HOW THE WELFARE SYSTEMS OF THE REPUBLIC OF IRELAND AND UNITED KINGDOM UPHOLD THE RIGHT OF ACCESSIBILITY FOR DISABLED PERSONS

STEVEN JOHN ATKIN

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF NOTTINGHAM TRENT UNIVERSITY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

AUGUST 2024

COPYRIGHT STATEMENT:

ACKNOWLEDGEMENTS

I have had the privilege of being guided, encouraged and influenced by a great many people through my PhD journey. Here, I acknowledge and thank all those who have supported me in the writing of this thesis.

First, I give thanks to my PhD supervisors Elspeth Berry, Rachel Fyson, Tom Lewis and Peter McTigue. Their insights and experiences were invaluable to the supervision process, as was their patience and desire to see me succeed. At tough times during the PhD journey where my enjoyment waned, they provided the enthusiasm and energy necessary to get back on track. I would also like to thank other colleagues from Nottingham Law School who offered advice and assistance while writing this thesis, including Graham Ferris, Helen O'Nions, Ruth Brittle, Adela Kratenova, Loretta Trickett, Elizabeth Kirk and Pamela Henderson.

I further give thanks to my examiners Austen Garwood-Gowers and Jed Meers for taking the time to read and provide feedback on this thesis.

Consultations with academics and disability rights advocates from Ireland allowed for necessary context to be threaded through the thesis, and ensured that any conclusions I reached were correct. As such, I give thanks to Marion Wilkinson, Caroline Nolan and Clare Brennan of the National Disability Authority of Ireland, Ruth Barry of Community Law and Mediation, Fleachta Phelan of the Disability Federation of Ireland, and Mel Cousins, author of *Social Security Law in Ireland*.

By funding my PhD studies and by providing a programme of specialist doctoral training, I give thanks to the Midlands4Cities doctoral training partnership. I also give thanks to the Socio-Legal Scholars Association, whose network of academics have created an equally intellectually enriching and warmly welcoming environment for researchers at all stages of their career to collaborate and share their work.

I give thanks to Sumeet Singhal for sharing with me his keen insight into executive functioning and invisible disabilities.

To my family, I give particular thanks for their unconditional support and resolve given to me throughout the PhD journey. Whether a critical eye cast over a draft or a compassionate ear, my strong support system was always felt.

LIST OF ABBREVIATIONS

ADP	Adult Disability Payment
ANED	Academic Network for European Disability Experts
BP	Blind Pension
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CPAG	Child Poverty Action Group
CRPD	UN Convention on the Rights of Persons with Disabilities
DA	Disability Allowance
DCA	Domiciliary Care Allowance
DFI	Disability Federation of Ireland
DLA	Disability Living Allowance
DPMA	Disabled Persons Maintenance Allowance
DPO	Disabled Persons' Organisation
DRUK	Disability Rights UK
DSP	Department of Social Protection
DWP	Department for Work and Pensions
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESA	Employment and Support Allowance
GP	General Practitioner
HCP	Health Care Professional
ICCPR	International Covenant on Civil and Political Rights,
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICF	International Classification of Functioning, Disability and Health
IGEES	Irish Government Economic and Evaluation Service
IHRL	International Human Rights Law
MR	Mandatory Reconsideration
NDA	National Disability Authority of Ireland
NGO	Non-Government Organisation
NI	National Insurance
OPD	Overwhelming Psychological Distress
PIP	Personal Independence Payment
PSRI	Pay Related Social Insurance
SSCS	Social Security and Child Support Tribunal
SWAO	Social Welfare Appeals Office
UDHR	Universal Declaration of Human Rights
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNOHCHR	United Nations Office of the High Commissioner of Human Rights
UPIAS	Union of the Physically Impaired Against Segregation
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organisation
WPC	Work and Pensions Committee
WRA	Welfare Reform Act 2012

ABSTRACT

In 2016, the United Nations Committee responsible for overseeing the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) carried out its first inquiry into potential grave and systematic violations of CRPD rights, which concluded in the UK being the first CRPD State Party to have gravely and systematically violate the CRPD. The cause of these violations was determined to be aspects of the primary disability welfare benefit of the UK, Personal Independence Payment (PIP). The inquiry resulted in the CRPD Committee reaching the conclusion that the UK had indeed violated the rights of disabled people, and as such, the UK was the first CRPD State Party to be held in grave and systematic violation of the CRPD. Since 2016, PIP has remained the primary disability welfare benefit in the UK, with very little change to the criteria for eligibility and the manner by which eligibility is assessed. Therefore, the law providing for PIP in the UK can be observed as continuing to gravely and systematically violate provisions of the CRPD.

Prompted by this continued failure of the welfare system of the UK to meet CRPD standards of human rights protection for disabled people, this thesis undertakes a comparative study in which the welfare system of another CRPD State Party – in this case Ireland - is scrutinised to determine whether it meets CRPD standards, and as such, whether aspects of the welfare system of Ireland could be transposed into that of the UK.

To this end, the Comparative Legal Method is employed throughout this thesis in order to:

a. identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland,
b. determine which of the laws governing the operation of the primary disability welfare benefit in the UK and Ireland currently meet CRPD standards of accessibility; and
c. offer recommendations as to how the UK and Ireland could improve practice in the operation of primary disability welfare benefits in order to ensure CRPD standards of accessibility, with a particular focus on identifying where it would be appropriate to adapt and transpose UK or Irish provisions into the legal system of the other State.

CONTENTS

CHAPTER 1: INTRODUCTION

1.1. INTRODUCTION

In 2012, the new Personal Independence Payment (PIP) was introduced in the UK through the enactment of the Welfare Reform Act 2012 as a disability-specific welfare benefit to 'help with extra costs disabled people face as a result of their being disabled.'.[1] Even before PIP was rolled out across the United Kingdom (UK) in 2013, concerned groups of disabled people and disabled peoples' organisations (DPOs) began sending communications the United Nations Committee of the Rights of Persons with Disabilities (CRPD Committee).[2] These communications prompted the CRPD Committee to undertake its first ever Inquiry into potential violations of the United Nations Convention of the Rights of Persons with Disabilities (CRPD), which resulted in *The Report of the Committee on the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention* (Inquiry Report 2016) being published in October 2016.[3]

In the Inquiry Report 2016, the CRPD Committee concluded that the enactment of the Welfare Reform Act 2012 and the operation of PIP 'disproportionally and adversely affected the rights of persons with disabilities',[4] and in particular would see approximately 620,000 disabled people who were eligible for the previous system of disability welfare support become ineligible due to the new eligibility criteria for PIP. Thus, the CRPD Committee determined that the threshold of grave or systematic violations of the rights of persons with disabilities had been met by the UK.[5] Indeed, the UK holds the dubious honour of being the first State Party to the CRPD to be found in grave and systematic violation of the convention.

[1] Department for Work and Pensions, 'Personal Independence Payment (PIP)' (*DWP*) < https://www.gov.uk/pip > accessed 10 August 2024; Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024.
[2] The CRPD Committee is a committee of independent disability rights experts tasked with monitoring the implementation of CRPD rights by State Parties - United Nations Office of the High Commissioner of Human Rights, 'Human Rights Treaty Bodies' (*United Nations*, 2021) <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> accessed 10 August 2024.
[3] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.
[4] *ibid* [113d].
[5] *ibid* [113].

At the outset of this thesis, it must be clarified that the CRPD Committee primarily targeted the laws and operation of PIP in England when undertaking its inquiry, and indeed commended Wales, Scotland and Northern Ireland for the measures each county took to advocate against the implementation of PIP,[6] despite the fact that each nation did adopt PIP as its primary disability welfare benefit. Indeed, consideration was given during the drafting of the thesis as to whether the comparative analysis should focus solely on England rather than the whole of the UK. However, it was decided to place focus on the whole of the UK due to the UK, not England, being a State Party to the CRPD, and the fact that the CRPD Committee concluded that the UK, not England, was in grave and systematic violation of the CRPD.

Since the publication of the Inquiry Report 2016, PIP has remained the primary disability welfare benefit in England, Wales and Northern Ireland (Scotland has since replaced PIP with the Adult Disability Payment)[7], with very little change to the criteria for eligibility and the manner by which eligibility is assessed. Therefore, the law providing for PIP in the UK can be observed as continuing to gravely and systematically violate provisions of the CRPD.

Prompted by the continued failure of the welfare system of the UK to meet CRPD standards of human rights protection for disabled people, the researcher was inspired to undertake a comparative study in which the welfare system of another CRPD State Party would be scrutinised to determine whether it met CRPD standards, and as such, whether aspects of the welfare system of that State could be transposed into that of the UK.

The comparator State chosen was Ireland. The validity of the comparison will be explained in Chapter 2, but there is an additional value to considering Ireland. This is because in 2018, Ireland ratified the CRPD, indicating that its government believed that its laws and policies espoused the standards required to promote and protect the rights of the CRPD. However, this has yet to be formally tested by the CRPD Committee due to Ireland not having ratified the Optional Protocol to the CRPD, which contains the provisions that empower the CRPD Committee to undertake inquiries such as the one undertaken in the UK. Thus, this thesis will address a gap in the literature by assessing the extent to which Ireland's welfare system Ireland complies CRPD standards, as well

[6] *ibid* [77].
[7] The Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022.

as assessing whether its compliant aspects could be transposed to the UK. Moreover, this thesis will serve to unpick some of the ways in which modern rights-respecting liberal democracies deal with the problems and difficult balances inherent in the protection of disability rights.

1.2. RESEARCH OBJECTIVE AND RESEARCH QUESTIONS

As stated above, this investigation was prompted by the conclusions reached in the Inquiry Report of 2016 by the CRPD Committee, finding that the UK had gravely and systematically violated the CRPD – which is the 'international treaty that identifies the rights of persons with disabilities as well as the obligations on States parties to the Convention to promote, protect and ensure those rights.'[8]

As research began for this thesis, it became apparent that along with the three provisions of the CRPD that the CRPD Committee investigated as regards to the UK and then concluded to have been violated in its Inquiry Report 2016, other CRPD provisions that were not investigated by the CRPD Committee in the 2016 Inquiry would have potentially been concluded to be violated if they were also investigated.

In particular, the pervasive and highly important CRPD right of accessibility was not considered by the CRPD Committee when concluding against the UK in 2016. This is of particular surprise as the CRPD Committee itself holds that protection of accessibility is necessary before any other right can be enjoyed by persons with disabilities,[9] and that '[a]ccessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society'.[10]

Thus, this thesis focuses in on the CRPD right of accessibility and investigates the extent to which the welfare systems of the UK and Ireland uphold this right. Where the welfare system of either State is determined by the researcher to fall below the standards of the CRPD by not upholding the right of accessibility for disabled people, recommendations

[8] United Nations Department for Economic and Social Affairs 'Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities' (*United Nations*) <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/frequently-asked-questions-regarding-the-convention-on-the-rights-of-persons-with-disabilities.html#iq2> accessed 10 August 2024.
[9] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014).
[10] *ibid* [1].

will be put forward on how this can be ameliorated. To this end, the research aims of this thesis are:

1. To identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland, given the differing historico-social understandings of disability in the two jurisdictions.
2. To determine which of the laws governing the operation of the primary disability welfare benefit in the UK and Ireland currently meet CRPD standards of accessibility;
3. In light of the above, to offer recommendations as to how the UK and Ireland could improve practice in the operation of primary disability welfare benefits in order to ensure CRPD standards of accessibility, with a particular focus on identifying where it would be appropriate to adapt and transpose UK or Irish provisions into the legal system of the other State.

1.3. STRUCTURE

This thesis consists of seven chapters.

Having outlined the background to the thesis and the research question in this introductory chapter, Chapter 2 entitled *Methodology* provides a discussion of the methods employed in the undertaking of this thesis. This work employed both traditional doctrinal research methods and specific formulations of the Comparative Legal Method. As is discussed in Chapter 2.3, the application of the Comparative Legal Method requires, after selecting the legal systems for comparison, a standard against which to examine common elements from the legal systems being compared, which is informed by existing legal sources, the standard is itself being a unique creation of the researcher developed through their understanding of the relevant law for the specific purpose of addressing the research questions.[11] The standard was established and developed in Chapter 3.

Chapter 3, entitled *Accessibility and the CRPD*, establishes the standard, or framework, against which the systems of the UK and Ireland are compared in subsequent chapters. Firstly, it investigates how rights and obligations relating to accessibility are included in the CRPD. This is an aspect of the CRPD which has been little studied in the academic

[11] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 26; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 27; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015) 148-154.

literature yet, as this thesis demonstrates, it provides not only an important lens to understand the CRPD, it also provides the foundations for State implementation of the CRPD. In so doing, the ground is laid for the second research aim of this thesis - to determine which Irish and UK laws currently meet the CRPD standard of accessibility – to be addressed in subsequent chapters. Secondly, this chapter develops an analytical framework through which laws and policies relating to the primary disability welfare benefit in the UK and Ireland are analysed in line with multiple dimensions of the right to accessibility as protected by the CRPD. This is the 'Accessibility Framework', which provides a unique and original analysis of the CRPD and the way in which it could and should be implemented. The Accessibility Framework is utilised in subsequent chapters in order to identify key areas where the national laws of the UK and Ireland fall below CRPD standards of accessibility.

Chapter 4, entitled *Establishing the Primary Disability Welfare Benefit in the UK and Ireland*, identifies Personal Independence Payment as the disability-specific welfare benefit with the highest number of claimants and identifies the functional equivalent disability-specific welfare benefit in Ireland as Disability Allowance (DA). This chapter then provides context on how both PIP and DA were introduced into their respective nations, and concludes by setting out the stages of the Application Process for a claim for PIP and DA. This Application Process identifies three broad stages through which both claims for PIP and DA pass, and each of these stages forms the basis for the subsequent two chapters.

Chapter 5, entitled *Telling the Claimant's Stories*, discusses at length the first stage of the Application Process for PIP and DA, which is - the claimant provides testimony as to how they meet the qualifying factors and eligibility criteria for the benefit. In this chapter, key actions undertaken by both claimants and medical practitioners are identified in both the application for PIP and DA. Key differences between the processes are identified and aspects of each system are analysed through the lens of the Accessibility Framework in order to determine where the welfare system of each nation, (if at all, in the case of Ireland) falls below CRPD standards for accessibility, and where appropriate submits recommendations to ameliorate against this.

Chapter 6, entitled *Retelling, Rating and Reviewing the Claimant's Stories*, discusses at length the second stage of the Application Process for PIP and DA, which is -the

testimony of the claimant is assessed and a decision on eligibility is reached. In this chapter, key actions taken by government-contracted healthcare professionals who functionally assess claimants of PIP and DA, and of government-employed Decision-Makers are identified. Again, key differences between the processes are identified and aspects of each system are analysed through the lens of the Accessibility Framework in order to determine where the welfare system of each nation, (if at all, in the case of Ireland) falls below CRPD standards for accessibility, and where appropriate submits recommendations to ameliorate against this. This chapter also analyses the actions available to claimants upon receipt of a PIP or DA decision notice with which they are dissatisfied, including having their claims reviewed by Decision Makers.

Through considering each stage of the application process for the primary disability welfare benefit of the UK and Ireland, this thesis seeks to temporarily transport the reader into the shoes of a benefit claimant in the UK and Ireland. The reader, as they follow along the journey undertaken by the claimant, will not only realise the sheer number of different steps disabled people must traverse to secure an award of a disability welfare benefit but crucially how inaccessible the journey between each step is. If, on the surface, the benefit application process appears to be a hurdle race, then this thesis will illustrate that it is not tarmac between each hurdle, but rather hot coals and beds of nails.

The recommendations submitted in Chapters 5 and 6 are intended to improve the accessibility of the process for claimants and therefore refer back to both Chapters 3 and Chapter 4. Indeed, where possible, the recommendations aim to eliminate accessibility hurdles altogether, and where this is not possible, serve to ensure the surface between the hurdles is safe to travel across.

Chapter 7, entitled *Conclusions,* contains the outcome of this research and a summary of the answers to the research questions. It also reaffirms the recommendations to improve the accessibility of the welfare systems in the UK and Ireland that were offered in previous chapters. The original contribution that this work makes to existing legal scholarship is also reaffirmed.

CHAPTER 2: METHODOLOGY

2.1. INTRODUCTION

The primary methodology used when undertaking this research was the legal doctrinal method. This is because the doctrinal research method is synonymous with legal research,[12] and the application of this method is an 'intuitive aspect of legal work'.[13] In other words, one cannot undertake legal research without applying the doctrinal method. A discussion on how the doctrinal method was applied when undertaking this thesis is provided in section 2.2.

The research aims of this thesis also require that an additional method needed to be employed, namely the Comparative Legal Method because all of the research aims call for an element of comparison between legal systems. To recap, the research aims of this thesis are:

1. To identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland, given the differing historico-social understandings of disability in the two jurisdictions.
2. To determine which of the laws governing the operation of the primary disability welfare benefit in the UK and Ireland currently meet CRPD standards of accessibility;
3. In light of the above, to offer recommendations as to how the UK and Ireland could improve practice in the operation of primary disability welfare benefits in order to ensure CRPD standards of accessibility, with a particular focus on identifying where it would be appropriate to adapt and transpose UK or Irish provisions into the legal system of the other State.

The prerequisites that must be present in order to apply Comparative Legal Method are there being at least two legal systems that can be meaningfully compared,[14] and a similar

[12] Terry Hutchinson, 'Doctrinal research: researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 8.
[13] *ibid* 9.
[14] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 13-15.

legal issue existing within each of the legal systems. This thesis clearly satisfies these prerequisites for the following reasons.

In regard to the first prerequisite, this thesis compares aspects of two legal systems - those of the UK and Ireland. The UK was selected for analysis in this thesis for two reasons. First, due to its being found in violation of the CRPD by the CRPD Committee.[15] This prompted an examination of whether this legal problem could be solved by seeking answers from other States' legal systems. Second, I already have an in-depth knowledge of the legal system of the UK, which increases the chances of the research aims being successfully met. This is because, as comparatists agree, it is a risk to undertake a comparative study in which all legal systems are unfamiliar to the researcher as doing so could lead to an overreliance on reporting about the law as it is written rather than how it is observed and practised by societies.[16] This risk is minimised by selecting the UK as one of the comparators.

Ireland was selected for analysis and comparison with the UK in this thesis firstly due to its relatively recent ratification of the CRPD in March 2018,[17] meaning that there is a gap in the literature in relation to analysis of how its welfare system relates to CRPD standards of accessibility. This yields an opportunity for this thesis to provide an original contribution to knowledge. Secondly, in comparing Ireland to the UK, this research compares two legal systems of the same legal family, as both-belong to the same legal family of common law States (as do many other States, primarily States that were subject to British colonisation and thus had a common law system imposed upon them, such as Canada and Australia.[18]).

Consideration of legal families is important when undertaking legal transplantation. At its core, legal transplantation is the act of borrowing an existing set of legal rules from one legal system and placing them into another which does not currently have those rules.[19] This is often done due to the practical utility of borrowing an existing rule from another system, as it is simpler to implement a rule that demonstrably works in practice

[15] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.
[16] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method *ibid*, 4-5.
[17] As of June 2023, 186 States have ratified the CRPD. Ireland is the 10th most recent State to ratify the CRPD whereas the UK was the 57th State to ratify the CRPD.
[18] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 43, ch 4.
[19] Alan Watson, 'Aspects of Reception of Law' (1996) American Journal of Comparative Law 335, 335; see also generally: Alan Watson, 'The Importance of "Nutshells"' (1994) 42 American Journal of Comparative Law 1; Alan Watson, Legal Transplants: An Approach to Comparative Law (2nd edn, University of Georgia Press, 1993).

than to develop a new rule from the ground up that has not been 'road-tested'.[20] However, some comparatists doubt that the process of legal transplantation is so straightforward. Kahn-Freund suggests that, in line with the literal understanding of transplantation, the host legal system may 'reject' the new presence altogether should the law not go through sufficient adjustment in order for it to suit its new host system.[21] Rejection is more likely in situations where the historical, political, economic and social norms of the host system are vastly different to that of the donor system. As both the UK and Ireland exist in the same legal family of common law States, the chances of successful legal transplantation are improved.[22] This is because the transplanted laws will not need to pass through a differing legal family (e.g. a civil,[23] code-based system) and so will be less changed in the process,[24] which improves the likelihood of the fourth research aim being met.

The success of a legal transplant between the UK and Ireland is also increased due to both States being modern liberal democratic industrialised nations. Attempting a legal transplant between two similarly developed States is less prone to rejection than when attempting to implement an existing legal rule into a State at a different stage of development than the host State.

Although the UK and Ireland are both now modern liberal democratic industrialised nations, they have very different histories which continue to affect how modern legislation has been developed and implemented differently in both States, particularly those relating to disability. These differing histories will be considered and analysed throughout this thesis.

The second prerequisite for legal comparison, a legal problem existing in multiple States, is also satisfied in this thesis. Two particular legal problems are identified in my research aims; the operation of disability welfare systems and CRPD compliance. The first of these, the issue of providing disability-specific welfare, is one faced by most States globally, including the UK and Ireland.[25] Secondly, the existence of an issue in terms of

[20] *ibid.*
[21] Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 Modern Law Review 1; see further: Pierre Legrand, The Impossibility of 'Legal Transplants' (1997) 4 Maastricht Journal of European and Comparative Law 111; Gunther Teubner, 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences' (1998) 61 Modern Law Review 11.
[22] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 198-9.
[23] For a more detailed overview of different legal families, see Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014 74-78.
[24] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014 198-199.
[25] John Dixon and Robert P Scheurell (eds), *Social Welfare with Indigenous Peoples* (1st edn, Routledge 1995); John Dixon and David Macarov (eds), *Social Welfare in Socialist Countries* (1st edn, Routledge 1992); John Dixon and

CRPD compliance by domestic legal systems is indicated by the findings of CRPD Committee investigations, both into communications claiming CRPD violations from disabled individuals and from groups of disabled people. Regarding group communications, the CRPD Committee has found that three States,[26] including the UK,[27] have committed grave and systematic violations of the CRPD against the entire class of disabled people in those States (see Chapter 3.2.2). Regarding individual communications, the CRPD Committee found have to date found that 21 individuals have had their CRPD rights violated by 11 different States.[28] This demonstrates that the issue of CRPD compliance does indeed exist in multiple States. It is noted here that the issue of CRPD compliance by Ireland has not been tested by the CRPD Committee through the mechanism of communication by Irish citizens to date. This is because Ireland has not ratified the Optional Protocol of the CRPD, which is the legal instrument that grants power to the CRPD Committee to receive and adjudicate on communications (see Chapter 3.2.2).

A discussion on how Comparative Legal Method was applied when undertaking research for this thesis, including an explanation of why specific approaches to legal comparison were selected, is provided at section 2.3.

However, before discussing this, section 2.2. will provide further explanation of the doctrinal method, with a focus on the specific way in which it was applied in this thesis and on the sources identified through its application.

2.2. DOCTRINAL METHODOLOGY

The doctrinal method is the default methodology employed by legal researchers and its influence are apparent in all legal works.[29]

Robert P Scheurell (eds), *Social Welfare in Latin America* (1st edn, Routledge 1990); John Dixon and Robert P Scheurell (eds), *Social Welfare in Developed Market Countries* (1st edn, Routledge 1989); John Dixon (eds), *Social Welfare in The Middle East* (1st edn, Routledge 1987); John Dixon (eds), *Social Welfare in Africa* (1st edn, Routledge 1987); John Dixon and Hyung Shik Kim (eds), *Social Welfare in Asia* (1st edn, Routledge 1985).

[26] UNCRPD 'Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention' (17 September 2020) UN Doc CRPD/C/HUN/IR/1; UNCRPD 'Inquiry concerning Spain carried out by the Committee under article 6 of the Optional Protocol to the Convention' (4 June 2018) UN Doc CRPD/C/20/3; UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.

[27] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.

[28] https://juris.ohchr.org/search/results/1?sortOrder=Date&typeOfDecisionFilter=3&countryFilter=0&treatyFilter=0

[29] Terry Hutchinson, 'Doctrinal research: researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 8-9.

Doctrine, in this context, is defined as 'a synthesis of various rules, principles, norms, interpretive guidelines and values which makes coherent or justifies a segment of the law as part of a larger system of law'.[30] Thus, the doctrinal method is the process used to 'identify, analyse and synthesise the content of law'.[31]

The doctrinal method is closely informed by the doctrine of precedent. This means that legal rules hold a doctrinal quality due to being applied consistently through time and are therefore more than casual or convenient norms.[32] Indeed, the courts of both the UK and Ireland are bound by the maxim of *stare decisis et non quieta movere,*[33] which means to stand by what has been decided and to not unsettle the established, thus instilling consistency and fairness in how cases are decided.[34] As such, decisions made by a British or Irish court are binding upon the courts below them in their domestic court hierarchy and accordingly set a precedent for future cases. Therefore, cases that come before a lower court in either jurisdiction on either substantially similar facts or the same legal principle will be decided in line with the precedent set by the higher court.

When identifying legal sources to analyse and then synthesise through the doctrinal method, the researcher first collected 'normative sources, such as statutory texts, treaties, general principles of law, customary law, binding precedents, and the like',[35] and then 'authoritative sources, such as case law, if they are not binding precedents (for example, caselaw from other jurisdictions), and scholarly legal writings'.[36] Thus, legal researchers commonly frame sources as either being primary sources – i.e. the law – or secondary sources – i.e. commentary on the law.

In the UK, the primary source of law is statutes codified by parliament.[37] Further detail and context is provided by secondary statutory instruments,[38] and both primary and

[30] Trischa Mann (ed) *Australian Law Dictionary* (OUP 2010) 197.
[31] Terry Hutchinson, 'Doctrinal research: researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 9; Paul Chynoweth, 'Legal research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell 2008), 29.
[32] Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) Deakin Law Review 83, 84-85.
[33] Commonly shortened to *'stare decisis'.*
[34] Jacqueline Martin, *The English Legal System* (5th edn, Hodder Education 2008) 22.
[35] Mark Van Hoecke 'What Method(s) for What Kind of Discipline' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart 2011) 11.
[36] *ibid.*
[37] For example – The Welfare Reform Act 2012.
[38] For example – The Social Security (Personal Independence Payment) Regulations 2013.

secondary legislation is interpreted and applied by the judiciary as and when relevant cases are brought before them.[39]

Ireland, unlike the UK, has a written constitution –the Bunreacht na hÉireann, enacted in 1937 - as its fundamental legal document and thus a primary source of law.[40] The second highest ranking source of law in Ireland is statutes written by the Irish parliament (Oireachtas),[41] which must be compliant with the provisions of the Bunreacht na hÉireann. Despite being the second-highest ranking source of law, statutes are also primary sources in Ireland. As in the UK, further detail is then often provided by secondary legislation,[42] and also cases which are interpreted by the judiciary.[43] Academic writings and policy documents are also secondary sources in the UK and Ireland.

As for sources relevant to the CRPD, the primary sources are the CRPD itself,[44] along with other treaties and covenants from international human rights law (IHRL) referenced in the preamble of the CRPD.[45] The most relevant of these are the Universal Declaration of Human Rights,[46] the International Covenant on Civil and Political Rights,[47] and the International Covenant on Economic, Social and Cultural Rights.[48] The secondary sources here consist of material that contextualises the law contained in the CRPD, including commentary from United Nations Treaty Bodies such as General Comments,[49] domestic case law from the UK and Ireland that references the CRPD,[50] and academic commentary on the CRPD.[51] The closest thing to caselaw under the CRPD system is the recommendations that the CRPD Committee provided to States following the State to be found in CRPD violation, either against an individual or against a large group of people

[39] For example - *R (on the application of RF) v Secretary of State for Work and Pensions* [2017] EWHC 3375 (Admin).
[40] Catherine Allen and Rachel Hanly, 'Legal systems in Ireland overview' (2020) Practical Law 1.
[41] For example - Social Welfare Consolidation Act 2005.
[42] For example - Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007.
[43] For example - *McLoughlin v. Minister for Social Welfare* [1958] IR 1.
[44] UN Convention on the Rights of Persons with Disabilities, resolution adopted by the UN General Assembly, 13 December 2006, UN Doc. A/RES/61/106, entry into force 3 May 2008 (CRPD).
[45] *ibid* preamble [b-d].
[46] Universal Declaration of Human Rights, resolution adopted by the UN General Assembly, 10 December 1948, Paris, Resolution 217 A (III) (UDHR).
[47] International Covenant on Civil and Political Rights, resolution adopted by the UN General Assembly, Resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 (ICCPR).
[48] International Covenant on Economic, Social and Cultural Rights, resolution adopted by the UN General Assembly, Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976 (ICESCR).
[49] CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' UN Doc E/ C12/ 2000/ 4 (11 August 2000); CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014).
[50] *R (on the application of RF) v Secretary of State for Work and Pensions* [2017] EWHC 3375 (Admin).
[51] Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017); Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), *The UN Convention on the Rights of Persons with Disabilities- A Commentary* (Oxford University Press, 2018).

with disabilities (grave and systematic violations).[52] Whereas binding precedents from caselaw are usually primary sources for the purposes of doctrinal methodology, CRPD recommendations are secondary sources because CRPD decisions and recommendations are non-binding. The travaux préparatoires (records of preparatory work and drafting history) of the ad hoc committee responsible for drafting the CRPD will also be consulted as secondary sources. This is in line with the rules of treaty interpretation as allowed for by the Vienna Convention on the Law of Treaties (VCLT),[53] which codifies legal rules of how international legal documents operate. Article 32 of the VCLT allows for 'supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion' to be consulted when interpretation of the text of a treaty itself leads to a meaning that is either 'ambiguous or obscure', or 'manifestly absurd or unreasonable'.[54]

The content of these sources was assessed through application of the doctrinal method. However, when comparative aspects of research were undertaken, this was done so through application of Comparative Legal Method.

2.3. COMPARATIVE LEGAL METHODOLOGY

Comparative Legal Method is understood to be shorthand for a number of overlapping methods of legal research,[55] which draw explicit comparisons between legal systems,[56] assess the possibility of functional equivalence between the legal systems,[57] and through which conclusions about either the distinctiveness of or commonalities between the legal systems can be made.[58] With the UK and Ireland, it is already established that they share the common feature of belonging to the same legal family of common law States (see section 2.1 above). When undertaking legal comparison, it is the research question and research aims which determine the appropriate methodologies to be applied.[59] Of the

[52] For example - UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.
[53] Vienna Convention on the Law of Treaties, resolution adopted 22 May 1969, entry into force 27 January 1980 (VCLT).
[54] *ibid* art 32.
[55] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1; Otto Kahn-Freund, 'Comparative Law as an Academic Subject' (1966) 82 LQR 40, 41; John C Reitz, 'How to Do Comparative Law' (1998) 46(4) AJCL 617.
[56] John C Reitz, 'How to Do Comparative Law' (1998) 46(4) AJCL 617, 618-620; 633-4.
[57] *ibid*, 620-3; 625-6.
[58] *ibid*, 624-5.
[59] K Zweigert and H Kötz, *An Introduction to Comparative Law* (2nd edn, OUP 1987) 29; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 8; Mark Van Hoecke, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which*

various overlapping methods of comparative research, this thesis utilised the functional method, the law-in-context method, and the historical method.[60] These were selected due to their being the most appropriate in order to address the research aims outlined in the introduction of this chapter, for the reasons explained in the following sections.

Many legal comparatists hold that these methods of legal comparison must also utilise a standard against which to examine common elements from the legal systems being compared.[61] This standard is informed by existing legal sources, the standard is itself being a unique creation of the researcher developed through their understanding of the relevant law for the specific purpose of addressing the research questions.[62] For this thesis, the standard developed by the researcher is the Accessibility Framework through which CRPD compliance is assessed (see chapter 3.4.).

2.3.1. THE FUNCTIONAL METHOD

The functional method of comparative legal research, or functionalism, was formalised in 1977 by Zweigert and Kötz in *An Introduction to Comparative Law.*[63] The functional method is concerned with identifying and comparing functionally equivalent laws in order to determine how divergent systems of law, in applying different legal rules, can reach the same or similar solutions to legal problems common among them.[64] This functional approach is very often necessary because it is uncommon that different legal systems will address legal problems in the exact same way. Comparatists agree that it is a 'rule-of-thumb' to apply the functional method when undertaking a comparative legal

Kind of Method for What Kind of Discipline? (Hart 2011) 13-4; Jaap Hage, 'The Method of a Truly Normative Legal Science' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart 2011) 22-3; Jan Vranken, 'Methodology of Legal Doctrinal Research: A Comment on Westerman' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart 2011) 120-1; Maurice Adams, 'Dimensions of Distinctiveness in Comparative Law' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart 2011) 237-8.

[60] Due to the UK and Ireland both having common law systems, it was not necessary to consider using the structural method, which is another recognised formulation of comparative legal method, for this thesis. This is because the structural method is only useful when the structural similarities between two legal systems or legal families are not immediately apparent, primarily in studies between common law and civil law systems. Further, the analytical method was not considered as this applies only to matters of private law, not public law issues as are considered in this thesis.

[61] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 26; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 27; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015) 148-154.

[62] *ibid.*

[63] K Zweigert and H Kötz, *An Introduction to Comparative Law* (1st edn, North-Holland Publishing 1977).

[64] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 9.

study,[65] with some going as far as to hold functionalism as 'the' method of comparative law.[66] Thus, it can be said that all comparative studies in law, including this research, apply the functional method to some extent. It is for this reason that Zweigert and Kötz's *An Introduction to Comparative Law* is thought by many to be the seminal writing on modern Comparative Legal Method.

For this thesis, the focus was on disability welfare law from both the UK and Ireland and the function being investigated was that of accessibility. Thus, application of the functional comparative method required that this thesis examine laws that provided for disability welfare benefits which had the functional impact of upholding the right to accessibility. Laws from the UK and Ireland that are functionally similar in regards to their upholding of the right to accessibility were compared against the Accessibility Framework in order to determine the differences in operation and impact of these functionally similar laws and identify the extent to which they complied with CRPD accessibility standards. Primarily, these were the policies and operations informed by the Welfare Reform Act 2012 in the UK and the Social Welfare (Consolidation) Act 2005 in Ireland as these statutes implemented the current system of disability-specific welfare benefits in each State. The laws relating to welfare benefits in both States govern a complex web of benefits/welfare payments available for those with disabilities. However, both States have one primary disability-specific welfare benefit, which are identified in Chapter 4.2 as Personal Independence Payment for the UK and Disability Allowance for Ireland.

The functional comparative method is traditionally utilised as the skeleton upon which other versions of legal comparison are attached in order to fully develop a methodology appropriate for the research being undertaken.[67] Indeed, additional formulations of the comparative method were required when undertaking this research in order to fully address the research aims. Each of the recognised formulations of Comparative Legal Method discussed below were applied in this thesis in addition to functionalism.

[65] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 26; Cheryl Saunders, 'Towards a Global Gene Pool' National Taiwan University Law Review 4(3) [2009] 1, 13; Jaakko Jusa, ''Functional Method in Comparative Law – Much Ado About Nothing?' European Propert Law Journal 2 (2013) 4.
[66] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 9.
[67] K Zweigert and H Kötz, *An Introduction to Comparative Law* (2nd edn, OUP 1987) 31.

2.3.2. THE LAW-IN-CONTEXT AND HISTORICAL METHODS

Legal comparative research cannot be limited to comparison purely of 'black-letter' legal rules, concepts or systems.[68] This is because law in action is often very different to how it appears as written in legislation.[69] It is for this reason that the law-in-context method is not a standalone method but is a tool that can only be used in conjunction with others.[70] This method is to be employed when considering how, *inter alia*, economical, sociological, psychological and anthropological factors impact legal systems and the development of laws.[71] Thus, rather than simply explaining how the law operates by looking inwards, this method leads to an understanding of why the law of a given State is the way it is by considering sources from beyond the law.[72] For example, the law-in-context method has been used in research into how non-legal institutions such as healthcare systems impact the development of laws regarding ending of life.[73]

The historical method is also one which cannot be utilised alone and is one which has been described as one part of the wider law-in-context method. The historical method is employed when researching the construction and development of an area of law in order to ascertain the 'origins and reasons for the law as it is today'.[74] However, whereas the traditional formulation of the law-in-context method is not a necessary aspect of comparative legal study, analysis of historical legal developments is essential for two reasons.[75]

First, this is because of the importance of the doctrine of precedent in legal practice, which is the application of previously decided cases in order to ensure that cases on similar facts and legal principles are treated with consistency and fairness. In this sense, the doctrine of precedent can be framed as the process of looking backwards in time to seek authority that supports contemporary legal argument.[76]

---

[68] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 16.
[69] *ibid, 22.*
[70] *ibid,* 16.
[71] *ibid,* 17.
[72] *ibid,* 17.
[73] Maurice Adams and John Griffiths, 'Against "Comparative Method": Explaining Similarities and Differences' in Maurice Adams and Jacco Bomhoff (eds), *Practice and Theory in Comparative Law* (Cambridge University Press 2012) 293-296
[74] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 18-19.
[75] *ibid.*
[76] Philip Handler, 'Legal History' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 103.

