

ALL-ISLAND SOCIAL SECURITY NETWORK

RESPONSE TO THE GREEN PAPER ON DISABILITY REFORM, APRIL 2024

Introduction:

We welcome the opportunity to respond to the Government of Ireland's consultation on disability reform.

What is the All-Island Social Security Network (AISSN)?

AISSN is a group of researchers, policy experts and practitioners from the North and South of Ireland and from other UK Nations. We wish to examine, understand, map-out, explore, disseminate and promote knowledge and understanding about the social security system in the Republic of Ireland and Northern Ireland. We seek to create a safe space for discussion, debate and exploration of a social security system on both parts of the island that can meet the challenges of the future, while ensuring every individual can live a life centred on dignity and respect¹.

The AISSN notes and supports the public responses already issued by Irish disability organisations and stresses the importance of centring their lived experience of disability income supports and services in Ireland. This policy perspective on behalf of the Network, is therefore intended to complement their own interventions utilising our experience as researchers with a comparative understanding of the Irish and UK systems.²

Ultimately the AISSN notes that any future systematic review of disability-related payments should be informed by two key considerations. These are that it should centre the lived experience and participation of disabled people with direct experience of claiming so that changes are more intuitive and beneficial for claimants and that it should draw upon international best practice.

The key proposals that the AISSN wish to respond to:

¹ The network was launched in 2023 and further details about AISSN and its activities can be found at <https://aiissn.blog/>.

² This response has been prepared by AISSN Steering Group members.

The Minister in the foreword to the Green Paper, states that the Department of Social Protection wishes to respond to twin challenges:

1. to encourage a higher level of employment for people with disabilities, which will enhance their participation in society and reduce the risk of poverty and deprivation; and
2. to better insulate (protect) disabled people who cannot work from poverty and deprivation.

The proposals outline a move away from the current system of support for people with disabilities. There are two main payments which are administered by the Department of Social Protection:

- A means-tested Disability Allowance (DA, €232 weekly)
- A contributory Invalidity Pension (based on 5 years of National Insurance contributions) (IP, €225.50 weekly)

There is also a means-tested Blind Pension (€220 weekly) and a Partial Capacity Benefit (PCA) which permits a person with reduced capacity who is employed to continue to receive a payment.

At present, disabled people are not subject to welfare conditionality – the principle that an individual must demonstrate that they have participated in work or work-related activity in order receive entitlement. The new proposals will introduce welfare conditionality for those placed into tier 2 and 3 of the proposed system.

The proposed system of Personal Support Payments (PSPs) would require new claimants (and later existing claimants) to be placed in tier 1, 2, or 3 depending on the disabled persons capacity to undertake paid employment. Furthermore, the age at which PSPs can be claimed would be standardised to 18.

- A person placed into tier 1 would be eligible to receive an increased payment equivalent to the State Pension rate (2024 rate = €277.30 per week³). This indicates they have a “low capacity to work” for at least a period of 2-years.

³ This is based on 2024 rates, although the Green Paper refers to this as €265.30.

- A person placed into tier 2 would be eligible to receive a payment of (2024 rate = €242.65 per week⁴). This indicates that there is a reduced capacity to work, and that the individual can't support themselves solely through employment for at least a period of 2-years. People placed in this tier would be expected to make a reasonable effort to interact with Public Employment Services (PES) and to take part in training and programmes to increase their capacity for employment.
- A person placed into tier 3 would be eligible to receive the current DA rate (2024 rate = €232⁵). This indicates that they are capable of certain types of work and will be expected to take up training, employment programmes or appropriate employment opportunities.

Medical Assessors in the Department for Social Protection prepare a detailed report based on the applicant's evidence for a Deciding Officer who will determine which tier the disabled person should be placed in.

1. A Cautionary Tale: Similarities with Employment Support Allowance (ESA)

This model raises similarities with the system of Employment and Support Allowance (ESA) (which replaced Incapacity Benefit). ESA was introduced in 2008 to the UK social security system. It introduced a Work Capability Assessment (WCA) which is used to determine the level of work-related activity that a person is expected to engage in.

People are either found Fit for Work (FFW) which means they must claim unemployment benefit, or they are placed in the Work-Related Activity Group (which is paid at the same level as the standard allowance of Universal Credit (£90.50 per week, £71.70 if you are under 25)⁶ or the Support group. People who are placed in

⁴ Based on figure provided in Green Paper but may have increased given both State Pension (Contributory) and Disability Allowance have increased in Budget 2024 after the Green Paper was published.

⁵ Based on 2024 rate – Green Paper cites €220 per week.

