sup>9</sup> NHS England, [NHS launches world's first national review of deaths of people with learning disabilities](#), 18 June 2015

## 7 Learning Disability - policy and services

- All people with learning disabilities with two or more long-term conditions should have a local, named care coordinator;
- Mandatory learning disabilities awareness training provided to all staff, delivered in conjunction with people learning disabilities and their families.<sup>10</sup>

The Government provided its response in September 2018 and accepted the report's recommendations. They committed to several actions, including completing a public consultation on proposals for mandatory learning disability training by March 2019. The Government said that despite the [Learning Disability Core Skills Education and Training Framework](#) (2016), in practice not all staff have the core skills and knowledge to care for, treat and support people with a learning disability. Further information is provided below.

NHS England has allocated an additional £1.4 million to support local CCGs delivering the programme, although a decision on the extension of the LeDeR programme has not yet been taken.<sup>11</sup>

### 2.2 Staff training

The [Learning Disability Core Skills Education and Training Framework](#) was published in July 2016, commissioned and funded by the Department of Health. The aim of the framework is to support the development and delivery of learning disabilities education and training for health and care staff.

However, in September 2018 the Government said that despite this framework, in practice not all staff have the core skills and knowledge to care for, treat and support people with a learning disability:

While in principle employers are required to ensure that their staff have the core skills and knowledge to care for, treat and support people with a learning disability, the LeDeR [Learning disabilities mortality review] report and campaigns such as Mencap's Treat me well, demonstrate that in practice this isn't always the case.<sup>12</sup>

Further information about the Learning Disability Core Skills Education and Training Framework is provided in a recent PQ:

Employers have a statutory responsibility to provide sufficient numbers of suitably qualified, competent, skilled and experienced staff to meet the needs of the people using health services, including those with a learning disability.

The Learning Disability Core Skills Education and Training Framework, published in July 2016 sets out the requisite skills and competencies that staff need to deliver care and support to people with a learning disability. The Framework sets out the necessary skills across three tiers. Tier 1, knowledge for roles that require general awareness of learning disabilities; Tier 2, knowledge and skills for roles that will have some regular contact with people with a learning disability and Tier 3, knowledge and

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<sup>10</sup> The Learning Disabilities Mortality Review (LeDeR) Programme, [Annual Report 2016-17](#), December 2017, page 8

<sup>11</sup> [PO 144248 \[Learning Disability: Death\]. 21 May 2018](#)

<sup>12</sup> Department of Health & Social Care, NHS England, [The Government response to the Learning Disabilities Mortality Review \(LeDeR\) Programme Second Annual Report](#), para 38

skills for those providing care and support for people with a learning disability. Training should be provided in line with this Framework.

Health Education England (HEE) is currently producing eLearning materials to support Tier 1 learning disability awareness training. This free online training will be available to all staff in 2019. HEE will also be writing to all education providers reminding them of the Learning Disability Core Skills Education and Training Framework and ask them to ensure that all staff groups include Tier 1 awareness training as a minimum.

HEE also uses a workforce development fund to support the ongoing development of staff, with spending focused on priority areas, including staff working with people with learning disabilities and/or autism. Examples of the type of development that is supported includes, Positive Behavioural Support, Total Attachment Theory, Leadership programmes, Mindfulness-based Stress Reduction, Learning Disability Mortality, Building the Right Support, Early Positive Approaches to Support, Restraint Reduction, Positive Behavioural Support Workshops for family carers, Forensic learning disabilities skills, Trauma informed care and Autism.

All nurses receive learning disabilities training as part of their pre-registration education. Curricula are set by individual education providers, to standards set by the professional regulators.

Additionally, since April 2015, newly appointed health care assistants, including those who will provide care and support to people with a learning disability have been undergoing training as part of the national implementation of the Care Certificate. The Care Certificate equips new staff with the knowledge and skills which they need to provide safe, compassionate care across a range of areas, including the care of people with a learning disability.

We have committed that there will be a response to each of the recommendations of the Learning Disabilities Mortality Review Programme annual report, including the recommendation on training. The response will be published soon.<sup>13</sup>

The Government have said they and NHS England will be taking steps to remind employers of their responsibilities to train their staff in a manner that is consistent with the framework<sup>14</sup> – further information is provided below on the Government response to the Learning Disability Mortality Review Programme.

## The Learning Disability Mortality Review Programme and consultation on training

The [second annual report](#) from the Learning Disabilities Mortality Review was published in May 2018. The report said that reviews of deaths identified the need for a greater awareness of the health needs of people with learning disabilities to be embedded within the healthcare system. The Review recommended that:

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<sup>13</sup> [PO 156445 \[on learning disability\], 28 June 2018](#)

<sup>14</sup> Department of Health & Social Care, NHS England, [The Government response to the Learning Disabilities Mortality Review \(LeDeR\) Programme Second Annual Report](#), para 39



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Mandatory learning disability awareness training should be provided to all staff, delivered in conjunction with people with learning disabilities and their families.<sup>15</sup>

The Government provided its response in September 2018. It accepted the report's recommendations and announced an action plan for each area. Responding to the recommendation above, the Government said:

We agree that health and care staff should have access to learning disability awareness training. We will consult by the end of March 2019 on options for delivering this to staff.

35. We are committed to basic training in, and awareness of, learning disability for health and care staff. Furthermore, we accept the advantage of delivering such training in conjunction with people with lived experience. We strongly recommend that all employers involve people with lived experience in the development and deployment of training.

36. All employers already have a clear responsibility set out in legislation to make sure that staff are competent to perform their role. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, require that any person employed by a regulated service must 'receive the support, training, professional development, supervision and appraisal as is necessary to enable them to carry out the duties they are employed to perform.' In practice, for people and services which care for and treat people with a learning disability, the nature of the necessary skills and competencies are set out in the Learning Disability Core Skills Education and Training Framework (2016).

37. This Framework describes the core skills and knowledge required in three 'tiers':

- Tier 1 - for roles that require general awareness of learning disabilities;
- Tier 2 - for roles that will have some regular contact with people (children, young people and adults) with a learning disability, and;
- Tier 3 - for those staff directly providing care and support for people (children, young people and adults) with a learning disability.

38. While in principle employers are required to ensure that their staff have the core skills and knowledge to care for, treat and support people with a learning disability, the LeDeR report and campaigns such as Mencap's Treat me well, demonstrate that in practice this isn't always the case. We will take immediate steps (detailed below) to remind employers of their responsibilities to raise the profile of the Framework, stimulate provision of training generally and to measure uptake. But persistent inequalities have endured for some of our most vulnerable citizens for too long.

**For this reason, we will consult on options for delivering mandatory learning disability training for all relevant staff.** Consultation will take place with people with lived experience, the wider learning disability sector, NHS and social care providers and the general public to ensure that proposals are practicable and

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<sup>15</sup> The Learning Disabilities Mortality Review (LeDeR) Programme, [Annual Report](#), December 2017, Summary of recommendations, page 31.

effective and to avoid any training becoming a 'box-ticking exercise'. The consultation will be completed by March 2019.<sup>16</sup>

The Department of Health & Social Care provides some further information on the [Consultation announced to improve learning disabilities staff training](#) (September 2018).