Second, it is because historical analysis not only demonstrates when and how differences in approaches appear in different legal systems, but can also indicate whether the same or similar legal rules were once present in the several different States being compared.[77] For example, both the UK and Ireland were once governed by systems of ecclesiastical law and it is from the charitable tenets of Christianity that today's codified systems of welfare have developed. These initially similar systems have, however, diverged over time and a historical analysis enables an exploration of some of the social and cultural the reasons for this divergence Indeed, in line with the first research aim of this thesis, the differing historico-social understandings of disability in the two jurisdictions of the UK and Ireland are considered wherever significant differences in the legal systems are identified.

The subject of this thesis, that of disability welfare benefits, is not a matter that exists solely in the legal sphere. Indeed, for any discussion of the CRPD to be fully contextualised, an understanding of well-established sociological models of disability is necessary. This is because one of the major purposes of the CRPD was to introduce the human rights model as a new model of disability,[78] with the human rights model itself being a reformulation of the social model of disability which was developed in the UK in the 1970s to replace 'outdated' charitable and medical models of disability.[79] Indeed, CRPD provisions that enshrine rights and obligations for CRPD – those which inform the Accessibility Framework (see Chapter 3.4) through which relevant domestic law will be analysed – are the tools through which the CRPD upholds the social and human rights models of disability. Each of these models, at one time or another, have been given primacy at national and international levels. These models are discussed further in Chapter 3.2.3.

2.4. CONCLUSION

The doctrinal method is applied in this research as it is the default methodology employed by legal researchers. The doctrinal method was utilised to identify and analyse primary and secondary sources of both the domestic legal systems of the UK and Ireland, and of

[77] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 19.
[78] Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 41.
[79] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) foreword, 91-0.

the CRPD and other International Human Rights Law (IHRL) documents. Whereas the distinction between primary and secondary sources of domestic law is clear and well-established, the distinction is less clear for sources relating to the CRPD. Ultimately, IHRL documents including the CRPD are categorised as primary sources, whereas other United Nations publications and non-binding decisions finding CRPD decisions are treated as secondary sources.

As all the aims of this thesis call for an element of comparison between legal systems, Comparative Legal Method was additionally employed. More specifically, the functional method, the law-in-context method, and the historical method were applied, with each of these representing a recognised approach to legal comparison that falls under the umbrella term Comparative Legal Method. These methods were selected over other recognised approaches to legal comparison as they were best suited to address the research aims. The functional method allowed for functional equivalents in the legal systems of the UK and Ireland to be identified and compared in order to identify the differences and similarities in how the selected laws addressed the same legal problem, namely ensuring accessibility in the disability welfare system. These were identified as primarily the laws that govern the operation of Personal Independence Payment in the UK and Disability Allowance in Ireland.

Although functionally equivalent laws operate in similar ways, a transplantation of a similar law is not a guarantee. The law operates in accordance with the historical, political, economic and social norms of the State in which it exists. Transplanting a law from one State into another, even between States belonging to the same legal family as is the case with the UK and Ireland, may prove unsuccessful when said law would fail to operate in a different economy or would be politically unacceptable due to not being in accordance with the agenda of the government of the day. It is for these reasons that this thesis employed the law-in-context and historical methods.

Employing these methods allowed for functionally equivalent laws to be contextualised and informed by the wider societal factors of each State, and has allowed recommendations of transplantation to be made with knowledge of how laws would require adapting in order to be in line with the historical, political, economic and social norms of each State. Moreover, utilising the CRPD to develop the framework through

which the functionally similar laws were analysed meant that, when the disability-specific domestic provisions allowing for welfare benefits in the UK and Ireland were examined as to the extent that they reflected the rights of disabled people, the rights being scrutinised were already formulated in a disability-specific context.

Having outlined the specific methodological approaches adopted in this thesis, the remaining chapters will focus on analysing the law through these methods. The upcoming Chapter 3 investigates the right of accessibility as enshrined in the CRPD, and concludes with the development of an Accessibility Framework that is subsequently applied to the domestic law of the UK and Ireland.

CHAPTER 3: ACCESSIBILITY AND THE CRPD

3.1. INTRODUCTION

The purpose of this chapter is twofold. Firstly, this chapter investigates how rights and obligations relating to accessibility are included in the Convention on the Rights of Persons with Disabilities (CRPD).[80] In so doing, the ground is laid for the second research aim of this thesis - to determine which Irish and UK laws currently meet the CRPD standard of accessibility – to be addressed in subsequent chapters. Secondly, this chapter develops an analytical framework through which laws and policies relating to the primary disability welfare benefit in the UK and Ireland (See Chapter 4) are analysed in line with multiple dimensions of the right to accessibility as protected by the CRPD.[81] This is the Accessibility Framework (See 3.4 below). The Accessibility Framework will be utilised in subsequent chapters in order to identify key areas where the national laws of the UK and Ireland fall below CRPD standards of accessibility. In so doing, the second research aim of this thesis is further met. Further, recommendations addressing how the national laws could be improved to meet CRPD standards of accessibility can be offered, thus meeting the third research aim of this thesis - to offer recommendations as to how the UK and Ireland could improve practice in the operation of primary disability welfare benefits in order to ensure CRPD standards of accessibility, with a particular focus on identifying where it would be appropriate to adapt and transpose UK or Irish provisions into the legal system of the other State.

Accessibility as enshrined in the CRPD is a right held above all others by the United Nations, and is viewed as a prerequisite to be secured to disabled people to enjoy any other human right.[82] In testament to its importance, accessibility is included over 25 times throughout the text of the CRPD in multiple forms, including as a standalone thematic right, a series of obligations, and a general principle of the CRPD, thus showing its importance to the operation of the CRPD.

[80] UN Convention on the Rights of Persons with Disabilities, resolution adopted by the UN General Assembly, 13 December 2006, UN Doc. A/RES/61/106, entry into force 3 May 2008 (CRPD).
[81] Chapter 4 of this thesis defines primary disability welfare benefit and outlines the specific provisions governing these in both the UK and Ireland. As will be demonstrated, the primary disability welfare benefit in the UK is Personal Independence Payment (PIP) and the primary disability welfare benefit in Ireland is Disability Allowance (DA).
[82] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [1]; CRPD Committee, Ron McCallum 'Opening remarks at the Day of General Discussion on Accessibility' (7 October 2010).

Section 3.2 first discusses the structure of the CRPD and its Optional Protocol in order to demonstrate how CRPD provisions differ in nature, with some provisions being self-contained clusters of rights and obligations whereas others are of interpretive character meaning all others are read in line with them, and others. Section 3.2.3 focuses in on these provisions of interpretive characters in order to indicate how disability is framed and approached by the CRPD. This is done in order to clarify who is disabled per the CRPD and thus those who can engage CRPD rights.

Having provided an understanding of how the CRPD and Optional Protocol operate in section 3.2, section 3.3 then discusses accessibility as it is included in the CRPD. First, section 3.3.1 presents a textual analysis of Article 9 of the CRPD, which is the thematic substantive right of accessibility in the CRPD. This textual analysis demonstrates how accessibility, as it is included in Article 9, exists across multiple dimensions. Second, in section 3.2.2, focus is moved beyond Article 9 and instead considers how obligations and rights relating to accessibility in the CRPD are included expressly in CRPD provisions other than Article 9. Third, section 3.3.3 discusses how accessibility rights and obligations expressly included in some CRPD provisions generate unwritten, implied accessibility rights and obligations into other CRPD provisions that do not expressly contain any reference to accessibility.

Section 3.4 outlines the Accessibility Framework that has been designed based on specifically selected CRPD provisions relating to accessibility. This framework applies the approach adopted by many legal comparatists who hold that, in order to fully address the research questions when undertaking a thesis in legal comparison, the use of a standard against which to examine common elements from the legal systems being compared is required.[83] This framework based on CRPD provisions relating to accessibility will act as said standard, and will provide the lens through which relevant disability welfare benefit law from the legal systems of the UK and Ireland are examined in order to identify significant differences between the systems and to determine which of the Irish and UK laws being examined currently meet CRPD standards of accessibility.

Section 3.5 then concludes this chapter.

[83] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 26; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 27; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015) 148-154.

3.2. THE CRPD AND ITS OPTIONAL PROTOCOL

The CRPD was the first international human rights treaty of the 21st Century,[84] and is described by the United Nations as 'an international treaty that identifies the rights of persons with disabilities as well as the obligations on States parties to the Convention to promote, protect and ensure those rights.'[85] Both the CRPD and its Optional Protocol were adopted by Resolution 61/106 by the United Nations in December 2006.[86] The UK ratified both the CRPD and its Optional Protocol in 2009, whereas Ireland ratified the CRPD much more recently in 2018, and as of the time of writing has not ratified its Optional Protocol.[87]

The CRPD does not itself create any new human rights that were not previously present and agreed upon on an international scale in international human rights law (IHRL).[88] Instead, the CRPD is said to transform and add to existing concepts in IHRL in order to allow for these concepts to be given disability-specific interpretations.[89] As Broderick and Ferri note, whereas some well-established IHRL rights usually require only negative (passive) intervention from States, meaning that a State must refrain from interfering with or restricting an IHRL right,[90] the very same rights require positive State intervention when applied in a disability-specific context.[9192] The example Broderick and Ferri provide is that of freedom of expression, a well-established human right existing in IHRL.[93] Ordinarily, to uphold this right, a State needs only to not interfere with an

[84] United Nations Department for Economic and Social Affairs 'Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities' (*United Nations*) <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/frequently-asked-questions-regarding-the-convention-on-the-rights-of-persons-with-disabilities.html#iq2> accessed 10 August 2024.
[85] *ibid*.
[86] UNGA Res 61/106 (13 December 2006) UN Doc A/RES/61/106.
[87] United Nations Treaty Collection, 'Convention on the Rights of Persons with Disabilities' (*United Nations*, 2020) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 4 August 2021; United Nations Treaty Collection, 'Optional Protocol to the Convention on the Rights of Persons with Disabilities' (*United Nations*, 2020) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en> accessed 10 August 2024.
[88] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) Module 2; Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy – Text, Cases and Materials* (Cambridge University Press 2019) 60-61.
[89] *ibid.*
[90] C M Buckley, E P Bates, M O'Boyle and D J Harris, *Harris, O'Boyle and Warbrick: European Convention on Human Rights* (3rd edn, OUP 2014) 21.
[91] Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy – Text, Cases and Materials* (Cambridge University Press 2019) 61.
[92] Positive intervention means that rather than passively allow a person to enjoy their human rights without interference, a State must actively take measures, usually with a financial implication, to secure enjoyment of a human right - C M Buckley, E P Bates, M O'Boyle and D J Harris, *Harris, O'Boyle and Warbrick: European Convention on Human Rights* (3rd edn, OUP 2014) 21-22.
[93] Universal Declaration of Human Rights, resolution adopted by the UN General Assembly, 10 December 1948, Paris, Resolution 217 A (III) (UDHR) art19; which is then reaffirmed by International Covenant on Civil and

individual who is expressing themselves. However, in its disability-specific CRPD context, the right to freedom of expression includes a right to information being in accessible formats in order for disabled people to gain an understanding of a subject and thus be able to contribute to discourse on said subject.[94] Clearly, converting information into accessible formats is an action that requires positive intervention by States.

The remainder of this section outlines the structure and composition of the CRPD so as to provide an understanding of the classifications of human rights that are made disability-specific and how certain CRPD mechanisms such as the monitoring of CRPD compliance operate in practice, as well as clarify who rights-holders are under the CRPD.

3.2.1. THE STRUCTURE OF THE CRPD

The CRPD comprises of a preamble followed by 50 Articles. It includes both procedural and substantive provisions.

Articles 1-30 are the substantive provisions of the CRPD. These substantive provisions espouse the purposes and principles of the CRPD,[95] the rights that are to be afforded to disabled people,[96] and the obligations States must uphold and perform in order for said rights to be realised.[97] The preamble to the CRPD, Articles 1 (Purpose) and 2 (Definitions) are provisions of an interpretive character,[98] which means that all subsequent provisions must be read in keeping with the overall context and goals of the CRPD as laid out in these provisions.[99]

Article 3 lists eight general principles which are to be protected and upheld through the operation of the CRPD and Article 4 lists general obligations that States must undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people. In this context, the general principles can be described as being abstract concepts and values, whereas the general obligations are specific concrete

Political Rights, resolution adopted by the UN General Assembly, Resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 (ICCPR) art 19(2).

[94] UN Convention on the Rights of Persons with Disabilities, resolution adopted by the UN General Assembly, 13 December 2006, UN Doc. A/RES/61/106, entry into force 3 May 2008 (CRPD) art 21(a).

[95] CRPD arts 1-3.

[96] CRPD arts 5-30.

[97] CRPD arts 4-30.

[98] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 27-28; Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy – Text, Cases and Materials* (Cambridge University Press 2019) 63.

[99] *ibid*.

requirements that mandate States to undertake measures to ensure the principles of the CRPD are upheld. Articles 5-30 of the CRPD are described by the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) as being thematic articles,[100] each containing clusters of obligations to be placed upon States and rights to be protected, and with each article relating to a specific area such as health,[101] education,[102] or work.[103] These thematic articles protect the 'full spectrum of human rights' in that civil, political, economic, social, and cultural rights are all protected under the CRPD,[104] thus ensuring that human rights of all classifications are applicable to disabled people.

Accessibility is one of the most pervasive rights enshrined in the CRPD. Various dimensions of accessibility are expressly included in all types of substantive provision of the CRPD – as a general principle in Article 3,[105] a general obligation in Article 4,[106] a specific standalone right in Article 9,[107] and an express component of many other CRPD provisions, including *inter alia* preambular paragraph v, which is a provision of interpretive character for the whole of the CRPD.

Articles 31-50, then, contain the procedural provisions of the CRPD. Articles 31-40 of the CRPD contain provisions relating to implementation and monitoring of State Parties' application of the CRPD, and Articles 41-50 contain provisions relating to signature, ratification, and entry into force.[108] Of particular note here are Article 34-36. Article 34 established the Committee on the Rights of Persons with Disabilities (The CRPD Committee), which is the 'Treaty Body' for the CRPD.[109] The CRPD Committee is a committee of independent disability rights experts tasked with monitoring the implementation of CRPD rights by State Parties.[110] Articles 35 and 36 CRPD allow the CRPD Committee the power to monitor CRPD implementation and compliance through the receipt of State reports. Article 35 obliges States to submit a report to the CRPD

[100] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 29.
[101] CRPD art 25.
[102] CRPD art 24.
[103] CRPD art 27.
[104] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 29.
[105] CRPD art 3.
[106] CRPD art 4(1)(h).
[107] CRPD art 9.
[108] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 30; Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy – Text, Cases and Materials* (Cambridge University Press 2019) 64-65.
[109] United Nations Office of the High Commissioner of Human Rights, 'Human Rights Treaty Bodies' (*United Nations,* 2021) <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> accessed 10 August 2024.
[110] *ibid;* CRPD art 34.

Committee that outlines the measures the States has undertaken to reflect the obligations placed on it by the CRPD.[111] Article 36 then empowers the CRPD Committee to, based on the State reports it received, furnish States with a list of observations and recommendations to be undertaken in order to ensure full CRPD compliance.[112]

3.2.2. THE OPTIONAL PROTOCOL TO THE CRPD

The Optional Protocol to the CRPD is a separate legal instrument to the CRPD that requires separate ratification or accession from States.[113] The Optional Protocol contains additional procedural provisions that grant the CRPD Committee further powers in line with its duties to monitor State compliance with CRPD implementation.

The Optional Protocol grants the CRPD Committee the power to receive communications from individuals or groups of individuals who claim to be victims of violations of the CRPD.[114] Upon receipt of a communication,[115] the CRPD Committee determines whether the individual or group of individuals have indeed had their CRPD rights violated by State action. Communications in which the CRPD Committee determine a State had violated one or more CRPD rights are then passed to the State along with recommendations as to how it can rectify the CRPD violation of which it is accused,[116] after which States have a six-month window in which to supply the Committee with either a statement outlining the remedy provided to the individuals or a written explanation of why the State disagrees with the finding of the CRPD Committee.[117]

The Optional Protocol also grants the CRPD Committee the power to conduct inquiries into State Parties upon receiving credible evidence of grave or systematic CRPD violations from alleged victims or their representatives. The terms grave and systematic in this context are both applied in line with their dictionary definitions. 'Grave' refers to the seriousness and severity of the violations, whereas 'systematic' refers to the widespread nature of the violations. Systematic here also relates to institutional issues due to the fact that systematic violations are by their nature committed by institutions. It

[111] CRPD art 35.
[112] CRPD art 36.
[113] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 130.
[114] UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex II (CRPD-OP) arts 1-3.
[115] Communications which the CRPD Committee report on are interchangeably referred to as CRPD jurisprudence and CRPD cases.
[116] *ibid* art 3.
[117] *ibid*.

is important to note that Article 6(1) of the CRPD, by allowing inquiries into grave or systematic violations, seems to suggest that an inquiry can be undertaken into instances of solely grave or solely systematic violations.[118] However, all inquiries to date have concluded with a finding of both grave and systematic violations by the State being investigated.

To date, three inquiries have been undertaken by the CRPD Committee under the authority granted by the Optional Protocol culminating in three inquiry reports being created. The inquiry into the UK found grave and systematic violations of the CRPD rights to living independently and being included in the community (Article 19), to work and employment (Article 27), and to an adequate standard of living and social protection (Article 28). These violations were determined to have been caused by changes to the disability welfare benefit system implemented by the Welfare Reform Act 2012 that led to "significant cuts to social benefits that were affecting several of the rights of persons with disabilities".[119] The move to a new regime of disability welfare benefits in the UK following the implementation of the 2012 legislation saw over 600,000 disabled individuals who were eligible for the previous primary disability welfare benefit be found ineligible for the new style disability welfare payments[120], arguably due to 'tightened' eligibility criteria as compared to the system that came before.[121] The basis for the findings of the CRPD Committee that reform to welfare law has caused the eligibility criteria for the primary disability welfare benefit in the UK to be tightened is discussed in Chapter 4.3.1.

Then, in 2018, the CRPD Committee found that Spain had violated the CRPD right to education due to the practice of segregated education for disabled students.[122] The most recent inquiry was into Hungary, in 2020, in which the CRPD Committee found grave and systematic violations of the CRPD rights to independent living and community inclusion,[123] to equality and non-discrimination,[124] and to equal recognition before the

[118] Ornella Ferrajolo, 'Optional Protocol to the Convention on the Rights of Persons with Disabilities' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 722.
[119] *ibid* [2]
[120] *ibid* [112].
[121] *ibid.*
[122] UNCRPD 'Inquiry concerning Spain carried out by the Committee under article 6 of the Optional Protocol to the Convention' (4 June 2018) UN Doc CRPD/C/20/3.
[123] CRPD art 19.
[124] CRPD art 5.

law,[125] due to policies allowing for increased institutionalisation and guardianship of persons with disabilities and a reduction in community-based support services.[126]

Following an inquiry, the CRPD Committee delivers a report which includes its comments, any findings of CRPD violation, and any recommendations for improvements to ensure CRPD compliance.

3.2.2.1. The Authority of the CRPD and CRPD Committee Decisions

The UK and Ireland are both subject to international law obligations, including obligations from the CRPD and other IHRL treaties referenced above. However, because the UK and Ireland have dualist legal systems, international treaty obligations do not automatically change the law due to Parliamentary sovereignty in both States.[127] Rather, in both Ireland and the UK, legislation must be introduced in order for their international law obligations to be recognised in domestic law.[128] At present, neither the UK or Ireland have introduced any domestic legislation to codify the CRPD in domestic law and neither State shows any signs of doing so in the near future.

Moreover, the CRPD Committee as a treaty body does not have binding judicial powers akin to that of a court or tribunal. Therefore, any recommendations made by the CRPD Committee are of a non-binding nature. However, this does not mean that CRPD Committee decisions are of no authority.

By virtue of a State ratifying the Optional Protocol, as the UK has, said State recognises the competence of the CRPD Committee to make recommendations following receipt of communication or following an inquiry.[129] For example, the Inquiry Report into the UK, which was made possible by the UK ratifying the Optional Protocol, contained 11 separate recommendations.[130] These included recommendations for the UK to conduct a

[125] CRPD art 12.
[126] UNCRPD 'Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention' (17 September 2020) UN Doc CRPD/C/HUN/IR/1.
[127] Parliamentary sovereignty is the concept that Parliament can legislate on any subject matter, cannot bind nor be bound by a previous Parliament and no other body besides Parliament has the right to override or set aside an Act of Parliament, i.e. a statute, and that a statute can completely overrule any custom, judicial precedent, delegated legislation or any previous statute.
[128] However, some international law obligations may require the UK or Ireland to change its law, either before ratification or as a result of subsequent judgments, decisions, or recommendations of the relevant treaty body.
[129] Antonia Jones et al, 'The UN Inquiry into the Rights of Persons with Disabilities in the UK' (2017) 7367 HoC Library Briefing Papers 1, 5.
[130] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1 [114].

cumulative impact assessment of the legislative measures governing PIP,[131] to ensure legislative measures governing PIP are reformed to uphold the human rights model of disability,[132] and to introduce accommodations that ensure information accessibility and access to justice for disabled people.[133]

In contrast, at present, Ireland has not ratified the Optional Protocol, but there is mounting pressure from disability advocacy groups for it to do so. Despite this, disabled people in Ireland can still have their human rights protected, but not by the CRPD Committee. This is possible through two routes.

First, as discussed above, the rights espoused by the CRPD are disability-specific reframings of IHRL rights that exist outside of the CRPD. As Ireland has ratified the European Convention of Human Rights (ECHR), which is also applicable to the UK, the IHRL rights of the ECHR are most important here. These ECHR rights will be discussed in 3.3.2.2.

The second mechanism available to disabled people in Ireland to have their rights protected is through the application the Bunreacht na hÉireann (Irish Constitution). This mechanism will be discussed in section 3.2.2.3.

Before considering these mechanisms, it must be noted that both suffer from two disadvantages as compared to CRPD Committee investigations.

First, although the rights protected by these mechanisms that reflect non-disability-specific framings of the rights protected by the CRPD can be protected through these mechanisms by domestic and international courts, these courts lack the unique expertise of the CRPD Committee in handling violations of human rights violations against disabled people. It is therefore preferable that a disabled person has their rights as espoused by the CRPD investigated the CRPD Committee rather than by other bodies.

Second the rights protected under these mechanisms are not specifically CRPD rights but instead are non-disability-specific framings of the rights espoused by the CRPD. Thus, although a CRPD right may have been violated, said CRPD right cannot be directly

[131] *ibid* [114a].
[132] *ibid* [114b].
[133] *ibid* [114e-f].

protected through these mechanisms. However, the advantage of utilising either the ECHR or Bunreacht na hÉireann is the range of remedies available under these mechanisms than beyond the recommendations offered by the CRPD Committee.

3.2.2.2. Non-Disability-Specific Framings of CRPD Rights in the ECHR

Both Ireland and the UK are contracting States to the ECHR, and the European Court of Human Rights (ECtHR) - to which individual victims of rights violations can bring claims directly - has often referred to the CRPD in its judgments.[134] The ECHR and the ECtHR thus provide an obvious, albeit indirect, mechanism for the enforcement of rights equivalent to some of those in the CRPD for disabled people in both Ireland and the UK.

Although the ECtHR can only hear cases where one of the human rights protected by the ECHR has been violated, these include the right to a private life (Article 8 ECHR) and the right not to be discriminated against in relation to ECHR rights (Article 14 ECHR). Importantly, the ECtHR has used the CRPD as a source of reference when interpreting the ECHR and this provides a mechanism through which CRPD rights may potentially be enforced in Ireland and the UK. For example, *Glor v. Switzerland*,[135] was an ECtHR case that concerned Article 14 ECHR. Article 14 reads:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

In *Glor,* the ECtHR determined that due to the list of protected statuses in Article 14 being non-exhaustive, there was 'no doubt' that Article 14 could be applied to discrimination on the grounds of disability.[136] In reaching this decision, the ECtHR referred to the "European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment", which the ECtHR determined was exemplified by other international human rights instruments such as, *inter alia,* the CRPD.[137]

[134] *Glor v. Switzerland* 2009-III 33; *Kiss v Hungary* App no 38832/06 (ECtHR, 20 May 2010).
[135] Application no. 13444/04, 30 April 2009.
[136] *ibid* [80].
[137] *ibid* [53].

Similarly, in the subsequent case of *Kiss v Hungary*,[138] in which the applicant was barred from the electoral roll due to their disability, the ECtHR also applied the CRPD in finding a violation of Article 3 of Protocol 1 (in conjunction with Article 14) - right to free elections - resulting from disability discrimination. However, whereas in *Glor* the ECtHR simply pointed to the CRPD as being an indicative legal instrument demonstrating that disabled individuals required further protection, the ECtHR went much further in *Kiss.* In *Kiss,* the ECtHR quoted in full two CRPD Articles that it believed to be relevant to have been engaged in this case – the CRPD right to equal recognition before the law (Article 12) and the right to participation in political and public life (Article 29).[139] This could be taken as a tacit recognition by the ECtHR that not only were the applicants' ECHR rights violated in this case, but so were the specific CRPD rights referenced. Thus, disabled people whose CRPD rights have been violated by States where the ECHR applies, including the UK and Ireland, appear likely to succeed in a claim under ECHR Article 14 if they were to report a violation of any CRPD right to the ECtHR due to a violation of disability-specific formulations of human rights by a State being a discriminatory act for the purposes of Article 14 ECHR. Therefore, the ECtHR provides a venue to disabled people in the UK and Ireland where a legally binding remedy can be sought when CRPD rights are violated.

A similar approach was taken in the recent ECtHR case of *Jivan v Romania*,[140] in which a violation of Article 8 ECHR was found due to the disabled applicant being denied a personal assistant and thus being denied respect for his private life, in so far as him being 'deprived of his autonomy and of access to the outside world'.[141] In this case, the ECtHR also quoted in full CRPD Articles that it believed to be relevant to have been engaged in this case – the CRPD right to independent living (Article 19), the right to personal mobility (Article 20), and the right an adequate standard of living and social protection (Article 28), and held these rights to be of relevance to the case.[142]

In addition to ratifying the ECHR, both the UK and Ireland have enacted domestic legislation requiring public authorities,[143] including the courts, to read and give effect to domestic legislation in a way that is compatible with the ECHR as interpreted by the

[138] Application no. 38832/06, 20 May 2010.
[139] *ibid* [14].
[140] Application no. 62250/19, 8 February 2022.
[141] *ibid* [28].
[142] *ibid* [45].
[143] Human Rights Act 1998; European Convention on Human Rights Act 2003.

ECtHR. In the light of the judgments in *Glor*, *Kiss*, and *Jivan*, this may mean that both States must, at least to the extent covered by Articles 8 and 14 ECHR, interpret domestic legislation in line with the CRPD as well as the ECHR. This was indeed the case of *RF v SSWP* in the UK,[144] in which a change to legislation that removed eligibility to higher rate PIP payments from housebound claimants was challenged due to an argued contravention of Article 14 ECHR. In finding for the claimant and thus holding the change in the law to be discriminatory, the court agreed with the claimant who argued that the change in the law also violated the CRPD right of independent living and stated that the violation of this CRPD provision was 'another reason why the discrimination within the measure cannot be objectively justified'.[145]

3.2.2.3. Non-Disability-Specific Framings of CRPD Rights in the Bunreacht na hÉireann

The second alternative to CRPD Commmittee as a mechanism for disabled people on Ireland to enforce their rights is the the Bunreacht na hÉireann, the Irish constitution. Several of the provisions of the Irish constitution mirror CRPD rights. Indeed, Article 40(1) Bunreacht na hÉireann allows for equality before the law, which is reflected in the CRPD in Article 12. Article 45 Bunreacht na hÉireann includes the Directive Principles of Social Policy, which includes the promotion of the welfare of the whole people of Ireland,[146] and a pledge to:

> to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.[147]

If infirm, in the context of the Bunreacht na hÉireann is taken to include disabled persons, then Article 45 of the Bunreacht na hÉireann can be taken as a constitutional right ensuring an adequate standard of social protection for disabled persons, which is the same right espoused by Article 28 of the CRPD.

[144] *R (on the application of RF) v Secretary of State for Work and Pensions* [2017] EWHC 3375 (Admin).
[145] *ibid* [61].
[146] Bunreacht na hÉireann, Art 45(1).
[147] Bunreacht na hÉireann, Art 45(4).

3.2.3. MODELS OF DISABILITY AND THE APPROACH TO DISABILITY BY THE CRPD

Having established the structure of the CRPD, and how the CRPD Committee monitors the activities of States in line with these rights, and some possible alternatives, attention must be turned to the rights-holders under the CRPD. Indeed, those whose rights are protected under the CRPD are disabled people/persons with disabilities. Thus, it must be made clear who a 'person with a disability' is for the purposes of the CRPD. Determining the approach to disability by the CRPD will inform the second research aim of this thesis – to ascertain how different historical opinions regarding disability in the UK and Ireland have impacted modern legislation and its interpretation.

Article 1, which provides the overall purpose of the CRPD and is a provision of interpretive character, reads:

> The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
>
> Persons with disabilities include those who have 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.

Crucially, the second paragraph of Article 1, which outlines who is to be viewed as disabled under the CRPD, does not provide an exhaustive definition of disability in that the use of the word 'include' suggests an implied term here of 'include and not limited to'. Indeed Article 2, which provides a total of five definitions,[148] does not provide a definition for disability, leaving the term to be ambiguous within the CRPD.

This approach is uncommon, as most legal documents will contain provisions that supply technical terms with contextualised definitions for the purpose of said legal document. This is certainly the case with the domestic legislation of the UK and Ireland governing laws relating to disability, with both States having 'legal definitions' for disability

[148] Article 2 of the CRPD provides contextualised definitions for these five terms: Communication, Language, Discrimination on the basis of disability, Reasonable Accommodation, and Universal Design.

encoded in statutory law,[149] and these definitions inform the approach of legal agents when applying the law to disabled people.

The absence of a definition of disability in the CRPD is not without reason, rather, its omission was a conscious decision. Preambular paragraph e reads:

> Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

Thus, by leaving disability without a definition in the CRPD allows for an evolution in the understanding of what indeed can qualify as a disability. It is submitted that this, taken with the non-exhaustive list in Article 1, allows the CRPD to be a 'living instrument' of IHRL. [150]

The UNOHCHR contends that in enshrining disabled people with the full spectrum of *all* human rights, the CRPD (i) challenges 'previous perceptions of disability as [being] a medical problem or a generator of pity or charitable approaches',[151] and (ii) institutes a human-rights based approach to disability that is in line with the social conceptualisation of disability.[152]

To comprehend this, an understanding of each of the models of disability mentioned above is required, as well as an understanding of how they connect. As will be made clear, the work of disability advocacy groups and scholars who developed the social model of disability directly influenced the ethos and drafting of the CRPD,[153] and laid the ground upon which the human rights model was built. The social model and human rights model

[149] The legal definition for disability in the UK is provided by s.6(1) of the Equality Act 2010, which reads, 'A person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities', whereas the legal definition for disability in Ireland is provided by s.2(1) of the Disability Act 2005, which reads, 'a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment'.
[150] 'Living instrument' is the language adopted in the case of *Tyrer v UK* which framed the European Court of Human Rights as being a living instrument that must "be interpreted in the light of present-day conditions" – A 26 (1978); 2 EHRR 1 [31].
[151] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) foreword.
[152] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 9-10.
[153] The Social Model is so named by Michael Oliver – see Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 41-57.

are the models of disability adopted by the CRPD Committee. Thus, adoption of these models by CRPD State Parties demonstrates compliance with the purpose of the CRPD, whereas adoption of other, outdated models would suggest a lack of compliance with the CRPD. Therefore, before discussing the social model and human rights model of disability, the charitable model and medical model of disability must first be discussed because, as will be demonstrated in subsequent chapters, two outdated models of disability – namely the charitable model and medical model – are still utilised to some degree by both the UK and Ireland. This is in part due to differing historical and religious factors impacting the national approaches to disability by the UK and Ireland, and thus the following sections set the ground for the first research aim of this thesis - to identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland, given the differing historico-social understandings of disability in the two jurisdictions.

3.2.3.1. The Charitable Model

According to the UNOHCHR, the charity approach to disability treats Disabled people as 'passive acts of kind acts or welfare payments rather than empowered individuals with the rights to participate in political and cultural life and in their development.'[154]

This model is characterised by the viewpoint that disabled people are unable to provide for themselves as a result of their impairments and as such disabled people require society to provide for them, framing disabled people as wholly dependent on 'duty bearers' including charity houses, churches, foundations, and similar institutions.[155] Such a framing holds disabled people to have little to no control or participation in their lives due to the burden they place on the duty bearers in society and the resulting decision-making allowed to the duty bearers.[156] This model is held to further the divide between disabled people and society.[157]

Conroy refers to the period of time in which the charitable model was predominant in Ireland as the Heroic-Tragic Era, and indicates that the only exceptions to this

[154] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 8.
[155] *ibid.*
[156] *ibid.*
[157] *ibid* 9.

dehumanising view of disabled people were those disabled people who attained extraordinary achievements despite their impairments who were framed by society as 'heroic, remarkable, extraordinary and unusual'.[158] The remaining majority of disabled people who did not meet these criteria were held to be tragic subjects of charity due to their inability to enter the workforce meaning that were not 'considered to have any human capital value'.[159] According to Conroy, this model was the predominant model in Ireland until the 1970s.

Michael Oliver, a prominent scholar of disability who is attributed with developing the social model of disability, holds that this charitable approach to disability is part of a wider umbrella model, that of the 'individual model'. As the name suggests, the individual model locates disability within the individual and results from the illness or impairment of the individual.[160] The individual model, according to Oliver, is built upon the tenet of medicalisation.[161] Medicalisation of disability is often taken to be the basis of a model in unto itself, that of the 'Medical Model'. The medical model will now be discussed below.

3.2.3.2. The Medical Model

The UNOHCHR holds that the medical approach is characterised by the focus on the impairment and functional limitations of disabled people as representing the source of their inequality.[162] By framing disability as largely a medical problem, it follows that a disabled people can undergo medical treatment in order to be 'fixed' or 'cured' to facilitate their reintroduction into society.[163] This model is mistrusted and criticised by disabled people and their organisations due to the dangers it represents to disabled people. One such danger, as the United Nations indicate, is that this model allows for the framing of disabled people as 'bad patients' such as those society considers dangerous and violent (a particularly prevalent framing of disabled people with mental impairments) who must

[158] Pauline Conroy, *A Bit Different: Disability in Ireland* (Orpen Press 2018) 4-5.
[159] *ibid* 5.
[160] Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 43-46; Pauline Conroy, *A Bit Different: Disability in Ireland* (Orpen Press 2018) 6-7.
[161] Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 43-46.
[162] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 9.
[163] *ibid*; Andrea Broderick, *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015) 22-23.

be treated and therapised in order to make them 'good patients'.[164] A second resultant danger here is the power that medical experts are allowed over the lives of disabled people under the medical model. Said experts are allowed power to, if treatment, therapy, and rehabilitation proves impossible, disallow disabled people into society, instead opting to institutionalise the disabled people. Here, we can see an overlap between the medical model and the charitable model, in that where medical care fails to 'treat or cure' the disabled people, they are turned over the duty bearers of society whose 'burden' it is to care for disabled people.[165] A third danger is that, by framing disability as an individual problem based upon functional limitations, no consideration is had of environmental factors that contribute to the disablement of disabled people. Despite these criticisms, the medical model was endorsed as the primary by the World Health Organisation until 2001 and the introduction of the *International Classification of Functioning, Disability and Health* (ICF),[166] and remains to be reflected in domestic legislation governing disability in many States,[167] including the UK and Ireland.

To combat these dangers and issues of the medical model of disability, advocacy groups and scholars supporting disability rights developed the Social Model of disability, which is discussed below.

3.2.3.3. The Social Model

> According to Oliver, the genesis of the influential social model of disability was a publication by the disabled persons advocacy group the Union of the Physically Impaired Against Segregation (UPIAS),[168] titled *Fundamental Principles of Disability*.[169] Oliver selects this extract particularly as expressing a social understanding of disability:

---

[164] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 9.
[165] *ibid 8-9.*
[166] World Health Organisation, International Classification of Functioning, Disability and Health (World Health Organisation, 2001) (ICF).
This replaced the International Classification of Impairments, Disabilities and Handicaps (ICIDH), which adopted language that reflected the medical model of disability, with disability being defined as 'any restriction or prevention of the performance of an activity, resulting from an impairment, in the manner or within the range considered normal for a human being.' - World Health Organisation, *International Classification of Impairments, Disabilities and Handicaps: a Manual of Classification Relating to the Consequences of Disease* (World Health Organisation 1980) 143.
[167] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 11.
[168] Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 41-43.
[169] Union of the Physically Impaired Against Segregation, *Fundamental Principles of Disability* (Union of the Physically Impaired Against Segregation 1976).