⁶ If you were awarded ESA before 3 April 2017, you will receive a work-related activity component (£35.95).

the Work-Related Activity Group are expected to participate in Work Focused Interviews (WFIs) and if they fail to engage, they could be sanctioned. People who are placed in the Support Group receive additional support (£47.70 per week) and are not subject to conditionality requirements. The Government has recently announced changes to the WCA driven by a rise in the number of people who are claiming the benefit, which will further restrict access to additional support, based on an assumption that disabled people are able to undertake more work from home.⁷ The proposals have faced huge opposition from disability advocates and organisations.⁸

AISSN is concerned that the Irish Government risk treading the same path as the UK Government in terms of promoting an individualised work-focused approach, which fails to recognise the persistent failure to address structural barriers which exist in the labour market.⁹ A range of studies have shown that the biggest obstacle to employment for disabled people is employers' attitudes to them and employers' unwillingness to make reasonable adjustments to allow disabled employees to do their jobs. The lack of reasonable adjustments is reported by disabled people as one of the main reasons they are unable to sustain a job when they get one.¹⁰ The Irish Government's Green Paper suggests the reforms will ensure that more disabled people can access employment, which supports a route out of poverty, as well as enhancing disabled people's participation in society. This aligns strongly with the ideological approach that New Labour adopted in the 2006 Green Paper which saw the introduction of ESA. Grover and Piggott outline that characterising work as a route out of poverty can be interpreted as a 'means of using work ethic to blame

⁷ Transforming Health: The Health and Disability White Paper (March, 2023) < [Transforming Support: The Health and Disability White Paper - GOV.UK \(www.gov.uk\)](#) (accessed 6 March 2024)

⁸ E.g. Disability Rights UK Response to WCA Consultation, [Disability Rights UK's response to WCA Consultation | Disability Rights UK](#).

⁹ C. Barnes, (2003) Disability, the organization of work, and the need for change. statement presented to the OECD Conference Transforming Disability into Ability. March 6 2003. Available online at: [www.independentliving.org/docs6/barnes20030306.html](#) cited by C. Grover and L. Piggott (2007) Social security, employment and Incapacity Benefit: critical reflections on *A new deal for welfare* , Disability & Society, 22:7, 733-746.

¹⁰ J. Olsen, (2024) Employers: influencing disabled people's employment through responses to reasonable adjustments, Disability & Society, 39:3, 791-810.

those who lack work for the situation in which they find themselves.¹¹ This is exemplified by discourse in the Irish Government's Green Paper, which articulates the current system of disability income supports as one of contributing challenges which constrains people's capacity to work.¹²

The final UK Government commissioned statutory review of ESA concluded that despite changes and improvements to the WCA, it has sustained "an overwhelmingly negative perception" in terms of the effectiveness of the process for people undergoing an assessment and the individuals or organisations supporting them.¹³ Gulland underlined that a major source of controversy was the overwhelming numbers of people who failed to qualify for the benefit at all. Statistics showed that 34 percent of people were awarded the benefit while the remaining 66 percent of people were found Fit for Work. In the same way as the proposals in the Irish Government's Green Paper, the WCA marked a departure from previous eligibility tests for disability benefits by classifying claimants into different categories. This approach, Gulland argues has led to embedding a moralistic process, where those who "pass" the test and who are not required to engage in work related activity are perceived to be honest and deserving of social support, while those who "fail" the test are perceived to be undeserving.¹⁴ It is interesting to note that, the Disability Federation of Ireland state that, the Department has indicated that 50% of existing social protection recipients of disability income supports would be assessed as Tier

¹¹ C. Grover and L. Piggott, (2007) Social security, employment and Incapacity Benefit: critical reflections on *A new deal for welfare*, *Disability & Society*, 22:7, 733-746.

¹² For example. p. 3 of the Green Paper. "It is concerned with improving how the income and employment supports provided by the Department of Social Protection can act as a stepping-stone towards employment for those people who have a capacity to work."

¹³ P. Litchfield (November, 2014) An Independent Review of the Work Capability Assessment – year 5. Available at: <https://assets.publishing.service.gov.uk/media/5a75716ded915d6faf2b3059/wca-fifth-independent-review.pdf> (accessed 7 March 2024)

¹⁴ J. Gulland (2011), 'Ticking Boxes: Decision-Making in Employment and Support Allowance', *Journal of Social Security Law*, vol. 18, no. 2, pp. 69-86.