In its response, the Government also outlined immediate actions to raise awareness of the Learning Disability Core Skills Education and Training Framework:

39. We want to make sure that there is greater understanding and awareness of the Framework and that employers, in meeting their responsibilities to train their staff, choose training that is consistent with the Framework. DHSC and NHS England will write to professional groups and all employers to remind them of their statutory responsibilities and how they can employ the Framework to inform their learning needs analysis, appraisals and training plans.

40. We will support employers by developing a Tier 1 awareness training package which will be made available to all staff. Health Education England will work with experts by experience to develop this package. We are clear that this is a minimum and does not remove the need for employers to train staff to Tier 2 requirements where appropriate.

41. DHSC, NHS England, NHS Improvement and the CQC will work together to develop guidance on how learning disability training is considered 'essential' for all staff in line with the prevailing regulations. The CQC will then be able to assess the extent to which it has been provided in its inspections in line with the regulations. We will conduct an audit of core skills and knowledge across employers at Tier 1 within 12- 36 months.

42. Additionally, Health Education England will write to professional bodies and education providers and ask them to review standards and curricula and, where required, embed the Tier 1 Learning Disability awareness requirements in line with the core skills framework in their requirements.<sup>17</sup>

## 2.3 Transforming Care - reducing the use of inpatient services

In 2011, the BBC's Panorama programme exposed the abuse of patients at Winterbourne View, an independent hospital for people with learning disabilities and/or autism. Further inspections by the CQC of 150 hospitals and care homes for people with a learning disability found inadequate practice in some services, included poor person-centred care, limited appropriate activities and a lack of monitoring and learning from incidents of restraint.<sup>18</sup>

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<sup>16</sup> Department of Health & Social Care, NHS England, [The Government response to the Learning Disabilities Mortality Review \(LeDeR\) Programme Second Annual Report](#), para 35-38

<sup>17</sup> Department of Health & Social Care, NHS England, [The Government response to the Learning Disabilities Mortality Review \(LeDeR\) Programme Second Annual Report](#), para 39-42

<sup>18</sup> Care Quality Commission, [Learning Disability reports](#) [last accessed 5 November 2014]

## 11 Learning Disability - policy and services

The Department of Health's national policy response, [\*Transforming care: A National response to Winterbourne View Hospital\*](#) (December 2012) stated that "hospitals are not where people should live" and pledged that everyone inappropriately in hospital will move to community-based support as quickly as possible, and no later than 1 June 2014. Other key pledges included:

- By Summer 2015 NICE will publish quality standards and clinical guidelines on challenging behaviour and learning disability.
- By Summer 2016 NICE will publish quality standards and clinical guidelines on mental health and learning disability.
- The Department of Health will revise statutory guidance and good practice guidance to reflect new legislation and address findings from Winterbourne View, to be completed in time for the implementation of the Care and Support Bill (subject to parliamentary approval).
- CQC will take steps now to strengthen the way it uses its existing powers to hold organisations to account for failures to provide quality care.

A full timetable of actions can be found in the report's Annex.<sup>19</sup>

The [Learning Disability Programme Board](#), chaired by Department of Health, monitors delivery of the [\*Transforming care\*](#) programme.

The review was accompanied by the [\*Winterbourne View Review: Concordat\*](#), an agreement signed by the NHS, statutory organisations and stakeholders committing themselves to provision of appropriate services for people with learning disabilities.

In 2014, NHS England commissioned Sir Stephen Bubb to consider how a new national framework for learning disability services could be implemented. This came after the pledge to enable people with learning disabilities and/or autism inappropriately placed in hospital to move to community based support by June 2014 was missed.<sup>20</sup>

Sir Stephen's starting point was that it is not acceptable in the twenty-first century for thousands of people to be living in hospitals when, with the right support, they could be living in the community. His report [\*Winterbourne View - Time for Change\*](#) (November 2014), found that people with learning disabilities are still being placed inappropriately in long-term institutional care rather than being supported in the community. The report found that there are still more people being admitted to such institutions than are being discharged. The report's key recommendations were:

- To urgently close inappropriate in-patient care institutions;
- To introduce a Charter of Rights for people with learning disabilities and/or autism and their families;

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<sup>19</sup> Department of Health, [Transforming care: A national response to Winterbourne View Hospital](#), page 56

<sup>20</sup> A report by the Transforming Care and Commissioning Steering Group, chaired by Sir Stephen Bubb, [Winterbourne View - Time for change](#), November 2014, page 8

- To give people with learning disabilities and their families a 'right to challenge' decisions and the right to request a personal budget;
- To require local decision-makers to follow a mandatory framework that sets out who is responsible, for which services and how they will be held to account, including improved data collection and publication;
- To improve training and education for NHS, local government and provider staff;
- To start a social investment fund to build capacity in community-based services, to enable them to provide alternative support and empowering people with learning disabilities by giving them the rights they deserve in determining their care.<sup>21</sup>

Sir Stephen's progress report - [Winterbourne View - Time is Running Out](#) (July 2015) – found that the number of people with learning disabilities and/or autism being discharged from inpatient institutions was now greater than the number being admitted. However, the review declared that the pace of change has been slow, and the *Transforming Care* programme has not yet delivered anything tangible in terms of new community facilities or closures. In February 2016, Sir Stephen published [Time for Change: The Challenge Ahead](#) which recommended a commissioner for learning disabilities to promote and protect the rights of all people with learning disabilities and/or autism in England. The Government said it will consider the recommendations of the report, but that "new statutory roles and legislation are not necessarily the answer to promoting and protecting the rights of people with learning disabilities and their families".<sup>22</sup>

In January 2015, the Government published [Winterbourne View: transforming care 2 years on](#), to report on progress against their original report. The report said that a significant number of the recommendations have been achieved, including:

- We know how many people are in inpatient settings, where they are and who is responsible for them.
- We have strong accountability and corporate responsibility arrangements in place via the Duty of Candour and Fit and Proper Person Test to assure the quality and safety of care services that people receive.
- We have new DH guidance on minimising restrictive interventions, complemented by a suite of information by Skills for Care and Skills for Health setting the foundation for a broader new programme Positive and Safe launched by the Department of Health in 2014. Work is underway to improve and report on data about the use of restraint.
- A more rigorous registration, assessment and inspection approach is in place for learning disability services, involving experts by experience and ratings are being published from inspections taking place since October 2014.

<sup>21</sup> A report by the Transforming Care and Commissioning Steering Group, chaired by Sir Stephen Bubb, [Winterbourne View - Time for change](#), November 2014

<sup>22</sup> [PQ 28525 \[on Learning Disability\] 1 March 2016](#)

## 13 Learning Disability - policy and services

- The Care Act 2015 underpins and reinforces the importance of good quality, independent advocacy and will play an important part in supporting people, their families and carers to raise concerns when these arise.<sup>23</sup>

However the report also said that not as much progress has been made as was intended – for example the commitment to transfer people by June 2014 from inappropriate inpatient care to community-based settings was missed.<sup>24</sup>

In February 2015, the National Audit Office (NAO) published its report [Care Services for People with Learning Disabilities and Challenging Behaviour](#). The report found that the Government had not met its central goal of moving people with learning disabilities and challenging behaviour out of hospital by 1 June 2014, because it “underestimated the complexity and level of challenge in meeting the commitments in its action plan”.