> In our view, it is society which disables physically impaired people. Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society. Disabled people are therefore an oppressed group in society. To understand this it is necessary to grasp the distinction between the physical impairment and the social situation, called 'disability', of people with such impairment. Thus we define impairment as lacking all or part of a limb, or having a defective limb, organism or mechanism of the body and disability as the disadvantage or restriction of activity caused by a contemporary social organisation which takes little or no account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities.[170]

With the above extract as its underpinning ethos, the social model provides an understanding of disability that separates the individual impairment from societal barriers.[171] Contributors to and advocates of the social model of disability hold that these societal barriers can be, *inter alia,* of a physical, attitudinal, institutional, economic, cultural, or psychological nature.[172] As will be made apparent in the analysis of the right to accessibility as promoted and protected by the CRPD, accessibility exists in multiple dimensions, specifically including the physical, economic, attitudinal, and institutional.[173] For this reason, the right to accessibility can be viewed as a right that gives life to the social model (and thus the human rights model) of disability. This is indeed the position taken by the United Nations, which frames a restructuring of institutional, physical, and attitudinal accessibility as necessary to eliminate barriers that disable disabled people.[174] This is of course a common-sense approach in line with the dictionary definitions of both accessible, 'to be able to be reached or used […] understood

[170] Union of the Physically Impaired Against Segregation, *Fundamental Principles of Disability* (Union of the Physically Impaired Against Segregation 1976) 14; Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 42.
[171] Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009).
[172] *ibid;* Janet E. Lord, Katherine N. Guernsey, Joelle M. Balfe & Valerie L. Karr, Nancy Flowers (eds), *Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities* (Human Rights Resource Center, University of Minnesota 2007) ch 2; United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 9-10.
[173] CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' UN Doc E/ C12/ 2000/ 4 (11 August 2000) [12(b)]; Janet E. Lord, Katherine N. Guernsey, Joelle M. Balfe & Valerie L. Karr, Nancy Flowers (eds), *Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities* (Human Rights Resource Center, University of Minnesota 2007) 37-38.
[174] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 9-10.

or enjoyed.[175]' and barrier, '(1) an obstacle that prevents movement or access, (2) an obstacle to communication or progress.[176]'. Clearly, if a barrier is that which prevents access, and to be accessible is to be free of barriers, then any disability-specific right of accessibility is by its nature eliminating barriers of disablement and reflecting the social model of disability in so doing, thus making accessibility the tool through which the social model is applied in practice.

Oliver, in the second edition of *Understanding Disability*, claims that 'the social model does not mean that individually-focuses interventions in the lives of disabled people, whether they be based on medicine, rehabilitation, education or employment, are of no use or always counter-productive.[177]' Rather, according to Oliver, the social model is 'an attempt to switch the focus away from the functional limitations of individuals with an impairment on to the problems caused by disabling environments, barriers and cultures.[178]' In other words, the social model, while recognising that impairments of disabled people differ and cause their own level of difficulty, suggests that shifting focus away from potentially ineffective or non-existent cures and treatments of individual impairments onto the societal disabling barriers causes the matter of disability to be forced into the socio-political sphere.[179]

The social model is not without its own criticisms. As Broderick indicates 'the social model of disability […] reinforces a shared experience of inequality, irrespective of the type of individual impairment',[180] it is this primary focus on the shared experience of disablement caused by societal barriers over the individual experience that specifically draws criticism. Jenny Morris, who writes on disability from a feminist perspective, argues:

> While environmental barriers and social attitudes are a crucial part of our experience of disability – and do indeed disable us – to suggest that this is all there

[175] Maurice Waite (ed), *Paperback Oxford English Dictionary* (7th edn, OUP 2012) 4.
[176] *ibid* 52.
[177] Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 45.
[178] *ibid.*
[179] Michael Oliver, *Understanding Disability – From Theory to Practice* (2nd edn, Palgrave 2009) 43; Michael Oliver and Colin Barnes, 'Back to the future: The World Report on Disability Article' (2012) 27 (4) Disability & Society 575.
[180] Andrea Broderick, *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015) 24.

> is, is to deny the personal experience of physical and intellectual restrictions, of the fear of dying.[181]

Shakespeare, a disability rights scholar and sceptic of the social model, goes further and argues that:

> At the heart of the social model approach to disability is a kind of denial. Social model theory enables disabled people to deny the relevance of their impaired bodies or brains, and seek equality with non-disabled people on the basis of similarity. What divides disabled from non-disabled people, in this formulation, is the imposition of social oppression and social exclusion. Moreover, the identity politics that is fuelled by this ideology paradoxically depends on strengthening the coherence and separateness of the disability group. Disabled people are contrasted with non-disabled people. Non-disabled people and the non-disabled world are increasingly seen as oppressive and hostile. Those who claim to help disabled people – professionals, charities, governments – are rejected.[182]

Indeed, as these criticisms indicate, the social model when taken to its extreme can serve to isolate disabled people from their non-disabled counterparts and worse still isolate disabled people from other disabled people as the correcting of societal barriers will not eliminate the individual impairments.

This concern was evidently recognised by the authors of the background study to the CRPD, Degener and Quinn, who developed a new Human Rights Model of disability from the social model which was ultimately adopted by the United Nations as the model to be reflected in the CRPD, and which provides a more nuanced approach.[183]

3.2.3.4. The Human-Rights Model and the CRPD

[181] Jenny Morris, *Pride Against Prejudice: Transforming Attitudes to Disability: A Personal Politics of Disability* (Women's Press, London, 1991) 10.
[182] Tom Shakespeare, *Disability Rights and Wrongs Revisited* (Routledge 2014).
[183] The human rights model is not the only model to have been developed from or following the social model, with other accepted models of disability being the *inter alia* the minority rights approach, the universalist approach, and the capabilities approach – see Andrea Broderick, *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015) 25-30.

According to Degener, a CRPD Committee member, 'the human rights model is an improvement of the social model of disability' and 'is a tool to implement the CRPD.[184]' Indeed, Degener clarified that during the drafting of the CRPD, despite a lack of clear consensus of how the text of the CRPD should be written, it was accepted by all at the beginning that the social model of disability should be 'the philosophical foundation of the CRPD' and the medical model would be an incorrect choice.[185] However, Degener holds that the CRPD rather than espousing and reflecting the social model instead 'goes beyond the social model of disability and codifies the human rights model of disability.[186]'

The human rights model of disability, while a distinct model, does still adopt the key tenet of the social model that disability is the confluence of impairment and societal barrier, as evidenced in the CRPD by the recognition that:

> disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.[187]

Where the human rights model reflects the social model is that to allow for disabled people to effectively enjoy their (human) rights such as the right to participation and to inclusion in society, and in respect for difference and diversity,[188] barriers faced by disabled people to enjoying these rights and thus to entering society must be eliminated through active State intervention.

Whereas the social model, which is chiefly concerned with disabled people as a collective, the human rights model returns the focus to the inherent dignity and autonomy of the individual human being.[189] Indeed, the purpose of the CRPD as enshrined in Article 1 is to 'promote, protect and ensure the full and equal enjoyment of all human rights and

---

[184] Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 41.
[185] *ibid* 42.
[186] Theresia Degener, 'Disability in a Human Rights Context' in Anna Arstein-Kerslake (eds), *Disability Human Rights Law* (MDPI AG 2017) 3.
[187] CRPD preamble [e].
[188] Andrea Broderick, *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015) 26-27
[189] Gerard Quinn and Theresia Degener, 'The moral authority for change: human rights values and the worldwide process of disability reform' in Gerard Quinn, Theresia Degener et al, *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability* (United Nations 2002) 14, 19.

fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.

As Degener indicates when distinguishing the human rights model from the social model:

> Human rights are fundamental rights. They cannot be gained or taken away from an individual or a group. They are acquired qua birth and are universal, i.e., every human being is a human rights subject. Neither social status, nor identity category, nor national origin or any other status can prevent a person from being a human rights subject. Therefore, human rights can be called unconditional rights. It does not mean that they cannot be restricted but it means that they do not require a certain health status or a condition of functioning.[190]

In this way the human rights model seeks to overcome the issue of othering, both between people with and without disabilities and between disabled people with vastly differing impairments and presentations. This is because the human rights model is built on the understanding and promotion of rights universal to all human beings regardless of disability, or any other characteristic. According to the UNOHCHR, the human rights model is an agreement and a commitment by disabled people, States and the IHRL system that holds the State as the main duty bearer, and it is the State that is responsible for ensuring that disabled people can 'participate in society, in education, at the workplace, in political and cultural life, and defend their rights through accessing justice.'[191] Thus, through ensuring all CRPD rights apply to all disabled people unconditionally, the human rights model can be said to be the foundation by which CRPD rights are made acceptable to disabled people as the holders of these rights. Moreover, the relationship between accessibility and the human rights model is bidirectional. Just as the human rights model ensures CRPD rights are accessible, the specific right of accessibility in the CRPD is upheld as part of wider, immutable, human right. In this way, the CRPD is designed to be used by disabled people to break down the barriers preventing them from participation.

[190] Theresia Degener, 'Disability in a Human Rights Context' in Anna Arstein-Kerslake (eds), *Disability Human Rights Law* (MDPI AG 2017) 4. For further distinctions between the social model and human rights model of disability, see: Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017).

[191] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 10-11.

3.3. ACCESSIBILITY IN THE CRPD

The importance of accessibility in the CRPD cannot be understated. This importance is clearly demonstrated by its inclusion in the CRPD in multiple provisions, specifically as i) a general principle,[192] ii) a specific standalone right,[193] and iii) an express component of no less than 25 other substantive CRPD provisions.[194]

It is the opinion of academics,[195] practitioners,[196] and the CRPD Committee itself that protection of accessibility is necessary before any other right can be enjoyed by persons with disabilities.[197] An understanding of the importance that the CRPD places on the right to accessibility can be found in its General Comment 2, with a UN General Comment being a 'treaty body's interpretation of human rights treaty provisions, thematic issues or its methods of work.'[198]

CRPD General Comment 2, which clarifies the interpretation of Article 9, states that "[a]ccessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society".[199] Further, the former CRPD Committee chair proclaimed in the opening to the Day of General Discussion on Accessibility that "[the CRPD Committee] cannot think of anything more crucial for persons with disabilities than accessibility".[200]

However, while accessibility has such prevalence within the CRPD, the Ad Hoc Committee responsible for drafting the CRPD consciously decided to leave accessibility without a definition, either in the specific substantive provision for accessibility (Article 9) or in Article 2, the dedicated provision for providing definitions.[201] While there was

[192] CRPD art 3.
[193] CRPD art 9.
[194] CRPD arts 5, 11, 13, 16, 19, 21, 24, 27, 28, 29, 30; CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) part IV.
[195] Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy – Text, Cases and Materials* (Cambridge University Press 2019) 64; Francesco Seatzu, 'Article 9- Accessibility' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.) *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 229.
[196] Coomara Pyaneandee, *International Disability Law A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities*, (Routledge 2019) Ch 8.
[197] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014).
[198] Dag Hammarskjöld Library, 'What is the purpose of the Human Rights Treaty Bodies general comments?' (*United Nations*, 2020) <https://ask.un.org/faq/135547> accessed 10 August 2024.
[199] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [1].
[200] CRPD Committee, Ron McCallum 'Opening remarks at the Day of General Discussion on Accessibility' (7 October 2010).
[201] Anna Lawson, Article 9 – Accessibility' in Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), *The UN Convention on the Rights of Persons with Disabilities- A Commentary* (Oxford University Press, 2018) 280.

some early support for the inclusion of a definition of accessibility in the CRPD, particularly one that would 'be able to evolve as interpretation of technology develops', it was decided that a specific accessibility article sufficed and circumvented the need for a definition.[202] As Lawson notes, the omission of a definition for accessibility avoids the placing of 'an ossifying rigidity on the concept',[203] but causes a lack of clarity and does nothing to quell confusion as to the scope and meaning of accessibility.[204] Indeed, Seatzu suggests that the confusion as to the scope and meaning of accessibility is the reason for it being the subject of one of the earliest general comments published by the CRPD Committee.[205]

Thus, in order to develop a framework through which legal provisions governing the disability welfare benefit systems of the UK and Ireland can be analysed, it is necessary to first discuss the scope of application of the right to accessibility in its CRPD context. In this context, the scope of application refers to the variety of ways in which the right to accessibility may be engaged and the number of different matters that engage the right. For example the scope of the accessibility rights enshrined in Article 11 CRPD – Situations of risk and humanitarian emergencies – are narrow because Article 11 is only engaged by subjects relating to natural disasters, armed conflict, or similar matters impacting national security. In contrast, the scope of the accessibility rights enshrined in Article 17 – Protecting the integrity of the person – are wider because Article 17 is engaged whenever a disabled person has their physical or mental integrity or autonomy interfered with.

In order to determine the scope of application of Article 9 – Accessibility - section 3.3.1 explores the specific right to accessibility found in Article 9 of the CRPD and demonstrates how its language mirrors the four-dimensional formulation of accessibility established by the UN treaty body for the International Covenant on Economic, Social and Cultural Rights (ICESCR).[206]

---

[202] *ibid.*
[203] Anna Lawson, Article 9 – Accessibility' in Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), *The UN Convention on the Rights of Persons with Disabilities- A Commentary* (Oxford University Press, 2018) 280.
[204] *ibid.*
[205] Francesco Seatzu, 'Article 9- Accessibility' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.) *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 229.
[206] International Covenant on Economic, Social and Cultural Rights, resolution adopted by the UN General Assembly, Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976 (ICESCR).

3.3.1. ARTICLE 9: THE EXPRESS ACCESSIBILITY PROVISION OF THE CRPD

Article 9 – Accessibility - consists of two paragraphs. Paragraph 1 of Article 9 CRPD reads:

> 1) To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*:
>
> a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
>
> b) Information, communications and other services, including electronic services and emergency services.

Paragraph 1 of Article 9 is followed by a second paragraph, which lists eight sets of appropriate measures that States are obligated to adopt in order to comply with Article 9 (Article 9(2)(a-h)).

The Ad Hoc Committee responsible for drafting the CRPD expressed concerns during the drafting process that the wording of any accessibility right must not focus on only one 'type of accessibility' and must acknowledge that accessibility is a matter that exists beyond just physical barriers.[207] These concerns were addressed by the inclusion of a clause in Article 9(2)(b) that ensures the promotion and protection of *all* aspects of accessibility. The purposeful inclusion of the word 'all' in Article 9 suggests that the provision was specifically was designed to protect and promote accessibility in multiple forms. Although, Article 9 does not explicitly indicate what forms of accessibility are to

[207] Ad Hoc Committee, 'Report of the Ad Hoc Committee on a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities on its sixth session' UN Doc A/ 60/ 266 (17 August 2005) Annex II [66].

be protected under the provision, only that accessibility has multiple aspects, the CRPD committee has utilised the work of the Committee on Economic, Social and Cultural Rights (CESCR, the treaty body responsible for monitoring, the International Covenant on Economic, Social and Cultural Rights (ICESCR). As stated above (section 3.2), the CRPD does not create new rights, but rather comprises of disability-specific formulations of pre-existing IHRL principles, and it is thus unsurprising that that the CRPD Committee held that:

> the significance of accessibility can be derived […] from general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights.[208]

In CESCR General Comment 14, accessibility is determined to contain the following dimensions:

i. Non-discrimination.[209] This is the notion of ensuring the accessibility of facilities, goods, and services for all people, especially the most vulnerable and marginalised,[210] on an equal basis;
ii. Physical accessibility.[211] This is the notion of ensuring the physical accessibility of facilities, goods and services for all people, especially the most vulnerable and marginalised, on an equal basis and in so doing ensure said facilities, goods, and services are within safe physical reach;
iii. Economic accessibility. This is the notion that accessibility is itself a vehicle to ensure equity, and that facilities, goods, and services must

[208] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [6].
[209] The CRPD Committee claim that the right to accessibility without discrimination first existed in IHRL in Article 5(f) of the International Convention on the Elimination of All Forms of Racial Discrimination which provides the right to access any place or service intend for use by the general public regardless of race. The CRPD Committee suggest that, taken beyond its race-specific context, this right was adapted to allow for a right accessibility without discrimination generally as espoused in General Comment No 14: The Right to the Highest Attainable Standard of Health and in a disability-specific context in Article 9 of the CRPD - CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [3-4]. Preambular paragraph e of the CRPD also references environmental and attitudinal barriers – this and any other such reference to discriminatory attitude acting as a barrier is taken to reflect the non-discrimination of accessibility.
[210] The CESCR hold the following characteristic as being especially likely to be vulnerable and/or marginalised: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status - CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' UN Doc E/ C12/ 2000/ 4 (11 August 2000) [18].
[211] The CRPD Committee claim that the right to physical accessibility first existed in IHRL in the right to freedom of movement as protected by Article 13 of the Universal Declaration of Human Rights (later reaffirmed in Article 12 of the International Covenant on Civil and Political Rights) in that 'access to the physical environment and public transport for persons with disabilities is a precondition for freedom of movement' - CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [1-2].

be affordable to all people, especially socially disadvantaged groups, in order to ensure this equity;

iv. Information accessibility.[212] This is the express right to seek, receive and impart information and ideas, while ensuring that the making of information accessible does not compromise the confidentiality of data.

While this formulation of accessibility is not disability-specific,[213] textual analysis of the language used in Article 9 undertaken directly below in sections 3.3.1.1 to 3.3.1.4 demonstrates how each of these four dimensions of General Comment 14 is reflected in the language of Article 9 and how obligations placed on States serve to protect accessibility in line with these dimensions.

The remainder of section 3.3.1. demonstrates where each of these four overlapping dimensions of accessibility as determined in ICESCR General Comment 14 is reflected in the text of Article 9 CRPD. As these dimensions are indeed overlapping in nature, some of the discrete rights and obligations of Article 9 will be shown to reflect several dimensions of accessibility.

3.3.1.1. Non-Discrimination

The dimension of non-discrimination is clearly reflected in Article 9(1) CRPD both by the inclusion of "on an equal basis with others", and by reference to ensuring accessibility in both urban and rural areas, with rural areas traditionally suffering from greater social deprivation. However, there are not any other clear examples of language reflecting this dimension specifically in paragraph 1 of Article 9.

Article 9(2), which places specific obligations on States to ensure that the right contained in Article 9(1), contains further examples of the non-discrimination dimension. Pursuant to Article 9(2), States are required to provide signage in Braille and in easy to read and understand forms,[214] along with forms of live assistance and intermediaries, including

[212] The CESCR trace the origin of the IHRL right to information accessibility as being the right to freedom of expression (see 3.2 above), which exists in Article 19 UDHR and Article 19(2) ICCPR – CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [1-2].
[213] Andrea Broderick, *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015) 237.
[214] CRPD art 9(2)(d).

guides, readers, and professional sign language interpreters.[215] More opaque is the obligation found in Article 9(2)(b) discussed above, which requires that all aspects of accessibility are taken into account.

Article 9(2)(b) goes further than obliging States to take into account all aspects of accessibility by obliging States to 'ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility'. This is noteworthy as IHRL provisions usually place obligations onto a State to be implemented by its public sector institutions, for example, for minimum safeguards to be implemented by local authorities and violations to be investigated by police services. Thus, Article 9(2)(b) enforces the obligation of promoting and protecting accessibility rights not just onto public servants and institutions as actors of States, but also specifically onto private entities. This is despite private entities and services not usually being specifically developed to provide a public good as is the usual case with most public entities and services.[216]

This has the effect of obliging States to ensure that private entities do not discriminate against disabled people by being in any way inaccessible, thus reducing the scope of access of disabled people to services and facilities to be those provided by the public sector.

Not only this, but it enforces Article 9 obligations onto private entities across the full spectrum of accessibility dimensions,[217] meaning that private entities are by virtue of Article 9 obliged to ensure physical, economic, and informational accessibility in whatever goods, services, or facilities they provide and do so in a non-discriminatory manner, showing clear overlap with the other three dimensions.

3.3.1.2. Physical Accessibility

Article 9(1) enshrines the requirement of States to 'take appropriate measures to ensure to persons with disabilities access […] to the physical environment, to transportation' and

[215] CRPD art 9(2)(e).
[216] Francesco Seatzu, 'Article 9 – Accessibility' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 229.
[217] *ibid*.

as well with reference to ensuring accessibility in both urban and rural areas. The specific reference to ensuring accessible transportation brings Article 9(1) directly in line with the right to accessibility as espoused by Article 13 UDHR and Article 12 ICCPR, in that there is a need for the availability of accessible transportation to make said provisions effectual. Specific facets of the physical environment that may pose barriers, and thus require positive State intervention to ensure accessibility is provided in the form of a non-exhaustive list in Article 9(1)(a), and include buildings, roads, transportation, and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.

The inclusion of the list of potential barriers in Article 9(1)(a) suggests that issues relating to the dimension of physical accessibility are better understood and can be more easily identified than barriers hindering accessibility in other dimensions. Indeed, as Seatzu claims, the term 'accessibility rights' is a sufficiently clear indication that physically disabled people should not be prevented from using and attaining equal benefit from goods, services, and facilities because of physical obstacles.[218] In other words, the ambit of 'making something accessible' clearly includes the removal of physical barriers to allow physically disabled people equal opportunity to engage with the physical world.

This dimension is further reflected through the obligation placed on them by Article 9(2)(e), which holds that States are required:

> To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public

Article 9(2)(d) similarly imposes an obligation on States relating to buildings and facilities open to the public, requiring signage to be provided that is in Braille and in easy to read and understand formats.

As is discussed later in the thesis, an example of how this dimension of accessibility may be engaged by the operation of the primary disability welfare benefits of the UK and

[218] *ibid* 227.

Ireland is through practices mandating that claimants travel to and attend venues such as assessment centres specifically designed for the purpose of facilitating assessments of the functional limitations of claimants (Chapter 6.2.1).

3.3.1.3. Economic Accessibility

In contrast to physical accessibility and non-discrimination through attitudinal accessibility, economic accessibility is referred to only tangentially in Article 9. There is an explicit requirement in Article 9(2)(h) which obliges States to invest in technological innovation specifically for the purpose of ensuring information accessibility for disabled people. It also provides that any ICT developed for this purpose should be made available to disabled people at minimum cost, which is effectively another requirement of economic access. Further, as with all dimensions of accessibility, Article 9(2)(b) reaffirms that accessibility exists across multiple dimensions by its obligation that States take into account all aspects of accessibility, which is taken here to include economic accessibility.

Despite its limited express inclusion in Article 9, the dimension of economic accessibility is of fundamental importance. This importance is discussed further in section 3.3.3, where implied rights of accessibility in CRPD provisions other than Article 9 are identified. For example, section 3.3.3.3. below demonstrates that the protection of the dimension of economic accessibility by Article 28 – Adequate Standard of Living and Social Protection - directly ties the concept of economic accessibility with the matter of social security for disabled people, which includes the primary disability welfare benefits of the UK and Ireland. Indeed, State social security measures are examples of economic accessibility in action as they make support for disabled persons accessible in that they provide disabled persons with financial means to access said support.

3.3.1.4. Information Accessibility

The dimension of information accessibility is afforded perhaps the greatest amount of express protection in both Article 9 and, as will be explored in sections 3.3.2 and 3.3.3. below, the CRPD as a whole. The text of the main body of Article 9(1) explicitly requires States to ‘take appropriate measures to ensure to persons with disabilities access […] to information and communications, including information and communications

technologies and systems', with Article 9(1)(b) expanding this to ensure that States remove barriers and obstacles making '[i]nformation, communications and other services, including electronic services and emergency services' inaccessible. There is Article 9(2)(b), which ensures the taking into account of all aspects of accessibility of which information accessibility is one. Then there are the obligations which provide for signage in Braille and in easy to read and understand forms,[219] and the provision of live assistance.[220] These obligations are supported by a similar set of requisite measures as provided for by Article 9(2)(f), which requires States 'to promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information'. This provision, as well as acting as a coverall to ensure that assistance will be provided even if it does not belong to any of the categories of assistance expressly listed, is written broadly enough to allow for the promotion of methods of assistance not yet invented which would ensure access to information for disabled people.[221]

Article 9(2)(g) takes a similarly broad approach in obliging States:

> To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet

This obliges States to specifically ensure that information is made accessible through new, developing, and cutting edge technologies, thus preventing States from making accessible only a limited number of information dissemination mechanisms. Moreover, it specifically calls for the promotion of access to the Internet. As Lawson notes, this obligation is of particular significance 'given the pace of innovation in the ICT field and the increasing importance of the Internet in the lives of all'.[222] Concerning new and cutting edge technologies, Article 9(2)(h) requires the positive intervention of States to invest in technological innovation specifically to make accessible ICT for disabled people, in that it obliges States to 'promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.'.

---

[219] CRPD art 9(2)(d).
[220] CRPD art 9(2)(e).
[221] Anna Lawson, 'Article 9- Accessibility' in Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), *The UN Convention on the Rights of Persons with Disabilities- A Commentary* (Oxford University Press, 2018) 284.
[222] Lawson further analyses whether the change in language from 'facilitate accessibility to' used in Article 9(2)(d) and (e) to 'promote access' in Article 9(2)(g) has connotations of increasing State obligations to the actual provision of ICT and training to use it – *ibid*.

As is discussed later in the thesis, an example of how this dimension of accessibility may be engaged by the operation of the primary disability welfare benefits of the UK and Ireland is a lack of clarity in communication. Freyhoff, who criticised the European Union for omitting to implement any legal provisions from that ensure the adoption of easy-to-read communication as part of its adoption of the CRPD, co-authored the *European Easy-to-Read Guidelines*.[223] These guidelines confirm that:

> the way that information is written or presented can exclude many people, especially those with literacy or comprehension problems. Instead of being empowered by information, people are denied access to it. A barrier is created between "the information rich" and "the information poor" which makes it difficult for people to be equal citizens and fully participate in their societies.[224]

These guidelines specify that information must be 'not only easy to read, but also easy to understand.',[225] and that easy-to-read information is characterised by, *inter alia*, 'the use of a simple, straightforward language, only one main idea per sentence, the avoidance of technical language, abbreviations and initials, [and] a clear and logical structure.'.[226]

Therefore, highly technical, dense, and complex communications engage the dimension of accessibility information. This is of particular concern when considering the length and content of the application forms for the primary disability welfare benefits of the UK and Ireland (See Chapter 5).

Related to this is the similar but distinct matter of legal complexity.[227] Harris, in *Complexity in the law and administration of social security: is it really a problem?,*[228] identified several fundamental barriers that legal complexity presented to disability

[223] Geert Freyhoff et al, 'Make it Simple: European Guidelines for the Production of Easy-to-Read Information for People with Learning Disability' ILSMH-EA (Inclusion Europe) 1998.
[224] *ibid* 7.
[225] *ibid* 7.
[226] *ibid* 8.
[227] Neville Harris, 'Complexity in the law and administration of social security: is it really a problem?' (2015) 37 (2) JSWFL 209, 219-220; Neville Harris, 'Complexity, Law and Social Security in the United Kingdom' (2006) 8(2) Eur J Soc Sec 145, 160.
[228] Neville Harris, 'Complexity in the law and administration of social security: is it really a problem?' (2015) 37 (2) JSWFL 209.

welfare benefit claimants. First, legal complexity causes claimants to be unsure about their rights and grounds for legal challenges in relation to their claims.[229] Second, legal complexity has a direct impact on the decision-making process by government decision-makers who decide on whether claimants satisfy eligibility criteria and thus receive an award.[230] However, Harris did warn that, given that the law is inherently complex, to force simplification onto a legal system creates its own dangers.[231]

3.3.1.5. Summary of the Dimensions of Accessibility As Espoused by General Comment 14

In summary, it is clear that the multi-dimensional model of accessibility as developed by the CESCR is reflected heavily throughout the text of Article 9. This is significant as Article 9 provides an expansive field of protection that requires States to not only address physical barriers, but to protect the right of disabled people from barriers to access in the form of discrimination, unaffordability, or unclear information. As such, if States fail to ensure disabled people with their right to accessibility across any one of these dimensions for a disabled person, then that disabled person will have had their Article 9 right violated. This demonstrates the extremely wide scope of the rights espoused by Article 9 and the breadth of manners through which disabled people will find their Article 9 rights engaged.

Section 3.3.2. below will now indicate where rights and obligations of accessibility are expressly included in the CRPD beyond Article 9. In so doing, further reflections of the multiple dimensions of accessibility will be made apparent and the existence of more dimensions of accessibility beyond those listed in the CESCR model will be demonstrated.

3.3.2. EXPRESS ACCESSIBILITY RIGHTS AND OBLIGATIONS BEYOND ARTICLE 9

As previously stated, express obligations requiring State Parties to ensure accessibility appear no less than 25 times throughout the text of the CRPD.[232] This section explores

[229] *ibid* 212.
[230] *ibid* 211.
[231] *ibid* 213.
[232] Anna Lawson, 'Article 9- Accessibility' in Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), *The UN Convention on the Rights of Persons with Disabilities- A Commentary* (Oxford University Press, 2018) 262.

four provisions containing express obligations relating to accessibility that are potentially relevant to matters of disability welfare benefit law in the UK and Ireland. These four provisions are of particular importance as they, along with Article 9, inform the development of the Accessibility Framework (See 3.4 below) through which laws and policies governing the primary disability welfare benefit of the UK and Ireland are analysed in later chapters.

3.3.2.1. Preambular Paragraph v – Recognising the Importance of Accessibility

Express recognition of the importance of accessibility is provided in preambular paragraph v, which reads:

> Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms

Here, there is again a clear indication that accessibility in the CRPD is to be viewed as a multi-dimensional right, and supports the development of a multi-dimensional Accessibility Framework as an analytical device for this thesis. While preambular paragraph v seems to suggest the existence of the further dimensions of cultural, health, and educational accessibility by their inclusion in preambular paragraph v, these will not be included in the framework through which disability welfare law of the UK and Ireland will be examined. This is because of a lack of potential overlap between matters relating to disability welfare benefits and cultural or educational accessibility, and because any matters of health will be examined through the lens of other dimensions of accessibility. As the preamble to the CRPD is a provision of interpretive character, this means that all other CRPD provisions must be applied in keeping with this multidimensional understanding of accessibility.

3.3.2.2. Article 4 – Obligations Relating to Technologies and Information

Article 4, which provides general obligations to be implemented by State Parties of the CRPD, contains two express obligations relating to accessibility. As will be demonstrated, the obligations contained in Article 4 suggest the necessity of active State

involvement and so serve to bolster enforcement of the express accessibility obligations in this provision.

Article 4(1)(g) obliges State Parties to undertake:

> To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost

This clearly reflects the dimensions of both information and economic accessibility and creates similar obligations to those provided by Article 9(2)(f-h). The obligations created in this provision serve to expand those included in Article 9 by the inclusion of the phrase 'undertake or promote research and development of'.

As Della Fina argues, the verb "promote", which is used here as well as in Article(9)(f-h), is 'not particularly constraining',[233] and as such may be easily satisfied under a States margin of appreciation. In contrast, the verb "undertake" has connotations of more active State involvement.[234] As such, Article 4(1)(g) goes some way to strengthen the specific accessibility obligations of Article 9(2)(f-h).

Article 4(1)(h) further obliges State Parties to undertake:

> To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities

As is apparent, this measure complements several of the obligations included in Article 9. Whereas Article 9 obliges the actual provision of assistance,[235] support services,[236] and new information and communications technologies and systems including the Internet,[237]

[233] Valentina Della Fina, ' Article 4 – General Obligations' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham-Springer, 2017) 146.
[234] *ibid*.
[235] CRPD art 9(2)(e).
[236] CRPD art 9(2)(f).
[237] CRPD art 9(2)(g).

Article 4(1)(h) obliges States to disseminate information regarding these aids to accessibility and to ensure that said information is itself accessible. Here, the verb "provide" clearly indicates the need for positive intervention from States to fulfil this obligation.[238]

3.3.2.3. Article 21 – Freedom of expression and opinion, and access to information

Article 21, through its express protection of access to information, serves to further contextualise the dimension of information accessibility identified in Article 9.

The CRPD disability-specific provision for freedom of expression as espoused by Article 21 reads:

> States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in Article 2 of the present Convention, including by:
>
> a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
>
> b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
>
> c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
>
> d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
>
> e) Recognizing and promoting the use of sign languages.

[238] Valentina Della Fina, ' Article 4 – General Obligations' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham-Springer, 2017) 146.

By including express obligations specifically designed to reflect the dimension of information accessibility, Article 21 serves to grant further protection of information accessibility to disabled people than that which is protected solely by Article 9.

Immediately in Article 21, it is made clear that States must ensure that disabled people can 'seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice' so as to make Article 21 effective.[239] In the context of the CRPD, a non-exhaustive list of potential formats of communication that Article 21 expressly protects the use of is provided in Article 2 CRPD, which determines that communication:

> includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

Thus, Article 21 creates a wide scope of protection because all forms of communication are protected under Article 21.

Further, as is apparent from the five specific obligations listed in Article 21(a-e), the actions required to be taken by States to make any freedom of expression and opinion of disabled people effective, all relate to the information dimension of accessibility. For this reason, Article 21 has been dubbed a 'hybrid right' in that,[240] to protect the passive right of free expression, the active right to accessibility must first be ensured. In other words, the express inclusion of accessibility obligations in Article 21 makes it so that Article 9, and the rights and obligations it enshrines, are prerequisites to allow freedom of expression and opinion for disabled people. This is further evidenced by Article 21(a-e) essentially mirroring the information accessibility obligations listed in Article 9(2).

[239] The language adopted in Article 21 CRPD regarding the freedom to 'seek, receive and impart information and ideas' is the same as that which is used in other UN IHRL instruments containing rights of free expression, including Article 19 UDHR and Article 19(2) ICCPR.
[240] Rachele Cera, 'Article 21 – Freedom of Expression and Opinion, and Access to Information' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 390.

3.3.2.4. Article 13 – Access to Justice

Article 13, which protects the right of disabled people to access justice, is a provision of fundamental importance because, as will be demonstrated, it provides an additional dimension of accessibility beyond the four listed in ICESCR General Comment 14. This is similar to how preambular paragraph v generated additional accessibility dimensions of cultural, health, and educational accessibility (see section 3.3.2.1.).

The right of Access to Justice as provided by Article 13 reads:

> 1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
>
> 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 13 provides a disability-specific reframing of IHRL rights allowing for effective remedy and fair trial,[241] and is a requisite of allowing disabled people to 'assert and enforce all other human rights'.[242] As with most CRPD rights, the United Nations intended Article 13 to be interpreted to allow the widest possible scope. This is exemplified through the inclusion of 'investigative and other preliminary stages' of legal proceedings in Article 13(1), ensuring disabled people have their Article 13 right protected from the moment they engage with legal procedures in their State. Further, as Flynn notes, the mention of prison staff and the police in Article 13(2) provides a 'broader interpretation of the administration of justice',[243] and expands the usual understanding of administrators of justice beyond only lawyers and the judiciary.

[241] UDHR arts 8, 11; ICCPR arts 2, 9.
[242] Eilionóir Flynn, Article 13 – Access to Justice' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), *The United Nations Convention on the Rights of Persons with Disabilities- A Commentary* (Cham- Springer, 2017) 282-1.
[243] *ibid* 285.

Despite indications in the text of Article 13 as to the expansive nature of the right, neither Article 13, nor any other CRPD Article, provides a definition for the term 'access to justice'. However, rather than leaving the term purposefully ambiguous as with other key CRPD terms addressed in this chapter, the United Nations have indeed provided a definition of sorts for the right of access to justice in commentary on Article 13 – albeit in a document with no legal effect. In *Toolkit on Disability for Africa – Access to Justice for Persons with Disabilities*,[244] a training module prepared by the UN, the UN adopt Janet Lord's definition of access to justice. Lord defines access to justice as:

> a broad concept, encompassing people's effective access to the formal and informal systems, procedures, information, and locations used in the administration of justice.[245]

As is clear from this definition, the UN intend for the disability-specific right allowing for access to justice to reflect the accessibility dimensions listed in the CESCR model, including physical and information access. Indeed in General Comment 2, the CRPD Committee expresses that the requirement under Article 9 to make buildings accessible is of particular importance regarding buildings where justice is administered in order to allow for Article 13 rights to be realised for disabled people.[246]

Not only is access to justice a right protected by the CRPD, it is also considered by the CRPD Committee to be a dimension of accessibility – that of accessibility of the justice system. The CRPD Committee took this approach of framing Article 13 as forming the dimension of accessibility to the justice system in two cases it heard in 2016 in which it adopted views against the State of Australia.[247]

Both of these cases each concerned an Australian person who was denied the right to serve as a juror on the basis of them having a hearing impairment, and the resulting need of each complainant to receive live assistance, in one case a stenographer,[248] in the other

[244] Department for Economic and Social Affairs, 'Toolkit for Disability for Africa: Access to Justice for Persons with Disabilities' (United Nations) <https://www.un.org/esa/socdev/documents/disability/Toolkit/Access-to-justice.pdf> accessed 10 August 2024.
[245] Janet E. Lord, Katherine N. Guernsey, Joelle M. Balfe & Valerie L. Karr, Nancy Flowers (eds), *Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities* (Human Rights Resource Center, University of Minnesota 2007) 158.
[246] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [37].
[247] CRPD Committee *Gemma Beasley v Australia* CRPD/C/15/D/11/2013 (01 April 2016); CRPD Committee *Michael Lockrey v Australia* CRPD/C/15/D/13/2013 (01 April 2016).
[248] CRPD/C/15/D/13/2013.

a sign language interpreter,[249] to allow them full participation as jurors. When access to said live assistance was denied by Australian authorities, the two Australian disabled people affected each communicated to the CRPD Committee alleging multiple CRPD violations. The CRPD Committee concluded in both cases that Australia had violated the Article 9, 13, and 21 rights of the complainants. The CRPD Committee, when considering the merits of the allegation of violations, provided almost identical findings in both cases.