3.¹⁵ As emphasised by Cousins, preventing long-term disability claims requires ‘a broader scope’ than that adopted by the Green Paper.¹⁶

Finally, the AISSN wish to draw attention to the mounting evidence which links the WCA to suicide. A research study outlined that the WCA process could be linked to 600 suicides in a three-year period.¹⁷ Presenting to the Committee on Work and Pensions, Professor Barr who conducted the study said that further reports of individual deaths and coroners’ investigations showed “clear evidence that there’s potential for the assessment process to cause some very major adverse effects on mental health.”¹⁸

Lessons from the UK system: Increased Conditionality for disabled people

There is little evidence to support the view that welfare conditionality supports disabled people into employment. A major Economic Social Research Council funded project, ‘welfare conditionality’ draws on data from three waves of repeat interviews (between 2014-2017) with a group of disabled people. It found that welfare conditionality is counterproductive as it exacerbates many people’s existing illnesses and impairments. A particular concern was the negative impact on disabled people’s mental health. Related to this, it found that sanctions have no tangible positive effects, but rather they trigger negative financial impacts and move more claimants further from the paid labour market. These findings are illustrated by a participant:

¹⁵ Disability Federations of Ireland, ‘Green Paper – Reform needed but current proposals flawed and inadequate.’ (17 January 2024). Available at: <https://www.disability-federation.ie/news/2024/01/17/green-paper-reform-needed-but-current-proposals-fl/#:~:text=The%20Green%20Paper%20proposes%20that,context%20as%20we%20outline%20below> (accessed 7 March 2024).

¹⁶ M. Cousins, The Green Paper on Disability Reform: a flawed effort to reform payments for people with disabilities. Available at: https://publicpolicy.ie/downloads/papers/2024/Disability_Reform.pdf (accessed 17 January 2024)

¹⁷ B. Barr, D. Taylor-Robinson, D. Stuckler, *et al* (2016) ‘First, do no harm’: are disability assessments associated with adverse trends in mental health? A longitudinal ecological study *J Epidemiol Community Health* 2016;70:339-345.

¹⁸ Disability Rights UK, DWP ignored ‘hugely alarming’ research that linked WCA with 600 suicides, MPs are told (27 June 2022) available at: <https://www.disabilityrightsuk.org/news/2022/june/dwp-ignored-%E2%80%98hugely-alarming%E2%80%99-research-linked-wca-600-suicides-mps-are-told> (accessed 7 March 2024)

“[Conditionality] encouraged a lot of stigma, discrimination and bullying and I think that’s a real culture problem within DWP and Jobcentre Plus and that would have to completely change if any level of conditionality were to be effective and reasonable... It’s only really getting into the support group that gave me that freedom to focus on what I wanted to do and not to have to put all my energy into jumping through pointless hoops and cope with the stress and anxiety of not knowing whether I was going to be referred to sanctions every month... It didn’t just happen to me, lots and lots of my peers and friends were set conditions... It’s really ruined people’s lives. People have just lost that kind of foothold that they had in terms of taking part in society or maintaining an activity that enabled their wellbeing or gave them some hope for the future. That’s just had to go out of the window because all their energy has gone in complying with stupid conditionality.” [Disabled woman, England]¹⁹

Furthermore, recent evidence published by the Department for Work and Pensions found that sanctions do not result in large shifts in job finding rates and may affect the kind of work that people take up, shifting people towards lower paying work. In other words, people are more likely to take up any job to escape financial hardship which is unlikely to take them out of poverty in the long run.²⁰

2. Compliance with the UN Convention’s Definition of Disability

Adopted in 2006, the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol²¹ utilises a new legal definition of disability. In particular, Article 2 of the Convention defines disability as any

¹⁹ P. Dwyer, K. Jones, J. McNeill, L. Scullion and A. BR Stewart, Welfare Conditionality Final Findings: Disabled people (May 2018). Available at: <http://www.welfareconditionality.ac.uk/wp-content/uploads/2018/05/40414-Disabled-people-web.pdf> (accessed 7 March 2024).

²⁰ Department for Work and Pensions, The Impact of Benefit Sanctions on Employment Outcomes (March 2023). Available at: <https://www.gov.uk/government/publications/the-impact-of-benefit-sanctions-on-employment-outcomes-draft-report/the-impact-of-benefit-sanctions-on-employment-outcomes> (accessed 7 March 2024).

²¹ United Nations, Convention on the Rights of Persons with Disabilities 2006, GA Res 61/106 and UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities 2006, GA Res 61/106, Annex II.