During a Public Accounts Committee evidence session on the NAO report in February 2015, the Chief Executive of NHS England announced that there would now be a planned closure programme for NHS mental health hospitals, and a change in commissioning practices for NHS inpatients within the independent sector.<sup>25</sup> This would be accompanied by a transition plan for the people with learning disabilities within these hospitals, from 2016–17.<sup>26</sup>

In October 2015, NHS England, in partnership with the Local Government Association (LGA) and the Directors of Adult Social Services (ADASS), published a national action plan to develop community services and close inpatient facilities for people with a learning disability and/or autism. The *Building the Right Support* plan aimed to shift money from inpatient services to the community, and reduce the use of inpatient beds by 35% - 50% in the next three years, alongside the closure of the last standalone learning disability hospital in England, Calderstones.<sup>27</sup> Transformation is being delivered through 49 Transforming Care Partnerships, comprising of CCGs, NHS England commissioners, and local authorities. To support commissioners, NHS England will make available up to £40 million of transformation funding from 2015/16 to 2018/19, to be matched by CCGs, and £20 million in capital funding.<sup>28</sup>

The [Government’s Mandate to the NHS 2018-19](#) set an objective of achieving the 35-50% bed reduction by March 2019. As of October 2017, the total number of people in inpatient units had fallen 14% since March 2015, and 164 inpatient beds closed in 2016/17, ahead of

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<sup>23</sup> Department of Health, [Winterbourne View: Transforming Care Two Years On](#), January 2015, page 6

<sup>24</sup> *ibid*

<sup>25</sup> Public Accounts Committee, [Care services for people with learning disabilities and challenging behaviour](#), 27 March 2015, HC 973 2014-15, para 15

<sup>26</sup> Public Accounts Committee, [Care services for people with learning disabilities and challenging behaviour](#), 27 March 2015, HC 973 2014-15, page 5

<sup>27</sup> NHS England, [Building the right support](#), October 2015

<sup>28</sup> NHS England, [NHS England to invest in building the right support for people with a learning disability](#), 20 June 2017

plan.<sup>29</sup> In 2016, the last standalone learning disability hospital in England was absorbed into a mental health trust, although the planned closure of the Calderstones site may not be completed until 2021.<sup>30</sup>

## 2.4 The “No voice unheard, no right ignored” consultation

In March 2015, the Government published the consultation paper - [\*No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions.\*](#)

The consultation examined how people’s rights and choices could be strengthened and had four key goals:

- People in charge, supported by family and friends – not as passive patients or “prisoners” of a system, as they so often feel they are;
- Inclusion and independence in the community – people should not routinely be sent away from their homes and communities or to institutions which restrict access to their community or to inappropriate care;
- The right care in the right place –there should be real person centred planning with the individual themselves at the heart; and
- Very clear accountability and responsibility throughout the system – there can be no excuses for a lack of clarity over responsibility or for people falling through the gaps between services.<sup>31</sup>

The scope of the consultation primarily related to:

- assessment and treatment in mental health hospitals for people (all age) with learning disability or autism;
- adult care and support, primarily for those with learning disability but also for adults with autism (and the links to support for children and young people); and
- all those to whom the Mental Health Act currently applies (including children and young people).<sup>32</sup>

The Government provided its response to the consultation in November 2015: [\*Government response to No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions.\*](#) This reported that the consultation had found varying provision for people with learning disabilities:

The consultation recognised stark variability in commissioning approaches and in resulting outcomes across the country. This reflected the fact that some commissioners have failed to grasp and act on the urgency of putting in place suitable community provision.

<sup>29</sup> [PQ 108577 \[on Health Services: Learning Disability\], 26 October 2017](#)

<sup>30</sup> [‘UNION BOSSES: Calderstones Hospital closure date ‘unachievable’](#), *Lancashire Telegraph*, 19 April 2018

<sup>31</sup> [HCWS355 \[on No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions\], 6 March 2015](#)

<sup>32</sup> *ibid*

## 15 Learning Disability - policy and services

In its response, the Government set a series of proposals grouped into three implementation phases:

- early actions that seek to sustain momentum generated, chiefly through the use of existing powers and building on work currently underway
- further changes, including proposed legislative changes that cannot be achieved via existing powers (and which relate principally to the Mental Health Act 1983), and
- a third phase, which explores more radical solutions to longer-term issues, as well as ongoing monitoring and review, and a commitment that the Government will intervene further, including through legislation if necessary, if the improvements sought continue not to be realised in practice.<sup>33</sup>

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<sup>33</sup> Department of Health, [Government response to No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions](#), November 2015 para 6

## 3. Employment

In the first quarter of 2018, there were 3.7 million people with disabilities in employment. Just over 100,000 of these had a learning disability.

The Government is committed to “making a step change in the life chances of people with learning difficulties, and learning disabilities”, recognising that people who have learning difficulties “have often not been well supported in employment”.<sup>34</sup>

The Government has stated that it will get 1 million more disabled people into work by 2027. To meet this target there would have to be 4.5 million people in employment with disabilities, a growth of 29% on current levels.<sup>35</sup>

### 3.1 Employment statistics

The table below shows the employment rate for people with learning disabilities, and compares this with the rate for those with any disability and those who do not have a disability.

<b>Employment Rate for people aged 16-64</b>			
UK, Q1 2014 - Q1 2018			
	People with Learning Disabilities	People with a disability	People without disabilities
Q1 2014	22%	44%	78%
Q1 2015	20%	46%	79%
Q1 2016	21%	47%	80%
Q1 2017	22%	49%	80%
Q1 2018	24%	51%	81%

**Source:** LFS Microdata, ONS, Labour Market Bulletin, Table A08

**Notes:** Figures are estimates based on survey data

The employment rate for people with a learning disability is markedly less than that for those with any disability and those without a disability. While just over half of those with a disability were in employment in the first quarter of 2018, less than a quarter of those with a learning disability were also in employment. Over 80% of those without a disability were in work.<sup>36</sup>

### 3.2 Increasing the number of people with learning difficulties in work

In March 2018 the Government highlighted the steps it is taking to help people who have learning disabilities to find work:<sup>37</sup>

<sup>34</sup> [PO 126722](#), 9 February 2018

<sup>35</sup> [Conservative Party Manifesto](#), May 2017

<sup>36</sup> House of Commons Library, [Key statistics on people with disabilities in employment](#), 21 March 2016

<sup>37</sup> [PO 133523](#), 28 March 2018



## 17 Learning Disability - policy and services

The Government is strongly committed to increasing opportunities for people with a learning difficulty or disability. Taking a life course approach, we are working across Government and with local authorities, voluntary organisations and employers in the public and private sectors to achieve this.