In both cases, Article 9 was determined to have been violated specifically due to the fact that barring the complainants as acting as jurors due to their disabilities meant that they were not allowed to participate fully in all aspects of life […] on an equal basis in an effective manner' as others.[250] Here, it is the non-discrimination dimension of accessibility that was violated.

Article 21 was determined to have been violated in both cases due to the failure to accept and facilitate 'different means and formats of communication in official interactions',[251] and as such denying the complainants the 'freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication'.[252] Here, it is the information dimension of accessibility that was violated.

Article 13 was determined to have been violated in both cases as acting as a juror constitutes 'participation' in legal proceedings for the purposes of Article 13.[253] Crucially, in both cases, the CRPD Committee reflects the argument put forward by Australia regarding the nature of Article 13, which is that 'effective access to justice' refers to the accessibility to the justice system.[254]

This framing of the rights and obligations espoused by Article 13 as formulating the additional dimension of accessibility of the justice system is applied in this thesis, and this additional dimension is included in the Accessibility Framework (See 3.4 below). The inclusion of this additional dimension of accessibility of the justice system in the Accessibility Framework and thus analysing the primary disability welfare benefit of the

[249] CRPD/C/15/D/11/2013.
[250] CRPD/C/15/D/11/2013 [8.6]; CRPD/C/15/D/13/2013 [8.6].
[251] CRPD/C/15/D/11/2013 [8.8]; CRPD/C/15/D/13/2013 [8.8].
[252] CRPD art 21.
[253] CRPD/C/15/D/11/2013 [8.9]; CRPD/C/15/D/13/2013 [8.9].
[254] *ibid*.

UK and Ireland in line with Article 13 serves two purposes. Firstly, in that Article 13(1) provides accessibility of the justice system 'including at investigative and other preliminary stages of legal proceedings', policies and laws that engage the dimension of accessibility of the justice system before the more traditional stages of appeal to a tribunal or court hearings can be analysed. In this instance, the eligibility assessment, decision-making process, and departmental review of claims – each of which are discussed in Chapter 6– can all be investigated as to whether they engage the dimension of accessibility of the justice system.

Further, the wide interpretation of who should be classed as administrators of justice under Article 13(2) is applied in this thesis in order to bring benefit decision-makers and deciding officers under the umbrella of administrators of justice and as such allow their actions to be assessed under the dimension of accessibility of the justice system.

3.3.2.5. Summary of Express Accessibility Rights and Obligations Beyond Article 9

The recognition in the CRPD preamble of accessibility relating to, *inter alia*, the physical, social, and economic environment, and to information demonstrates a clear reflection of the multi-dimensional framing of accessibility as put forward by the CESCR. The express inclusion of obligations relating to the dimension of information accessibility in both Article 4 and Articles 21 demonstrates its sheer importance to disabled people and frames Article 9 as being a right that is a prerequisite before the enjoyment of other CRPD rights. Article 13, through its disability-specific reframing of IHRL rights allowing for effective remedy and fair trial into a right of access to justice successfully formulates an additional dimension of accessibility, that of accessibility of the justice system. This dimension will be applied along with those listed by the CESCR when examining disability welfare benefits law and policy from the UK and Ireland.

Section 3.3.3. below will now indicate where rights and obligations of accessibility are implied into the CRPD beyond Article 9. This involves examining commentary from the CRPD Committee and indicating where it has previously drawn links between the right to accessibility and other thematic substantive CRPD provisions.

3.3.3. IMPLIED ACCESSIBILITY RIGHTS AND OBLIGATIONS IN THE CRPD

Accessibility is not just an express right in the CRPD, as just discussed, but also one of its general principles as listed in Article 3.[255] These principles are of general application.[256] in that they are applied to all other CRPD provisions. Thus, all CRPD provisions contain an implied obligation to ensure accessibility, even for those CRPD rights that do not include express obligations of accessibility. However, while this speaks to the importance and wide pervasion of the concept of accessibility within the CRPD, Article 3 provides no clear guidance for the application of this principle in practice, or what obligations should be placed on States to bring the concept into effect as a right.

3.3.3.1. General Comment 2: Accessibility as a Pervasive Right

It has already been established that, by virtue of Article 3, all CRPD rights contain at least an implied obligation to ensure accessibility is promoted and protected when applying any substantive CRPD right, meaning that no right can be applied in such a way that would run contrary to the principle of accessibility. In General Comment 2, eleven thematic substantive CRPD provisions are specifically held to have a strong implied relationship with accessibility as protected by Article 9.[257] Two such provisions have been explored above when discussing express accessibility obligations, with the CRPD Committee having recognised the inseparability of Article 9 with both the Article 13 right to access to justice and the Article 21 right to free expression and opinion. Another provision identified by the CRPD Committee as relating strongly to Article 9 in that of the equality and non-discrimination principle as enshrined in Article 5 because there is clear overlap between the non-discrimination dimension of accessibility and the specific CRPD right to equality and not be discriminated against. However, the impact of this relationship and how the relationship between Article 9 and Article 5 informs the

[255] In all, there are eight general principles listed in Article 3 - Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons, Non-discrimination, Full and effective participation and inclusion in society, Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, Equality of opportunity, Accessibility, Equality between men and women, Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

[256] United Nations Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities Training Guide* (United Nations Publications 2014) 28-29; Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy – Text, Cases and Materials* (Cambridge University Press 2019) 63.

[257] CRPD arts 5, 11, 13, 16, 19, 21, 24, 27, 28, 29, 30; CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) part IV.

application of the equality and non-discrimination norms is beyond the scope of this thesis.[258]

Of the eleven provisions identified by the CRPD Committee as having a specific special relationship with Article 9, the most relevant to this thesis is the Article 28 right to an adequate standard of living and social protection. The parallel drawn by the CRPD Committee between Article 9 and Article 28 is noteworthy for two reasons.

First, Article 28 does not contain any accessibility rights or obligations expressly. Therefore, it can be argued that the CRPD Committee, through identifying the interconnectivity of Article 9 and Article 28, sought to ensure that the implied right of accessibility was not missed whenever Article 28 is engaged.

Second, Article 28 is one of the three rights concluded to have been gravely and systematically violated by the UK through the operation of its disability welfare benefits system in the Inquiry Report[259] However, Article 9 was not concluded to have been violated by the UK in the Inquiry Report. Indeed, a potential violation of Article 9 was not considered by the CRPD Committee in its Inquiry. This raises the question of why the CRPD Committee opted not to investigate a violation of Article 9. This also provides an opportunity for this thesis to provide a unique contribution to knowledge in this area due to no previous research having been undertaken into how the right of accessibility of disabled people is engaged by the disability welfare benefit system of the UK.

3.3.3.2. Article 28 – The Right to an Adequate Standard of Living and Social Protection

As with several CRPD provisions previously discussed, Article 28 enshrines multiple rights and obligations within a single thematic substantive provision. Here, it is the relationship established by the CRPD Committee between Article 9 and specifically the right to social protection enshrined in Article 28 that is of particular importance to this thesis. This is because social protection, for the purposes of the CRPD, includes the allocation of disability welfare benefits. Where Article 28(1) protects the right to an

[258] For a detailed investigation into how the non-discrimination dimension of accessibility influences the equality norm of the CRPD see: Andrea Broderick, *The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities* (Intersentia 2015).
[259] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.

adequate standard of living, it is Article 28(2) and the obligations listed below that provide the right to social protection. Article 28(2) reads:

> States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
>
> a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
>
> b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
>
> c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
>
> d) To ensure access by persons with disabilities to public housing programmes;
>
> e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

Although the word access appears six times in Article 28(2), Article 28(2) does not appear to contain a clear right to or dimension of accessibility,[260] save for perhaps a reflection of the importance of economic accessibility given its focus on access specifically to financial assistance and poverty reduction.

The CRPD Committee state in General Comment 2 that:

> States parties should take the necessary measures to ensure that both mainstream and disability-specific social protection measures and services are provided in an accessible manner, in accessible buildings, and that all information and communication pertaining to them is accessible through sign language, Braille,

[260] For the potential differences between a right to access and a right of accessibility, see: Andrea Broderick 'Of rights and obligations: the birth of accessibility' (2019) 24(4) IJHR 393.

accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication.[261]

In other words, all operations relating to the allocation of disability welfare benefits must uphold all aspects of accessibility. Of the several dimensions of accessibility discussed in this chapter, it is the dimension of economic accessibility that Article 28 best serves to protect. This is because, as discussed previously (See 3.3.1.3), Article 28, through ensuring that financial means to access support are accessible to disable people, can be said to give action to the dimension of economic accessibility.

3.3.3.3. Summary of Implied Accessibility Rights and Obligations In the CRPD

The relationship identified by the CRPD Committee between Article 9 with Article 28 establish several key points. Firstly, the relationship between Article 28 and Article 9 demonstrates the wide scope of applicability of the CRPD right of accessibility as this is a case of a thematic substantive CRPD provision that *prima facie* does not relate to accessibility in actual fact being shown to in fact engage several accessibility dimensions. Secondly, due to the relationship between Articles 9 and 28 requiring all social protection measures to be provided in a manner through which accessibility is upheld, this creates a direct link between accessibility and the subject of disability welfare law and thus justifies the analysis of disability welfare law and policy from the UK and Ireland through the lens of accessibility. Thirdly, as Article 28 was one of the three determined to have been gravely and systematically violated by the UK,[262] a question is raised regarding the approach of the CRPD Committee when finding the UK in violation in 2016. If there exists a clear link between Articles 9 and 28, why did the CRPD Committee not then find the UK to also be in violation of the Article 9 right to accessibility? This question will necessarily be addressed as the thesis research aims are addressed, particularly when determining the extent to which UK disability benefit law and policy upholds and protects each dimension of accessibility through its operation.

[261] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [42].
[262] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.

Section 3.4. below will now outline the Accessibility Framework that has been developed for this thesis and through which disability welfare law from the UK and Ireland will be analysed.

3.4. ACCESSIBILITY FRAMEWORK DEVELOPED FOR THIS THESIS

In Chapter 2.3, in the discussion on the comparative method, it was submitted that a common practice when undertaking legal comparison of two or more domestic legal systems is the use of a standard against which to examine common elements from the legal systems being compared.[263] This standard is to be informed by existing legal sources, with the standard itself being a unique creation of the researcher developed through their understanding of the relevant law for the specific purpose of addressing the research questions.[264] This standard is then utilised as the analytical prism through which legal provisions are viewed in order to determine where elements of the legal systems of each state either meet or fall below this standard.

For this thesis, I have therefore produced the Accessibility Framework through which to analyse disability welfare law from the legal systems of the UK and Ireland. The Accessibility Framework was produced based on the multi-dimensional view of accessibility, specifically utilising the multi-dimensional model of accessibility introduced in General Comment 14 to the ICESCR,[265] which listed the dimensions that are reflected in Article 9. This model holds that accessibility exists across four overlapping dimensions. These are:

i. Non-discrimination,
ii. Physical accessibility,
iii. Economic accessibility,
iv. Information accessibility.[266]

Textual analysis of the thematic substantive provision of accessibility in the CRPD, Article 9, demonstrated that each of these four dimensions is reflected in the rights and obligations enshrined in Article 9 and are thus offered protection by the CRPD.

---

[263] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 26; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 27; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015) 148-154.
[264] *ibid.*
[265] CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' UN Doc E/ C12/ 2000/ 4 (11 August 2000) [12b].
[266] *ibid.*

By investigating how rights and obligations allowing for accessibility are included in the CRPD beyond Article 9, other dimensions of accessibility were discovered. As indicated in section 3.3.2.1 in the analysis of the inclusion of accessibility in the CRPD preamble, preambular paragraph v seems to extend the multi-dimensional model beyond that introduced in General Comment 14 to the ICESCR to also include the dimensions of cultural accessibility, education accessibility, and health accessibility. Whilst these may indeed be valid extensions to the General Comment 14 model, they are not of direct relevance to disability welfare benefit law and are therefore not included in the Accessibility Framework developed for the purposes of this thesis. The analysis of the right to access to justice as enshrined in Article 13 (section 3.3.2.4) revealed that Article 13 not only also reflected the dimensions of accessibility in General Comment 14 to the ICESCR, but itself contained both a right of access and a right of accessibility, with the right of accessibility being specifically the right to accessibility of the justice system. This additional right to accessibility is added to the multi-dimensional model of accessibility to form a new model of accessibility that contains five dimensions of accessibility which are protected by multiple CRPD provisions. Thus, the Accessibility Framework contains the dimensions of:

i. Non-discrimination,[267]
ii. Physical accessibility,[268]
iii. Economic accessibility,[269]
iv. Information accessibility,[270]
v. Accessibility of the Justice System.[271]

Expanding the multi-dimensional model of accessibility beyond that of the one introduced in General Comment 14 to the ICESCR allows for a more expansive application of the Accessibility Framework. This is because of the wide application of Article 13 and thus the subjects that can be analysed as to their accessibility of the justice system. Specifically, due to Article 13 expanding the duty to ensure accessibility to the justice system to include investigative and preliminary stages of legal proceedings,[272] benefit eligibility assessment, decision-making, and departmental review can be analysed

[267] CRPD arts 5, 9.
[268] CRPD art 9.
[269] CRPD arts 9, 28.
[270] CRPD arts 4, 9, 21.
[271] CRPD art 13.
[272] CRPD art 13(1).

as to the extent that they uphold accessibility dimensions. Further, by Article 13 expanding the usual understanding of administrators of justice beyond only lawyers and the judiciary,[273] the actions of benefit decision-makers and deciding officers can also be analysed through the accessibility framework.

3.4.1. APPLICATION OF THE ACCESSIBILITY FRAMEWORK

The Accessibility Framework is utilised as the analytical prism for the subsequent chapters of this thesis. The operation of the Accessibility Framework consists of four steps.

First, relevant laws and policies governing disability welfare benefit laws from the UK and Ireland are identified and selected. As discussed previously, these will be the policies and laws informed by the Welfare Reform Act 2012 in the UK and the Social Welfare (Consolidation) Act 2005 in Ireland as these statutes implemented the current system of disability-specific welfare benefits in each State.

Second, the selected laws and policies will be determined through the application of the law-in-context method of legal comparison, which requires analysis of non-legal factors that influence legal development and administration in order to account for the difference between the law as written and its actual impact on society (see Chapter 2.3.2).[274] Here, there will be a particular focus on how disabled people are impacted. Through utilising the law-in-context method of legal comparison, the first research aim of this thesis - to identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland, given the differing historico-social understandings of disability in the two jurisdictions - will be addressed.

Third, a determination will be made as to whether the operation of the selected laws and policies engage any of the five dimensions of accessibility that comprise the Accessibility Framework. Where any dimensions of accessibility are determined to be engaged, an assessment will be undertaken to determine whether the CRPD standards for each of the dimensions of accessibility are being met by the selected laws and policies, informed by and in line with the approach taken by the CRPD Committee in both its cases and State

[273] CRPD art 13(2).
[274] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 16.

inquiries in that the CRPD Committee concludes that failure by States to uphold standards espoused by CRPD provisions constitutes violations of those CRPD provisions.[275]. Crucially, if any one of the dimensions of accessibility is not met by the operation of disability welfare law in either the UK or Ireland, this would then constitute a potential CRPD violation.

Fourth, in line with the final research aim of this thesis, recommendations will be proposed that suggest how both the UK and Ireland could amend laws, policies and practices in order to ensure compliance with CRPD accessibility rights, with a particular focus on identifying areas of potential legal transplant of CRPD compliant law from one State into the legal system of the other.

3.5. CONCLUSION

The protection of accessibility is necessary before any other right can be enjoyed by persons with disabilities.[276] It is one of the most pervasive rights of the CRPD, existing not only as a standalone express provision in the CRPD (Article 9), but as a general principle (Article 3), multiple express obligations (Article 21) and as an implied aspect of other provisions (Article 19). Indeed, CRPD General Comment 2, which clarifies the interpretation of Article 9, states that "[a]ccessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society".[277]

In this same guidance document, the CRPD Committee held that there was an implied connection between Article 9 and Article 28 – the right to social protection and an adequate standard of living. Article 28 was one of the three CRPD provisions which the CRPD Committee concluded the UK had gravely and systematically violated in its Inquiry Report in 2016. However, the CRPD Committee did not consider whether Article 9, nor other provisions with express accessibility obligations, were similarly violated. Thus, this thesis will provide a unique contribution to legal scholarship in that those legal provisions governing the operation of PIP in the UK will be scrutinised to identify potential violations of the CRPD right of accessibility. The identification of potential violations will be informed by and in line with the approach taken by the CRPD

[275] This includes individual cases in which the correspondents were from the UK and the Inquiry Report in response to welfare reform in the UK.
[276] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014).
[277] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [1].

Committee in both its cases and State inquiries in that the CRPD Committee concludes that failure by States to uphold standards espoused by CRPD provisions constitutes violations of those CRPD provisions.

A further unique contribution to legal scholarship will be made by this thesis through analysing the laws governing the primary disability welfare benefit in Ireland to determine whether they meet CRPD standards. Indeed, Ireland ratified the CRPD in 2018, suggesting that the Irish government determined its legal framework to be in line with CRPD standards. However, as Ireland has not ratified the Optional Protocol to the CRPD, the veracity of this assumption cannot be tested by the CRPD Committee as they cannot engage with communications sent by disability individuals in Ireland.

The investigation into potential violations will be facilitated by the Accessibility Framework developed for this thesis. The Accessibility Framework was developed in order to narrow the scope of the far-reaching right of accessibility, which exists in the CRPD without a definition. Through textual analysis, a multitude of dimensions of accessibility were identified to be espoused by the CRPD. In order to allow the Accessibility Framework to be a practical lens through which to compare and contrast the national laws of the UK and Ireland, dimensions of accessibility relevant to the subject matter of disability welfare benefit law were identified, and will be the standards against which UK and Irish law are assessed. These dimensions are:

i. Non-discrimination,
ii. Physical accessibility,
iii. Economic accessibility,
iv. Information accessibility,
v. Accessibility of the Justice System.

The next chapter identifies the primary disability welfare benefit of the UK and Ireland, be the focus of the thesis and thus will be examined through the lens of the Accessibility Framework.

CHAPTER 4: ESTABLISHING THE PRIMARY DISABILITY WELFARE BENEFIT IN THE UK AND IRELAND

4.1. INTRODUCTION

In the previous chapter, the Accessibility Framework through which domestic laws of the UK and Ireland will be analysed was developed. This chapter, then, identifies the domestic laws of the UK and Ireland which require analysis in order to address the research question of this thesis – to what extent to the welfare systems of the UK and Ireland uphold the rights of persons with disabilities? As will be demonstrated, the legal provisions from both UK and Irish law that require analysis through the Accessibility Framework are those that relate to the primary disability welfare benefit of each State.

Section 4.2 below defines the term 'primary disability welfare benefit of a State' for the purposes of this thesis and determines what the primary disability welfare benefit of both the UK and Ireland is. The laws governing these benefits in each of the UK and Ireland are then identified at sections 4.3 and 4.4, with particular reference to the legal provisions which gave rise to the UK being found in breach of the CRPD (Chapter 3.2.2) and the functional equivalent aspects of Irish law which are different and which might provide a template for the UK to increase its compliance with accessibility obligations of the CRPD (Chapter 3.4). This chapter thus focuses on the first research aim of this thesis – to identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland.

Section 4.5 then identifies the process which claimants and government agents who decide the outcomes of claims in both the UK and Ireland go through during an application for a primary disability welfare benefit. It is when comparing and contrasting the operation of the primary disability welfare benefits of the UK and Ireland that potential violations of the Accessibility Framework (Chapter 3.4) are identified and thus this section sets the scene for the second research aim – to determine which of the laws governing the operation of the primary disability welfare benefit in the UK and Ireland currently meet CRPD standards of accessibility - to be addressed.

Section 4.6 concludes this chapter.

4.2. PRIMARY DISABILITY WELFARE BENEFIT

For the purposes of this thesis, the primary disability welfare benefit of a State is one which

i) is a 'disability-specific' benefit,[278] and

ii) is the disability welfare benefit which has the fewest basic qualifying factors, and

iii) is the disability welfare benefit with the highest number of claimants.

'Disability-specific' means that eligibility to the benefit must be predicated on the claimant having a disability,[279] or rather, non-disabled individuals are ineligible from claiming the benefit.

All welfare benefits in the UK and Ireland, including disability-specific welfare benefits, have both eligibility criteria which are usually complex and relate to the impact that disabilities have on a claimant, and basic qualifying factors which the claimant must satisfy even before an assessment of their eligibility is undertaken and which are much simpler to test for. Basic qualifying factors are usually centred on the age and residency status of a claimant.

If two or more disability-specific welfare benefits have an equally low number of basic qualifying factors, then the benefit with the highest number of claimants is the primary disability welfare benefit as the operation of that benefit affects the highest proportion of disabled people in the State.[280]

Applying these criteria to the UK indicates that Personal Independence Payment (PIP) is the primary disability welfare benefit.[281] PIP satisfies criteria i) above because it requires

[278] Of course, if a State has only one disability-specific welfare benefit, then further testing to determine the primary disability welfare benefit is unnecessary.
[279] Here, in line with the various international and domestic legal provisions defining and describing disability, the requirement that a claimant has a disability includes health condition, illness, injury, disease or deformity - UN Convention on the Rights of Persons with Disabilities, resolution adopted by the UN General Assembly, 13 December 2006, UN Doc. A/RES/61/106, entry into force 3 May 2008 (CRPD), art 1; Equality Act 2010, s.6; Welfare Reform Act 2012, s. 80; Disability Act 2005, s.2; Social Welfare Consolidation Act 2005, s.210; Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, art 137.
[280] It is not clear whether
[281] Welfare Reform Act 2012, art 4.

a claimant have a disability in order to claim. However, PIP is not the sole disability-specific welfare benefit in the UK, rather, there are a total of three disability-specific welfare benefits in the UK. These are PIP, Employment and Support Allowance (ESA)[282] and the Scottish Adult Disability Payment.[283] The latter benefit was eliminated from consideration as it is only applicable in Scotland and there is insufficient data on it as it was only introduced in 2022. When comparing PIP and ESA to determine which has the least basic qualifying factors, although both require that the claimant has a disability and that there is a functional limitation resulting from the disability, ESA further requires that the claimant has made sufficient National Insurance (NI) contributions through paid work. ESA thus has more basic qualifying factors than PIP, making PIP the primary disability benefit according to the criteria outlined above.[284]

Applying the criteria to Ireland indicates that the primary disability welfare benefit is Disability Allowance (DA).[285] DA is one of several disability-specific welfare benefits available to be claimed by disabled individuals but, unlike the UK which only has three disability-specific welfare benefits (and only two applicable to the whole of the UK), there are 29 social welfare schemes or services in the category of health welfare provided by the Department of Social Protection,[286] of which 11 are listed under the heading of 'Illness, Disability and Caring' benefits in the annual statistical reports of the Irish government.[287] Turning to the basic qualifying factors, all but two disability-specific welfare benefits in Ireland require that a claimant has made sufficient Pay Related Social Insurance (PSRI) contributions through paid and insurable work, leaving DA and Blind Pension (BP). Both DA and BP have the same number of basic qualifying factors and thus satisfy criteria ii). As for criteria iii), DA has far more claimants, as BP is limited to claimants whose disability is blindness or visual impairment. Indeed in 2020, there were only 1075 BP claimants whereas there were a total of 152,580 DA claimants in Ireland.[288]

[282] Welfare Reform Act 2007.
[283] The Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022.
[284] The third step of the test is unnecessary as the UK has only one disability specific welfare benefit with the lowest number of additional qualifying factors.
[285] Social Welfare (Consolidation) Act 2005.
[286] DSP, 'Social Welfare Schemes and Services' (*Gov.ie,* 3 May 2022) < https://www.gov.ie/en/collection/ff767-social-welfare-schemes-and-services/#health > accessed 10 August 2024.
[287] Department of Social Protection, Statistical Information on Social Welfare Services Annual Report 2020 (DSP 2020).
[288] The second and third most claimed Illness, Disability and Caring benefits were Carer's Allowance and Carer's Support Grants respectively. The fourth most claimed Illness, Disability and Caring benefit, and second most claimed disability-specific benefit was Invalidity Pension with 59,230 claimants.

Thus, with DA and PIP having been demonstrated to be the primary disability welfare benefit for each State, these benefits and the laws governing them were selected for focus and comparison throughout the remainder of this thesis. Although this thesis is primarily concerned with a comparison between the primary disability benefits of the UK and Ireland – PIP and DA – it is impossible to divorce these primary disability welfare benefits from the wider system of welfare in which they exist.

One facet of the Comparative Legal Method applied in this research was the functional method. The functional method is utilised to examine divergent systems of law which take differing approaches to solve the same legal problem but which reach the same or similar solution.[289] The laws governing DA and PIP certainly demonstrate that these benefits are functionally equivalent in that they exist to fulfil the same function of providing financial support to disabled persons regardless of whether they have previously worked. As well as the functional method for legal comparison, the law-in-context method for legal comparison, which considers how, *inter alia*, economical, sociological, psychological and anthropological factors impact legal systems and the development of laws,[290] is applied when discussing PIP and DA throughout this thesis. This provides an understanding of how the legal provisions operate in practice due to the additional influence of economic, political and sociological factors on PIP and DA application.

Section 4.3 now discusses PIP.

4.3. ENGLAND: PERSONAL INDEPENDENCE PAYMENT AND THE WELFARE REFORM ACT 2012

This section outlines the laws relating to PIP which are analysed in subsequent chapters of the thesis and briefly explains its purpose.

PIP was introduced in Part 4 of the Welfare Reform Act 2012 (WRA 2012). WRA 2012 was introduced by the Conservative-Liberal Democrats coalition government on 8th

[289] See Chapter 2.3.1; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 9; K Zweigert and H Kötz, An Introduction to Comparative Law (1st edn, North-Holland Publishing 1977); Mathias Siems, Comparative Law (1st edn, Cambridge University Press 2014) 26; Cheryl Saunders, 'Towards a Global Gene Pool' National Taiwan University Law Review 4(3) [2009] 1, 13; Jaakko Jusa, ''Functional Method in Comparative Law – Much Ado About Nothing?' European Propert Law Journal 2 (2013) 4.
[290] See Chapter 2.3.2; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 17.

March 2012. The WRA 2012 was introduced with the purported purpose of overhauling and rationalising the benefits system in the United Kingdom. The WRA also had the tacit purpose of contributing to the process of austerity and 'budget-tightening' that was in keeping with the policy of fiscal conservatism implemented by the government at that time,[291] and which has remained the guiding approach to public expenditure in the UK up to and including the time of writing. To this end, the WRA 2012 introduced two new benefits into the UK welfare system; PIP and Universal Credit.[292]

PIP replaced Disability Living Allowance, which had been the primary disability-specific welfare benefits for the previous twenty years.[293] The CRPD Committee held the difference in operation and criteria for eligibility between PIP and DLA as one of the chief causes of CRPD violations by the UK. As such, a discussion of these differences in operation and eligibility between PIP and DLA is required. However, these differences cannot be outlined before first documenting the operation and eligibility criteria of PIP. Thus, the matter of contrasting PIP and DLA against the backdrop of CRPD Committee commentary is returned to in section 4.3.1.

According to the Department for Work and Pensions (DWP),[294] the department of UK central government that manages the provision of social welfare benefits, PIP payments are designed to help with extra costs disabled people face as a result of their being disabled. It is intended that PIP payments assist disabled people to lead full, active and independent lives,[295] and to remove barriers preventing disabled people from doing so.[296]

PIP is a non-means-tested benefit and as such is available to eligible claimants regardless of their earnings or income, their tax credits or national insurance contributions.[297]

---

[291] *R (on the application of RF) v Secretary of State for Work and Pensions* [2017] EWHC 3375 (Admin) [44]; Richard Kelly, 'Political parties' in Bill Jones and Philip Norton (eds), *Politics UK* (8th edn, Routledge 2014) 213.
[292] Universal Credit replaced a host of both disability-specific and non-disability-specific benefits that were commonly also claimed by disabled people. Although Universal Credit can be claimed by disabled persons in the UK and includes an additional premium for disabled claimants, Universal Credit is not itself a disability-specific benefit and is therefore not focused on in this thesis but is referenced on occasion throughout the remainder of the thesis due to it being a part of the wider welfare system for disabled people in the UK.
[293] Social Security Contributions and Benefits Act 1992, part 3.
[294] Department for Work and Pensions, 'Personal Independence Payment (PIP)' (*DWP*) < https://www.gov.uk/pip > accessed 10 August 2024; Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024.
[295] *ibid* [1.1.1].
[296] Department for Work and Pensions, Public Consultation: Disability Living Allowance Reform (Cmd 7984, 2010) 2.
[297] Ian Greaves (eds), *Disability Rights Handbook: April 2022 - April 2023* (47th edn, Disability Rights UK 2022) 25.

As of January 2022, there had been 6.4 million claims for PIP registered, and there were 2.9 million successful recipients of PIP in the UK,[298] which is approximately 4.3% of the population of the UK. According to the 2021 census undertaken by the UK Office for National Statistics, 9.8 million people in England (17.7% of the population of England) alone were disabled.[299]

While PIP is the primary disability-specific welfare benefit in the UK,[300] it is not paid purely on the virtue of a person having a disability or health condition, although this is one of the qualifying factors. Rather, eligibility for PIP is primarily determined based on the results of a functional assessment that tests the ability of a disabled claimant to undertake a series of ten specific daily living activities and two mobility activities, which are listed in the Social Security (Personal Independence Payment) Regulations 2013.[301] Points are allocated to the claimant depending on the level of capability they demonstrates for each of these specific daily living and mobility activities, and a claimant must attain enough points to be awarded PIP.[302]

A maximum award of PIP as of 2022, which requires a claimant to be awarded the enhanced rate of payment for both the daily living component and mobility component of PIP, is £156.90, which is paid on a four-weekly basis at a total of £627.60 and amounts to £8158.80 per annum. To frame this amount, it will now be compared against the amount awarded to universal credit claimants and against the national living wage in the UK.

This amount is higher than that awarded to the average universal credit claimant in the UK, who receives a monthly award of £334.91, or £265.31 if they are under 25 years old. A disabled claimant of universal credit may qualify for either the additional limited capability for work element at £132.29 a month or the limited capability for work and

[298] Department of Work and Pensions, 'Personal Independence Payment: Official Statistics to January 2022' (*Gov.UK*, 15 March 2022) < https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-january-2022/personal-independence-payment-official-statistics-to-january-2022 > accessed 10 August 2024.
[299]https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/disabilityenglandandwales/census2021#:~:text=In%20England%2C%20the%20proportion%20of,in%20every%20region%20of%20England.
[300] PIP can be claimed alongside and in addition to other social security benefits and tax credits in the UK so long as the claimant is determined to be eligible for each of the other social security benefits or tax credits they apply for. However, unlike with DA in Ireland, PIP claimants do not have their eligibility for other benefits and tax credits screened as part of the PIP application process.
[301] Indeed, PIP is divided into two components - the daily living component and mobility component. Both the daily living component and mobility component are assessed separately and thus each provides a separate payment, with claimants potentially being eligible for just one of the components or both concurrently - Welfare Reform Act 2012, ss. 78-79; The Social Security (Personal Independence Payment) Regulations 2013, sch 1, part 2-3.
[302] The Social Security (Personal Independence Payment) Regulations 2013, sch 1, part 2-3.

work-related activity element at £354.28 a month. As such, only a universal credit claimant in receipt of the additional limited capability for work and work-related activity element and who is over 25 years old will be awarded more than the maximum PIP award per annum, with a difference of only £114.48 over a year.[303]

The annual income of a person earning the national living wage in the UK in 2022 would receive £18,525 before tax, and £16,189 after tax.[304] Thus, a PIP claimant awarded the enhanced rate of both the daily living component and the mobility component receives only 50.4% of the national living wage per annum.

Before moving to outline the law and policy regarding the Irish legal provisions governing DA, attention is first turned to another, now outdated, English disability welfare benefit – Disability Living Allowance (DLA). This is because it is through comparison between PIP and DLA (which PIP replaced) that the CRPD Committee concluded that the UK had gravely and systematically violated the CRPD.

4.3.1. PERSONAL INDEPENDENCE PAYMENT, DISABILITY LIVING ALLOWANCE, AND THE VIOLATIONS OF THE CRPD

The CRPD Committee concluded in its Inquiry Report that the UK had committed grave and systematic violations of the CRPD determined by specific findings resulting from the investigation that the CRPD Committee undertook. These concluding observations identified that CRPD violations were caused by, *inter alia*, several measures disproportionally and adversely affecting the rights of persons with disabilities,[305] the continuation of UK policy reducing social benefits of persons with disabilities,[306] and the assumption that tightening sanctions and conditionality of social benefits is a legitimate tool for incentivising disabled persons to move into employment.[307]

Further, paragraph 112 of the Inquiry Report reads:

[303] This is because universal credit is paid monthly, i.e. 12 times over a year, whereas PIP is paid on a four-weekly basis, i.e. 13 times a year.
[304] https://www.incometaxcalculator.org.uk/?ingr=18525
[305] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1 [113d].
[306] *ibid* [113j].
[307] *ibid* [113b].

> [T]he transition from Disability Living Allowance to Personal Independence Payment would result in 620,000 fewer people receiving Personal Independence Payments and would represent a 20 per cent saving in expenditure. The eligibility criteria and the threshold for qualifying for Personal Independence Payments have been tightened, with the result that many claimants with moderate or lower levels of support have been excluded from the benefit. Similarly, the tightening of the eligibility criteria for the mobility component has resulted in Personal Independence Payments beneficiaries losing their entitlements to that component.[308]

As is clear from the above, it is the tighter eligibility criteria that claimants of PIP face than claimants of the previous benefit DLA that led the CRPD Committee to conclude that the UK had violated CRPD Article 28.

The CRPD Committee, despite concluding that the eligibility criteria for PIP are tighter than those for DLA, did not provide any justification for its assertion of this in the paragraph above or elsewhere in the Inquiry Report. This is not to say that this view by the CRPD Committee was unfounded. Indeed, while the CRPD Committee did not provide specific examples of a "tightening" in eligibility criteria with PIP as compared to DLA, other interest groups and commentators such as the UK charities Disability Rights UK (DRUK) and the Child Poverty Action Group (CPAG) have found several differences between DLA and PIP that could be seen as creating tighter rules for eligibility. Further, the CRPD Committee has not clarified (either in its Inquiry Report or subsequent commentary) whether the system and operation of DLA would have been found in compliance of the CRPD if subjected to the same scrutiny which PIP was. However, given that the CRPD Committee adopted DLA as the benchmark against which to analyse PIP, and any divergence between PIP and DLA sees the CRPD Committee concluding that the UK had violated the CRPD, this thesis will continue with the assumption that the CRPD Committee would have held DLA in CRPD compliance.

The following argument attempts to justify the opinion drawn by the CRPD Committee that PIP eligibility is tighter than DLA - and thus constitutes a violation of the CRPD in

[308] *ibid* [112].

the opinion of the CRPD Committee -[309] by analysing commentary from disability charities in the UK and the PIP assessment guide created by the UK government.[310] Through analysing this commentary, it becomes apparent that the significantly lower amount of successful claims for PIP than DLA are not limited to the eligibility criteria of PIP, but also due to the method by which these eligibility criteria are assessed.

