

Disability and Carers Benefits Expert Advisory Group: Assessments Workstream

To: Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People
By e-mail

31 May

Dear Ms Somerville,

Informal Observations

Background

Thank you for your letter of 7 February requesting advice on informal observations. The Group's Assessments Workstream¹ was pleased to consider this. The workstream is remitted to carry out in depth investigation into disability assessments and includes non-members with relevant expertise to ensure advice is thorough and well-informed.

As previously outlined, our advice is based on the best information currently available to us, but makes some assumption about how the process of determining an entitlement to Disability Assistance will work. Should our assumptions prove incorrect, or new information become available, our advice may change.

As per our previous note on this topic, we have focused on Disability Assistance for Working Age People (DAWAP). We understand the assessment process for Disability Assistance for Children and Young People (DACYP) and Disability Assistance for Older People (DAOP) will, in most cases, be paper-based.

We have had very productive discussions with your officials regarding the concerns you raised in your letter and remain grateful for their support and co-operation.

We have considered the three proposed options outlined in the Scottish Government's position paper on informal observations:

- 1) Restrictions are put on both adverse and supported inferences.
- 2) Restrictions are put only on adverse inferences relating to function.
- 3) A specific list of restricted factors from which inferences cannot be drawn.

We think the guidance criteria outlined in Option 1 set out useful parameters for how informal observations could operate. However, we are of the opinion that Option 1 is not appropriate because:

¹ Workstream membership can be found in Annex A

- In our view, restricting permissible informal observations to ‘functional observations’ creates a risk that non-functional observations continue to influence decisions, potentially informed by bias, and will not be officially recorded in the assessment materials, leaving no opportunity for the person concerned to comment on or challenge these observations.

We are of the opinion that Option 2 is not appropriate because:

- This option seeks to restrict adverse observations to functional observations, based on the assumption that supportive observations can only be made from functional observations. Whilst we acknowledge this intention, we nonetheless believe that, as with Option 1, there is a risk assessors will still make adverse informal observations that may influence their decision and that are not recorded and do not allow for the individual to comment or challenge.

We are of the opinion that Option 3 is not appropriate because:

- There is potential for this to become a never-ending list with constant additions. We are also mindful of building a system of dignity and respect as opposed to building a list of observations to profile claimants and potentially second guess motivation, therefore undermining trust.

Having carefully considered these three options, we wish to propose a fourth option:

Option 4:

All observations made during a face-to-face assessment are governed by a set of core principles to ensure that individuals are treated in line with the values of the Social Security Agency and its obligations:

- full transparency;
- clear explanation of why informal observations are being used - to determine eligibility for DAWAP and understand the needs of the individual;
- clear information on how this data is used; and
- the right to respond to informal observations at the time they are made.

On this basis we recommend that informal observations, both ‘functional’ and ‘non-functional’, be permitted subject to the following guidelines:

- specific guidance, training and resources are developed for assessors regarding informal observations;
- claimants must be made aware of what informal observations are, why they are being made and what impact they will have on the decision;
- all observations must be recorded to allow them to be challenged/commented on; and

- all claimants must be informed of what observations have been made in the assessment, what the assessor infers from them, and that either the claimant or their advocate are given the right to comment on or challenge these observations during the assessment;
- Informal observations must be restricted to the assessment itself – observations cannot be made in the assessment centre (e.g. from the waiting room/car park etc. to assessment room) or on the person's journey to and from the assessment centre.

Our recommendation on informal observations has been reached in the context of how we expect face-to-face assessment to be used and with regard to the values and principles underpinning the new social security system:

Evidence

The Scottish Government is, by law, required to design a social security system based on evidence. Evidence from the tribunal service shows that information from the individual is the most important piece of information when making a decision. Getting a complete and accurate account of the individual's circumstance should be the focus of the Agency's processes.

Trust

We are clear in our advice that a social security system based on respect and dignity for an individual is one that is based on trust; where the individual trusts that the process of the Agency will treat them fairly and where the Agency trusts that the information provided by the individual is accurate. This model is found, for example, in the HMRC self-assessment tax system. Arguably it is not found in the current DWP system for disability benefits. There is an opportunity for the Scottish Government to ensure that this is built into the Agency from the start.

Face-to-face assessments

In our previous advice notes on sources of supporting information, we concluded that a claimant's self-assessment and a corroborating diagnosis should, in the majority of cases, be sufficient to make a decision on eligibility for Disability Assistance.

This was a result of looking at other sources of supporting information and concluding that no other source, including a face-to-face assessment, provides the information required to make a determination.

Before we looked at informal observations we also discussed the limitations of a face-to-face assessment.

The PIP criteria currently require an individual to be able to undertake an activity safely, reliably and repeatedly before they can be considered 'able' to do it. This can be an arduous process in a physical assessment. It is also difficult within a non-physical assessment to objectively determine someone's ability to undertake a range

of everyday tasks at that particular moment. It is even harder to objectively determine impact i.e. whether they can undertake an activity as often as is reasonably required, and without a real possibility of causing harm to themselves or others. It is clearly impossible to determine whether they can undertake it repeatedly, as a face-to-face assessment will only ever provide a snapshot of that moment. Experience and impact such as fatigue, pain, exhaustion, mental distress of the assessment and related tests cannot be assumed within this limited timeframe.

We have therefore concluded that face-to-face assessments will not, in the majority of cases, provide any useful additional evidence regarding a claimant's entitlement to Disability Assistance and we agree with the Scottish Government's commitment to reduce the number of these assessments.

Bias

We acknowledge that informal observations will partially be directed by the unconscious bias that we all hold. Judgements will be implicitly shaped by personal experiences, societal stereotypes and cultural context. This is to be expected in any human interaction. Therefore, if observations are to be used in the decision-making process there must be procedures and guidance to mitigate unconscious bias and a written record of all observations must be made so they can be accurately addressed in the appeals process.

There must also be detailed and significant training for assessors on unconscious bias to mitigate the risk of bias having an impact on award decision.

Purpose of Assessments

We note that the Scottish Government has broadly accepted our recommendation that face-to-face assessments may only be carried out in a few specific circumstances². We look forward to working further with officials and the Agency to help develop clear policies about when face-to-face assessments would be appropriate.

To understand how informal observation should be used we needed to understand the purpose of the face-to-face assessment. Broadly we believe that there are two possible scenarios in which face-to-face assessments may be carried out:

1 – A face-to-face assessment may be used to help the claimant tell their story and give a fuller account of their impairment and its impact. In this scenario informal observations may be useful prompts to enable the assessor to explore certain aspects of the claimant's difficulties. e.g. if a claimant has difficulty taking off their coat this may prompt further questions about the difficulty they have in getting dressed etc.

2 – A face-to-face assessment may be used to test a claimant's account where additional information is deemed necessary to make an accurate determination. The

² Scottish Government position paper, Disability Assistance : Assessments

examples mentioned in 'Examples of functional observations' in the policy paper show how such informal observation could be used.

We believe the purpose behind the face-to-face assessment should influence the guidance that is given regarding informal observations

We think there must be a clear and coproduced policy as to the purpose of a face-to-face assessment and we would be interested in meeting with your officials to help us understand when face-to-face assessment may be used.

We look forward to hearing your thoughts.

With best wishes,

Tressa Burke
(Workstream co-chair)

Workstream membership

Alan McDevitt
Ewan MacDonald
Carolyn Lochhead
Ed Pybus
Shaben Begum
Lorne Berkley
Nicholas Watson