On Thursday 30 November 2017 we published 'Improving Lives the Future of Work, Health and Disability', which sets out details of our life course approach to improving employment opportunities for disabled people and people with a health condition. Whilst the initiatives are not all aimed exclusively at people with a learning difficulty or disability, we expect that many will benefit from them. Our plans include:

- A proof of concept for a Tri-work Supported Work Experience offer in schools will be tested in three jobcentre districts and will provide a supported work experience placement of up to two weeks for pupils in Year 10 or 11 who have special educational needs, many of whom are likely to have a learning disability or difficulty.
- We have developed a Supported Work Experience aimed at offering young people with a learning disability and other long term conditions a chance to spend time with an employer whilst receiving the support they need to make the most from the opportunity. These young people will be identified by Work Coaches and other professionals who will encourage them to volunteer if it is right for them. The young person may be claiming benefit, or in the latter years of their education.
- A Local Supported Employment proof of concept is being delivered with nine local authorities. DWP is investing £2.7 million to test an approach which delivers Supported Employment, on an outcome-payment basis, to help people with a learning disability or learning difficulty who are known to adult care services.
- We are introducing 200 Community Partners to Jobcentres across Great Britain, to enhance our services to people with a disability or health condition. Community Partners have a lived experience or expert knowledge of disability and provide valuable insight into how disability can affect an individual's employment outcomes, both in terms of securing and sustaining employment. Many of the Community Partners will have a specialism and 11 will be specialists in learning disabilities and neurodiverse conditions.
- Within the civil service we are expanding recruitment-related activities where pilots have shown strong results, such as a work experience programme for people on the autistic spectrum, in partnership with a specialist autism charity.

Other policies that the Government has had in place to increase the number of disabled people in work include the following:

### **The Disability Confident Campaign**

The [Disability Confident Campaign](#) was launched by the Prime Minister in July 2013, and aims to encourage employers to become more confident in employing disabled people, by removing barriers and increase understanding.

Employers who sign up to the scheme are asked to commit to offer a disabled person an opportunity within their organisation.

As of June 2018, over 6,500 employers had signed up to the Disability Confident scheme. The Government has stated that the scheme “helps employers to improve in their ability to recruit, retain and develop disabled people”.<sup>38 39</sup>

At a Westminster Hall Debate on the Disability Confident scheme, the Shadow Minister for Work and Pensions (Disabled People) stated that there is little evidence that the scheme is enabling more disabled people to find sustainable and supportive employment, and reported that the Government has stated that they are “not able to measure the number of disabled people moving into employment as a direct result of [the disability confident scheme]”.<sup>40</sup>

## Access to Work

The [Access to Work](#) scheme provides financial support for the extra costs of being in work which go beyond the “reasonable adjustments” that are required in law (see below). Access to Work is delivered by the Department for Work and Pensions through Jobcentre Plus and is available to those aged 16 years or over who live and work in Great Britain.

Specialist support is provided to those people with learning disabilities and other less visible disabilities through a Hidden Impairment Specialist Team.<sup>41</sup>

For further information see the Library briefing on [‘Access to Work’ scheme for people with disabilities](#) (June 2016).

## Work and Health Programme

The Work and Health Programme is an employment support programme which was launched in North West England and Wales in November 2017. The programme rolled out across the rest of England during early 2018.

The Programme provides support to help people find and keep a job. It is available, on a voluntary basis, to those with health conditions or disabilities, and to various groups of vulnerable people.

The Programme will be targeted at people who with specialist support are likely to be able to find work within 12 months. The Government expects the majority of those referred to the scheme to be disabled.<sup>42 43</sup>

There are currently no statistics on the take up of this programme.<sup>44</sup>

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<sup>38</sup> DWP, [Disability Confident: employers that have signed up](#), 4 June 2018

<sup>39</sup> [PQ 130481](#), 5 March 2018

<sup>40</sup> HC Deb, [Disability Confident Scheme](#), c133WH

<sup>41</sup> [PQ 126722](#), 9 February 2018

<sup>42</sup> DWP/DoH, [Work, health and disability: improving lives](#), 31 October 2016, p32

<sup>43</sup> [PQ HL3190](#), 15 November 2016

<sup>44</sup> [PQ 137468](#), 27 April 2018

For further information see the Library briefing paper [Work and Health Programme](#) (January 2018).

### **The Work Programme and Work Choice**

It was announced in the [2015 Autumn Statement](#) that the Work and Health Programme will replace the [Work Programme](#) and [Work Choice schemes](#).<sup>45</sup>

The Work Programme and Work Choice have both closed to new applications, although support continues to be provided to people who were already part of the schemes.<sup>46 47</sup>

There had been concerns about the success of the Work Programme in supporting people with a learning disability.

The Work and Pensions Committee evaluated the success of the Work Programme in its inquiry into Welfare-to-work. The inquiry report (October 2015) stated that:

It must not be forgotten that nearly 70% of participants are completing the Work Programme without finding sustained employment. In particular, the Work Programme is not working well for people with more complex or multiple barriers to employment who need more intensive help.<sup>48</sup>

The Government responded to the report by stating that the programme “is a success [...] and has helped over 459,000 people to move into lasting jobs”.<sup>49</sup>

### **Organisations giving opportunities to those with learning disabilities**

[Mencap](#) have provided a [list of the organisations](#) that provided work experience placements for people with a learning disability.

The Rethink Mental Illness charity provides a list of the organisations that they are working with [here](#).

The Department for Work and Pensions has also provided [case studies](#) of those organisations who have demonstrated good practice in employing disabled people.

### **NHS Learning Disability Employment Programme**

In June 2015, NHS England and NHS Employers launched the [NHS Learning Disability Employment Programme](#) which aimed to increase the employment within the NHS of people with learning disabilities.

NHS England have published [tools and guidance](#) to support NHS organisations in meeting this objective.

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<sup>45</sup> HM Treasury, [Spending Review and Autumn Statement 2015](#), p89

<sup>46</sup> Gov.uk, [Help with moving from benefits to work](#)

<sup>47</sup> Gov.uk, [Work Choice](#)

<sup>48</sup> Work and Pensions Committee, [Welfare-to-work](#), 14 October 2015, p3

<sup>49</sup> Work and Pensions Committee, [Welfare-to-work: Government Response](#), 6 January 2016, p1

## The Equality Act 2010 – discrimination and reasonable adjustments

Discrimination on the grounds of disability is unlawful under the *Equality Act 2010* and the United Nations Convention on disability rights. The *Equality Act 2010* means it is unlawful for an employer to discriminate against someone with a disability in areas including application forms, interview arrangements, and terms of employment, including pay.