Taking first the potential justification for the CRPD Committee holding PIP eligibility criteria to be tighter than DLA eligibility criteria, commentary from CPAG best lays out arguments to support this claim. In its *What You Need to Know* guide for PIP, CPAG indicates four key differences between PIP and DLA,[311] three of which demonstrate such a tightening. Firstly, PIP is payable at two rates, standard and enhanced, whereas DLA was payable at three rates; lowest, middle and highest.[312] It has been argued that those who would have previously qualified for the lowest level would find themselves without support due to a lack of a similar tier provided by PIP.[313] Secondly, CPAG indicated that whereas with PIP a long-term health condition or disability must last for at least a year,[314] the period was only 9 months with DLA.[315] Moreover, with PIP, a claimant will not be eligible for payments solely because of a health condition or disability; it must limit their ability to mobilise or undertake daily activities.[316] Thirdly, CPAG argue that PIP offers less provision for carrying out the full range of daily activities than that provided by the care component of DLA. This is because PIP is allocated depending on the inability of a claimant to carry out the ten specific daily living activities, whereas DLA payments were determined not on a limited range of specific activities, but depended on the amount of attention or supervision a claimant required throughout the day and night with all bodily functions.[317] Indeed, DLA claims could be decided on a further range of activities than those assessed under PIP including activities 'so closely related to bodily functions', such as cleaning up after an episode of incontinence or food spillage,[318] or domestic duties for

[309] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1 [112]
[310] Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024.
[311] Child Poverty Action Group, *Personal Independence Payment What You Need To Know* (2nd edn, CPAG 2016) 5.
[312] Social Security Contributions and Benefits Act 1992, s. 72(3-4).
[313] Ellen Clifford, FIND PAGE!!!
[314] The Social Security (Personal Independence Payment) Regulations 2013 2013, regs 12-13.
[315] Social Security Contributions and Benefits Act 1992, s. 72(2).
[316] Welfare Reform Act 2012, ss. 77-80.
[317] Ian Greaves (eds), *Disability Rights Handbook: April 2008 - April 2009* (33rd edn, Disability Alliance 2008), 124-5, Ch 21.
[318] *R v National Insurance Commissioner, Ex parte Secretary of State for Social Services (The Packer Case)* [1981] 1 WLR 1017.

which help would be reasonably required due to difficulties with bodily functions such as grocery shopping or housework.[319] Clearly, this allowed for a much wider range of activities to be considered than those assessed for PIP (see Chapter 5.4.3).

As noted above, another potential reason for a significantly lower success rate for PIP applications has been identified as the method by which PIP claimants are assessed. This difference in assessment method between PIP and its predecessor benefit DLA is the fourth and final key difference as noted by CPAG. CPAG point out that although a face-to-face assessment is a necessary stage of a claim for the vast majority of PIP claims, there was no such requirement with DLA with only 6% of DLA claimants having undergone such an assessment.[320] This difference may not be so significant if face-to-face assessments were only to clarify the answers provided by claimants on their PIP2 questionnaire forms. However, given that informal observations from HCPs undertaking the assessment are included in a report to the DWP Case Manager, which are then considered as part of the PIP assessment process, this can unfairly impact those claimants with fluctuating disabilities or health conditions. The functional assessments for PIP are discussed at length in Chapter 6.2.1.

Also of note in the Inquiry Report into the UK is the finding of a violation of the CRPD right to independent living and community inclusion (Article 19) due to changes to the eligibility of specifically the mobility component of PIP.[321] In finding this violation of Article 19, the CRPD Committee concluded that the changes to PIP mobility component payments constituted a violation because claimants who lose entitlement to mobility component payments find it more difficult to get around and integrate in the community[322]. It is surprising that the CRPD Committee did not reference the obvious link to accessibility here – a link previously recognised by the CRPD Committee itself in General Comment 2 on the CRPD right of accessibility. In General Comment 2, the CRPD Committee stress that in order to participate fully in community life, one must first be able to access the physical environments, modes of transportation, communication, and information that all constitute aspects of the community in which disabled persons

[319] *Mallinson v Secretary of State for Social Services* [1994] 1 WLR 630
[320] Secretary of State for Work and Pensions, *Government's response to the Independent Review of the Personal Independence Payment Assessment* (DWP 2015) 5.
[321] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1 [95].
[322] *ibid*.

live.[323] Chapter 3.3.3 contains further analysis of the link between the right to accessibility and the right to independent living and community inclusion, as well as analysis of the connection between the right to accessibility and the right to social protection. Indeed, the CRPD Committee itself concludes that, in order for the right to social protection to be made effective,

> States parties should take the necessary measures to ensure that both mainstream and disability-specific social protection measures and services are provided in an accessible manner, in accessible buildings, and that all information and communication pertaining to them is accessible through sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication.[324]

It bears repeating that with such strong connections between accessibility and the rights that the CRPD Committee held to have been violated by the UK, the exclusion of Article 9 from consideration by CRPD Committee is not a logical choice. Perhaps it was because the Inquiry into the UK was the first CRPD Committee inquiry into grave and systematic CRPD violations of a State that this omission was made.

Section 4.4 now outlines the relevant Irish law.

4.4. IRELAND: DISABILITY ALLOWANCE AND THE SOCIAL WELFARE CONSOLIDATION ACT 2005

This section outlines the laws relating to DA which are analysed in subsequent chapters of the thesis and briefly explains its purpose.

The Department of Social Protection, the department of Irish central government that manages the provision of social welfare benefits, provides over 150 different welfare schemes in Ireland.[325] Of these, 29 fall under the heading of Health, of which 11 are

[323] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [23, 37].
[324] CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014) [42].
[325] Indeed, the welfare system as a whole appears very different on the surface to that of the UK, which provides comparatively very few different schemes due in large part to Universal Credit assimilating a number of benefits in the UK.

grouped together by the DSP as Illness, Disability and Caring benefits.[326] Of these many welfare schemes, DA is the primary disability welfare benefit of Ireland.

DA was introduced into Ireland by Part IV of the Social Welfare Act 1996, which amended the Social Welfare (Consolidation) Act 1993. The Social Welfare (Consolidation) Act 1993 was the primary legislation, containing provisions allowing for over 25 different welfare allowances, pensions and benefits. The primary legislation that now governs the operation of DA is the Social Welfare (Consolidation) Act 2005. The Social Welfare (Consolidation) Act 2005, as the name suggests, was introduced in order to rationalise Irish social welfare law. Between 1993 and 2005, 18 social welfare acts were passed by the Oireachtas.[327] As part of the final stage of debates on the passing of the Social Welfare (Consolidation) Bill 2005 in the Oireachtas, the Minister for Social and Family Affairs stated that the Social Welfare (Consolidation) Bill 2005 brought together 12 years of legislation into one accessible document and that "it is important that these Acts are put in an accessible format.".[328] Thus, the legislative framework for DA is purported to uphold the principle of accessibility.

When DA was introduced in 1996, it replaced Disabled Persons Maintenance Allowance (DPMA).[329] DPMA was paid and managed by health boards in Ireland, which were regional administrative bodies established by the government to manage administration of health services.[330] DPMA was described by the Irish Government Economic and Evaluation Service (IGEES) as "a contingency-led and budget-driven scheme with a maximum number of participant places".[331]

IGEES, when contrasting DA with DPMA, described DA as

> a demand-led support awarded to all persons who satisfy the qualification criteria, meaning recipient numbers increase or decrease in line with the demand of eligible applicants.[332]

[326] Department of Social Protection, Statistical Information on Social Welfare Services Annual Report 2020 (DSP 2020) 13, 31.
[327] https://www.oireachtas.ie/en/debates/debate/seanad/2005-11-16/7/
[328] *ibid.*
[329] Health Act 1970, s. 69.
[330] *ibid,* ss. 4-6.
[331] Niamh Callaghan, 'Spending Review 2017: Disability Allowance Expenditure Drivers' (2017) IGEES Papers 1, 4.
[332] *ibid* 4-5.

Thus, the introduction of DA saw a removal of the express upper limit of potential claimants for the primary disability benefit of Ireland. The introduction of DA saw another key reform in the administration of the primary disability welfare benefit of Ireland the power to administer the primary disability benefit of Ireland was transferred to central government, specifically the DSP, and away from Health Boards. This was significant as the Irish Health Boards, which were established in 1970,[333] were limited both in terms of remit and budget. Each Health Board was responsible for the management of three to six Irish counties and each had a maximum expenditure allowance.[334] Accordingly, potential claimants who would pass the eligibility test for DPMA could still have their claims rejected through no fault of the claimant but due to the Health Board having exhausted its budget.

In stark contrast to the rollout of PIP in the UK, this change in administration of the primary disability welfare benefit of Ireland saw a very substantial uptick in the number of successful claimants for DA as compared to DPMA. Whereas the major decrease in successful claimants for PIP in the UK was attributed to a change in the eligibility criteria to receive the benefit, the eligibility criteria and qualifying factors for DA are similar to those for the previous DPMA.[335] Reasons that have been submitted by economists for the uptick in successful claims for DA as compared to DPMA include the removal of any upper limit on expenditure for the primary disability welfare benefit,[336] a growing prevalence of disability in the Irish population since 1996,[337] and greater awareness and accessibility of the existence of the centrally managed DA than the ad hoc allocation of DPMA.[338] Indeed, as Gannon notes, wherever welfare allocation are available, an increase in the accessible information regarding a welfare allocation will naturally see an increase in claimants for it,[339] further demonstrating the necessity of information regarding the primary disability welfare benefit be accessible.

According to the DSP, DA has two objectives:

[333] Health Act 1970, s. 4.
[334] Health Act 1970, s. 31.
[335] Irish Government Economic and Evaluation Service, IGEES Strategic Policy Discussions: Disability Policy (IGEES 2022) 7.
[336] *ibid.*
[337] *ibid.*
[338] Brenda Gannon, 'Disability Benefit: Controlled or Under-Controlled?' (Budget Perspectives 2007, 2007) 8.
[339] *ibid.*

> To provide income supports to people with disabilities whose employment capacity is substantially reduced by reason of their disability and whose means are insufficient to meet their own needs and those of their dependents
>
> To encourage and assist people with disabilities and long-term illnesses to identify and take up employment, training, educational and other self-development opportunities, where appropriate.[340]

In the main, analysis will focus on to the extent to which DA meets the first of these two aims. This is because it is the first aim, the aim of providing income support to disabled people, which is functionally equivalent to that of PIP. Indeed, although the UK also has social welfare benefits to encourage and assist disabled people back into employment,[341] PIP is not one of them. Further, the second aim of DA, to encourage and assist disabled people into employment or education, is not one often achieved in practice. Indeed, IGEES have reported that, as of 2018, only around 10% of DA claimants would move into paid work, either part time or full time, in the calendar year following them leaving the DA system.[342] The IGEES report does not clarify whether the people leaving the DA system were doing so voluntarily, were encouraged and supported to find work through the DA system, or had their award taken away due to a change of circumstances causing a lack of DA eligibility.

As with PIP, eligibility for DA is not determined solely on a claimant having a disability or health condition. Per the Social Welfare Consolidation Act 2005, eligibility for DA is dependent on a claimant demonstrating that they are substantially restricted in undertaking employment of a kind which, if the person was not suffering from that disability, would be suited to that person's age, experience and qualifications.[343]

Unlike PIP, which is paid at various rates depending on whether a claimant is paid either a standard or enhanced award, DA is paid at one standard rate. In 2022, that weekly rate is €208.00, which is paid weekly to claimants and which amounts €10,816 per annum.

[340] Ciaran Judge, Éamonn Rossi, Saidhbhín Hardiman, and Ciarán Oman, Department of Social Protection Report on Disability Allowance Survey 2015 (DSP 2015) 1.
[341] Such as New Style Employment and Support Allowance – Department for Work and Pensions, 'New Style Employment and Support Allowance' (*DWP*, 1 July 2022) < https://www.gov.uk/guidance/new-style-employment-and-support-allowance#why-should-you-claim-new-style-employment-and-support-allowance > accessed 10 August 2024.
[342] Department of Social Protection, An analysis of Disability Allowance inflows and outflows (DSP 2018), Ch IV.
[343] Social Welfare Consolidation Act 2005, s.210.

Claimants who are successful in determining their eligibility for DA are *de facto* entitled to this amount. However, depending on the weekly means of a claimant, the €208.00 is tapered down in graduations of €2.50 to a minimum of €3.00 per week. This rate is the same as that which is awarded to claimants of the non-disability-specific jobseeker's allowance who are at least 25 years old, and is only slightly less than the amount awarded to recipients of Invalidity Pension in Ireland, which is the second-most claimed disability benefit in Ireland and is paid at a rate of €213.50 per week. A person earning the national minimum wage in Ireland receives €20,475 per annum before tax and €19,031 per annum after tax.[344] Thus, a DA claimant awarded the standard rate of DA receive 56.8% of the national minimum wage of Ireland per annum.

The law governing DA is contextualised by the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, which provide that a restriction caused by a specified disability will be substantial if the disability lasts for, or is reasonably expected to last for, over one year.[345]

These brief legislative provisions unfortunately cause a lack of clarity in the law. Whereas the law governing PIP provides a detailed scoring system against which a claimant can be assessed, the law governing DA provides only that a claimant must be substantially restricted, for at least one year, in undertaking employment. Clearly, this statutory threshold requires much contextualisation in order to determine who should be eligible for DA as the legislation allows for anyone with a disability lasting more than one year who is not in work would be *prima facie* eligible. This thesis will address a question that has not been the subject of any earlier doctrinal or empirical research, which is the question of the impact of the law governing DA being limited and ambiguous. In so doing, this thesis will provide a unique contribution to legal scholarship, particularly Irish legal scholarship.

It is in part due to this lack of clarity in the law that the DSP has generated lengthy and highly detailed Operational Guidelines.[346] These guidelines are not themselves law, rather they are:

[344] https://ie.talent.com/tax-calculator?salary=20475&from=year&region=Ireland
[345] Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, art 137.
[346] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022); Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).

> used both to explain statutory provisions to its staff (including deciding officers) in readable English and to fill in lacunae that are not covered by legislation or to expand on statutory provisions.[347]

The DSP is said to rely heavily on these administrative guidelines,[348] which is not surprising when considering the lack in the law relating to DA. To be sure, this formula of a State implementing broad primarily legislation that it then contextualises and clarifies with administrative guidelines is not uncommon. However, while both UK and Irish law contain legal provisions which dictate that eligibility for PIP/DA is contingent on a disability lasting at least one year that restricts the functioning of a claimant, this is the totality of what Irish law says on the matter whereas the UK law is more detailed.

Ireland's Operational Guidelines engage the dimensions of both information accessibility and access to justice as the utilisation of guidelines is less transparent than using the legislation, and a misapplied guideline does not garner the same right to recourse as a misapplied law. For these reasons, Operational Guidelines will be analysed through the Accessibility Framework in subsequent chapters along with the law governing DA.

The DSP has generated lengthy and highly detailed Operational Guidelines not only on Disability Allowance,[349] but also dedicated separate Operational Guidelines for *inter alia* Decision Making and Natural Justice,[350] Medical Assessments,[351] and Means Assessments.[352] It is of concern that the *Operational Guidelines: Disability Allowance* do not contain any further clarification as to what constitutes a substantial restriction to the employment capacity of people with disabilities by reason of their disability for the purposes of DA.[353]

Research undertaken by IGEES indicated that a large proportion of inflow into the DA system was from claimants of other social welfare payments in Ireland.[354] Thus while

[347] Mel Cousins and Gerry Whyte, Social Security Law in Ireland (3rd edn, Kindle edn, Wolters Kluwer, 2021) [45-46].
[348] *ibid.*
[349] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[350] Department of Social Protection, Operational Guidelines: Decision Making and Natural Justice (DSP 2022).
[351] Department of Social Protection, *Operational Guidelines: Medical Assessments* (DSP 2020).
[352] Department of Social Protection, *Operational Guidelines: Means Assessments* (DSP 2022).
[353] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[354] Department of Social Protection, An analysis of Disability Allowance inflows and outflows (DSP 2018), Ch V.

having DA as their focus, subsequent chapters occasionally draw reference to several other Irish welfare benefits that are claimed by disabled persons.

Section 4.5 now outlines how an application for both PIP and DA sees a claimant move through several specific stages.

SECTION 4.5. THE APPLICATION PROCESS FOR PIP AND DA

Having identified the statutory provisions and policies that govern the primary disability welfare benefit of the UK and of Ireland above, this section clarifies how potential violations of the CRPD right of accessibility will be identified, and how the systems of law and policy that govern PIP and DA will be compared and contrasted with each other in regards to their CRPD compliance.

Where sections 4.3 and 4.4 above have outlined key aspects of the law providing for PIP in the UK and DA in Ireland, with a focus on differences between each system, the methods by which a claimant claims for either PIP or DA are significantly similar, as are the methods adopted by those tasked by the governments of the UK and Ireland to pass decisions on the eligibility of PIP and DA claims. Indeed, the actions undertaken by claimants and decision-makers throughout the journey of a claim for PIP and DA can be viewed as belonging to one of three broad stages:

a. The claimant provides testimony as to how they meet the qualifying factors and eligibility criteria for the benefit,
b. The testimony of the claimant is assessed and a decision on eligibility is reached
c. The decision of (in)eligibility for the benefit is either accepted or challenged.

The following two chapters of this thesis, then, examine the three stages of the application process in turn beginning with Chapter 5 - *Telling the Claimant's Stories*, which analyses the actions taken by claimants as well as medical professionals when accessing and completing the benefit application, including reporting on the basic qualifying factors for PIP and DA and securing additional medical evidence to support claims. Chapter 6 - *Reading, Rating and Retelling the Claimant's Stories*, then analyses the actions of HCPs and Decision Makers from the UK and Irish governments when determining whether claimants meet the eligibility requirements for either PIP or DA. Chapter 6 also analyses

the actions available to claimants upon receipt of a PIP or DA decision notice with which they are dissatisfied,[355] including having their claims reviewed by Decision Makers.

Areas where the operation of PIP in the UK and DA in Ireland potentially violate dimensions of the Accessibility Framework (Chapter 3.4) are identified in both of these chapters, and recommendations that would ameliorate these potential violations are provided.[356]

SECTION 4.6. CONCLUSION

This chapter, along with Chapter 3, provides the basis from which findings and recommendations are generated in subsequent chapters.

The conclusion reached by the CRPD Committee that the laws and policies governing the operation of PIP violated the CRPD was reaffirmed, and it was argued– in light of there being no significant reform to this law and policy – that PIP in its current form remains in violation of the CRPD. Specifically, the CRPD Committee concluded that both the eligibility criteria for PIP and the method through which eligibility was assessed contributed to the conclusion of CRPD violations. Subsequent chapters focus on these two aspects of the law and policy governing PIP

Section 4.3.1 considered how in the Inquiry Report, the CRPD Committee concluded that the violations of the CRPD caused by the eligibility criteria for PIP as established by the Welfare Reform Act 2012 were found as such by analogy to the previous system of disability welfare in the UK – Disability Living Allowance (DLA). A discussion was had that aimed to provide supporting evidence for the claim made by the CRPD Committee of the eligibility criteria for PIP being 'tighter' than those for DLA as the CRPD Committee failed to provide rationale or justification for this assertion. In so doing, a unique contribution to legal scholarship was made.

[355] The word dissatisfied is purposefully used here rather than unsuccessful. This is because claimants may either be successfully awarded one component and not the other and believe this to be an error, or be awarded at the standard rate but believe that their limitations are severe and thus should be awarded an enhance rate for either or both components - Welfare Reform Act 2012, ss. 78-79; The Social Security (Personal Independence Payment) Regulations 2013, rr. 5-6.

[356] To recap, the dimensions of accessibility contained in the Accessibility Framework are: Non-discrimination; Physical accessibility; Economic accessibility; Information accessibility; and Accessibility of the Justice System.

As the focus of the thesis now turns to analysis of where dimensions of accessibility contained in the Accessibility Framework are engaged and potentially violated by the operation of PIP in the UK and DA in Ireland, the legal frameworks as identified in this chapter will be regularly revisited as these are the laws that were concluded to violate (and as such continue to violate) the CRPD in the case of the UK, and the functionally equivalent laws and policies that are analysed through the Comparative Legal Method to inform areas where laws can be transposed and recommendations put forward.

CHAPTER 5: TELLING THE CLAIMANT'S STORIES

5.1. INTRODUCTION

This chapter analyses the first stage of the benefit application process identified in Chapter 4.5 – 'the claimant provides testimony as to how they meet the qualifying factors and eligibility criteria for the benefit'. This is the stage at which claimants for PIP in the UK and DA in Ireland provide and seek testimony as to their functional limitations and difficulties resulting from their disabilities and health conditions. For both PIP and DA, this testimony as to functional limitation is primarily recorded in a benefit application form. It is the completion of the benefit application forms for PIP and DA that are the major focus of this chapter.

The title of this chapter was inspired by a piece of guidance provided by the DWP to PIP claimants in the UK titled the *Claimant Journey*.[357] The *Claimant Journey*, produced in 2015, framed an application for PIP as a journey comprising several steps that a PIP claimant must take and divided these into stages.[358] The stage of the Claimant Journey that discussed claimants reporting their functional limitations was titled 'Telling Your Story'. According to the Claimant Journey, the Telling Your Story stage is the stage that 'allows the claimant to explain how their condition affects them in their own words'.[359] As will be demonstrated throughout this chapter, neither a claim for PIP nor DA allows a claimant to complete a claim form solely in their own words, rather, a claimant is always required to include the testimony of others in their claim form, most often medical professionals. Indeed, if PIP and DA applications were awarded solely on the basis of the claimant's autobiographical report of their limitations in the application forms, then 'Telling Your Story' would be an accurate representation of the process. However, the application document received by decision-making government officials in both the UK and Ireland is not a claimant's autobiography. It is instead a biography written by several authors.[360] Thus, the title *Telling The Claimant's Stories* was adopted for this stage to

[357] Department for Work and Pensions, Personal Independent Payment: the claimant journey (DWP 2015).
[358] The Claimant Journey 2015 influenced the development of the Application Process for this thesis but a structural framework could not be directly developed from this guidance document for two reasons. Firstly, the DA process did not match the steps outlined in this PIP-specific guidance document. Secondly, the Claimant Journey provided no guidance to claimants as to the steps available to them after the DWP reached a decision on their claim, which was a necessary area of focus for this thesis.
[359] *ibid.*
[360] For both PIP and DA, an application entering the decision-making phase will have a minimum of three 'authors', the claimant, a member of the claimant's medical treatment team, and a healthcare professional contracted by the government to assess applications.

denote the plurality of voices that each tell a different story of the claimant that are recorded throughout a benefit application for both PIP and DA.

The actions that claimants for DA or PIP undertake at this stage of the application process can be broadly summarised as:

a) Reporting on the basic qualifying factors,
b) Accessing and receiving the benefit application form,
c) Filling in the benefit application form,
d) Consulting others to attain their contributions to the form.

These are broadly the same for both Irish DA and UK PIP claimants. Each of these actions will be addressed in turn in this chapter.

The legislative provisions and government policy that regulate the actions taken by claimants during this stage of an application for PIP and DA are compared and contrasted in this chapter through the lens of the Accessibility Framework (Chapter 3.4) in order to indicate where each system engages dimensions of the right to accessibility. To recap, the dimensions of accessibility considered in this thesis are:

i. Non-discrimination,
ii. Physical accessibility,
iii. Economic accessibility,
iv. Information accessibility,
v. Accessibility of the Justice System.

The first four of the five dimensions of accessibility, listed above, are engaged at this stages of an application for both PIP and DA.

5.2. THE BASIC QUALIFYING FACTORS

As stated in the previous chapter, disability benefits in the UK and Ireland, including PIP and DA, have basic qualifying factors which the claimant must satisfy even before an assessment of their eligibility is undertaken and which are relatively simple to assess in

addition to the eligibility criteria which are usually complex and relate to the impact that disabilities have on a claimant.

For both PIP and DA claims, the first action carried out by the claimant once they have decided to pursue a claim is to provide information regarding the basic qualifying factors before moving on to any reporting of functional limitation or assessment of the eligibility criteria.

PIP and DA both share four basic qualifying factors, which are:

i. The disability or health condition qualifying factor,
ii. The required period qualifying factor,
iii. The age limit qualifying factor,
iv. The residency qualifying factor.

The requirements to satisfy qualifying factors ii – iv above are the same in both Ireland and the UK. The required period qualifying factor requires that the health condition or disability of the PIP or DA claimant lasts or is expected to last for one year.[361] The age limit qualifying factor requires that the PIP or DA claimant be aged between 16 and state pension age.[362] The residency qualifying factor requires a PIP or DA claimant to be habitually resident in the UK or Ireland respectively.[363] The test for the disability or health condition qualifying factor, however, is not as straightforward as for the other qualifying factors. Whereas the claimant themselves will be immediately aware whether they satisfy the test for the age, residency and length of health condition qualifying factors, the same is not the case for the disability or health condition qualifying factor. This factor as will therefore be considered in more detail for both PIP and DA.

5.2.1. UK: THE DISABILITY OR HEALTH CONDITION QUALIFYING FACTOR OF PERSONAL INDEPENDENCE PAYMENT

As PIP is the primary disability-specific welfare benefit in the UK, it might be expected that qualification for PIP is open to anyone with a disability however, this is not the case. It is not immediately clear either from legislation or government guidance what constitutes a disability for the purposes of entitlement to PIP. This is because there are

[361] The Social Security (Personal Independence Payment) Regulations 2013, reg 12-14; Social Welfare (Consolidated Claims, Payments And Control) Regulations 2007, art 137.
[362] Welfare Reform Act 2012, s.83; Social Welfare (Consolidation) Act 2005, s. 210(1)(a).
[363] Social Welfare (Consolidation) Act 2005, s. 210(9).

discrepancies between the language used in the Welfare Reform Act 2012,[364] the Gov.UK webpage on PIP,[365] and the DWP PIP Assessment Guide.[366] The differences in the language across the documents constitute two potential CRPD violations, as outlined directly below.

Firstly, the discrepancies between the above sources of information cause inconsistent messaging as to who is allowed to claim for PIP in the UK. This inconsistent messaging may constitute a barrier an 'obstacle or barrier' to accessing PIP, and thus potentially violate Article 9(1) CRPD – Accessibility. According to the Claimant Journey 2015,[367] a guidance document produced by the DWP to outline the steps a PIP claimant must follow in order to complete their claim, claimants undertake the intangible action of 'thinking about claiming' before tangibly beginning their claim. The Claimant Journey 2015 advises claimants to consult a number of sources when deciding whether to pursue a claim for PIP, including their GP or medical team, the DWP, or online sources.

The Gov.UK webpage was selected for analysis here as the claimant is more likely to view this official 'info page' for PIP rather than complex legal provisions in UK statute books. The same is true of DWP officers and healthcare professionals (HCPs) working on behalf of the DWP in that they are more likely to look at guidance documents rather than directly at the legislation. The PIP Assessment Guide was selected because of its mirroring of the language of the CRPD, as is demonstrated below. Crucially, while the language adopted in these sources remains inconsistent, the UK can be viewed as perpetually failing to uphold CRPD accessibility standards.

Secondly, as will be demonstrated, of the three definitions of disability in the context of PIP considered, only one is in line with the description of disability espoused by Article 1 CRPD – Purpose, which reads:

> Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers

[364] Welfare Reform Act 2012, ss.78-79.
[365] Department for Work and Pensions, 'Personal Independence Payment (PIP)' (*DWP*) < https://www.gov.uk/pip > accessed 10 August 2024.
[366] Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024.
[367] Department for Work and Pensions, Personal Independent Payment: the claimant journey (DWP 2015) 2.

> may hinder their full and effective participation in society on an equal basis with others.[368]

Any narrowing of this description and the resultant exclusion of certain classes of disabled people from accessing PIP constitutes a violation of the non-discrimination dimension of accessibility espoused by Article 9 CRPD. Further, Article 28 CRPD – the right to an adequate standard of living and social protection - will also be violated by this, particularly Article 28(b) and Article 28(c), which oblige States to ensure disabled people have access to social protection programmes and financial assistance with disability-related expenses respectively.

The source most in keeping with Article 1 CRPD is the PIP Assessment Guide. The PIP Assessment Guide was developed by the DWP for HCPs working for Assessment Providers (AP), which are private companies that have been contracted by the UK government to carry out functional assessments of PIP claimants on behalf of the DWP (functional assessments of PIP and DA claimants are discussed at length in Chapter 6.2).[369] The PIP Assessment Guide informs the HCPs undertaking functional assessments of PIP claimants that:

> Personal Independence Payment (PIP) is a benefit for people with a long-term health condition or impairment, whether physical, sensory, mental, cognitive, intellectual, or any combination of these.[370]

Thus, HCPs undertaking functional assessments are informed that all people with disabilities of any kind are *prima facie* entitled to apply for PIP and thus anyone with a diagnosed health condition should satisfy the qualifying factor of having a disability or health condition.

However, the law providing for PIP does not reflect Article 1 CRPD to the same extent. The Welfare Reform Act 2012 determines that a person will only be entitled to PIP if the person's ability to carry out certain activities 'is limited by the person's physical or mental

[368] UN Convention on the Rights of Persons with Disabilities, resolution adopted by the UN General Assembly, 13 December 2006, UN Doc. A/RES/61/106, entry into force 3 May 2008 (CRPD)., Art 1.
[369] Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024 [1.1.6].
[370] *ibid* [1.1.1.].

condition'.[371] This approach is in keeping with the definition of disability contained in the Equality Act 2010, which lists disability among its protected classes and that determines that a person has a disability if –

> (a) P has a physical or mental impairment, and
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.[372]

The Gov.UK webpage for PIP, which provides information regarding who can claim PIP, its eligibility criteria and contact details to begin a PIP claim, echoes these statutory definitions, in that it states:

> Personal Independence Payment (PIP) can help with extra living costs if you have both:
>
> - a long-term physical or mental health condition or disability
> - difficulty doing certain everyday tasks or getting around because of your condition.[373]

When comparing these statutory definitions and the Gov.UK PIP webpage guidance with Article 1 CRPD, it is apparent that both the Welfare Reform Act 2012 and the Equality Act 2010 omit intellectual or sensory impairments from their definitions of disability. Indeed, a literal application of the Welfare Reform Act 2012 would suggest that those with conditions falling outside the binary of physical or mental would be disqualified from PIP;[374] so too with the guidance on the Gov.UK PIP webpage. Despite the fact that the PIP Assessment Guide is available open-access on the internet, it is less likely that this source will be consulted by claimants compared to the Gov.UK PIP webpage, as discussed above. Those with intellectual disabilities may not identify as mentally or physically disabled but categorise themselves in the discrete classification of intellectually disabled,[375] and those belonging to this class are more likely to interpret

[371] Welfare Reform Act 2012, s. 78(1)(a); s. 79(1)(b).
[372] Equality Act 2010, s. 6.
[373] Department for Work and Pensions, 'Personal Independence Payment (PIP)' (*DWP*) < https://www.gov.uk/pip > accessed 10 August 2024.
[374] "If the words of an act are clear then you must follow them even though they lead to a manifest absurdity. The court has nothing to do with the question whether the legislature has committed an absurdity." - *R v Judge of the City of London Court* [1892] 1 QB 273, 290 (Lord Esher MR); The literal approach of statutory interpretation is the main approach employed by UK courts - Jacqueline Martin, *The English Legal System* (5th edn, Hodder Education 2008).
[375] Mairead Moloney, Therese Hennessy and Owen Doody, 'Reasonable adjustments for people with intellectual disability in acute care: a scoping review of the evidence' (2021) 11 BMJ 1.

language literally.[376] Therefore, those with an intellectual disability may opt not to apply for PIP if following the Gov.UK webpage, or indeed the law as written, because of the mistaken belief that they would be automatically disqualified from PIP. Thus, for disabled people in the UK with sensory and intellectual disabilities, the definitions of disability included in the Welfare Reform Act 2012, the Equality Act 2010, and the Gov.UK PIP webpage violate both the non-discrimination dimension of accessibility as espoused by Articles 9 and 28 CRPD as explained above.

Recommendation 5A: the Welfare Reform Act 2012, the Equality Act 2010, and the Gov.UK PIP webpage should all be amended to reflect the language employed by CRPD Article 1 and which is presently employed in the PIP Assessment Guide in order to reflect the inclusion of sensory and intellectual disabilities.

This recommendation would satisfy Articles 9 and 28 CRPD, particularly the non-discrimination dimension of accessibility.

5.2.2. IRELAND: THE DISABILITY OR HEALTH CONDITION QUALIFYING FACTOR OF DISABILITY ALLOWANCE

Unlike with the variations between sources of information in the UK regarding PIP, the definition of disability or health condition employed by Ireland in the context of DA is consistent across the DA1 application form,[377] the Gov.ie Disability Allowance webpage,[378] and the Operation Guidelines for DA.[379] However, as will be demonstrated the statutory provision for DA differs from this consistent definition, but does not contradict it.[380] The information dimension of accessibility as espoused by Article 9(1) CRPD is satisfied here because of the consistency in the definition of disability in its DA context. However, as will be demonstrated, the non-discrimination dimension of accessibility is engaged and potentially violated by the definition of disability in its DA context.

The DA1 application form, the Gov.ie Disability Allowance webpage, and the Operation Guidelines for DA all stated that to qualify for DA, a person must:

[376] Liz Boardman, Jane Bernal and Sheila Hollins, 'Communicating with people with intellectual disabilities: a guide for general psychiatrists' (2014) 20(1) Advances in Psychiatric 27.
[377] Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022).
[378] Department of Social Protection, Disability Allowance (DSP 2022).
[379] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[380] Social Welfare Consolidation Act 2005, s. 210.

- have an injury, disease or physical or mental disability that has continued or may be expected to continue for at least one year,
- as a result of this disability and for no other reason be substantially restricted in undertaking work that would otherwise be suitable for a person of your age, experience and qualifications.[381]

Focus here is on the latter of the two points – the matter of 'substantial restriction in undertaking work' is discussed at length in subsequent chapters.

Here, as with PIP, the omission of sensory and intellectual disabilities is not in keeping with the Article 1 CRPD formulation of disability. For the reasons outlined above regarding PIP, this omission engages and violates the non-discrimination dimension of accessibility for disabled people in Ireland with sensory and intellectual disabilities.

Section 210 of the Social Welfare Consolidation Act 2005, the statutory provision allowing for DA, rather than including or omitting different classes of disability, allows for any person 'who is by reason of a specified disability substantially restricted in undertaking employment' to satisfy this qualifying factor.[382] This provision could be viewed as deliberately keeping the definition of disability open, much like the approach undertaken by the CRPD to avoid the ossifying rigidity of a fixed definition of disability (See Chapter 3.3) identified by Lawson.[383] However, as all other documentation regarding DA refers only to injury, disease or physical or mental disability, it is not immediately apparent whether disabilities outside of these classes would qualify for DA.

Recommendation 5B: the DA1 application form, the Gov.ie Disability Allowance webpage, and the Operation Guidelines for DA should be updated to include a wider definition of a qualifying health condition.

[381] Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022); Department of Social Protection, Disability Allowance (DSP 2022); Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[382] Social Welfare Consolidation Act 2005, s. 210.
[383] Anna Lawson, 'Article 9- Accessibility' in Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), *The UN Convention on the Rights of Persons with Disabilities- A Commentary* (Oxford University Press, 2018) 280.

Good practice would be to transplant the qualifying condition contained in the PIP assessment guide into DA policy, and to include the following in the above-mentioned documentation:

> Disability Allowance (DA) is a benefit for people with an injury, disease, long-term health condition or impairment, whether physical, sensory, mental, cognitive, intellectual, or any combination of these.[384]

This amendment would ensure that the non-discrimination dimension of accessibility is not violated at this early stage of an application. This increased clarity in the language used will also ensure that the information dimension of accessibility is respected here.

5.3. ACCESSING AND RECEIVING THE BENEFIT APPLICATION FORM

This section considers how a claimant physically accesses either the Irish DA or UK PIP form in order for them to begin filling it in and progress with their claim. This section does not analyse how accessible the PIP and Irish forms are in terms of its informational content.

5.3.1. ACCESSING AND RECEIVING THE UK'S PIP APPLICATION FORM

A PIP claimant must first contact the DWP in order to obtain a PIP benefit application form. Contact is made either by a telephone call to the PIP New Claims call line,[385] which is a freephone number, or much less commonly by writing to the PIP New Claims team of the DWP.[386] If contact is made by writing, then the claimant will be sent a PIP1 form and if contact is made via telephone, then a DWP officer takes details from the claimant, or someone speaking on behalf of the claimant, and screens these responses against the questions asked in the PIP1. The PIP1 is not the benefit application form, rather, it is a form in which the basic qualifying factors (discussed above in section 5.2) of a claimant are recorded. It is only when a claimant demonstrates that they satisfy the qualifying factors for PIP, either through their telephone conversation with the DWP or through the answers recorded in a PIP1 form, that they are sent the benefit application form by the

[384] Adapted from the DWP PIP Assessment Guide - Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024 [1.1.1.].
[385] Department for Work and Pensions, Personal Independence Payment (PIP) How to Claim (DWP).
[386] The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013, reg 12(1)(c)

DWP. Undergoing a test determining satisfaction of qualifying factors is the only way a claimant can access a PIP application form in the UK.[387]

5.3.2. RECEIVING THE PIP2 BENEFIT APPLICATION FORM FROM THE DWP

Following the initial contact with the DWP and so long as the claimant successfully satisfies the qualifying factors, the DWP sends the claimant an application form – the PIP2 Form (also known as a 'How your disability affects you' form).[388] A PIP claimant then must return the completed PIP2 Form to the DWP within one calendar month of the initial contact with the DWP.[389] Failure to return the PIP2 in this time results in the claim being disallowed,[390] save for if a claimant can demonstrate 'good reason' for the delay in completing the form.[391]

The PIP2 Form is always accompanied by an attached Information Booklet to assist claimants in filling out the PIP2 Form. This instruction booklet contains advice on the types of evidence that a claimant should attach to assist with their claim, and provides bullet point examples of the types of help a claimant may report they need when undertaking different activities. This instruction booklet satisfies the non-discrimination dimension of accessibility as it ensures that all PIP claimants are provided with basic guidance on how to complete the PIP2 form without having to carry out research themselves. If claimants were required to undertake research in order to complete the form, then those with learning and intellectual disabilities, memory impairment or brain fog would be at a determent compared to those without such impairments. Further, the inclusion of the instruction booklet negates the engagement of both the economic and physical dimensions of accessibility. This is because, as discussed above in section 5.2, should a claimant need to undertake research on how to complete the form, the guidance they would require would most likely be found online rather than in a physical medium. Thus, a claimant would necessarily need to either pay for an internet connection or travel to a location with an internet connection if not for the instruction booklet.