“long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”²²

The Preamble to the Convention expands on this by including “attitudinal and environmental barriers that hinders full and effective participation.”²³

This new conception of disability de-centres the medical view that focuses on the impairment or limitation experienced by an individual²⁴ and instead adopts a ‘social’ model²⁵ which stresses the importance of socio-economic, societal and environmental barriers in limiting or preventing the participation of persons with disabilities within society.²⁶

This new model consequently:

“focuses on the inherent dignity of the human being and subsequently, but only if necessary, on the person’s medical characteristics. It places the individual centre stage in all decisions affecting him/her and, most importantly, locates the main ‘problem’ outside the person and in society.”²⁷

It is concerning that the three-tiered system of classifying disability is overly medicalised and places too much emphasis on an individual impairment. We also note that disabled persons organisations (DPOs), disability representative bodies,

²² CRPD, Article 2.

²³ CRPD, Preamble para (e). See also para (k).

²⁴ Drum, ‘Models and approaches to disability’ in Drum, Krahn, Bersani, *Disability and Public Health* (2009); Oliver, *Social Work with Disabled People* (1983); Oliver, ‘The social model of disability: thirty years on’ (2013) 28(7) *Disability & Society* at 1024-26.

²⁵ Hacking, *The Social Construction of What?* (1999) at 6-7.

²⁶ Kayess and French, ‘Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8(1) *Human Rights Law Review* 1 at 6.

²⁷ Degener and Quinn, ‘A Survey of International, Comparative and Regional Disability Law Reform’, in Breslin and Yee (eds), *Disability Rights Law and Policy* (2002) at 13.

and IHREC have critiqued the medical model of disability being used in the proposals.²⁸ By doing so, it strains against the definition of disability adopted in Article 2 of the Convention. The clear delineation between tiers is unlikely to take into consideration the specific barriers faced by a person with disabilities, particularly where these are invisible disabilities or do not have a consistent impact and are prone to flair ups. That the Green Paper does not include any explicit mention of the CRPD in its framing or in how it conceptualises disability is also a significant concern. The Green Paper therefore seems to follow a highly medicalised approach, which does not attempt to meet the State's obligations under the Convention.

The inclusion of the 24 month/2 year requirement for classifying someone as having a disability for the purposes of qualifying for the new Personal Support Payment should also be clarified to ensure that this will not create a significant barrier to access. While this may be a functional categorisation to delineate more temporary sickness benefits from longer-term disability benefits, the inconsistency in terminology within the proposal - Tier 1 includes "for as long as their condition persists and for at least 2 years" whereas Tiers 2 and 3 include "for at least 24 months"²⁹ when these are the same in practice - suggests that this is not being viewed based on the new socio-contextual model of disability within the CRPD as it creates a more literal time bar that could be applied strictly. If disabled persons are forced to comply with a 2 year requirement prior to applying, this may disqualify individuals who would otherwise meet the other preconditions.

3. Addressing the Cost of Disability and Compliance with Article 28 of the Convention

Article 28 of the UNCRPD requires that:

"States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including

²⁸ [ILMI Summary of the Green Paper on DA Consultations – ILMI](#); [Ireland and the International Covenant on Economic, Social and Cultural Rights \(ihrec.ie\)](#); [Latest News | Disability Federation of Ireland \(disability-federation.ie\)](#);

²⁹ Green Paper, 24.

adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”

This also necessitates that disability-related costs are addressed. The current proposals are built on a conflation of ‘capacity to work’ and providing for the additional cost of disability – these are not the same issue and conflating them builds in a flaw at the heart of the proposed policy structure.

The Green Paper appears to set the average cost of an individual with a severe disability compared to an unemployed person without a disability at €5,000 per year based on an Indecon study submitted to the Department.³⁰ However, the increased amount for Tier 1³¹ would only amount to an increase of approximately €2355.60 per year – significantly below the Department’s own conservative estimate. These increases would not appear to address the associated costs of disability and will not take people with disabilities out of poverty. Whilst this might be offset by access to additional benefits, such costs should be embedded within this new system. The Green Paper does not set out the rationale for the given payment levels, apart from stating that the highest payment level is equivalent to the highest level of contributory state pension. This is a missed opportunity to introduce a benchmarked and indexed approach into the social protection system, which would lead to a more coherent approach to setting welfare rates. None of the proposed rates meet, or are methodologically aligned with, the cost of an adequate standard of living for a single adult without a disability,³² let alone the additional costs of disability.³³ It is unclear if

³⁰ Green Paper, 12.

“The range of costs started at €11,579 and went up to €16,284, or between €9,282 and €14,513 using an econometric/equivalent standard of living approach. This was based on a survey of direct costs reported by people with disabilities” and “The study also showed that the costs incurred by a person with a severe disability are estimated to be about €5,000 a year more than faced by an unemployed person without a disability.”

³¹ When compared to the proposed Tier 3 rate and potential uplift for a ‘severe disability’.