The *Equality Act 2010* also places a duty on employers to make “reasonable adjustments” for their staff so that a disabled person is not at a substantial disadvantage compared to a non-disabled person. The reasonable adjustment duty applies to recruitment practices as well as arrangements for existing staff members. The definition of what is “reasonable” will depend on factors such as the time and cost of making an adjustment. Reasonable adjustments might include:

- providing recruitment literature in large print
- providing in interview situations extra equipment at reasonable cost, removing movable barriers like furniture, or holding the interview in a different, wheelchair accessible room;
- allowing a guide or hearing dog into the workplace;
- purchasing specialist equipment, such as an ergonomic chair;
- discounting disability-related sickness leave for the purposes of absence management;
- providing additional supervisory guidance / support;
- including a disabled parking space in the car park;
- allowing different start and end times to the working day.<sup>50</sup>

As detailed above, the Access to Work scheme can provide additional financial support for adjustments which go beyond the remit of mandatory reasonable adjustments requirements.

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<sup>50</sup> [Equality Act 2010: Duty on employers to make reasonable adjustments for their staff](#)

## 4. Welfare and benefits

People with a learning disability may be entitled to a range of different benefits. This includes income-replacement benefits, such as [Employment and Support Allowance \(ESA\)](#), or benefits to help with the extra costs of a disability, such as [Disability Living Allowance \(DLA\)](#) which is being replaced by [Personal Independence Payment \(PIP\)](#) for working-age adults. The means-tested version of Employment and Support Allowance – income-related ESA – is (together with other means-tested benefits and tax credits) being replaced by [Universal Credit](#).

While social security is devolved to Northern Ireland, the long-established parity principle requires Northern Ireland to keep in step with the rest of the UK in social security matters. Until recently, social security was almost entirely a reserved matter in Great Britain, but the [Scotland Act 2016](#) devolved significant welfare powers – including responsibility for disability and carers' benefits – to the Scottish Parliament (see below).

### Employment and Support Allowance

Employment and Support Allowance (ESA) replaced incapacity benefits for new claimants from 27 October 2008. It replaced both Incapacity Benefit, and Income Support for people judged incapable of work.

Eligibility for ESA is determined by the [Work Capability Assessment \(WCA\)](#). Claimants are assessed to determine whether they have a "limited capability for work", and also whether they are capable of engaging in "work-related activity." This second part of the assessment determines whether the person is placed in the "Support Group" or the "Work-Related Activity Group" (WRAG). Maximus – which operates as the [Health Assessment Advisory Service](#) – holds the contract to undertake assessments for the Department for Work and Pensions, but the decision on entitlement to ESA and on the relevant group is ultimately one for a DWP "Decision Maker."

ESA claimants in the Support Group are not required to undertake any activities as a condition of receiving their benefit. For claimants placed in the WRAG, access to the full rate of benefit may be conditional on participation in Work-Focused Interviews and undertaking work-related activity. "Work-related activity" is activity that makes it more likely that the person will get a job or remain in work. The exact activity is at the discretion of the work coach, and could include a wide range of activities such as skills training, drawing up a CV, work placements, or work experience (although the latter is voluntary). Any requirement must be "reasonable," taking into account the person's circumstances. A person cannot be required to apply for a job, undertake work or undergo medical treatment. All work-related activity must be recorded in an "action plan," which must be in writing and specify the activity the claimant is required to undertake.

As a result of measures in the [Welfare Reform and Work Act 2016](#), the additional Work-Related Activity Component (WRAC) worth £29.05 a

week payable to ESA claimants in the Work-Related Activity Group – and the equivalent element in Universal Credit – was abolished for new claims from April 2017. The changes were introduced to “remove the financial incentives that could otherwise discourage claimants from taking steps back to work”. The changes were widely criticised by disability charities. The idea that the WRAC incentivises claimants to not look for work has been particularly disputed.<sup>51</sup> Alongside the changes, the Government promised a package of measures to provide additional help people with health conditions and disabilities get into work. Further details were given in the November 2017 policy document [Improving Lives: The Future of Work, Health and Disability](#).<sup>52</sup>

## Jobseekers’ Allowance

People who apply for ESA but are not deemed to have “limited capability for work” due to an illness or disability may apply for Jobseeker’s Allowance (JSA). To get JSA, a person has to sign on as available for and seeking work, and must be prepared to accept any reasonable offer of work, even if a reconsideration/appeal of the ESA decision is pending.<sup>53</sup> A JSA claimant with a health condition or disability may however be allowed to restrict their availability for work if it is reasonable in light of their condition.

## Personal Independence Payment

Personal Independence Payment (PIP) is replacing Disability Living Allowance (DLA) for people of working age. Like DLA, PIP is non-means-tested and is intended to help with the extra costs arising from ill health or disability. It has two components: a mobility component, based on an individual’s ability to get around; and a “daily living” component, based on ability to carry out various day to day activities. Each component has two rates.

PIP was introduced for new claims from April 2013, and DWP is reassessing all existing working age DLA claimants for the benefit. Young people in receipt of DLA are also reassessed for PIP when they reach 16.

The PIP assessment is intended to provide “a more holistic assessment of the impact of a health condition on an individual’s ability to participate in everyday life.” It covers sensory impairments, developmental needs, cognitive impairments and mental conditions, as well as physical disabilities. PIP was intended to target support more closely on those most in need and significantly fewer people were expected to qualify for PIP than would have qualified for DLA, but the Office for Budget Responsibility believes that PIP will not in fact deliver savings relative to DLA.

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<sup>51</sup> See Commons Library briefing CBP-7649, [Abolition of the ESA Work-Related Activity Component](#), 7 March 2017

<sup>52</sup> Cm 9342; see also Commons Library briefing CBBP-7540, [People with disabilities in employment](#), 29 June 2018

<sup>53</sup> See Work and Pensions Committee, [Employment and Support Allowance and Work Capability Assessments](#), 23 July 2014, HC 302-I 2014-15, paras 103-109

The Department for Work and Pensions is responsible for handling claims for PIP and making decisions on entitlement to benefit. Contracted assessment providers are however a key element in the claims process. Atos Healthcare holds the contracts for undertaking assessments in Northern England and Scotland; and in London and Southern England. Capita Business Services Ltd holds the contracts covering Wales and Central England; and Northern Ireland.<sup>54</sup> These are separate from the contract under which Maximus assesses ESA claimants.

At November, 376,400 Disability Living Allowance claimants in Great Britain – 18% of the total – were recorded as having “learning difficulties” as their main disabling condition. Of the 1.8 million PIP claimants at April 2018, 105,400 – just under 6% - had learning disability as their main disabling condition.<sup>55</sup>

The DWP also published statistics on outcomes for working-age DLA claimants reassessed for PIP.<sup>56</sup> Compared with DLA claimants as a whole, people with learning difficulties reassessed for PIP were more likely to have an increased award following a reassessment for PIP (56%, compared with 39%), but 32% of DLA claimants with learning difficulties had their award reduced or disallowed, with 27% having their claim disallowed.<sup>57</sup>

### **PIP mobility component and psychological distress**

In March 2017 the DWP introduced regulations to reverse the effect of two Upper Tribunal judgments relating to the PIP eligibility criteria – for background to these changes see Commons Library briefing CBP-7911, [Changes to the Personal Independence Payment eligibility criteria](#). The most significant change made by the regulations was to tighten the rules on access to the mobility component for people unable to undertake journeys due to “overwhelming psychological distress.” This would potentially affect people with a wide range of conditions including learning disability. Disability organisations called on the Government not to proceed with the changes. Some questioned how the changes fit with the Government’s stated commitment to “parity of esteem” between physical and mental health issues.