[387] If any of these qualifying factors are not successfully met, then the claim will be closed and the DWP will issue a letter of disallowance - Department for Work and Pensions, Personal Independent Payment: the claimant journey (DWP 2015) 2.
[388] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021).
[389] The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013, reg 12(1); The Social Security (Personal Independence Payment) Regulations 2013, reg 8(2).
[390] The Social Security (Personal Independence Payment) Regulations 2013, reg 8(3).
[391] The Social Security (Personal Independence Payment) Regulations 2013, reg 10.

Until recently, the PIP2 was exclusively sent to the claimant by the DWP as a paper form via post. However, since December 2021, the DWP offers PIP claimants the option of receiving a link via email that provides the claimant with the e-PIP2 Form.[392] The e-PIP2 Form is identical to the paper PIP2 form in terms of its content.[393] This option is not advertised on the How to Apply for PIP webpage on the Gov.UK site,[394] but is discussed on webpages of advice organisations that assist disabled people such as Child Protection Advocacy Group and Turn2Us.[395]

At present, it is the choice of the claimant as to whether they opt for a paper PIP2 or e-PIP2 form.[396] Further, should a PIP claimant opt for an e-PIP2 but find that they struggle with the online system, they can contact the DWP again and request a paper PIP2 instead. While this is reassuring, there are concerns from advocacy groups and DPOs that the development of the e-PIP2 form may be the first step of developing PIP applications to be 'Digital by Default'.[397]

5.3.3. ACCESSING AND RECEIVING IRELAND'S DA APPLICATION FORM

In Ireland, in order to make a claim for DA, a claimant must fill in a DA1 application form.[398] The DA1 form is available from a range of locations, both physically and online. A print copy of the DA1 form can be collected from any of the 128 Intreo offices,[399] with Intreo being the Irish Public Employment Service provided by the DSP. A Print copy can also be collected from any of the 96 Citizen Information offices,[400] and can be printed by

[392] Carri Swann, 'PIP: digital forms and online claims' (2022) 287 Welfare Rights Bulletin < https://askcpag.org.uk/content/207837/pip-digital-forms-and-online-claims > accessed 10 August 2024.
[393] *ibid.*
[394] Department for Work and Pensions, Personal Independence Payment (PIP) (DWP).
[395]Carri Swann, 'PIP: digital forms and online claims' (2022) 287 Welfare Rights Bulletin < https://askcpag.org.uk/content/207837/pip-digital-forms-and-online-claims > accessed 10 August 2024; Turn2Us, 'Claiming Personal Independence Payment (PIP) - Start your PIP Claim' (*Turn2Us*) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Start-your-PIP-claim > accessed 10 August 2024.
[396] Carri Swann, 'PIP: digital forms and online claims' (2022) 287 Welfare Rights Bulletin < https://askcpag.org.uk/content/207837/pip-digital-forms-and-online-claims > accessed 10 August 2024.
[397] *ibid;* Richard Machin, 'Regressive and precarious: analysing the UK social security system in the light of the findings of the UN Special Rapporteur on poverty and human rights' (2020) 21(3) Social Work and Social Sciences Review 1, 7.
[398] The most recent version of the DA1 form began circulating in January 2022 - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022).
[399] Department of Social Protection, 'Intreo centres and local branch offices' (*Gov.ie*) < https://www.gov.ie/en/directory/category/e1f4b5-intreo-offices/?referrer=http://www.gov.ie/en/service/40cf48-find-your-local-intreo-office/ > accessed 10 August 2024.
[400] Citizen Information is a public body established by the Comhairle Act 2000 to provide free, impartial and confidential information, advice and advocacy services to the public; Citizens Information, 'Find a Citizens Information Centre' (*Citizens Information*) < https://centres.citizensinformation.ie/county.php > accessed 10 August 2024.

GP practices at the request of a claimant.[401] The form can be downloaded from the Gov.ie page for Disability Allowance,[402] from the websites of a number of GP practices,[403] and from the Citizen Information webpage.[404]

Unlike the PIP2 Form in the UK, the DA1 is not accompanied by an information booklet to assist claimants in filling it in. Thus, both the physical and economic dimensions of accessibility are engaged here because, without a baseline level of guidance on how to complete the form, any claimant struggling with the DA1 must undertake private research, which requires either paying for an internet connection or visiting a location with an available internet connection.

Also, whereas the PIP2 screens only for functional limitations, the DA1 screens for both qualifying factors and functional limitations.

5.3.4. COMPARING THE ACCESSIBILITY OF PIP AND DA APPLICATION FORMS

From the above, it is apparent that the DA1 application form in Ireland is much more readily accessible to claimants than the PIP2 in the UK. This difference in approach may indicate a failing on the part of the UK to meet CRPD standards. It is not the limited accessibility of the PIP2 form in the UK that may constitute a CRPD violation in of itself, but the wider implication that a lack of accessibility of the form has on the information dimension of accessibility.

As stated above, a PIP claimant has only one month to complete the PIP2 form from the date of initial contact with the DWP.[405] Within this month, they must comprehend the

[401] Hazelhill Family Practice, 'Disability Allowance Application Form (DA1)' (*Hazelhill Family Practice*) < https://www.hazelhillfamilypractice.com/3forms-and-links/3-2-1disability-allowance-application-form-da1/ > accessed 10 August 2024; Ballsbridge Medical Centre, 'Disability Allowance' (*Ballsbridge Medical Centre*) < https://ballsbridgemedical.ie/information/disability-allowance-application-form-da1/ > accessed 10 August 2024.
[402] Department of Social Protection, 'Disability Allowance' (*Gov.ie*, 4 May 2022) < https://www.gov.ie/en/service/df6811-disability-allowance/?referrer=http://www.gov.ie/DA/ > accessed 10 August 2024.
[403] Hazelhill Family Practice, 'Disability Allowance Application Form (DA1)' (*Hazelhill Family Practice*) < https://www.hazelhillfamilypractice.com/3forms-and-links/3-2-1disability-allowance-application-form-da1/ > accessed 10 August 2024; Ballsbridge Medical Centre, 'Disability Allowance' (*Ballsbridge Medical Centre*) < https://ballsbridgemedical.ie/information/disability-allowance-application-form-da1/ > accessed 10 August 2024.
[404] Citizens Information, 'Disability Allowance' (*Citizens Information*) < https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/disability_allowance.html > accessed 10 August 2024.
[405] The Social Security (Personal Independence Payment) Regulations 2013, reg 8(2).

information included, prepare responses outlining their functional limitations in specific areas, and secure relevant medical evidence.[406]

Were the claim form to be made accessible to PIP claimants before this stage, it would allow for a PIP claimant to have more time in developing their responses to the form and to gather the necessary medical evidence. The present approach of only allowing one month from receiving the PIP2 to comprehend and complete the form and to gather necessary evidence is particularly impactful on claimants with learning disabilities and mental health conditions which affect executive function,[407] thus engaging and potentially violating the non-discrimination dimension of accessibility as the current system is designed in a way which disadvantages those with certain types of impairment, particularly those affecting executive function.[408]

Recommendation 5C: the UK should adopt the Irish approach to make the PIP2 form more widely physically accessible from universal public services, including *inter alia* GP surgeries, local authority information points, and libraries and thus satisfy the dimension of physical accessibility as protected by Article 9(1) CRPD.[409]

This recommendation would allow potential claimants the opportunity to consider the information they must input into the PIP2 and to gather the necessary evidence over a less constrained time period. This simple act would help to increase both physical and information accessibility protection in the UK. Removal of the time constraints placed on claimants to complete their PIP2 form within one month of receipt from the DWP would

[406] Claimants are advised not to delay submission of their PIP2 Forms if medical evidence is not available at the time, but to send the medical evidence at a later stage to the DWP address - Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021) 14. However, claimants are often reluctant to do this and would rather send the completed form and all evidence in one submission due to widespread report of administrative errors from the DWP. For accounts of maladministration in the DWP, see - Robert Thomas, 'Benefit complaints: a critical analysis' (2022) 44 Journal of Social Welfare and Family Law 258.

[407] Executive function is an umbrella term that refers to a person's functions and abilities such as prioritizing and sequencing behaviour, inhibiting familiar or stereotyped behaviours, creating and maintaining an idea of what task or information is most relevant for current purposes, providing resistance to information that is distracting, or task-irrelevant, switching between task goals, utilizing relevant information in support of decision-making, categorizing or otherwise abstracting common elements across items, and handling novel information or situations. – Marie T. Banich, 'Executive Function: The Search for an Integrated Account' (2009) 18(2) Current Directions in Psychological Science 89, 89.

[408] *ibid.*

[409] Indeed, PIP claimants were already directed to such public service providers in the claimant journey guidance, which advises claimants to look at information regarding PIP, including information found online or from support organisations, leaflets, the DWP, GPs and healthcare professionals, or family & friends. It surely follows that these public service providers distribute copies of the PIP2 form also - Department for Work and Pensions, Personal Independence Payment: the claimant journey (DWP 2015) 1.

also remove a barrier of access and thus satisfy the non-discrimination dimension of accessibility protected by Article 9(1) CRPD.

5.4. FILLING IN THE BENEFIT APPLICATION FORM

When comparing the structure of the PIP2 and DA Forms, there are three main areas of contrast between them. These are (i) the number of sections/parts to the form and the number of questions each contains, (iii) the physical space available for claimants to record their testimony, and (iii) the functional activities that require addressing. Each of these points of contrast are considered below.

5.4.1. THE SECTIONS OF THE PIP2 APPLICATION FORM

The PIP2 form comprises of four sections,[410] and before these, a list of instructions on the first two pages on how to complete the PIP2 Form. A 12-page instruction booklet is also included alongside the PIP2 form.

Taking first the instructions on the first two pages, these inform the claimant to read through the accompanying *Information Booklet*, to start collecting accompanying evidence, fill in the answers to the questions on the PIP2 Form, photocopy the collected evidence and return the PIP2 Form to the DWP with the accompanying evidence attached. The Information Booklet contains two pages of guidance on what evidence to send and what evidence would be inappropriate to send. The crux of this part of the guidance is that evidence sent should explain how the health conditions and disabilities reported by the claimant specifically affect them and not be general information regarding the health conditions and disabilities.

Section One of the PIP2 Form - *About your health condition or disability* - invites claimants to list their disabilities and health conditions, their medications and their treatments. For the disabilities and health conditions, the claimant must record the approximate date at which they began. For the medications, claimants are invited to list their dosage, regularity and any side effects caused. For the treatments, claimants are invited to record the date treatment started or is due to start and the regularity of which the treatment will occur. Section One is two pages long.

[410] Both the PIP 2 Form and its accompanying Information Booklet have gone through several updates. Discussion in this subsection will focus primarily on the current formulations of these documents, with only brief reference to previous versions wherever necessary.

Section Two- About your health professionals - invites claimants to record the contact information of medical professionals who support the claimant, along with their role/title and the last date when the medical professional was seen by the claimant. Section Two is two pages long.

Section Three - How your health condition or disability affects your day-to-day life - is the most substantial section of the form, and is where the claimant records their capability in undertaking the functional activities. Section Three is 27 pages long.

There are twelve specific activities listed in this section of the PIP2 Form, and the claimant must record how if at all, they find undertaking each activity difficult and provide details as to why this is. The activities that are included in the PIP2 Form and which are subsequently assessed in order to determine whether an award of PIP can be given are as follows:

Daily Living Activities

- preparing food,
- eating and drinking,
- managing your treatments,
- washing and bathing,
- using the toilet and managing incontinence,
- dressing and undressing,
- talking, listening and understanding,
- reading,
- mixing with other people,
- managing money.[411]

Mobility Activities

- planning and following a journey,
- moving around.

[411] The Social Security (Personal Independence Payment) Regulations 2013, Sch 1 Part 2, which contains the descriptors that relate to these daily living activities, utilises different language to that included in the PIP2 Form for several activities, instead listing the activities as (1) Preparing food, (2) Taking nutrition, (3) Managing therapy or monitoring a health condition, (4) Washing and bathing, (5) Managing toilet needs or incontinence, (6) Dressing and undressing, (7) Communicating verbally, (8) Reading and understanding signs, symbols and words, (9) Engaging with other people face to face, (10) Making budgeting decisions. The adoption of similar but different language between the legislation and the PIP2 Form leaves room for ambiguity and difficulty in interpretation, particularly for claimants with intellectual or learning disabilities.

These functional activities are discussed in full in section 5.4.3 below.

5.4.2. THE SECTIONS OF THE DA1 APPLICATION FORM

The DA1 form comprises of 11 parts and a cover sheet. The cover sheet of a DA1 form states the qualifying factors and eligibility criteria for DA, followed by instructions to the claimant informing them to complete all parts other than Part 11b, which they must ask their doctor to complete. The return address for the DA1 form is included on the cover page,[412] as are the contact details of the DA section of the DSP and other disability-assisting organisations are signposted. Parts 1-7 of the DA1 require the claimant to answer a series of questions over nine pages,[413] which cover both personal details such as contact information and financial information such as income from employment or maintenance in order for the claimant to have their means tested.[414] These sections all relate to qualifying factors for DA.

Part 8, titled Checklist, includes a detailed list of additional documentation that must be sent with the DA1 in order for the claim to be processed. This checklist includes the additional information required by the DSP to process the claim along with an indication as to which question requires which form of evidence. For example, for question 19 - Are you or your partner employed? – a claimant is informed that they must include 'Three recent payslips for you and your spouse, civil partner or cohabitant.'.

However, despite the usefulness and clear presentation of this checklist detailing the evidence that a DA claimant must include to support their answers regarding personal and financial information, no such checklist is included for medical evidence in the second half of the form. Further, the only guidance provided to DA claimants in the DA1 is this checklist in Part 8 and the cover sheet.

---

[412] In the previous version of the DA1 form, the return address was included on Page 21 alongside the Checklist - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2018).

[413] In the previous version of the DA1 form, there were 60 such questions, demonstrating a rationalisation in this area of the form - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2018).

[414] Part 1 requires the claimant to input their name, contact details and marital/relationship status. Part 2 requires the claimant to input the name and contact details of their spouse, partner or cohabitant, should they have one. Part 3 requires the claimant to input financial details both regarding themselves and their partner if applicable.[414] This part screens for details including the employment status, weekly income from work, property ownership, payments from employment schemes, stocks and shares, maintenance payments, and any additional income from other sources of the claimant (and of their partner if applicable). Part 4 covers the habitual residence test. Part 5 requires the claimant to record any 'qualified children' the claimant wishes to claim for. Part 6 invites claimants to apply for 'other payments', which include the Living Alone Increase to DA and the secondary benefits of Electricity or Gas Allowance, Free Television Licence and Fuel Allowance (DA claimants can also separately claim for free travel and telephone support allowance.). Each of these will be payable subject to their own qualifying factors and eligibility criteria. Part 7 covers the bank details of the claimant.

Recommendation 5D: In order to fulfil its obligation under the non-discrimination dimension of accessibility, and in order to avoid engagement of both the physical and economic dimensions of accessibility, it is advised that Ireland develops an information booklet similar in style to that which accompanies the PIP2 so that all claimants have a baseline level of guidance to assist completion of the DA1.

Between Part 8 and the remainder of the DA1 form there is a box with the heading 'Medical Report for Disability Allowance', which denotes the move from the input of personal and financial details to the input of medical details into the DA1 form. The Medical Report for Disability Allowance is the first point that invites the claimant to discuss their disability and the impact that it has on their lives and thus the eligibility criteria for DA. Indeed, a DA claimant must navigate 38 questions across 10 pages regarding their personal and financial details before being able to report on their disabilities, which form the reason for why the claimant is applying for the benefit.

With its 11 parts spanning both qualifying factors and eligibility criteria, the DA1 form is much more complex than the PIP2 form. While it is accepted that an application form for DA, in its current structure, must obtain information from the claimant regarding their personal and financial details, the current structure of the form suffers from the same issues of length and complexity the preceded calls for simplification to the primary disability welfare benefit in the UK.[415] As Harris notes, complexity 'hinders the process of claiming benefits'.[416] As the complexity of the form constitutes a barrier to social security, the DA1 itself may be in violation of the information dimension of accessibility as protected by Article 9(1) CRPD in conjunction with Article 28 CRPD.

Recommendation 5E: to adopt a two-stage benefit application approach as is utilised in the UK in order to make the DA claim form more accessible.

The first stage of this proposed new approach would cover the current Parts 1-7 of the DA1 in order to screen the qualifying factors for DA before moving on to consideration of the eligibility criteria. This first stage could either be as an interview or phone call with

[415] Department for Work and Pensions, Public Consultation: Disability Living Allowance Reform (Cmd 7984, 2010), 10; Neville Harris, 'Complexity in the law and administration of social security: is it really a problem?' (2015) 37 (2) JSWFL 209, 219-220; Neville Harris, 'Complexity, Law and Social Security in the United Kingdom' (2006) 8(2) Eur J Soc Sec 145, 160.
[416] Neville Harris, 'Complexity, Law and Social Security in the United Kingdom' (2006) 8(2) Eur J Soc Sec 145, 160.

DSP (as is currently done in the UK with the DWP) or as a separate form by dividing the current DA1 form between Parts 1-8 and the Medical Report for Disability Allowance, creating a DA1 for personal information and DA2 for solely the Medical Report for Disability Allowance. Should the DA1 be divided into two separate forms, then each would require its own information booklet providing guidance as to its completion as per recommendation 5D above.

The Medical Report for Disability Allowance consists of Parts 9, 10, and 11a to be completed by the claimant, and Part 11b to be completed by the doctor of the claimant. However, all of Parts 10 and 11 require the input of information from someone other than the claimant, meaning that Part 9 is the only section of the DA1 form where the claimant can report their own personal testimony as to how they are affected by their disability or health condition. Part 9 is five pages long.

Part 9 is titled 'Your education and work history and how your disability, medical condition, illness or injury affects the activities of your typical day'. Part 9 is not divided into separate questions by number as with the first half of the form, but there are a series of thematic headings that separate the content of the part. Some headings are self-explanatory such as Current Occupation and Level of Education, Your GP, Names of Specialists, If Pregnant Expected Date of Delivery, and Medication.

Claimants must then record their medical history, under the headings of Present Disability, Medical Condition, Illness, or Injuries and Past Medical Conditions, Operations, and Injuries. In these sections, claimants must input the name of their conditions, the dates of onset and the date that treatment for the conditions began.[417] There is no information provided in the DA1 form to identify the difference between a present or past health condition, which creates ambiguity where a claimant suffered from an acute condition previously that, although treated, has caused long-standing functional limitations. An example here would be a person suffering from encephalitis, which despite being treated years previously, has left the person with persistent seizures and migraines. In this instance, it is unclear whether encephalitis is a past or present condition.

[417] Surprisingly, on the previous version of the DA1 form, there was no specified place for claimants to record their health conditions and disabilities, with these instead being recorded in the doctor's medical report - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2018).

The next heading in Part 9 is 'How Does Your Disability, Medical Condition, Illness or Injury Affect You in the Following Areas?'. This section comprises of 26 questions spread across six sub-headings, which are:

- Physical health,
- Mental health,
- Activities for daily living (ADLs),
- Travel,
- Communication,
- Vision.

The functional activities listed under each of these headings are discussed in full below.

Parts 10 and 11 make up the final seven pages of the DA1 Form. Parts 10 and 11a are a declaration of honesty and a request to provide permission to release medical information respectively, which must be signed by the claimant. Part 11b – Medical report by your doctor – is the final part of the DA1 form and is discussed below in section 5.5. Notably, at four pages long Part 11b is almost the same length as Part 9 - How Does Your Disability, Medical Condition, Illness or Injury Affect You in the Following Areas.

5.4.3. THE FUNCTIONAL ACTIVITIES INCLUDED IN PIP2 AND DA1 FORMS

The activities that are included in the PIP2 Form and which are subsequently assessed in order to determine whether an award of PIP can be given, are as follows:

Daily Living Activities

- preparing food,
- eating and drinking,
- managing your treatments,
- washing and bathing,
- using the toilet and managing incontinence,
- dressing and undressing,
- talking, listening and understanding,
- reading,
- mixing with other people,
- managing money.

Mobility Activities

- planning and following a journey,
- moving around.

For each of these functional activities, PIP claimants must explain whether they are able to undertake the activity safely, to an acceptable standard, repeatedly and in a reasonable time.[418] The specific meaning of each of these terms in their PIP context are discussed in the next chapter.

For DA, there are 26 questions regarding functional activities spread across six sub-headings, which are:

- Physical health,
- Mental health,
- Activities for daily living (ADLs),
- Travel,
- Communication,
- Vision.

It is under the physical health sub-heading that the only non-yes or no question is included, which asks 'how far can you walk on level ground without needing to stop, which, while not a simple binary choice, is still a question that expects a brief response.

This question is also notable due to its mirroring of the 'moving around' activity from PIP in the UK. Indeed, these 26 questions that screen how DA claimants are affected by their health conditions reflect most of the PIP functional activities. For example, the Mental Health screening question 'do you have difficulty interacting with people?' mirrors the 'engaging with others' activity for PIP. Further, the showering, dressing and toileting Activities for Daily Living mirror the 'washing and bathing', 'dressing and undressing, and 'managing toileting needs' PIP activities. However, as PIP only considers twelve mobility and daily living functional activities, there are many more activities and facets of life covered by DA than PIP. The Activities for Daily Living for DA also include housework, shopping and family, which are activities more in line with the previous system of DLA in the UK. Moreover, under Physical Health, the claimant is asked

[418] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021), 4; The Social Security (Personal Independence Payment) Regulations 2013, reg 4(2A).

whether their ability to sit and stand, to balance, to climb stairs or to use their hands is affected by their disability. Further, under Mental Health, the claimant is asked whether they have difficulties with memory, concentration, learning new information, sleeping, or partaking in leisure activities caused by their disabilities. While some of the above difficulties may also be recorded in an application for PIP, they would only be recorded in relation to the 12 specific functional activities, and PIP claimants are not prompted to consider these facets of their disabilities.

The major difference between the PIP2 and DA1 Form here is quite apparent. A PIP claimant will record functional limitations in 12 specific activities, whereas a DA claimant records limitations in 26 activities. As for any overlap between these activities, there are 7 activities that the claimant must discuss present on both the PIP2 and DA1.[419] When discussing communication, there is only one question relevant to this in the PIP2, whereas there are three separate questions relating to communication in the DA1, which require the claimant to discuss any difficulty in hearing, difficulty in speech, and whether they wear hearing aids. The PIP activity of 'reading and understanding signs, symbols and words' has no direct correlative in DA, but under the heading of mental health, the DA1 requires claimants to tell of any difficulty they have in learning new information, which is a similar activity to understanding written information. In all, PIP requires claimants to explain their functional limitations in 4 activities that DA claimants do not,[420] and DA claimants are required to explain their functional limitations in 16 activities that PIP claimants are not.[421] Thus, DA has a wider scope of assessment than PIP.

This wider scope of assessment is more in line with the principles of dignity and autonomy central to the human-rights model of the CRPD,[422] and thus shows a greater practical application of CRPD accessibility principles. This is because accessibility is the vehicle through which barriers to equal treatment are removed and thus through which the application of the human rights model is realised (See Chapter 3.2.3.4). Indeed, if a health condition or disability reported by a PIP claimant is determined during the

[419] Although different language is adopted on both the DA1 and PIP2, the shared activities relate to cooking, washing, dressing, managing toilet needs, communication, engaging with others and moving around.
[420] These are taking nutrition, managing therapy or monitoring a health condition, making budgeting decisions, and planning and following journeys.
[421] These questions require the claimant to record how their disability causes difficulty with climbing stairs, standing or sitting, balance or co-ordination, use of hands, lifting or carrying, memory, concentration, sleeping, undertaking leisure activities, housework, shopping, taking care of family, driving, utilising public transport, and vision.
[422] Gerard Quinn and Theresia Degener, 'The moral authority for change: human rights values and the worldwide process of disability reform' in Gerard Quinn, Theresia Degener et al, *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability* (United Nations 2002) 14, 19.

decision-making process (Chapter 6) to not engage one of the functional activities for PIP, then that health condition or disability is entirely disregarded.

While much of the impact of basing eligibility for PIP or DA on limitations in undertaking a small series of activities is the subject of the next chapter, there are two ways in which the functional activities assessed for PIP and DA impact claimants at this stage. These are (i) they require claimants to report on their limitations in a prescribed structure and (ii) it is not immediately clear to claimants what level of impairment they must display in order to prove limitation under each activity.

Taking first the prescribed structure of claimant responses, a major criticism is that claimants are barred from reporting their limitations in their own words. Instead, claimants truncate reports of difficulties and symptoms that may demonstrate limitation of several of the assessable functional activities into smaller sections under the relevant headings in the PIP2 or DA Form which may not provide the full context the claimant wished to put forward. An example of this is reported in Robinson's '*The Form that Flattens'*,[423] in which the testimony of a claimant as initially is described as being divided into parts in order to address specific questions on the PIP2 Form, which saw the claimant unwillingly separate reports of the beginning of their disability from its impact. To the claimant interviewed, these matters were part of the same issue and thus artificially separating out the response removed some of the context.[424] However, in the same report, the prescribed manner of answering helped the claimant recognise that they may have eligibility under the activity of cooking, as although they could ultimately cook a meal on a given day, they could not do so repeatedly or reliably.[425]

Recommendation 5F: to provide PIP and DA claimants with space for an open-ended response, along with the instruction that their response must demonstrate their ability or lack thereof to undertake the necessary functional activities.

While this would certainly alleviate the problem of prescribed responses, the non-discrimination dimension of accessibility may still not be fully met. This is because such an approach of allowing open-ended responses would allow for claimants without

[423] Kelly Fagan Robinson, 'The Form That Flattens' in Aaron Parkhurst and Timothy Carroll (eds.), *Medical Materialities: towards a material culture of Medical Anthropology* (Routledge, 2020).
[424] *ibid* 137.
[425] *ibid* 138-139.

cognitive impairments to better report their limitations and thus be more likely to secure an award for PIP or DA. However, there may be no way to entirely remove this barrier of requiring formalised communication for claimants with cognitive and learning impairments, particularly those whose impairments are severe. As Shakespeare reports, there is little that can be done to make the world -or in this case completing a form - more accessible to a person who lacks basic numeracy or literacy skills.[426] While this could be taken as an argument against accessibility as a universal human right, it could be argued that this issue serves to demonstrate the power of accessibility in the CRPD and thus the protection it grants. Indeed, whereas the formulation advised in recommendation 5F would make both the PIP2 and DA1 more compliant with the human rights model of disability and Article 1 CRPD, disabled people who would not have their barrier to communication removed by the formulation in recommendation 5F including those with severe learning and cognitive impairments could utilise Article 21 CRPD - freedom of expression and opinion, and access to information - to justify receiving either a PIP2 or DA1 in an alternative format.[427]

An example through which the information dimension of accessibility is shown to be upheld to a greater degree by DA is the inclusion of shopping as a functional activity in the DA1. The difficulties that people with physical, mental, sensory and intellectual disabilities have in navigating supermarkets is well documented. In relation to this, Wendell identified:

> the fact that our food, essential personal items, and household goods tend to be sold in supermarkets, which are huge, largely windowless unventilated boxy spaces with blindingly bright lights, miles of aisles, and lots of hard shiny surfaces that lack places for people to sit down in the middle of a shopping trip to collect their wits or simply to rest for a few minutes, effectively restricts access or provides a powerful deterrent to many people with disabilities.[428]

On this point, Davies elaborates that:

---

[426] Tom Shakespeare, Disability Rights and Wrongs Revisited (Routledge 2014)40

[427] Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost – Article 21(a) CRPD; Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions Article 21(b) CRPD.

[428] Susan Wendell, *The Rejected Body* (Routledge, 1996).

> Such an environment is unfriendly, unhealthy, and sometimes overtly dangerous to people who, for example, have fibromyalgia, panic disorders, severe attentional deficits, degenerative joint diseases, or MTBI.[429]

From the account provided by Wendell, it is apparent that functional activities assessed for PIP such as moving around, reading and understanding, and communicating are engaged. As such, it may be that a PIP claimant can similarly describe a trip to the shop and their limitations in so doing as part of their responses to the PIP2 form. However, such a response would be disjointed and separated or repeated to address each of the separate functional activities as described above by Robinson. Moreover, a PIP claimant may not immediately recollect a shopping trip when addressing the rubrics of the questions in the PIP2. Indeed, the request to provide information regarding a difficulty reading and understanding conjures images of written prose, not food packets. This exemplifies an issue arising both from the requirement that claimants report on their limitations in a prescribed structure and a lack of clarity as to the type of impairment they must display in order to prove limitation under each activity.

Without such a prompt as to discuss functional limitations when undertaking a standard activity of daily living such as shopping in the DA1, PIP claimants may be underreporting on areas where they are limited due to a lack of clarity of what should be discussed in their testimony.[430] Indeed, the worked exemplars in the PIP2 form only utilise a shop as an example in two contexts – understanding how much change to receive after paying for goods in relation to money management,[431] and an inability to undertake shopping due to anxiety in relation to planning and follow journeys.[432]

If, as with the DA1, the PIP2 include a section where claimants reported on difficulties undertaking 'Activities of Daily Living' such as shopping or undertaking housework, then claimants would be necessarily required to report on situations where their functional limitations are presented against the easy to understand framework of a standard task.

[429] N Ann Davis, 'Invisible Disability' (2005) 116(1) University of Chicago Press 153, 199.
[430] Neville Harris, 'Complexity, Law and Social Security in the United Kingdom' (2006) 8(2) Eur J Soc Sec 145, 158-159.
[431] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021) 11, 40.
[432] *ibid,* 42.

Recommendation 5G: include spaces in the PIP2 form to allow for open-ended responses, amending the PIP2 form to include a section where claimants are asked to provide an open-ended report of a typical day, including how they manage activities for daily living such as shopping, housework and leisure, as is the case with the DA1 form.

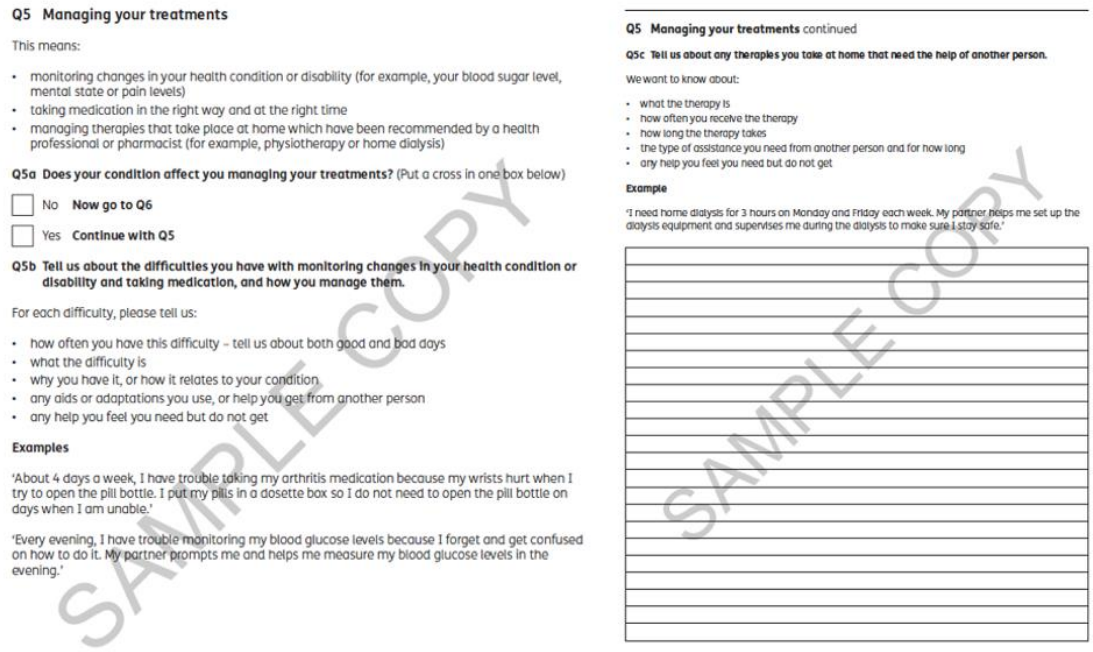
This recommendation would ensure that the information dimension of accessibility was respected and would meet the standard of CRPD Article 21.

5.4.4. THE SPACE PROVIDED FOR RESPONSES IN PIP2 AND DA1 FORMS

As will be demonstrated below, the spaces provided for responses in the application forms for PIP and DA can confuse claimants regarding the length of testimony they should record. This confusion engages the information and access to justice dimensions of accessibility.

For each of the functional activities contained in Section Three of the PIP2 form, claimants are invited to tick a box declaring whether their health condition or disability affects their ability to undertake the activity and a box in which the claimant is invited to document specifically how specifically they are affected in this area. For each activity in the PIP2 Form, a brief description of the activity, prompts as to the details the DWP would require in order to assess the competency of a claimant for the activity, and exemplars of the type of response claimants should provide are included.[433] Below is the section of the PIP2 contextualising the information that is required from claimants on the daily living activity of Manging your treatments.

[433] In the June 2018 version of the PIP2 Form, there were no examplars included, and while there were prompts as to the type of detail the DWP hoped the claimant would record, these prompts were not as clearly worded as on the January 2021 version of the form. Another difference is that the June 2018 version of the form included a tick box for claimants to record whether they required an aid or appliance in undertaking the activity - Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2018).



Q5 Managing your treatments

This means:

- monitoring changes in your health condition or disability (for example, your blood sugar level, mental state or pain levels)
- taking medication in the right way and at the right time
- managing therapies that take place at home which have been recommended by a health professional or pharmacist (for example, physiotherapy or home dialysis)

Q5a Does your condition affect you managing your treatments? (Put a cross in one box below)

☐ No **Now go to Q6**

☐ Yes **Continue with Q5**

Q5b Tell us about the difficulties you have with monitoring changes in your health condition or disability and taking medication, and how you manage them.

For each difficulty, please tell us:

- how often you have this difficulty – tell us about both good and bad days
- what the difficulty is
- why you have it, or how it relates to your condition
- any aids or adaptations you use, or help you get from another person
- any help you feel you need but do not get

Examples

'About 4 days a week, I have trouble taking my arthritis medication because my wrists hurt when I try to open the pill bottle. I put my pills in a dosette box so I do not need to open the pill bottle on days when I am unable.'

'Every evening, I have trouble monitoring my blood glucose levels because I forget and get confused on how to do it. My partner prompts me and helps me measure my blood glucose levels in the evening.'

Q5 Managing your treatments continued

Q5c Tell us about any therapies you take at home that need the help of another person.

We want to know about:

- what the therapy is
- how often you receive the therapy
- how long the therapy takes
- the type of assistance you need from another person and for how long
- any help you feel you need but do not get

Example

'I need home dialysis for 3 hours on Monday and Friday each week. My partner helps me set up the dialysis equipment and supervises me during the dialysis to make sure I stay safe.'

Image 1: A sample copy of the two page spread included in the PIP2 form regarding the 'Managing your treatments' descriptor - Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021).