³² See Vincentian MESL Research Centre (2023) Annual Update. Available at:<https://www.budgeting.ie/publications/mesl-2023/> (accessed 17 April 2024)

³³ Indecon (2021) The Cost of Disability in Ireland – Research Report. Available at:<https://www.gov.ie/en/publication/1d84e-the-cost-of-disability-in-ireland-research-report/> (accessed 17 April 2024)

the suggested illustrative rates propose an ongoing tie to the contributory pension rate, or will remain standalone and subject to fixed value increases as part of Budget negotiations, as with other payments. This would mean the value of payments are not indexed to a real-world evidence base. Further, the Tier 1 guidance stresses that recipients “would also be entitled to the full range of secondary benefits available to pensioners.”³⁴ This does suggest a strong tailoring for a disability context for ancillary benefits, and more that the contributory state pension is being applied to Tier 1 recipients as this is administratively more advantageous.

It is therefore AISSN’s view that there should be an emphasis on bringing any disability payments in line with the current cost of living linked to the Minimum Essential Standard of Living data, and to personalise these to allow for the individual cost of disability-related expenses and appropriate standalone payment.

4. ‘Mainstreaming Disability’

The Irish government primary policy on implementing the CRPD in respect of all areas, has been to ‘mainstream’ it within all decision-making processes - i.e. to adopt an approach whereby all decision-making is informed by the CRPD - and to implement the CRPD on a systematic basis in both law and policy.³⁵ This means that the CRPD is incorporated where applicable and in tailored ways - either via legislation or policy. Mainstreaming is the government’s overall policy in respect of meeting its obligations towards persons with disabilities.³⁶

As a dualist legal system, in order to make the CRPD legally enforceable against emanations of the State in its own right, a legislative act would be required, but no such effort has been made to do so. Although the Disability Act 2005 provides a framework for vindicating the rights of persons with disabilities, it was recently

³⁴ Green Paper, 30-31.

³⁵ Initial Report under the Convention on the Rights of Persons with Disabilities, Ireland, paras 3-7.

³⁶ Disability Federation of Ireland, Guide to government policy on disability: for voluntary disability organisations. Available at: <http://hdl.handle.net/10147/308845> (accessed 20/04/2024). Mainstreaming also encompasses fundamental issues such as “integrat[ing] services for people with disabilities and persons without disabilities,” however this section focuses on the policy-making perspective.

stressed by the Irish Human Rights and Equality Commission that the 2005 Act is not be interpreted in light of the CRPD either.³⁷

Although mainstreaming can be an effective policy tool, the lack of enforceability of the CRPD binding the State to abiding by the obligations contained within the CRPD is concerning - particularly when the Green Paper does not make any explicit references to it. This means that persons with disabilities lack a clear national legal remedy with which to bring the Irish State into compliance with the CRPD text. Indeed, the government have yet to even adopt the Optional Protocol to the Convention which would allow people with disabilities to access the UN Committee with legal complaints regarding Ireland's compliance.

Implementing an act of the Oireachtas similar to the European Convention on Human Rights Act 2003 is advised to ensure that emanations of the State could be found in direct violation of the CRPD and ensure higher levels of compliance. Particularly, if such a model was to be adopted, having the Convention fully integrated into Irish law would help ensure that the Superior Courts could interpret a tiered model as consistent with the CRPD. The government must also follow through on its commitment to adopt the Option Protocol to the Convention.³⁸

5. Issues with Internal Decision-Making Processes

There has been evidence of wide-spread issues relating to the efficacy and efficiency of decision-making with regards to benefit applications.³⁹ This has even been evidenced in internal Departmental reports from feedback provided by staff.⁴⁰ These issues include: inconsistent or potential out of date messaging, a lack of

³⁷ Irish Human Rights and Equality Commission, HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights (25 January 2022). Available at: <https://www.ihrec.ie/hses-interpretation-of-disability-act-undermines-rather-than-upholds-disability-rights/> (accessed 17 April 2024)

³⁸ <https://www.gov.ie/en/press-release/91941-inter-departmental-group-to-accelerate-work-to-ratify-the-optional-protocol-to-the-un-crp-d/#:~:text=Ratification%20of%20the%20Optional%20Protocol%20%E2%80%93%20which%20creates%20additional%20mechanisms%20for,periodic%20review%20under%20the%20Convention.>

³⁹ FLAC, Not Fair Enough: Making the Case for the Reform of the Social Welfare Appeals System (FLAC, 2012).

⁴⁰ Axiom Consulting, 'One DSP Organisational Development Initiative: Driving Strategy and Transformation Through Strategy' (21 August 2014),

training and appropriate guidance, issues with resources, and a conservative ethos towards granting payments.