In its judgment on 21 December 2017 in *RF v the Secretary of State for Work and Pensions & Others*,<sup>58</sup> the High Court ruled that the regulations introducing the March 2017 changes were unlawful because they discriminate against people with disabilities in breach of *Human Rights Act 1998* obligations, and declared that the Secretary of State did not have lawful power to make the regulations (i.e. they were “ultra vires”) and should have consulted before making them.

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<sup>54</sup> For further information on PIP see Commons Library briefing CDP-2018-0020, [Claimant experience of the Personal Independence Payment process](#), 30 January 2018

<sup>55</sup> Source: [DWP Stat-Xplore database](#)

<sup>56</sup> DWP, [Personal Independence Payment: DLA to PIP reassessment outcomes, October 2017](#), 13 December 2017

<sup>57</sup> These figures are initial outcomes from reassessments, prior or any reconsideration, appeal action or award review.

<sup>58</sup> [\[2017\] EWHC 3375 \(Admin\)](#)



On Friday 19 January the Government announced<sup>59</sup> that it would not contest the High Court's decision, and that it would also drop its appeal against the original Upper Tribunal decision that had prompted the change to the regulations.<sup>60</sup> The Secretary of State for Work and Pensions said that her Department would now "take all steps necessary to implement the judgment in MH in the best interests of our claimants, working closely with disabled people and key stakeholders over the coming months."

The DWP is reviewing all 1.6 million existing PIP awards, and PIP claims submitted since the original Upper Tribunal judgment in November 2016, to see who could be affected. On 25 June the Government announced that the review was underway and that new guidance required to implement the change had been published.<sup>61</sup> Further details of the review process are given in a Deposited Paper.<sup>62</sup>

It is expected that the review will result in around 25,000 claimants by 2022-23 receiving a PIP award who would not have done so otherwise and around 165,000 receiving a higher award than would otherwise have been the case.<sup>63</sup>

### **ESA and PIP assessments**

Disability bodies have long voiced concerns about the assessment processes for both incapacity and disability benefits and the particular issues faced by people with learning disabilities claiming benefits.

In November 2014, Dr Paul Litchfield's [Fifth Independent Review of the Work Capability Assessment](#) also expressed concerns about the disadvantages faced by people with a learning disability during the WCA process. He raised concerns about the difficulties people with a learning disability may face in engaging with and navigating the ESA process, including barriers to engaging with standard communications; a lack of easy read versions of materials; and interview practices that are not adapted to enable people with a learning disability to fully understand the questions being asked:

Many people with learning disabilities will answer questions literally and neither understand nor express subtleties of interpretation...Similarly, a number of people with learning disabilities will wish to please someone asking them questions and will consequently give the responses that they think are wanted rather than those which most accurately reflect reality.<sup>64</sup>

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<sup>59</sup> [Written Statement HCWS414](#)

<sup>60</sup> [MH v Secretary of State for Work and Pensions \[2016\] UKUT 0531 \(AAC\)](#)

<sup>61</sup> [Written Statement HCWS793](#)

<sup>62</sup> DWP, [PIP: Implementation of legal judgments: FAQs](#), DEP2018-0644

<sup>63</sup> Office for Budget Responsibility, [Economic and fiscal outlook](#), March 2018, para 4.112

<sup>64</sup> Dr Paul Litchfield, [An Independent Review of the Work Capability Assessment – year five](#), November 2014, page 60



Dr Litchfield made recommendations to improve the WCA process, including reviewing the learning disability training that the DWP provides to its staff and assessments providers.<sup>65</sup>

In evidence to the Work and Pensions Committee's inquiry into PIP and ESA assessments launched in September 2017, the Royal Mencap Society said that its helpline had heard of many cases where people previously in receipt of the middle rate DLA care component had been denied PIP altogether; and where people had on reassessment been moved from the ESA Work-Related Activity Group to Jobseeker's Allowance, or from the Support Group to the WRAG, despite no change in the circumstances.<sup>66</sup> Other concerns raised by Mencap included:

- Despite some ongoing work to improve training, assessors often did not have a full understanding of learning disability.
- Family members and advocates not being allowed to speak up during assessments when not was clear that the person being assessed was saying things that did not reflect their real-life abilities.
- The need for fundamental reform of the Work Capability Assessment so that it captured an accurate picture of the barriers faced by disabled people and what kind of job the person could do.
- The "devastating effects" on disabled people's lives of wrong PIP and ESA decisions, including the loss of passported benefits and people being subject to inappropriate conditionality.
- Ongoing concerns about the "Mandatory Reconsideration" process – many people felt that Tribunals seemed to understand their condition better, often because advocates were given the opportunity to speak and support the individual during appeals. Mencap was also worried that the Ministry of Justice's plans for online appeals could deter people from appealing decisions and make it more difficult for Tribunals to understand the nature and impact of a person's disability.
- Assessors should be more proactive in encouraging people close to the claimant, including care workers and family members, to submit evidence along with the claim, and professionals must be better educated about what types of evidence would be useful.
- An easy read version of the PIP2 claim form should be available, and people with a learning disability and their supporters should have access to staff with learning disability awareness on the phone to help with questions.
- All claimants should be given substantial advance warning of assessments, communications must make it clear that home visits can be requested, and claimants must be explicitly told that they can bring a companion with them and encouraged to do so. For those without a companion to accompany them, DWP should provide skilled advocacy service.

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<sup>65</sup> Dr Paul Litchfield, [An Independent Review of the Work Capability Assessment – year five](#), November 2014, page 60

<sup>66</sup> [Written evidence from Royal Mencap Society](#), PEA0398, November 2017

In its report on [PIP and ESA assessments](#) published on 7 February 2018<sup>67</sup>, the Work and Pensions Committee said that failings in the assessment and decision making processes for PIP and for ESA had resulted in the “pervasive lack of trust” that risked undermining the entire operation of both benefits. It set out a series of recommendations including:

- recording face to face assessments and providing a record and a copy of the assessor's report to claimants;
- measures to improve understanding about what constitutes good evidence to support PIP and ESA claim, and ensuring assessors use evidence effectively;
- improving the accessibility of the process at every stage, from the application form, to information about home visits and about accessing reconsiderations and appeals; and
- improving contractor performance through more effective use of contractual “levers” and ensuring assessors are given feedback, including from the appeals process.