Each of the twelve activities included in the PIP2 form has a page similar to this that contextualises the information required and also includes binary tick-box questions. Immediately following these pages is another page inviting the claimant to record any other difficulties that they have with the activity, and the majority of each of these pages is taken up by a text box which allows the claimant to answer these questions in long form. Should claimants exhaust this space, they are invited to continue on in the Additional Information section towards the end of the form, or if this is also exhausted, to:

> […] use separate pieces of paper. Remember to send them to us with this form.
>
> If you do this, write your name and reference number at the top of each extra page.[434]

Despite all of the space provided for claimants to record their responses in the PIP2 Form, the exemplars provided for each activity are comparatively short. Indeed, although the

[434] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021), 4.

majority of a full page of A4 is provided for claimants to record their limitations, the examples provided take up only two lines each. The advice organisation Benefits and Work indicate that the difference between the length of the examples and size of the response box creates a 'massive disparity',[435] and appears to infer that this may encourage claimants to write concisely in the PIP2 and not record the full extent of their limitations. This point is further enforced by the advice in the Information Booklet accompanying the PIP2 telling claimants that when filling out the PIP2, 'you do not have to fill all of the space provided'.[436] Benefits and Work also voiced concerns that the lengthy response boxes of the current PIP2, which replace several tick boxes from the previous version of the form,[437] puts onus on 'the claimant to provide detailed information in a lengthy written format without the benefit of any tick boxes'.[438] However, interviews undertaken by Machin and McCormack indicated that claimants with mental health conditions and fluctuating limitations preferred having more space to record more intricate details about their complex difficulties.[439]

As for DA, of the 26 functional activities considered, 25 are yes or no tick box questions with a space at the side for claimants to describe their answer if they tick yes.[440] Next to each of the 26 activity questions, there is an 85mm by 15mm box for claimants to record their answer in, and there is no instruction on the DA1 form as to whether claimants can

[435] Benefits and Work, 'New PIP 2 How Your Disability Affects You Form' (*BenefitsandWork*, 12 March 2021) < https://www.benefitsandwork.co.uk/news/new-pip2-how-your-disability-affects-you-form > accessed 10 August 2024.
[436] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021).
[437] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2018).
[438] Benefits and Work, 'New PIP 2 How Your Disability Affects You Form' (*BenefitsandWork*, 12 March 2021) < https://www.benefitsandwork.co.uk/news/new-pip2-how-your-disability-affects-you-form > accessed 10 August 2024.
[439] Richard Machin and Fiona McCormack, 'The impact of the transition to Personal Independence Payment on claimants with mental health problems' (2021) Disability & Society Online 1, 11.
[440] This is the most drastic change from the previous version of the DA1 form. In the previous DA1 form, claimants would have to provide answers to following questions: (a) Is your Mental Health affected?, (b) Is your Physical Health affected?, (c) Is your home and family care affected (for example, housework, shopping, cooking or DIY):, (d) Is your manual dexterity affected (for example, picking up small items, writing or using a computer):, (e) Is your communication and sensory affected (for example, speech/hearing/seeing):, (f) Are your hobbies and leisure affected (for example, sports, reading or watching TV):, (g) Please provide an outline of your activities during a typical day and any other relevant information?, (h) How often do you visit your doctor?, (i)Are you currently on any medication?. Although each of these also had a ye/no tickbox, the spaces provided to claimants to specify a selection of yes were much larger. The open style of the questions on the previous version DA1, and the larger boxes provided, allowed for some flexibility in how the claimant approaches recording the impact of their disability. However, a difficulty presented by the more open style of the questions on the previous DA1 was the overlap between some of the sub-questions. For example, a claimant with arthritis would likely record issues relating to arthritis as affecting their physical health (sub-question b), affecting their manual dexterity (sub-question d), and affecting the completion of activities during a typical day (sub-question g). Such a claimant may also record issues relating to arthritis as affecting their home and family care (sub-question c), and their hobbies (sub-question f). While this allows for a claimant to more fully record the impact of their disabilities in a manner not as restrictive as that in the PIP2 form, it does mean that a Deciding Officer would have to consult between three and five different answers on the form to fully comprehend the impact that arthritis had on the claimant - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2018).

attach additional sheets to the form containing more detailed answers to this question. Figure 3 below is an 85mm by 15mm box included here to indicate the small size of the data entry box. Part 9 concludes with a box in which claimants can provide any additional information they see fit.

Here, the contrast between the PIP2 and DA1 is stark when considering that the PIP2 provides a large amount of space for claimants to record their responses, with no less than 13 full pages of lined print. The small response boxes in the DA1 form, similarly to the brief exemplars included in the PIP2 form, surely signal to claimants that they need not include much in the way of personal testimony when applying for DA.

Importantly, the testimony supplied by claimants is a key source of evidence upon which the decision-making and appeals processes hinge.[441] Thus, if the testimony supplied by the claimant lacks sufficient detail, this can harm their chances of success at both the initial award stage and the review and appeal stage. As both the PIP2 and DA1 are currently formulated in such a way as to potentially limit claimant testimony and therefore chances of success on appeal, the accessibility dimension of access to justice as protected by Article 13 CRPD is engaged and potentially violated by both the UK and Ireland here. If recommendation 5G above were to be implemented, then this would satisfy Article 13 CRPD here.

The small response boxes in the DA1 form and the brief exemplar answers in the PIP2 form both make the level and nature of impairment that should be recorded into the forms less clear to claimants. This lack of clarity as to the level of impairment a claimant must display when undertaking these activities in order to secure an award engages the information dimension of accessibility. The issue of lack of clarity is quite easily addressed in the UK. In the UK, the functional assessment is undertaken by a DWP Case Manager based on all evidence they receive, including the self-reporting of a claimant in the PIP2 Form. The assessment involves the DWP Case Manager comparing the evidence against a set of descriptors contained in Schedule 1 of the Social Security (Personal Independence Payment) Regulations 2013 (PIP Regs 2013) outlining different levels of impairment and how many points each codes for. This is discussed at length in the next chapter. Although these descriptors, through being included in the PIP Regs 2013 and

[441] Katie Pybus, Kate E Pickett, Charlie Lloyd, Stephanie Prady and Richard Wilkinson, 'Functional assessments in the UK social security system: experiences of claimants with mental health conditions' (2021) 50(2) J Social Policy 305.

thus being available to the public via statute books,[442] consulting the law as written is not a simple task for either a claimant or their representative if they are not legally trained.

Recommendation 5H: to include the PIP descriptors from the PIP Regs 2013 on the Gov.UK PIP webpage.

This would be consistent with the approach currently employed by the UK government on the Gov.UK PIP webpage as, at present, the Gov.UK PIP webpage includes a plain English version of the statutory definition of disability in the context to PIP is already included on the webpage.

One way in which the DA1 Form could be amended to be more in line with the human rights model of disability is to allow for more space for claimants to records their personal testimony of their limitations.

Recommendation 5I: to adopt an approach to space provided for claimant responses no less than the PIP2 Form and allow at least one side of A4 per functional activity for a claimant to record their limitations.

It is acknowledged that this would make for a longer and bulkier application form, but this issue could be mitigated against if the recommendation 5E to remove Parts 1-8 from the Medical Assessment Form for DA was applied.

Also regarding DA, the lack of clarity regarding what a claimant must report in a DA1 form caused by the small space provided for testimony is further compounded by a lack of clarity regarding how DSP Decision Makers undertake functional assessments and the weight that they allocate to a reported limitation in any of the 26 activities. Discussion of this opacity from the DSP regarding functional assessments and thus engagement and potential violation of the information and access to justice dimensions of accessibility as protected by Article 9(1) and Article 13 CRPD forms a major discussion in the next chapter.

[442] Also available online at - UK Government, 'The Social Security (Personal Independence Payment) Regulations 2013' (*Legislation.gov*) < https://www.legislation.gov.uk/uksi/2013/377/made > accessed 10 August 2024.

Having now outlined the actions a claimant undertakes when completing the DA1 or PIP2 form in of itself, section 5.5 considers the actions a claimant takes to secure testimony from others which is necessary to ensure the success of PIP and DA claims.

5.5. THE CONTRIBUTIONS OF MEDICAL PRACTITIONERS TO THE DA1 AND PIP2

As stated in the introduction of this chapter, the DWP Claimant Journey guidance describes the PIP2 Form as allowing 'the claimant to explain how their condition affects them in their own words.'.[443] Given the necessity of corroborating evidence to ensure the possibility of success, this is not a true reflection of the PIP2 Form. The same is even more so the case for the DA1. The DA1 requires not only additional evidence to be attached, but for the GP of the claimant to write into the DA1 itself.

This section focuses primarily on contributions made by medical practitioners towards the completion of the DA1 or PIP2 forms.

This is because medical practitioners are the contributors whose testimony is entered into or directly attached to the PIP2 and DA1 Form. Although a legal representative or DPO/NGO advisor who assisted the claimant in completing the form may be said to have contributed, their role is to assist the claimant to communicate their limitations with more clarity.[444] Indeed, it is their communication skills and experience with completing application forms which is of use, not their personal testimony in support of the claimant and as such are not considered in this section.[445]

There is at a surface level a clear difference between the role undertaken by medical professionals in support of DA claimants in Ireland PIP claimants in the UK. As stated previously, the testimony of the GP of the DA claimant must be written into the DA1 form in order to complete the application form. In contrast, PIP claimants, via the Information Booklet to the PIP2 form, are advised as to types of evidence that they 'could

[443] Department for Work and Pensions, Personal Independent Payment: the claimant journey (DWP 2015) 3.
[444] See for example: Kelly Fagan Robinson, 'The Form That Flattens' in Aaron Parkhurst and Timothy Carroll (eds.), *Medical Materialities: towards a material culture of Medical Anthropology* (Routledge, 2020).
[445] With this said, there is clear evidence, at least for those cases that progress to tribunal, that forms completed with the assistance of professionals with experience have a greater chance of success - Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appelants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 417; Hazel Genn and Yvette Genn, *The Effectiveness of Representation at Tribunals: Report to the Lord Chancellor* (UCL Press, 1989).

send'.[446] The use of the word could here denotes that the provision of additional medical evidence is not a mandatory requirement to succeed in a claim for PIP. However, while not mandatory, medical evidence supplied by PIP evidence is often the chief exhibit referred to by tribunal judges.[447] Indeed the medical evidence, often when considered in contrast to the report by the DWP case manager, is often held to give a truer indication of the limitations of the claimant.[448] However, failure to supply additional medical evidence along with a PIP2 form would result in, in the case of tribunal, judges having only the claimant's personal testimony and the DWP report following functional assessment to consult in reaching their decision.[449] It is the opinion of academics,[450] practitioners, and the CRPD Committee that these DWP reports,[451] while theoretically objective summaries of the level of functioning of a PIP claimant,[452] lack nuance and personal understanding of the claimant and their disabilities, particularly in the case of claimants with fluctuating conditions, and are often rife with errors.[453] How these DWP reports are produced and the assessments on which they are based are the subject of the next chapter (See Chapter 6.2 and 6.3). Thus, while the provision of medical evidence along with a PIP2 form is not mandatory, provision of such evidence increases the chances of success whenever a PIP claim decision is challenged by the claimant (See Chapter 6.5 for further discussion),[454] positioning the provision of supporting medical evidence as a tacit requirement of fully completing the PIP2 form.

It has now been established that the supply of medical evidence at least a tacit requirement to fully complete a PIP2 and DA1 form. The next several sections will discuss how a claimant secures the medical evidence and how the dimensions of economic accessibility

[446] Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021) 2, 3.
[447] Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appelants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 423.
[448] *ibid.*
[449] Katie Pybus, Kate E Pickett, Charlie Lloyd, Stephanie Prady and Richard Wilkinson, 'Functional assessments in the UK social security system: experiences of claimants with mental health conditions' (2021) 50(2) J Social Policy 305, 314.
[450] Katie Pybus, Kate E Pickett, Charlie Lloyd, Stephanie Prady and Richard Wilkinson, 'Functional assessments in the UK social security system: experiences of claimants with mental health conditions' (2021) 50(2) J Social Policy 305, 314; Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appellants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 424.
[451] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1. [90], [113e].
[452] Katie Pybus, Kate E Pickett, Charlie Lloyd, Stephanie Prady and Richard Wilkinson, 'Functional assessments in the UK social security system: experiences of claimants with mental health conditions' (2021) 50(2) J Social Policy 305, 314.
[453] Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appellants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 422.
[454] Ellen Clifford, The War on Disabled People: Capitalism, Welfare and the Making of a Human Catastrophe (Zed Books 2020) 83.

are engaged through so doing. This is particularly the case for the content of the *Medical Report from your Doctor* in Part 11b of the DA1 form, where the content of the Ability/Disability profile of the *Medical Report from your Doctor* is discussed at length.

5.5.1. THE CONTRIBUTIONS OF MEDICAL PRACTITIONERS TO THE DA1 FORM

A claimant for DA must access a GP appointment in order to seek their testimony in Part 11b of the DA1 form. Should this testimony not be a direct corroboration of the information provided by the claimant in Part 9 of the DA1, the outcome of the claimant being found eligible for an award of DA becomes more tenuous. Further, if Part 11b is not fully completed by the GP of a claimant, then the claim can be rejected.

Part 11b requires the GP of the claimant to record brief answers noting the date from which they began seeing the claimant and the regularity with which they continue to see the claimant, the diagnoses of the claimant, and details as to how long they expect the claimant's disability or health condition to continue. The GP is also required to provide more detailed information as to the claimant's medical history, surgical history, hospital admissions, medical investigations, medication, treatments and any specialists that the claimant is attending.[455]

Question 10 of Part 11b of the DA1 form requires that a doctor indicates the degree to which the condition of the claimant has affected their ability in several areas of life. In all, there are 16 areas, such as walking or continence, that the doctor must score either normal, mild, moderate, severe, or profound. This is referred to as the ability/disability profile.[456] The ability/disability profile scoring page is included below.

[455] The previous version of the DA1 form also required the doctor of the claimant to indicate whether the claimant was fit to undergo a medical assessment by a DSP Medical Assessor, and whether the claimant was suitable for work/training for rehabilitative purposes - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2018).

[456] Social Welfare Appeals Office and Joan Gordan, Social Welfare Appeals Office Annual Report 2020 (SWAO 2020) 60-62.

ABILITY/DISABILITY PROFILE:

10. Indicate the degree to which your patient's condition has affected their ability in ALL of the following areas.

	Normal	Mild	Moderate	Severe	Profound
Mental Health/Behaviour	☐	☐	☐	☐	☐
Learning/Intelligence	☐	☐	☐	☐	☐
Consciousness/Seizures	☐	☐	☐	☐	☐
Balance/Co-ordination	☐	☐	☐	☐	☐
Vision	☐	☐	☐	☐	☐
Hearing	☐	☐	☐	☐	☐
Speech	☐	☐	☐	☐	☐
Continence	☐	☐	☐	☐	☐
Reaching	☐	☐	☐	☐	☐
Manual Dexterity	☐	☐	☐	☐	☐
Lifting/Carrying	☐	☐	☐	☐	☐
Bending/Kneeling/Squatting	☐	☐	☐	☐	☐
Sitting/Rising	☐	☐	☐	☐	☐
Standing	☐	☐	☐	☐	☐
Climbing Stairs/Ladders	☐	☐	☐	☐	☐
Walking	☐	☐	☐	☐	☐

Image 2: A sample copy of the Ability/Disability Profile as contained in the DA1 form - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022).

Concerningly, it is the results of this Ability/Disability that form the basis of the decision reached by Social Welfare Appeal Officers where DA claims are challenged.[457] This means that, regardless of the length of testimony supplied by the claimant and their GP in response to targeted questions, the most important factor to decision-making on appeal is a series of tick-boxes that are devoid of nuance or context.

By reducing the importance of the personal testimony of the claimant through necessitating its corroboration from a GP and by placing more weight on the results of a tick box chart than the written testimony of either the claimant or their GP on their behalf, the inherent dignity and autonomy of the individual human being is not respected,[458] constituting a protentional violation of the CRPD.

Further, the economic dimension of accessibility is engaged because, in Ireland, individuals who do not qualify for a medical card must pay a fee to see their GP,[459] which

[457] Social Welfare Appeals Office and Joan Gordan, Social Welfare Appeals Office Annual Report 2021 (SWAO 2021).
[458] Gerard Quinn and Theresia Degener, 'The moral authority for change: human rights values and the worldwide process of disability reform' in Gerard Quinn, Theresia Degener et al, *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability* (United Nations 2002) 14, 19.
[459] A person qualifies for a medical card in Ireland when they are below the financial threshold, which is a different monetary amount depending on the applicants' circumstances – Health Service Executive, 'How much can you earn and still qualify' (*HSE*) <https://www2.hse.ie/services/schemes-allowances/medical-cards/applying/how-much-you-can-earn/> accessed 10 August 2024.

are usually between €45.00 and €65.00.[460] Even where a DA claimant has a medical card and thus does not pay a fee to see their GP, a fee may still be charged by the GP for the completion of Part 11b of the DA1 form. Guidance from Citizens Information states that

> There are certain services that GPs are not obliged to provide free of charge, for example, eye tests for a driving licence or reports for life assurance. You may also be charged for medical certificates for absence from work. If you need a medical report to apply for a social welfare payment, the Department of Social Protection may cover the fee.[461]

Neither Citizens Information, nor other disability advice organisations nor the DSP itself clarify the situations in which the DSP 'may cover the fee' charged to claimants for having Part 11b of their DA1 forms by their GP.

The charging of these fees may constitute a violation of Article 9 CRPD.[462] Further, as a failure to secure GP testimony results in an incomplete DA1 form and thus no award of DA, Article 28 CRPD – the right to an adequate standard of living and social protection - will also be violated, particularly Article 28(b) and Article 28(c), which oblige States to ensure disabled people have access to social protection programmes and financial assistance with disability-related expenses respectively.

Recommendation 5J: to waive charges for GP appointments which are booked for the completion of Part 11b of the DA1 until a claim has been decided.

Should a claimant ultimately succeed in their claim for DA, then the fee could be taken from their initial DA payment. Should a claimant be unsuccessful, then the fee would become payable at the stage where the negative decision had been reached and the claimant informed. Disability activists may argue that [fees for the completion of DA1 forms and] GP fees should be abolished altogether. While this would be the superlative

[460] Citizens Information, 'GPs and private patients' (*Citizens Information*, 22 September 2020) < https://www.citizensinformation.ie/en/health/health_services/gp_and_hospital_services/gps_and_private_patients.html> accessed 10 August 2024.
[461] Citizens Information, 'GP Services to Medical Card Holders' (*Citizens Information*, 16 February 2020) < https://www.citizensinformation.ie/en/health/health_services/gp_and_hospital_services/gp_services_to_medical_card_holders.html> accessed 10 August 2024.
[462] This potential violation is further compounded by the fact that GPs in Ireland can claim payment of a fee from the DSP for completing DA1 form - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022).

outcome, it is unfortunately not in line with the political and economic reality of a State firmly aligned to the doctrine of austerity.[463] Thus, a temporary waiving of the fee until the claimant receives disability-related income is the recommendation most likely to be accepted by the State.

5.5.2. THE CONTRIBUTIONS OF MEDICAL PRACTITIONERS TO THE PIP2 FORM

The Information Booklet accompanying the PIP2 form advises claimants that the medical evidence they could submit could be, *inter alia*, test results from scans and tests or reports, statements or care plan treatment plans from GPs, consultants, community psychiatric nurses and occupational therapists.[464] As Citizens Advice informs PIP claimants, 'some health professionals won't help with benefit applications and others may charge a fee for doing so'.[465] Indeed, a survey undertaken by Citizens Advice of GP surgeries in 2014, as reported by Clifford, indicated that:

> GPs can be reluctant to provide medical evidence for benefit claims, and many levy a fee. A survey of GP surgeries carried out by Citizens Advice in 2014 found that 29 per cent of respondents did not provide medical evidence as standard to all patients, 15 per cent turned down all requests, and 50 per cent of those who did provide evidence charged their patients for doing so. Of these, 61 per cent charged sums between £10.01 and £50.[466]

The economic dimension of accessibility is therefore engaged when a PIP claimant seeks medical evidence. In that a PIP claimant who cannot afford to attain the necessary medical evidence to submit with their PIP2 form sees their chance of successfully being awarded

[463] Charles O'Sullivan and Donna McNamara, 'The 'Necessity' of Austerity and its Relationship with the UN Convention on the Rights of Persons with Disabilities: A Case Study of Ireland and the United Kingdom' (2021) 00 Human Rights Law Review 1.

[464] The full list included in the Information Booklet accompanying the PIP2 form is as follows - Reports or care or treatment plans from occupational therapists, GPs or consultants, social workers, community psychiatric nurses, learning disability support teams, district nurses, physiotherapists, reports, statements or diaries from carers or family members, hospital discharge or outpatient clinic letters about your condition or diagnosis, letters from your consultant(s) about your condition or diagnosis, or test results from scans, diagnostic tests, or hearing or vision tests, or a current repeat prescription list, statement of special educational needs, Education, Health and Care (EHC) plan, or certificate of visual impairment - Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021) 3.

[465] Citizens Advice, 'Getting evidence to support your PIP claim' (*Citizens* Advice) <https://www.citizensadvice.org.uk/benefits/sick-or-disabled-people-and-carers/pip/help-with-your-claim/your-supporting-evidence/> accessed 10 August 2024; see also Child Poverty Action Group, *Winning Your Benefit Appeal What You Need To Know* (2nd edn, CPAG 2016).

[466] Ellen Clifford, The War on Disabled People: Capitalism, Welfare and the Making of a Human Catastrophe (Zed Books 2020), 83.

PIP drastically diminished in the first instance, then the current system through which the onus is on the claimant to acquire medical evidence may constitute a violation of Article 9 CRPD. Further, in cases where a failure to acquire medical evidence leads to a failure to be awarded PIP, Article 28 CRPD will also be violated, particularly Article 28(b) and Article 28(c), as with DA above. The non-discrimination dimension of accessibility is also engaged in cases where the PIP claimants has multiple complex limitations that require input from several medical professionals. In this instance, a claimant may need to secure a medical statement from each of the several members of their treatment team and thus the cost can become compounded. In these cases, it is also Article 9 and Article 28 which may be violated.

Recommendation 5K: place the cost of securing medical evidence on the DWP.

Critics of such a solution may argue that this would place undue strain on the public purse. Indeed, as with Ireland above, the political and economic reality in the UK is that of austerity.[467] However, public funds are already being spent on the acquisition of medical evidence for PIP claimants in cases where the claim escalates to a tribunal. As Clifford observes, 'once a case goes to appeal, the courts request and pay for medical evidence'.[468]

Placing the onus and cost of securing medical evidence on the DWP would benefit PIP claimants twofold. Firstly, there is the obvious alleviation of the cost of securing said evidence themselves. Secondly, if the onus were on the DWP to pay to acquire medical evidence from public funds then the DWP must justify why it felt the acquisition of each piece of evidence was necessary. Moreover, in instances where the DWP failed to consult medical evidence that was later acquired by the tribunal, this could lead to severe political backlash.

The relationship between the acquisition of medical evidence for PIP and DA claims and the dimensions of accessibility has now been clarified. However, before concluding this chapter, it is necessary to address a central issue with the mandatory requirement placed

[467] Charles O'Sullivan and Donna McNamara, 'The 'Necessity' of Austerity and its Relationship with the UN Convention on the Rights of Persons with Disabilities: A Case Study of Ireland and the United Kingdom' (2021) 00 Human Rights Law Review 1.
[468] Ellen Clifford, The War on Disabled People: Capitalism, Welfare and the Making of a Human Catastrophe (Zed Books 2020), 83.

on claimants to supply medical evidence. This is because such an approach is firmly entrenched in the medical model of disability.

An argument in favour of the use of medical evidence put forward by the DWP and WPC in the UK is that self-reports from claimants of primary disability welfare benefits, particularly reports recorded into complex and confusing forms, can lead to inaccurate decisions being reached due to omissions and misrepresentations by the claimant.[469] This argument is consistent with observations by Oorschot, who analysed factors affecting non-take-up of social security benefits across Europe and determined that density and complexity were leading factors of non-take-up.[470] The WPC also framed the requirement that claimants self-report on their limitations to be a burden and a barrier to take up of benefits.[471]

N Ann Davies, in *Invisible Disabilities*, criticised the requirement of medical evidence in order to corroborate the personal account of the disabled persons and to prove their limitations and symptoms extensively. In this paper, Davies expressed that:

> The belief that scientific and medical personnel are specially — perhaps uniquely—well qualified to assess disability and should thus be accorded gatekeeper status has some disquieting implications.[472]

Davies continued:

> The insistence upon the need to be able to verify the truth of an individual's claim to be suffering, in pain, or unable to function in the expected ways, and the assertion that it is only objective physical causes that have been given a medical imprimatur that can provide the needed verification, seem to presuppose the truth of claims that are, in fact, vulnerable to serious challenge.[473]

---

[469] Work and Pensions Committee, Government support towards the additional living costs of working–age disabled people (HC 1493, 2012) [18]; National Audit Office, Department of Work and Pensions: Dealing with the Complexity of of the Benefit System (HC 592, 2005) [3.4-3.6]; Neville Harris, 'Welfare Reform and the Shifting Threshold of Support for Disabled People' (2014) 77(6) MLR 888.
[470] Wilhelmus Johannes Hubertus van Oorschot, 'Non-take-up of social security benefits in Europe' (1991) 1 JESP 15, 20.
[471] Work and Pensions Committee, Government support towards the additional living costs of working–age disabled people (HC 1493, 2012) [42].
[472] N Ann Davis, 'Invisible Disability' (2005) 116(1) University of Chicago Press 153, 179.
[473] *ibid* 182.

> "Thus, even if one thinks that the assessments of medical experts should be accorded special significance in matters of illness and wellness, pain and suffering, and disability, this does not give one grounds for thinking the physical assessment of ill or disabled persons is sufficient or definitive, or for supposing that it should be given automatic precedence over the reported experiences of the persons who are ill when- ever there is a failure of congruence. There are certainly circumstances in which it would be reasonable to accord precedence to the "view from outside." But we must at least admit the possibility that there are cases in which such a stance would be unreasonable."[474]
>
> "When their condition is "new" or ill understood, or the evidence is equivocal (because the experts do not agree), persons with invisible disabilities may also have to undercut the suspicion that their symptoms are hysterical."[475]

Davies is correct in her observation that medical practitioners are as fallible as the claimant and are as likely to include similar omissions or misrepresentations in their report as a claimant would in their self-report. This begs the question, then, why medical evidence is given such primacy over the testimony of the claimant for PIP or DA. The answer is simple. It is because the welfare systems of both the UK and Ireland are firmly entrenched in the medical model of disability. To this end, its strict adherence to the medical model of disability and the preferential treatment shown by government departments to testimonial evidence from medical practitioners over self-reports from the disabled person – the expert in how the disability or health condition affects them- resulted in targeted criticism and recommendations for reform from the CRPD Committee.[476]

Despite justified criticism of the use of medical evidence to support the self-reports of claimants applying for PIP and DA, it is unlikely that this requirement will be removed from the assessment process of either PIP or DA, regardless of any advocacy or protests

[474] *ibid* 185.
[475] *ibid* 211.
[476] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1. [89], [114b].

from DPOs. Similarly with the issue of GP fees to secure completion of part 11b of the DA1 form in Ireland, it is a political reality that with austerity comes increased conditionality on welfare provisions.[477] However, until Ireland and the UK abandon the medical model, which is positioned as the direct opposite to the human rights model of disability by the CRPD Committee,[478] social security in both countries will remain in contravention of the CRPD.

5.6. CONCLUSION

This chapter illustrated that despite this first stage of the application process for PIP in the UK and DA in Ireland being the opportunity for a claimant to 'tell their story', the operation of both PIP and DA severely limits the extent to which claimants can truly provide testimony on how their disabilities and health conditions affect them in their own voice.

Indeed, as Robinson identified through interviews with PIP claimants, the manner of questioning employed by the PIP2 form forces a claimant to list their limitations as they relate to specific functional activities as opposed to providing a full narrative of the totality of how their disability or health condition impacts their daily living.[479] This issue is even more pronounced with the DA1 form, in that the space provided for a DA claimant to report on their functional limitations is a 85mm by 15mm box, as opposed to the much larger spaces employed by the PIP2.

Perhaps most concerningly is the insistence by both the DWP in the UK and DSP in Ireland on evidence from a medical practitioner being attached to the benefit application form, which presents three major concerns. First, this constitutes a flagrant example of the medical model of disability continuing to be employed by both nations (Chapter 3.2.3.2), and as such a rejection of both the social model and human rights model of disability, thus constituting a potential violation of Article 1 CRPD by both the UK and

[477] Charles O'Sullivan and Donna McNamara, 'The 'Necessity' of Austerity and its Relationship with the UN Convention on the Rights of Persons with Disabilities: A Case Study of Ireland and the United Kingdom' (2021) 00 Human Rights Law Review 1; Neville Harris, 'Welfare Reform and the Shifting Threshold of Support for Disabled People' (2014) 77(6) MLR 888; Elliott Johnson and Daniel Nettle, 'Fairness, generosity and conditionality in the welfare system: The case of UK disability benefits' (2020) (Early View) Global Discourse < https://doi.org/10.1332/204378920X15989751152011>.

[478] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1. [32].

[479] Kelly Fagan Robinson, 'The Form That Flattens' in Aaron Parkhurst and Timothy Carroll (eds.), *Medical Materialities: towards a material culture of Medical Anthropology* (Routledge, 2020).

Ireland. Second, in both the UK and Ireland, claimants often must pay to secure medical evidence from a medical practitioner, thus placing them at a further financial detriment and thus violating their right of accessibility through the economic dimension of accessibility being engaged. Third, as Davies identifies,[480] the practice of requiring corroborating medical evidence suggests an inherent distrust of claimants of primary disability welfare benefits, and firmly secures medical practitioners as gatekeepers to said disability welfare benefits. On this final point, medical practitioners should not be vilified for their role as gatekeeper to disability benefits as this is not a position which was actively lobbied for by the medical community. Indeed, the justification provided by medical practices for charging a fee for the provision of medical evidence to claimants is that this is an extraneous function to the duties of their jobs imposed on them by government.

The impact of these limitations to the manner through which claimants can self-report on their disabilities and health conditions is most profound when considering how this stage of the benefit application process fits against the other stages. From the point that the PIP2 and DA1 forms are completed, with medical evidence attached, and sent to the respective government department, the claimant will have no further opportunity to provide testimony on their impairments until they commence a legal challenge against a decision reached on their claim. If a claimant opts not to challenge or appeal a decision reached on their claim, then this stage constitutes the sole opportunity a claimant has to tell their story. It is for this reason that the recommendations provided above must be implemented and this stage of the benefit application 'gotten right', so that claimants are provided with the autonomy and dignity to tell their own story in their own words about their own disabilities and health conditions.

Where this chapter ends with the claimant completing their benefit application form and sending this to the DWP or DSP, the next chapter then analyses the decision-making process employed by these government departments in determining (in)eligibility for PIP or DA.

[480] N Ann Davis, 'Invisible Disability' (2005) 116(1) University of Chicago Press 153.

CHAPTER 6: RETELLING, RATING AND REVIEWING THE CLAIMANT'S STORIES

6.1. INTRODUCTION

This chapter analyses the second stage of the benefit application process identified in Chapter 4.5 – 'the testimony of the claimant is assessed and a decision of eligibility is reached'. Whereas the previous chapter focused on how PIP and DA claimants gather evidence and record testimony as to their functional limitations,[481] this chapter examines how that testimony is scrutinised and evaluated by government-mandated Decision-Makers in the UK and in Ireland. This chapter also considers how the testimony of claimants can be either corroborated or contradicted by healthcare professionals (HCPs) working on behalf of the UK and Irish governments as part of functional assessments and medical reviews.

In relation to the Application Process for PIP and DA claims established in Chapter 4.5, this chapter focuses on its final two stages, which are:

b. The testimony of the claimant is assessed and a decision on eligibility is reached
c. The decision of (in)eligibility for the benefit is either accepted or challenged.

The second stage of the application process - the testimony of the claimant is assessed and a decision on eligibility is reached – can be further divided down into a series of three distinct steps as the testimony of the claimant is reviewed and handled by different actors. These steps are:

i. The HCP carries out a functional assessment on the claimant,
ii. The Decision Maker reviews the evidence and determines eligibility,
iii. The claimant (waits for and) receives their decision notice.

As with the previous chapter, the title of this chapter was also inspired by the DWP guidance document of the *Claimant Journey*.[482] Where the previous chapter identified that the PIP2 and DA1 received by the DWP/DSP is not a claimant's autobiography, but

[481] As well as the contributions of medical practitioners in supplying supporting evidence for claimants – see chapter 5.5.
[482] Department for Work and Pensions, Personal Independent Payment: the claimant journey (DWP 2015).

instead a biography written by several authors (See Chapter 5.1), this chapter can be visualised as the editing process for said biography.

Section 6.2 first considers the '*Retelling*' of the claimant's stories by discussing the functional assessment for PIP or DA. As will be shown, this first process reveals the most differences between the approach undertaken in the UK and Ireland than can be observed between the others. With the functional assessment for PIP or DA, the HCP delivering the assessment, the nature of the assessment itself and the venue where the assessment takes place differ between PIP and DA also. For both PIP and DA, the HCP who undertook the functional assessment produces a report which lays out their personal testimony as to their views on the functional limitations of the claimant, thus taking the story of the claimant but telling it anew.

Section 6.3 then considers the '*Rating*' of the claimant's stories by discussing the decision-making process through which eligibility or ineligibility for PIP and DA is determined. This section considers how the different evidence submitted by the claimant, including their personal testimony, testimony from their healthcare team, and the report from an independent HCP or Medical Assessor, is weighed by Decision Makers. This section also analyses how different levels of impairment as described in said evidence are scored, or '*Rated*', by Decision Makers as they determine whether a claimant has satisfied the criteria for eligibility.

Section 6.4 then considers the content of the decision notice supplied to claimants that informs of either eligibility or ineligibility to PIP and DA. This section analyses the content of decision notices and the legal guidelines that must be followed when Decision Makers construct them.

Section 6.5 then considers the '*Reviewing*' of the claimant's stories by discussing the actions available to the actions available to claimants upon receipt of a PIP or DA decision notice with which they are dissatisfied, including having their claims *Reviewed*' by Decision Makers and appeals to independent legal authorities. Section 6.6 concludes this chapter.

The legislative provisions and government policy that regulate the actions taken by claimants during this stage of an application for PIP and DA are compared and contrasted

in this chapter in order to indicate where each system engages dimensions of the right to accessibility. To recap, the dimensions of accessibility considered in this thesis are:

i. Non-discrimination,
ii. Physical accessibility,
iii. Economic accessibility,
iv. Information accessibility,
v. Accessibility of the Justice System.

All of the five dimensions of accessibility listed above are engaged at this stage of an application for both PIP and DA.

6.2. THE FUNCTIONAL ASSESSMENT

This section discusses the actions undertaken by PIP and DA claimants and HCPs during the functional assessments for PIP and DA.

The Academic Network for European Disability Experts (ANED) report on Disability Assessments determined that the style of assessment employed in Ireland to determine whether to recommend or award DA or not is a functional capacity assessment, which ANED described as a 'test of ability to carry out specified tasks or activity'.[483]. The ANED report on Disability Assessments in the UK similarly confirmed that PIP is assessed through a functional assessment,[484] as did the CRPD Committee in its Inquiry Report into the UK.[485]

Although the functional assessment is not directly an assessment of eligibility for either PIP or DA, the functional assessment is a necessary stage of an application for both benefits. The eligibility for both PIP and DA is determined later by Decision Makers. However, as will be made clear, for a claim for PIP, it is the report from the HCP

[483] The Academic Network for European Disability Experts, Sinead Keogh, and Cliona de Bhailis, 'Disability Assessment – Country Report: Ireland' (*ANED*, 5 February 2019) < https://www.disability-europe.net/downloads/912-country-report-on-disability-assessment-ireland > accessed 10 August 2024.
[484] The Academic Network for European Disability Experts, Mark Priestley, and Rosa Morris, 'Disability Assessment – Country Report: United Kingdom' (*ANED*, 5 February 2019) < https://www.disability-europe.net/downloads/930-country-report-on-disability-assessment-united-kingdom > accessed 10 August 2024.
[485] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1 [112].

undertaking the functional assessment that appears to carry the most authority for DWP Case Managers. Further, the equivalent document produced by DSP Medical Assessors also usually holds primacy for DSP Deciding Officers.

Before moving to consider the different approaches to the functional assessment for PIP and DA, there is a common thread between them that must first be analysed. This is the relationship between functional assessments and the medical model of disability.

In its Inquiry Report into the UK, the CRPD Committee observed 'the prevalence of the medical approach in assessment procedures for determining the eligibility of persons with disabilities to entitlements'.[486] The CRPD Committee concluded that the use of the medical approach to disability, particularly the reliance on 'narrowly defined medical criteria' for determining eligibility to social welfare, was antithetical to the obligations placed on States by Article 28 – the right to an adequate standard of living and social protection.[487] Further, in the foreword to *The Second Independent Review of the Personal Independence Payment Assessment*, Gray attempts to distinguish a functional approach to assessment from a medical approach but concedes that the perception of PIP is that it requires a medical assessment to be found eligible and that the two approaches are regularly conflated.[488] Indeed, the CRPD Committee conflate functional assessments and medical assessments in its Inquiry Report into the UK.[489] It is submitted that the functional and medical approaches to disability cannot truly be distinguished as both rely on the practice of medical diagnosis. The minor difference between these approaches is that where the medical approach aims to diagnose disabled people in order to determine symptoms, the functional approach seeks to determine how particular diagnoses lead to disabled people having limited capacity in undertaking activities.