The international literature is consistent on the barriers faced by vulnerable applicants in engaging with these kinds of administrative processes, and this includes persons with disabilities.⁴¹ This means that reforms should be focused on improving these issues to address access to justice for persons with disabilities at a fundamental systemic level before new, more complex processes are adopted. Introducing a functional and more complicated means of assessing disability via the current proposal is not in the best interests of people with disabilities.

Regardless of the potential benefits that the Department might see in adopting reforms in the disability benefit categories, systemic issues with the welfare system and processes should be addressed before considering the addition of a further layer of complexity - particularly for a vulnerable category of persons like persons with disabilities.

6. Medical Assessments

There has been a long-standing, chronic problem with respect to medical assessments and the weight given to them within administrative process, and these have been raised by FLAC since 2012 at least. Many cases have either had to progress to the High Court to have the medical evidence appropriately considered,⁴² or to the Ombudsman where High Court was not available.⁴³ This issue is likely to be

⁴¹ P. Pleasance & N.J. Balmer, 'How People Resolve Legal Problems' (2014) <<https://www.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>> H. McDonald & Z. Wei, 'How People Solve Legal Problems: Level of Disadvantage and Legal Capability' (Law & Justice Foundation of New South Wales, 2016); and T.. Dignan, 'Northern Ireland Legal Needs Survey' (2006) <<https://www.justice-ni.gov.uk/publications/northern-ireland-legal-needs-survey-2006>>; G. McKeever, M. Simpson & C. Fitzpatrick, 'Destitution and Paths to Justice' (2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3523907>; and L. Clements, 'Winners and Losers' (2005) 32(1) Journal of Law and Society 34-50.

⁴² See for example, CP v Chief Appeals Officer, Social Welfare Appeals Office & the Minister for Social Protection [2013] IEHC 512; MD v Minister for Social Protection [2015] IEHC 206; B v Minister for Social Protection [2014] (unreported).

⁴³ See for example, Ombudsman Casebook Issue 2 Winter 2014/15. Ombudsman Casebook Issue 1 Autumn 2014 Carer's Allowance C22/14/0447; Ombudsman's Casebook Issue 3 Spring 2015 Disability Allowance C22/14/1705; and Ombudsman's Casebook Issue 3 Spring 2015 Disability Allowance C22/14/1694.

exacerbated by the current proposal to stratify persons with disabilities into categories based on severity,⁴⁴ which will make medical assessments even more crucial in terms of the amount of benefits they are entitled to, and also conditionality attached to those same benefits.

High rates of incorrect refusals for Disability Allowance and the high rate of success upon appeal - of the 5,151 appeals dealt with in 2012 for example, 2,114 were granted in full and 95 were partially granted, with a further 730 decisions revised by Deciding Officers pending an appeal. This means that just over 57% of appeals for this individual payment were successful.⁴⁵ This had not changed by 2022 when 57.9% of appeals were allowed (wholly or in part) or were revised by a Deciding Officer in favour of an appellant prior to an Appeals Officer making a formal decision.⁴⁶ That this figure, 10 years apart, has remained consistently high underlines the chronic nature of this issue. It also more broadly highlights that issues relating to marginalised groups - in this instance persons with disabilities - appear to be persistent for the Department of Social Protection, and which have not been sufficiently addressed.

Although the Green Paper posits that the transition to the new payment will be conducted on a 'no loss' basis, there remains the possibility that an individual could be reassessed as having no discernible disability and be cut off. If there is also the requirement to be reassessed at regular intervals, they could lose out at these points - the fact that the current rate will become the lowest possible rate later does not mean that falling from Tier 1 to Tier 3 would not lead to a loss of income.

7. Employment Activation and Sanctions

As previously highlighted, the CRPD adopts a definition of disability which is focused on the need to remove external barriers within society. This is in part a recognition

⁴⁴ Department of Social Protection, 'Green Paper on Disability Reform – A Public Consultation to Reform Disability Payments in Ireland' (Department of Social Protection, 2023), Section 3 et. seq.

⁴⁵ Social Welfare Appeals Office, *Annual Reports 2012*, Table 3 on 7.

⁴⁶ Social Welfare Appeals Office, *Annual Reports 2022*, Table 3 on 31 - 5,435 total with 2348 allowed, 74 partially allowed and 722 resulting from a revised DO decision.

that structural elements are what restrict persons with disabilities from engaging in paid employment. Indeed, the Green Paper itself acknowledges this to some degree. However, it also emphasises that to a large degree for Tier 2 and 3 recipients, employment services will resolve this, and even allows for the potential to sanction them if they fail to engage or take up offers of employment. The existence of employment services do not change the realities of the labour market, and this could lead to sanctions being imposed where an individual with disabilities does not accept an offer of employment deemed appropriate by their caseworker or the employment services agent.