In its [response to the Committee's report](#) issued on 23 April, the Government made a number of commitments including:

- Producing an Easy Read version of the notes which accompany the PIP “How your disability affects you” form.
- Launching a series of videos which outline the PIP claim process in a simple and clear way, and explain the types of relevant information that are useful in support of a claim, in order to better prepare claimants for an assessment. The PIP assessment providers also supply information to claimants ahead of their assessment appointment via their websites and direct mail sent to the claimant.
- Addressing improvements to application forms by commissioning external research to identify whether, how and what aspects of the PIP (and ESA) claim forms could have the potential to cause distress; revising and amending the forms in light of these findings; and testing the revised forms with applicants to determine if improvements made result in the forms being more claimant-friendly and less likely to cause distress. This work is to comment in summer 2018.
- Working closely with the PIP assessment providers around requests for home visits to ensure their processes align with guidance and claimant needs are being met.
- Working with PIP providers to enhance GP engagement – all providers to foster a greater level of engagement and source information from a broader range of health and social care professionals.
- Pilot enhancements to the PIP telephony script to remind claimants to submit medical evidence and the types of evidence that are useful.
- The Department recognises that the complexity and potential costs of recording makes it difficult for claimants—of PIP

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<sup>67</sup> HC 829 2017-19

especially—to record their assessment. It intends “to make recording the PIP assessment a standard part of the process”. The Department would explore “potential options to test the recording of assessments, including video recording.”

- Gathering more information on companions accompanying claimants to PIP assessments. In recognition of the fact that a family member, friend, carer or other advocate to support claimants in the assessment, and can be “particularly helpful where a claimant has a mental, cognitive or intellectual impairment and may not be able to give an accurate account of their daily living and mobility needs.” DWP will consider how assessments where companions attend with claimants can be specifically examined in audit.

In a written statement on 5 June 2018, the Government announced further measures to “improve the experience” of those claiming PIP, including looking at how to enable more providers to deliver PIP by developing a DWP-owned IT system.<sup>68</sup>

### **Disability benefits in Scotland**

The [Scotland Act 2016](#) gives the Scottish Parliament powers over certain categories of benefits. These include Disability Living Allowance and Personal Independence Payment. The Scottish Parliament will have the power to determine the structure and value of these benefits, or replace the existing benefits with new benefits.

In relation to disability benefits, the Scottish Government has proposed that, among other things-

- Profit-making companies should not be involved in carrying out assessments.
- Children receiving DLA will have an automatic extension of the award up to age 18.
- Automatic awards will be available in certain circumstances, and longer-term or lifetime awards for people whose condition is unlikely to improve.
- Claimants will have the right to have a “supporter” with them during assessments, and the right to access “advocacy support” to ensure they can access the benefits they are entitled to.
- Claimants may be offered alternatives to cash in lieu of disability benefits.<sup>69</sup>

### **Universal Credit**

Under the *Welfare Reform Act 2012*, from April 2013 Universal Credit began to replace a range of means-tested benefits and tax credits for working age families. Universal Credit will replace income-related Employment and Support Allowance, income-based Jobseeker’s Allowance, Income Support, Child Tax Credit, Working Tax Credit and Housing Benefit. Contributory ESA will remain as a separate benefit.

The DWP have stated that Universal Credit aims to simplify the system of benefits and tax credits associated with disability. For further

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<sup>68</sup> [Written Statement HCWS733](#)

<sup>69</sup> See Scottish Government, [Disability and employment injury assistance: position paper](#), 27 October 2017; [Right to advocacy extended](#), 19 April 2018

information, see Library briefing SN06548 [Draft Universal Credit Regulations 2013](#).

Disability organisations have expressed concerns that the “Severe Disability Premium” (SDP), which is currently payable with means-tested benefits, is not being carried over into Universal Credit, meaning that some disabled people will be significantly worse off. On 7 June 2018 the DWP announced that people in receipt of SDP will not be moved to UC until they qualify for “transitional protection” – i.e. until the final “managed migration” stage, due to begin in Jul 2019. Claimants who have already lost SDP following a move to UC are to receive additional payments to cover the period since they moved.<sup>70</sup> Further details of when and how this policy will be implemented are awaited.

All Universal Credit claimants will be required to agree to a Claimant Commitment. This will record the activities they are required to undertake, including, where appropriate, doing all that can reasonably be expected of them to find work or prepare for work.

Unlike ESA, claimants for Universal Credit who are waiting for a Work Capability Assessment or waiting for the outcome of an appeal will, with some exceptions, be subject to the all work related requirements level of conditionality. These requirements will be personalised to their circumstances. The DWP stated that:

This approach is intended to support more claimants by keeping them in touch with the labour market to reduce the damage caused by labour market detachment.<sup>71</sup>

The DWP has produced a guide on [Universal Credit if you have a disability or health condition](#).

## Other benefits and funding sources

Other benefits that people with a learning disability, or their carer, could be entitled to include:

- Carer’s Allowance
- Housing Benefit
- Motability Scheme
- Blue Badge scheme
- Help with Council Tax

In addition to benefits and assessments, there are other sources of support available. For example, the [Family Fund](#) charity provides grants to families in the UK caring for severely disabled children.

Responsibility for people who were supported by the Government’s Independent Living Fund, which closed on 30 June 2015, has transferred to local authorities. Further information can be found in Commons Library briefing CBP-7788, [Local replacements for the Independent Living Fund \(ILF\)](#).

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<sup>70</sup> [Written Statement HCSWS745](#)

<sup>71</sup> Work and Pensions Select Committee, *Employment and Support Allowance and Work Capability Assessments*, 23 July 2014, HC 302-I 2014-15, [Ev 17 WCA0196](#)

## 5. Education

### Special Educational Needs and Disability

The *Children and Families Act 2014* provides for the special educational needs and disability (SEND) support system in England, covering education, health and social care.

The system introduced by the Act has been in place since September 2014, with transitional arrangements for those who already had support in place. Transition to the reformed system was intended to be completed by April 2018.

The [Special educational needs and disability code of practice](#) for children and young people aged between 0 to 25 years provides statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities.

The type of support that children and young people with SEND receive vary widely, as the types of SEND that they may have are very different. However, two broad levels of support are in place: SEN support, and Education, Health and Care Plans.

- **SEN support** - support given to a child or young person in their pre-school, school or college. In schools, it replaces the previously existing 'School Action' and 'School Action Plus' systems. For children of compulsory school age the type of support provided might include extra help from a teacher, help communicating with other children, or support with physical or personal care difficulties.
- **Education, Health and Care Plans** - for children and young people aged up to 25 who need more support than is available through SEN support. They aim to provide more substantial help for children and young people through a unified approach that reaches across education, health care, and social care needs.

Parents can ask their local authority to carry out an assessment if they think their child needs an EHC Plan. A request can also be made by anyone at the child's school, a doctor, a health visitor, or a nursery worker.

Further information can be found in the Library Standard Note on [Special Educational Needs: support in England](#). Section 5 of the briefing provides research on the effectiveness of the reformed system.

### Further education (FE)

The Government has issued separate [guidance to post-16 colleges and academies](#) (to be read alongside the [code of practice](#)) about implementing the new 0 to 25 SEND system, which sets out the new duties for FE providers. While EHC plans may cover eligible students up to the age of 25, the code of practice makes it clear that this does not

mean that students have an automatic entitlement to education up to the age of 25.<sup>72</sup>

As well as providing information on how FE institutions should work to fulfil their part of the reformed system, the code of practice highlights new statutory duties for the FE sector that are in place now the *Children and Families Act 2014* is in operation. For example, all FE and sixth form colleges must use their best endeavours to secure the special education provision that a young person needs, and they also, along with specialist post-16 institutions, have a duty to admit students if the institution is named in an EHC plan.<sup>73</sup>

FE providers also have to comply with provisions in the *Equality Act 2010* (in the same way as HE providers). Details of this are set out below.