Current Conditionality in the Irish Social Welfare System:

The Social Welfare Act 2010 legislated in April 2011 for a reduction of €44 per week if an adult job seeker refuses an appropriate offer of training, declines an intervention, does not attend meetings, or drops out of the process. From July 2013 those on the penalty rate of €144 for 21 days or more can be disqualified from receiving job seeker payments for up to nine weeks, or in extreme cases receive a total ban.⁴⁷ Failure to upload CVs to government job search websites was also subjected to conditionality requirements in 2015,⁴⁸ and part-time workers in receipt of benefits⁴⁹ experienced a similar effect in 2017. Lowe further notes that "heavy penalties for non-compliance are necessary to encourage client engagement,"⁵⁰ and that poor communication between the Department and providers can lead to inappropriate uses of sanctions,⁵¹ whilst Finn argues that "private providers paid by outcomes and underpinned by NPM performance indicators are more likely to hassle claimants with strict conditionality and threat or use of sanctions."⁵² A motion brought

⁴⁷ M. Murphy, 'Low road or high road? The post-crisis trajectory of Irish activation' (2016) 36(2) *Critical Social Policy* 1-21, 14.

⁴⁸ *Ibid.*

⁴⁹ M. Murphy, 'Irish Flex-insecurity: The Post-crisis Reality for Vulnerable Workers in Ireland' (2017) 51(2) *Social Policy and Administration* 308-327, 316.

⁵⁰ S. Lowe, 'JobPath: The Proposed Introduction of an Employment Programme in the Republic of Ireland' (2015) *The Public Sphere* 113-130, 118.

⁵¹ *Ibid.*

⁵² P. Finn, 'Playing with the absurdity of welfare: experiences of Irish welfare conditionality' (unpublished PhD thesis, Maynooth University, 2019), 111.

before the Dáil highlighted that “JobPath participants felt actively patronised, cajoled, threatened, manipulated and bullied,”⁵³ and Finn echoes this by saying that “the effectiveness of sanctions does not primarily lie in their application but as a coercive threat hanging over all jobseekers to shape their behaviour.”⁵⁴

The Green Paper does not sufficiently outline the nature or level of conditionality that disabled people in tier 2 and 3 may be subject to.⁵⁵ If similar penalties which are imposed on unemployed claimants are imposed on recipients of the new payment, it will be counterproductive, as exemplified by the evidence outlined above, in respect of the UK approach. Cousins also outlines that there has been little effort to engage with people moving onto disability payments and that there is ‘no evidence that compulsory activation is necessary or that the PES could support it.’⁵⁶

On the potential benefits of activation, Wiggan also emphasises that “reviews by the OECD and the Irish government of Ireland’s activation regime portrayed it as comparably high cost, poorly targeted and ineffective.”⁵⁷ For persons with disabilities who would require even more personalised supports and sensitive to the realities of the labour market, this would require more time, manpower and resources be put into this. The Department must therefore consider its own resources before committing itself to activation measures in this area – if 218,000 persons are currently in receipt of long-term disability benefits by its own estimation, if the Intreo

⁵³ See <<https://www.oireachtas.ie/en/debates/debate/dail/2019-02-05/36/>> (accessed 4 March 2024).

⁵⁴ P. Finn, ‘Navigating indifference: Irish jobseekers’ experiences of welfare conditionality’ (2021) 69(2) Administration 67-86, 77.

⁵⁵ The Green Paper (p. 31) does mention that tier 2 conditionality could be similar to that in place for Jobseeker’s Transitional Payment.

See F. Dukelow, J., Whelan and M. Scanlon, ‘In transit? Documenting the lived experiences of welfare, working and caring for one-parent families claiming Jobseeker’s Transitional Payment’ (Institute for Social Science in the 21st Century, University College Cork, 2023) for findings on the negative effects of conditionality and lack of tailored supports for lone parents on this payment, which tier 2 PSP claimants might also risk encountering.

⁵⁶ M. Cousins (2024) The Green Paper on Disability Reform: a flawed effort to reform payments for people with disabilities. Available at: [Disability_Reform.pdf \(publicpolicy.ie\)](#)

⁵⁷ J. Wiggan, ‘What variety of employment service quasi-market? Ireland’s job path as a private power market’ in Z Irving, M Fenger & J Hudson (eds), Social policy review 27 (Policy Press, 2015), 151 - 165 <https://www.pure.ed.ac.uk/ws/portalfiles/portal/21591781/Wiggins_Social_Policy_Review_27_2015.pdf> [draft version] citing Department of Public Expenditure and Reform, ‘Labour Market Activation and Training, Comprehensive Review of Expenditure’ Thematic Evaluation Series (2011).

Public Employment Service can facilitate even a portion of this of this number is a fundamental concern. A 2021 Eurofound case study on the integration of people with disabilities into the labour market in Ireland, for example, highlighted that

“At the beginning of the 2010s, disability support measures were distinct from mainstream support measures, leading to the ‘othering’ of jobseekers with disabilities as a separate category of jobseekers or employees. More recently, people with disabilities have been increasingly directed to access services through a new case management system provided by Intreo (rather than to specialist services), which is generally regarded as being supportive of those accessing its services (NESC, 2018).

However, this shift in services has not been sufficiently backed up by capacity building for Intreo staff, who traditionally have not been trained to serve jobseekers with disabilities, nor with additional human or financial resources. While meetings between jobseekers and Intreo case managers can be pivotal for progression, jobseekers may lack trust in staff who do not have specific disability management knowledge or who are overloaded in terms of workload. Case managers in Intreo services need to (be able to) provide adequate time to listen to jobseekers, demonstrate empathy and build trusting relationships, in order to understand their interests, skills, circumstances, motivations and the barriers to employment that they face (NESC, 2018)”⁵⁸

Therefore whilst there has been an effort to integrated disabled persons into the core processes of the Department, this would strongly suggest that the Department does not have the institutional structures in place to address current demand for services among persons with disabilities, let alone a significant increase, and has not adequately developed these since implementing these changes.

⁵⁸ Eurofound, ‘Living Conditions and Quality of Life: Disability and labour market integration: Policy trends and support in EU Member States’ (Publications Office of the European Union, 2021), 51.

We also have concerns regarding whether recipients of the new payment will only be dealt with via the Public Employment Service, or if this could be expanded to include other activation schemes like JobPath. It is important to recall that JobPath was criticised by a the Oireachtas Parliamentary Committee of Public Accounts in 2021 which found that:

“of the 283,826 individuals who have engaged with JobPath, official statistics show that 64,000 people started work and that 22,000 people had retained their employment up to a period of 12 months. That means €247.9 million paid for employment supports through JobPath that resulted in just 22,000 persons obtaining employment for more than one year.”⁵⁹

In making some of its final recommendations, the Committee Chairperson stated that

“The Committee recommends that any future public employment service is managed by either the Department or community-based organisations, and that all contracts between the Department and service providers satisfy procurement rules and guidelines. Contracts should be awarded to providers based on broader criteria than simply cost. The criteria should include the suitability of employment that will be provided to jobseekers.”⁶⁰

It is the position of the AISSN that without the appropriate tailoring of activation programmes, these would be of limited success for persons with disabilities when used on a more compulsory basis. Any use of activation should be voluntary and supportive to acknowledge that employment services focused on the individual do not alter that there are structural barriers which make finding employment with a

⁵⁹ ‘Committee of Public Accounts (PAC) finds JobPath scheme did not deliver value for money’ (2/12/2021) <<https://www.oireachtas.ie/en/press-centre/press-releases/20211202-committee-of-public-accounts-pac-finds-jobpath-scheme-did-not-deliver-value-for-money/>> (accessed 03/04/2023).

⁶⁰ Ibid.

disability far more difficult.⁶¹ Similarly, given that some of the core structural challenges identified by Eurofound include that ‘the system does not have a coherent vision and identity across its functions; one of the reasons for this is a lack of high-level strategic leadership and ownership,’⁶² that “the organisation of the CES [Comprehensive Employment Strategy for People with Disabilities 2015–2024] indicates a lack of understanding of the complexity of disability in a fast-changing world” and that

“The capacity of the current system to grow and learn is limited. Labour market support for people with disabilities sit in a silo apart from other social inclusion measures,”⁶³

The emphasis should be on developing a strong vision for disability-related services based on international best practice and developing the necessary institutional resources before implementing a large-scale change of this kind.

⁶¹ Grubb, D., S. Singh and P. Tergeist, ‘Activation Policies in Ireland’ (2009) OECD Social, Employment and Migration Working Papers, No. 75, OECD; Department for Social Protection, ‘High level issues paper emanating from a review of Department for Social Protection Employment support Schemes’ (November 2012); and S. McGuinness, P.J. O’Connell, E. Kelly, J.R Walsh, ‘Activation in Ireland: An Evaluation of the National Employment Action Plan’ (2011) Research Series No. 20, Economic and Social Research Institute.

⁶² Eurofound (2021), 54.

⁶³ Ibid, 55.