## Higher Education (HE)

The relevant legislation in HE is the [Equality Act 2010](#), this Act absorbed and superseded the *Disability Discrimination Act* (1995, 2006), and the *Special Educational Needs and Disability Act* (2001). Chapter 2 of the Act contains the provisions specifically relating to further and higher education.

The Act states that disabled students should **not be treated less favourably** than other students and places HEIs under a **duty to make reasonable adjustments** to ensure that people who are disabled are **not put at a substantial disadvantage** compared to people who are not disabled in accessing higher education.

Section 149 of the *Equality Act 2010* contains the Public Sector Equality Duty which requires public bodies, including HEIs, to comply with general duties to eliminate discrimination, to promote equality of opportunity, and to foster good relations between people who share a protected characteristic and people who do not share it.

### Reasonable adjustments

The *Equality Act 2010* requires bodies to make reasonable adjustments for disabled people - this duty aims to ensure that disabled people do not face 'substantial disadvantage' in comparison with non-disabled people. Section 20 of the Act defines what is meant by the duty to make reasonable adjustments. The first requirement of the duty covers changing the way things are done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (such as providing special computer software or providing a different service). The duty is anticipatory.

The Equality Challenge Unit have published a document [Managing reasonable adjustments in higher education](#), 2010 which gives guidance

<sup>72</sup> Department for Education, [Special educational needs and disability code of practice: 0 to 25 years](#), January 2015 p.190

<sup>73</sup> Department for Education, [Implementing a new 0 to 25 special needs system: further education](#), page 7

to HEIs on their strategies around the duty to make reasonable adjustments.

### The Local Offer

Since September 2014, all local authorities have been required to publish a 'Local Offer', which sets out education, health and social care provision for children and young people with SEN or disabilities in the area. The offer must include:

- the education and training provision available in FE and sixth form colleges, special post-16 institutions and other post-16 providers; and
- services available to support young people in preparing for adulthood and independent living, including:
  - finding employment
  - obtaining accommodation
  - participating in society <sup>74</sup>

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<sup>74</sup> Department for Education, [Implementing a new 0 to 25 special needs system: further education](#), April 2014, page 8

## 6. Criminal justice

### Liaison and Diversion

Liaison and diversion services seek to identify offenders who have mental health problems or learning disabilities, so that they can either be supported diverted into health treatment, social care services or other relevant support, where appropriate.

Liaison and diversion services are currently provided to over 82% of the population of England, with full roll-out by 2020/21, as recommended by the [Five Year Forward View for Mental Health](#) (February 2016).<sup>75</sup>

Full roll-out of liaison and diversion services was initially expected by 2017.

A summary of the development of liaison and diversion policy is provided below:

### Bradley Review

[The Bradley Report](#) (2009) - Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system - was commissioned by the Justice Secretary to examine how offenders with mental health problems or learning disabilities could be diverted away from the criminal justice system to other services.

Lord Bradley examined how diversion could take place at all stages of the criminal justice system, but emphasised that there should be better identification and assessment of mental health problems and learning disability at the start of the offender pathway. He found that "that the police stage in the offender pathway provides the greatest opportunity to effect change". This would enable screening of detainees with a learning disability at the police arrest stage. The report recommended that:

All police custody suites should have access to liaison and diversion services. These services would include improved screening and identification of individuals with mental health problems or learning disabilities, providing information to police and prosecutors to facilitate the earliest possible diversion of offenders with mental disorders from the criminal justice system, and signposting to local health and social care services as appropriate.<sup>76</sup>

The report also recommended that mental health awareness and learning disabilities should be a key component in training programmes for staff throughout the criminal justice system, including the police, probation officers and the judiciary.

### The Bradley Report five years on (June 2014)

In June 2014, the Bradley Commission published a review into what has changed since 2009 regarding the support provided to people with learning disabilities and mental health problems in the criminal justice

<sup>75</sup> [PO 136060 \[Administration of Justice: Mental Illness\], 19 April 2018](#)

<sup>76</sup> [The Bradley Report](#): Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system, April 2009, page 53



system. It also looked ahead to the next five years to see what remains to be done.

The report's foreword provides a brief summary of progress made in the last five years:

In that time, we have seen significant progress towards achieving the vision set out in that report with the clear and unambiguous support of both governments.

[...]

In looking back at what has changed over the last five years, it has been encouraging to see the development of more liaison and diversion teams, both for adults and for children and young people, offering early intervention in police stations and courts across the country. While there is a lot more to be done in making sure liaison and diversion is available everywhere, the commitment of the Department of Health, Ministry of Justice and NHS England to the successful completion of this job has been key to the continued progress we are making.

We are also now seeing the emergence of new and creative ways of supporting people with mental health problems and those with learning difficulties across the criminal justice system. Initiatives like street triage, which offers a more humane crisis response, and youth justice liaison and diversion, which provides support to children and young people when they come into contact with the police. We still have a lot to learn from these as we build the evidence of what makes the biggest difference to people's lives and the most cost-effective use of public money.

#### **National roll-out of liaison and diversion services**

In January 2014, the Department of Health announced an extra £25 million of funding for mental health nurses and other mental health professionals to work with police stations and courts so that people with a mental illness, learning disabilities or substance misuse problems can receive treatment at the earliest possible stage.

Ten areas across the country received part of the funding to test a new model of liaison and diversion services. The Department of Health said these services will be evaluated and if successful, extended to the rest of the country by 2017.<sup>77</sup>

As noted above the full roll-out of liaison and diversion services nationally was expected by 2017. Further information is provided in the PQ below:

**Lord Beecham:** To ask Her Majesty's Government why the deadline for full roll-out of liaison and diversion services for offenders with mental health needs or learning disabilities has been extended from 2014 until 2017; and how many offenders will be affected by the delay.

**The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con):** National roll-out of liaison and diversion services by NHS England will follow HM Treasury approval of a full business case. It has taken time to develop the business case and it will not be complete until 2015. This is

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<sup>77</sup> Department of Health, [Extra funding for mental health nurses to be based at police stations and courts across the country](#), 4 January 2014

because there is no existing evidence for the effectiveness of liaison and diversion services and this has to be developed as part of the phased roll-out of liaison and diversion services.

Information is not available about the potential number of offenders who would be affected by roll-out in 2017 instead of roll-out in 2014. Liaison and diversion services enable people entering the criminal justice system with mental health-related conditions and learning disabilities to get the right support and the best possible care as soon as possible. For offenders whose needs are not identified by a liaison and diversion service in police custody or the courts, these will continue to be identified through court procedures or at reception in prison.

National-roll out of liaison and diversion services is now expected by 2020/21.

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