In Ireland, although ANED determined that DA also employs the functional approach, the overlap with the medical approach is even more apparent. The DA1 form is divided between Parts 1-7 that screen for an assessment of means and Parts 9-11 that comprise the *Medical Report for Disability Allowance* (see Chapter 5.5). Further, as will be

[486] *ibid* [89].
[487] *ibid* [29].
[488] Paul Gray, The Second Independent Review of the Personal Independence Payment Assessment (DWP 2017).
[489] UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1 [89-90].

discussed below, the Social Welfare Appeals Office (SWAO) determine the two grounds of appeal against a DA decision to be either for errors relating to the means criteria or errors relating to medical criteria.

As discussed in previous chapters (See Chapter 3.2.3.2, Chapter 5.5.1), the welfare systems of the UK and Ireland – particularly those elements governing PIP and DA - are firmly entrenched in the medical model of disability, with this strict adherence to the medical model on the part of the UK receiving criticism from the CRPD Committee.[490] Adoption of the medical model as opposed to the adoption of the model of disability generated by the CRPD, the human rights model, constitutes a potential violation of the CRPD, particularly Article 1 – Purpose. Article 9 – Accessibility – is also potentially violated here due to accessibility being the apparatus used by disabled people to remove barriers and thus allow the human rights model to be actionable (See Chapter 3.2.3.4). However, as was recognised when discussing the eligibility criteria of PIP and DA (See Chapter 5.5.1), it is unlikely that either the UK or Ireland will fully move away from its adoption of the medical model of disability, so, recommendations must be implemented that amend the manner through which the model is adopted to better benefit disabled people, specifically potential claimants of PIP and DA.

Section 6.2.1. now discusses the assessment procedure applicable to PIP claimants specifically.

6.2.1. THE FUNCTIONAL ASSESSMENT FOR PIP

Once a completed PIP2 form is sent by a claimant and then received by the DWP, a case for that claimant is generated and assigned to a DWP Case Manager.[491] Save for where the DWP Case Manager concludes that a claimant fails to satisfy the basic qualifying factors for PIP (See Chapter 5.2), the DWP Case Manager invites the PIP claimant to undergo a functional assessment.[492] The functional assessment for PIP is carried out by a HCP working for an assessment provider company, which is a private company that has

[490] *ibid* [89], [114b].
[491] Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 10 August 2024 [1.1.6, 1.1.9].
[492] All PIP claims between August 2017 and July 2022, other than those disallowed before the assessment stage, were invited to functional assessment - https://www.gov.uk/government/statistics/personal-independence-payment-statistics-april-2013-to-july-2022/personal-independence-payment-official-statistics-to-july-2022.

been contracted to undertake PIP assessments on behalf of the DWP.[493] The purpose of this assessment is for HCPs to:

> assess the overall functional effects of the claimant's health condition or impairment on their everyday life over a 12 month period.494

From this functional assessment, the HCP produces a report containing their opinions as to the functional capabilities of the claimants in line with their medical understanding, along with a recommendation of how many points a claimant should be allocated for each of the functional activities of the PIP2 form. The number of points a claimant is ultimately scored for each functional activity directly determines their eligibility for PIP and amount of award paid if any. (See Chapter 4.3). Once a HCP has created their report, they submit it to the DWP Case Manager, who utilises the report along with evidence supplied by the claimant (including their testimony in the completed PIP2 form and any attached medical evidence, see Chapter 5.5) to make a determination as to whether the claimant is eligible for PIP.

The HCPs employed by the assessment provider companies, while all fully qualified in their field, come from many different sectors of the healthcare profession. As reported by CPAG, a HCP who carries out the functional assessment for PIP may be, *inter alia,* a registered doctor, level 1 nurse, paramedic, physiotherapist or occupational therapist.[495] On the surface, it is positive that assessment provider companies employ HCPs from diverse backgrounds in order to ensure a degree of specialism when functional assessments are carried out. The problem here is that no attempts are made to match HCPs of particular backgrounds to claimants with impairments with which the HCP will be familiar,[496] meaning that claimants with complex mental health disorders may be assessed by physiotherapists and claimants with physical impairments may be assessed by a community psychiatric nurse (CPN). This is made all the more concerning when considering that, during the decision-making process, DWP Case Managers are seen to give equal weight to the report from the HCP who carried out the functional assessments, regardless of their field, with the medical evidence attached to the PIP2 form by the

[493] *ibid* [1.1.6].
[494] *ibid* [1.2.1].
[495] Child Poverty Action Group, *Winning Your Benefit Appeal What You Need To Know* (2nd edn, CPAG 2016).
[496] https://www.disabilityrightsuk.org/news/2021/may/systemic-problem-healthcare-professional-pip-and-esa-assessment-process-suggests

claimant supplied by HCPs who in most cases come from a field that allows knowledge of the specific disabilities of the claimant. Moreover, the evidence supplied by the claimant will come from HCPs who have knowledge of the claimant and their functional limitations on a personal level.

This leads to a connected concern regarding the HCPs from assessment provider companies carrying out functional assessments for PIP. The HCPs will have no prior experience with the claimant. While this may be claimed to provide an independent and therefore objective view, the tacit requirement placed on PIP claimants to supply supporting medical evidence alongside their own testimony already ensures an independent and objective assessment of the claimant.[497]

A method of assessment that requires a claimant to disclose detailed information about their disabilities with a person they have met for the first time during said assessment is of particular concern where a claimant has a mental health condition, particularly those prone to overwhelming psychological distress (OPD). This is because OPD, defined in the PIP assessment guide as 'distress related to a mental health condition or intellectual or cognitive impairment which results in a severe anxiety state in which the symptoms are so severe that the person is unable to function',[498] limits the ability of the claimant to communicate with new people resulting from the severe anxiety. This is made all the more difficult when factoring in reports of inappropriate, demeaning and hostile behaviour from HCPs carrying out functional assessments.[499]

In his second independent review into PIP in March 2017, Gray reported that around 80% of functional assessments were undertaken face-to-face.[500] Indeed, at the commencement of writing this thesis, the default method of functional assessment for PIP were for these assessments to be carried out in a face-to-face, in-person setting. This would usually take

[497] This is because the evidence produced by the medical team of the claimant will be evidence from qualified HCPs and will include only objective observations.
[498] Department for Work and Pensions, 'PIP assessment guide part 2: the assessment criteria' (*DWP*, 21 July 2022) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-2-the-assessment-criteria> accessed 15 July 2022.
[499] Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appelants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 422-423.
[500] G Paul Gray, The Second Independent Review of the Personal Independence Payment Assessment (DWP 2017) 13.

place at a dedicated PIP assessment centre, but also occasionally at a local healthcare centre or as a home visit depending on the circumstances of the claimant.[501]

More recently, under Covid provisions, telephone assessment became the default method as opposed to face-to-face.[502] As a result, 0% were face-to-face between April 2020 and July 2021,[503] and only 5.7% of total assessments between August 2021 and January 2022 were held face-to-face. Although video assessments are beginning to be employed, these were utilised in only 0.6% of total assessments between April 2020 and January 2022. Despite this, some aspects of face-to-face assessments will still be discussed and analysed in this chapter and throughout the remainder of this thesis. This is for two related reasons. Firstly, there is an observable pattern of all facets of public life returning to a manner resembling how they were undertaken before the implementation of any Covid regulations. Therefore it is likely that standard practice for PIP functional assessments will return to the face-to-face method. Secondly, particularly in relation to face-to-face functional assessments undertaken at DWP assessment centres, this method of assessment presents several key conflicts with CRPD accessibility standards.

As stated above, the purpose of the functional assessment for PIP is to allow a HCP to determine the level of functional limitation of the claimant. In order to establish this, the HCP asks a series of questions focusing on each of the twelve functional activities of the PIP2 form, particularly querying facets of the testimony reported in the form. Towards the end of the assessment, the HCP will likely carry out a short physical assessment of the claimant, depending on the specific disability or health condition of the claimant.[504]

The assessment of the functional limitation of the claimant is not limited to questions regarding the responses that the claimant recorded in the PIP2 form and to the outcome of the physical assessment. Indeed, the HCP will also observe and note the claimant's behaviour and actions, and record notes based on these informal observations.[505] The HCP will then use these informal observations to provide 'context' in their report to the DWP case manager and to inform their recommendations of how many points should be scored

[501] *ibid* [1.3.2], [1.6.2], [1.6.31-35].
[502] https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-october-2022/personal-independence-payment-official-statistics-to-october-2022
[503] https://questions-statements.parliament.uk/written-questions/detail/2022-03-14/139251
[504] *ibid*.
[505] Ian Greaves (eds), *Disability Rights Handbook: April 2022 - April 2023* (47th edn, Disability Rights UK 2017) 40.

for each functional activity. How these informal observations are determined differs for each of the methods of the functional assessment.

6.2.1.1. Informal Observations at Assessment Centres and Clinics

In the case of face-to-face assessments at either an assessment centre or clinics, observations are recorded by HCPs regarding the behaviour and actions of the claimant before, during and after the assessment. For example, the HCP will seek and record information regarding how the claimant travelled to the assessment centre or clinic to determine their competency with public transport.[506] As for observations made by the HCP at the assessment centre, these are not limited to behaviour and actions during the assessment such as the ability of the claimant to sit in and rise from a seat or pick up and lift a mug, with observations being recorded regarding how the claimant travels from the waiting room into the assessment room.[507] The concentration and comprehension levels of a claimant are also reported on by the HCP, particularly where these were recorded by the claimant in their PIP2 form as impaired.[508]

While the process of determining the functional limitations of a claimant based on informal observations without their express knowledge is concerning, more concerning are recent reports from a Conservative MP highlighting that 'traps' are being set in PIP assessment centres to force scenarios by which informal observations of mobility can be made.[509] Reports of said traps include elevators being marked out-of-order and thus requiring claimants to take the stairs or water coolers being marked as faulty and cups removed from the holsters thus requiring claimants to walk further and to ask the assessment centre staff for a cup.

The dimension of physical accessibility is clearly engaged here due to the interplay between the claimant and their physical environment contributing to the assessment of their functional limitations, including the assessment centre and any transport taken to arrive for their assessment. Further, the information dimension of accessibility is engaged due to claimants not being made expressly aware that their actions and behaviour are

[506] https://www.citizensadvice.org.uk/benefits/sick-or-disabled-people-and-carers/pip/help-with-your-claim/your-assessment/#:~:text=If%20your%20GP%20normally%20visits,alternative%20location%20for%20your%20assessment.
[507] *ibid*.
[508] Ian Greaves (eds), *Disability Rights Handbook: April 2022 - April 2023* (47th edn, Disability Rights UK 2017) 40.
[509] https://www.disabilitynewsservice.com/dwp-contractors-carry-out-secret-tricks-on-disabled-claimants-tory-mp-has-been-told/.

being observed and recorded into a report that will be evaluated when determining eligibility for PIP.

6.2.1.2. Informal Observations at Home Visit Assessments

Similar observations are made by HCPs undertaking a face-to-face assessment at the home of a PIP claimant, such as reaching for belongings and the way the claimant sits on their furniture.[510] If others are present with the claimant, such as family members or carers, their input into the assessment is also noted. The concentration and comprehension levels of a claimant are again reported on by the HCP, particularly where these were recorded by the claimant in their PIP2 form as impaired.[511]

Whereas this method of face-to-face assessment does not suffer the same risk of potential 'traps' as reported above with attendance at assessment centres, there is still scope for informal observations to be made that do not fully reflect the capabilities of the claimant. Indeed, in a home setting, the claimant is likely to have their physical environment set up to best accommodate their functional limitations such as the style and placement of furniture, the utensils used to drink from, and the use of aids and appliances such as stair lifts that allow access to upper floors. Thus, HCPs may observe that a claimant, in their home setting, can undertake a functional activity they reported a limitation in and utilise this observation to contradict the testimony of the claimant.

This demonstrates a conflict between the medical (functional) approach to disability and the human rights model of disability. The human rights model of disability was developed from the central tenet of the social model, which posits that disability is not located within the person, but is created by the interplay between impairment and an inaccessible environment – and it is this which creates a disability. Under the human rights model of disability, the claimant will be 'less disabled' in the instance of assessments in a home setting, as an environment that the claimant has control over will likely have been designed and organised with their impairment in mind (See Chapter 3.2.3.4). This conflict between the medical and human rights model of disability is discussed further in Section 6.2.1.4.

[510] Ian Greaves (eds), *Disability Rights Handbook: April 2022 - April 2023* (47th edn, Disability Rights UK 2017) 40.
[511] Ian Greaves (eds), *Disability Rights Handbook: April 2022 - April 2023* (47th edn, Disability Rights UK 2017) 40.

While the dimension of physical accessibility is not engaged here, due to the physical environment of the assessment being in the control of the claimant, the information dimension of accessibility is again engaged due to claimants not being made expressly aware that their actions and behaviour are being observed and recorded into a report that will be evaluated when determining eligibility for PIP.

6.2.1.3. Informal Observations at Telephone Assessments

As stated above, this method of functional assessment has now become the default following the necessity of at-distance assessment during and following the Covid-19 pandemic.

It may be presumed that this method of assessment would be preferable due to its elimination of certain scenarios that can be informally observed, there are still concerns to be had with telephone assessments. Although the analysis of face-to-face assessments above highlighted the concerns that are raised by reliance on informal observations, their absence can be to the detriment of some claimants. With a telephone assessment, the only observations a HCP can make are on the tone and delivery of a claimant's answers to their questions. A HCP assessing a claimant with impaired mobility but no cognitive impairments who presents themselves well over the phone may build a mental image of an unimpaired claimant and thus contradict any report of impairment from the testimony of the claimant. Were the claimant to have their impaired mobility observed, then this would not be the case.

In this instance, the information dimension of accessibility would be engaged due to the lack of information provided to claimants both that functional assessments are scored partially on the basis of informal observations and that, by not having a face-to-face assessment, presumptions of capacity would replace any observations.

6.2.1.4. Informal Observations and Fluctuating Conditions

This section considers a concern with the functional assessment that is common to all methods through which it is carried out.

Regardless of the method through which a functional assessment is carried out, all provide a unique detriment to PIP claimants with fluctuating conditions,[512] which are inherently more difficult to observe or understand than health conditions which cause a consistent expression. This negative impact was highlighted as early as the Independent Review of the Personal Independence Payment Assessment undertaken in 2014,[513] only one year after the rollout of PIP.

HCPs are given clear instruction that they are to base their report on an assessment of the functional capabilities of the claimant across a twelve-month period,[514] and that their opinion should be of the impact of the condition over time rather than a snapshot of how the claimant presents on the day.[515] This requirement to consider the long-term implications of the health condition on a claimant goes beyond government guidance and is a legal requirement.[516]

Despite this requirement, HCPs do not always adhere to this rule and do sometimes base their report on their perception of the claimant as they saw them on the day and as such PIP claimants are warned:

> If you do them on assessment day, the assessor may think you can always do them.[517]

6.2.1.5. The Viability of Functional Assessments in line with Accessibility Obligations

The recording of observations based on the actions and behaviour of the claimant during an assessment means that the assessor receives information from the claimant via non-verbal, and possibly unintended, communication. The assessor thereby chooses what informal actions and behaviours to observe and record during functional assessments, giving them considerable unregulated power over the claimant In this way, the current

[512] Paul Gray, *An Independent Review of the Personal Independence Payment Assessment* (DWP 2014) 6, 45, 61-62; Lizzie Blair, 'A Rubber Stamp? Mandatory Reconsideration in the Personal Independence Payment application process' (*Citizens Advice*, May 2019) <https://www.carbs.org.uk/wp-content/uploads/2019/05/PIP-MR-Report-Final-Copy.pdf> accessed 28 January 2020.
[513] Paul Gray, An Independent Review of the Personal Independence Payment Assessment (DWP 2014).
[514] Department for Work and Pensions, 'PIP assessment guide part 1: the assessment process' (*DWP*, 17 May 2021) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process> accessed 15 July 2022 [1.2.1.].
[515] Ian Greaves (eds), *Disability Rights Handbook: April 2022 - April 2023* (47th edn, Disability Rights UK 2017) 40.
[516] The Social Security (Personal Independence Payment) Regulations 2013, rr. 4, 7.
[517] https://www.citizensadvice.org.uk/benefits/sick-or-disabled-people-and-carers/pip/help-with-your-claim/your-assessment/

method of functional assessments engage and potentially violate the obligation to uphold the dimension of information accessibility, particularly the Article 21 CRPD obligation to facilitate the use of means, modes and formats of communication that are the choice of the disabled person in official interactions.[518]

Many commentators have voiced concerns and doubts as to the effectiveness of the functional assessment for PIP as undertaken by HCPs contracted by the assessment provider companies.[519] Indeed, as Spicker noted in *What's Wrong with Social Security Benefits,*[520] as a PIP claimant has already submitted a completed PIP2 form with supporting evidence from their medical care team, HCP-delivered functional assessments for PIP 'either confirm the obvious or they duplicate information which is already held'. Spicker then recommended that eligibility instead be assessed in line with the claimant's self-report as confirmed by a certificate provided by a member of the claimant's own healthcare team.[521]

Moreover, and as will be discussed further when analysing the actions taken by DWP Case Managers, where mistakes are made in the reporting on the observations made by HCPs during the assessment, these mistakes can form the basis for a determination of ineligibility by the DWP.[522] This requires PIP claimants found ineligible based on mistakes by the assessing HCP to initiate a legal challenge against the eligibility decision, as is discussed in section 6.5 below.

Solutions to these problems are offered in recommendations 6A – 6B below.

---

[518] CRPD Art 21(b).
[519] Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appellants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 422-423; Katie Pybus, Kate E Pickett, Charlie Lloyd, Stephanie Prady and Richard Wilkinson, 'Functional assessments in the UK social security system: experiences of claimants with mental health conditions' (2021) 50(2) J Social Policy 305; 30. Richard Machin and Fiona McCormack, 'The impact of the transition to Personal Independence Payment on claimants with mental health problems' (2021) Disability & Society Online 1, 5, 19; Ellen Clifford, The War on Disabled People: Capitalism, Welfare and the Making of a Human Catastrophe (Zed Books 2020), 87-88; Paul Spicker, What's Wrong with Social Security Benefits? (Policy Press 2017) 78; Paul Gray , *The Second Independent Review of the Personal Independence Payment Assessment* (DWP 2017) [6].
[520] Paul Spicker, What's Wrong with Social Security Benefits? (Policy Press 2017) 78.
[521] *ibid*.
[522] Examples of errors recorded in HCP assessment reports include a claimant being identified as 'well kempt' despite having frayed hair from pulling strands out, or a comment as to the mobility of a claimant due to their ability to unload a washing machine, despite photographic evidence demonstrating that the claimant did not own a washing machine – Ludlow, p422

Recommendation 6A: the functional assessment for PIP in its current formation as undertaken by HCPs contracted by assessment provider companies should be replaced with a new system of assessment and certification of functional limitation to be undertaken by a member of the healthcare team of the claimant.

Recommendation 6B: The certification of functional limitation to be completed by a member of the healthcare team of the claimant should be adopted from the ability/disability profile adopted in the DA1 form in Ireland, with a wider range of functional activities included for assessment.

As discussed in the introduction to this thesis, the recommendations that are offered may not always remove barriers altogether, but ensure that the path between each barrier faced by a claimant is free of additional obstacles. In that respect, the following two recommendations are offered, which are applicable in an instance where recommendations 6A and 6B above were disregarded, and the current method of eligibility assessment via government contracted HCPs were to continue.

Recommendation 6C: to either limit the observations made by HCPs during functional assessments to solely matters corresponding to the functional activities listed in the PIP2 form.

Recommendation 6D: to inform PIP claimants in writing prior to the arrangement of any functional assessment as well as verbally and in writing prior to the commencement of a functional assessment that informal observations will be made of their behaviour and actions which will be used by the HCP to evidence the findings and recommendations on their report to the DWP Case Manager.

This recommendation would be in line with the Article 21 CRPD requirement that disabled people have their right to impart information on an equal basis to other ensured by States.

This is not to suggest that all HCPs carrying out functional assessments disregard the requirement to assess the functional limitations of a claimant across a twelve-month period either purposefully or maliciously.[523] Rather, regardless of face-to-face or via telephone, the functional assessment for PIP as it currently operates simply does not allow a HCP anything more than a snapshot of the functionality of a claimant upon which a

[523] However, the investigation into the claimant experience by Barnard and Ludlow referenced above certainly indicates a degree of malice and malintent by some HCPs carrying out functional assessments - Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appellants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 422-423

HCP can only opine about long-term impact of disability through analogy of said snapshot.

By implementing this recommendation, the need for HCPs who are approached by PIP claimants to provide lengthy medical evidence will be in part subverted, due to the simple and brief nature of the ability/disability profile. Moreover, in terms of the easy-to-read requirement for communication under the CRPD, this will create a document that is accessible to claimants which succinctly displays a record of their functional limitations upon which they can predict the outcome of a claim for PIP and also utilise as grounds for challenge if necessary, as discussed in section 6.5 below.

Section 6.2.2 below now discusses the functional assessment for DA.

6.2.2. THE FUNCTIONAL ASSESSMENT FOR DA

The functional assessment for a DA was discussed previously in Chapter 5.5.1 in the context of seeking testimony from a medical practitioner in support of a DA claim. Indeed, it is the report produced by the GP of a DA claimant and in particular the ability/disability profile that constitutes the functional assessment for DA.

As this process has been discussed in the previous chapter, only key elements of the functional assessment for DA that act as points of contrast to the functional assessment for PIP will be discussed and analysed here.

To initiate the functional assessment, a DA claimant must secure a GP appointment during which the GP of the claimant will complete Part 11b of the DA1 form. It is the completion of this part of the DA1 which is itself the functional assessment. As discussed in Chapter 5.5.1, the dimension of economic accessibility is immediately engaged when considering the functional assessment for a DA claim. This is because in Ireland, individuals who do not qualify for a medical card must pay a fee to see their GP,[524] which are usually between €45.00 and €65.00.[525] In addition to the cost of the appointment itself,

[524] A person qualifies for a medical card in Ireland when they are below the financial threshold, which is a different monetary amount depending on the applicants' circumstances – Health Service Executive, 'How much can you earn and still qualify' (*HSE*) <https://www2.hse.ie/services/schemes-allowances/medical-cards/applying/how-much-you-can-earn/> accessed 18 December 2022.

[525] Citizens Information, 'GPs and private patients' (*Citizens Information*, 22 September 2020) < https://www.citizensinformation.ie/en/health/health_services/gp_and_hospital_services/gps_and_private_patients.html> accessed 7 December 2022.

a claimant may be charged and additional fee by the GP regardless of whether or not they hold a medical card. This is due to the completion of Part 11b of the DA1 form being a service that GP are not obliged to provide for free.[526] These charges may constitute violations of both CRPD Article 9 – Accessibility and Article 28 - the right to an adequate standard of living and social protection,[527] due to said charges acting as a barrier to acquiring DA.

In the previous chapter, a method of bringing this practice of charging DA claimants to have a GP complete a necessary part of their DA1 application form was put forward by recommendation 5J, which read:

> **Recommendation 5J:** to waive charges for GP appointments which are booked for the completion of Part 11b of the DA1 until a claim has been decided.

Should a claimant ultimately succeed in their claim for DA, then the fee would be taken from their initial DA payment. Should a claimant be unsuccessful, then the fee would become payable at the stage where the negative decision had been reached and the claimant informed.

For the functional assessment of a DA claimant, the GP of the claimant must utilise their knowledge and experience of treating the claimant to provide testimony regarding their medical history. The GP must provide a list of diagnoses, medications and treatments relevant to the claimant, as well as indicate how regularly the claimant is seen by the practice. The GP must also complete general open-ended sections of the form requesting information regarding the medical, surgical and obstetrical history of the claimant, along with information regarding any relevant investigations and treatments. Finally, the GP must complete the Ability/Disability profile table included in Part 11b. This is included directly below:

[526] Citizens Information, 'GP Services to Medical Card Holders' (*Citizens Information*, 16 February 2020) < https://www.citizensinformation.ie/en/health/health_services/gp_and_hospital_services/gp_services_to_medical_card_holders.html> accessed 18 December 2022.
[527] CRPD, Art 28(b-c).

ABILITY/DISABILITY PROFILE:

10. Indicate the degree to which your patient's condition has affected their ability in ALL of the following areas.

	Normal	Mild	Moderate	Severe	Profound
Mental Health/Behaviour	☐	☐	☐	☐	☐
Learning/Intelligence	☐	☐	☐	☐	☐
Consciousness/Seizures	☐	☐	☐	☐	☐
Balance/Co-ordination	☐	☐	☐	☐	☐
Vision	☐	☐	☐	☐	☐
Hearing	☐	☐	☐	☐	☐
Speech	☐	☐	☐	☐	☐
Continence	☐	☐	☐	☐	☐
Reaching	☐	☐	☐	☐	☐
Manual Dexterity	☐	☐	☐	☐	☐
Lifting/Carrying	☐	☐	☐	☐	☐
Bending/Kneeling/Squatting	☐	☐	☐	☐	☐
Sitting/Rising	☐	☐	☐	☐	☐
Standing	☐	☐	☐	☐	☐
Climbing Stairs/Ladders	☐	☐	☐	☐	☐
Walking	☐	☐	☐	☐	☐

Image 2: A sample copy of the Ability/Disability Profile as contained in the DA1 form - Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022).

As will be discussed below, it is the ability/disability profile that appears to be crucial to determining eligibility at the decision-making and appeal stages of a claim for DA. Given its significance in either confirming or contradicting the testimony of the claimant as to their level of impairment, it is then disappointing that the ability/disability profile does not screen for limitations across all of the 26 functional activities for which the claimant provides testimony of limitations in Part 9 of the DA1 form.

Recommendation 6E: to expand the list of fields of the ability/disability profile to include all functional activities screened for in Part 9 of the DA1 form to be commented on by the GP of the claimant and to allow for any functional limitations under these activities to be directly assessed.

This would remove the ambiguity that DA claimants currently due to the inclusion of two differing lists of functional activities/activities of daily living in the DA1 form. This would satisfy the general accessibility obligation under Article 4 CRPD in that this approach would constitute the provision of accessible information to persons with disabilities about support services.

In addition to their own testimony, the GP of the claimant is invited to include relevant information from any specialists involved in the care and treatment of the claimant and

to attach their reports to Part 11b. Indeed, in Part 10 – a Part of the form to be completed entirely by the claimant – the DA1 reads:

> In addition to your doctor completing Part 11b, you should request them to enclose copies of any recent reports from specialists such as consultants, psychiatrists, psychologists, physiotherapists and counsellors. Your doctor should also enclose any test results or other information that they think is relevant. This will ensure we have a full picture of your medical condition when we make a decision on your claim.

This excerpt from Part 10 of the DA1 raises concerns. The inclusion of this information in Part 10 but not Part 11 suggests that the provision of evidence from specialists and consultants is not a standard element of a GP completing Part 11b. Thus, a GP may consider the provision of this additional evidence to be a secondary non-obligatory task and charge additionally for these documents. Further, placing the onus on claimants to request this documentation discriminates against those with health conditions affecting memory in that a claimant who forgets to ask for this additional information will not have said information considered by the DSP Deciding Officers. Thus, the economic and non-discrimination dimensions of accessibility are engaged and potentially violated here.

Recommendation 6F: to move the above excerpt into Part 11b and strengthen the language (i.e. replace 'you should request to enclose […]' with 'you are required to enclose […]'),

This recommendation would make the action of providing further evidence from specialists a standard part of the functional assessment and place the onus on the GP, at no additional cost to the claimant and thus satisfying the economic dimension of accessibility.

Once Part 11b of the DA1 has been completed by the GP, the claimant sends the finalised DA1 to the DSP where the testimony of the claimant, their GP and any additional evidence attached is reviewed by DSP Deciding Officers. This decision-making process is discussed below in section 6.3.

Having now analysed the functional assessments for both PIP and DA, section 6.3 now examines how the reports generated from PIP and DA functional assessments are

considered alongside testimony and evidence supplied by the claimant as part of the benefit eligibility decision-making process by government workers in the UK and Ireland.

6.3. THE DECISION-MAKING PROCESS FOR DETERMINING ELIGIBILITY

This section discusses the actions undertaken by Deciding Officers of the DSP in Ireland and Decision Makers of the DWP in the UK following their receipt of a completed DA or PIP benefit application form along with supporting evidence and the report generated from the functional assessment of the claimant. In this section, factors that influence the decision-making process will be analysed, with those factors that lead to concerns and errors when determining eligibility given particular focus.

6.3.1. THE DWP DECISION-MAKING PROCESS FOR PIP ELIGIBILITY

Following completion of the functional assessment for PIP, the DWP Case Manager considers all of the evidence they have received, which will include the report of the HCP who carried out the functional assessment of the claimant, the PIP2 form from the claimant, the additional evidence attached to the PIP2 form, and occasionally evidence collected from the medical professionals listed in Section Two of the PIP2 form that was not provided by the claimant directly.

From this information, the DWP Case Manager consults the descriptors for each of the daily living and mobility activities, found in Schedule 1 of the Social Security (Personal Independence Payment) Regulations 2013 (PIP Regs 2013).[528] Each descriptor indicates a certain level of limitation in undertaking a functional activity is worth a set number of points. The maximum points that can be scored for each activity varies between six and twelve. Every activity contains a descriptor that equates to zero points. In order for an award of PIP at the standard rate to be given in either the daily living or the mobility component, a score of eight must be reached,[529] and for an award of PIP at the enhanced rate to be given in either the daily living or the mobility component, a score of twelve must be reached.[530]

[528] The Social Security (Personal Independence Payment) Regulations 2013, Sch 1 Part 2, Part 3.
[529] The Social Security (Personal Independence Payment) Regulations 2013, reg 5(3)(a), reg 6(3)(a).
[530] The Social Security (Personal Independence Payment) Regulations 2013, reg 5(3)(b), reg 6(3)(b).

The descriptors for the functional activity of engaging with others face to face along with the points each level of limitation allows for are listed below:

Column 1 *Activity*	*Column 2* *Descriptors*	*Column 3* *Points*
9. Engaging with others face to face	a. Can engage with other people unaided.	0
	b. Needs prompting to be able to engage with other people.	2
	c. Needs social support to be able to engage with other people.	4
	d. Cannot engage with other people due to such engagement causing either –	8
	(i) overwhelming psychological distress to the claimant; or	
	(ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.	

Thus, it is the task of the DWP Case Manager when determining whether a claimant should be awarded PIP to select one descriptor relating to each activity that best matches the limitations of the claimant in line with the evidence available. Whereas a similar approach is applied by HCPs when generating their reports following functional assessments in that they also select from the list of descriptors what they believe to most appropriately represent the limitations of the claimant, this selection by a HCP is merely a suggestion. However, the descriptors selected by DWP Case Managers are those which count for scores in the final decision notice and which directly determine eligibility for PIP or lack thereof.

Such a description of the decision-making process may suggest that it is straightforward and uncontroversial. However, the rate at which DWP decisions are determined to be

faulty and thus overturned following appeal to tribunal is above 70%,[531] suggesting fundamental flaws in the decision-making process of the DWP.[532]

Indeed, DWP decision-making is roundly criticised by DPOs, academics,[533] and politicians, along with PIP claimants themselves, particularly in relation to maladministration by DWP officers. One such concern regarding DWP decision-making is the utilisation of reports generated by HCPs employed by assessment provider companies who carried out the functional assessments of claimants. This practice is of concern due to questions of the competency of the HCPs and hostile behaviour reported in said assessments as explained above.

A further concern related to the process by which PIP claims are handled by the DWP is the revelation stemming from a freedom of information request in 2017 which indicated that the DWP had not only set a departmental target of rejecting 80% of reconsiderations of claims challenged by claimants but in actuality exceeded this target.[534]

As well as concerns over the administration, there are also concerns as to how the law is interpreted and applied by DWP Case Managers as part of the decision-making process. The major concern here with DWP decision-making is that, despite a clear legal framework upon which decision-making should be based, the actual method through which decisions are made is obscured from the public eye, creating a lack of certainty and clarity for claimants.[535]

The following two sections analyse how legal provisions contained in the Social Security (Personal Independence Payment) Regulations 2013 are routinely misapplied by DWP Case Managers.

[531] Ministry of Justice, 'Official Statistics Tribunal Statistics Quarterly: April to June 2022' (*Gov.UK*, 8 September 2022) <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2022/tribunal-statistics-quarterly-april-to-june-2022> accessed 13 March 2023.
[532] Ellen Clifford, The War on Disabled People: Capitalism, Welfare and the Making of a Human Catastrophe (Zed Books 2020) 88.
[533] Catherine Barnard and Amy Ludlow, 'Administrative (in)justice? Appelants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406; and Harris
[534] https://www.disabilityrightsuk.org/news/2017/may/dwp-has-80-targets-refusing-benefit-reconsiderations
[535] Neville Harris , 'Complexity in the law and administration of social security: is it really a problem?' (2015) 37 (2) JSWFL 209, 219.

6.3.1.1. DWP Decision-Making and the Social Security (Personal Independence Payment) Regulations 2013

One major flaw that consistently presents itself at tribunal (the Social Security and Child Support Tribunal; SSCS), a venue at which the decision-making process of DWP Case Managers is regularly tested, is the failure of DWP Case managers to properly apply regulations from the PIP Regs 2013 that serve to clarify how to determine whether a descriptor has been met. These regulations that inform how to determine when a descriptor has been met provide that a claimant must be able to undertake an activity over 50% of days in the 'required period' (reg 7),[536] for a descriptor to apply,[537] and that a descriptor must only apply where a claimant can undertake the activity safely, to an acceptable standard, repeatedly, and within a reasonable time period (reg 4(2A)).[538] In the context of reg 4(2A), safely means 'in a manner unlikely to cause harm to [the claimant] or to another person, either during or after completion of the activity',[539] and is to be applied when there is a real possibility of harm occurring, not just where there is a likelihood of harm.[540] Repeatedly means as often as is reasonably required,[541] with consideration being taken of the cumulative impact that a disability will have on subsequently completing an activity and whether completing the task will render the claimant too exhausted to undertake the activity again later in the day or on subsequent days.[542] A reasonable time period for an activity is defined as being no more than twice as long as the maximum time it would take a person without a disability to undertake the activity,[543] with hesitancy causally related to the disability of a claimant being of

[536] This is roughly speaking the three months before a claim for PIP is made and the nine months after this claim for PIP – The Social Security (Personal Independence Payment) Regulations 2013, r. 12.
[537] The Social Security (Personal Independence Payment) Regulations 2013, r. 7; If multiple descriptors apply over 50% of the time, or no descriptors individually apply for 50% of the time, but two or more added together apply for over 50% of the time, then the DWP Case Manager must apply the highest scoring descriptor.
[538] The Social Security (Personal Independence Payment) Regulations 2013, r. 4(2A); r. 4(4) defines these terms: In this regulation— (a)"safely" means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity; (b)"repeatedly" means as often as the activity being assessed is reasonably required to be completed; and (c)"reasonable time period" means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person's ability to carry out the activity in question would normally take to complete that activity.
[539] The Social Security (Personal Independent Payment) Regulations 2013, reg 4(4)(a).
[540] RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ (PIP) [2017] UKUT 105 (AAC).
[541] The Social Security (Personal Independent Payment) Regulations 2013, reg 4(4)(b).
[542] Department for Work and Pensions, 'PIP assessment guide part 2: the assessment criteria' (*DWP*, 21 July 2022) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-2-the-assessment-criteria> accessed 15 July 2022, [2.2.16-18].
[543] The Social Security (Personal Independent Payment) Regulations 2013, reg 4(4)(c).

relevance here.[544] An acceptable standard is one that is not one that is near to perfection but must be simply 'good enough' to be considered acceptable.[545]

Returning to the descriptors for the 'engaging with others face to face' activity, in order to be awarded the full eight points under descriptor d the claimant must, because of a direct causal link with their health condition or disability, not be able to engage with others at all. In this context, engaging socially means interacting with others in a contextually and socially appropriate manner, understanding body language and establishing relationships.[546] A reading of these descriptors without the application of the PIP Regs 2013 would suggest that if with either prompting or social support, regardless of the intensity of such support, the claimant can undertake this activity then descriptor 9d cannot be applied.

This was the argument put forward by the DWP in the case of *AM,*[547] in which a neurodiverse claimant with a history of being verbally abusive to the extent their family were no longer able to support them and they were moved to supported accommodation was scored zero under the engaging with others activity, meaning the DWP held that the claimant could engage with other people unaided. The DWP justified this finding by noting that the claimant was a member of a drama group and that they were able to interact with other members of this group. The tribunal judge in this case held that the mere fact that the claimant could undertake the activity on an infrequent basis was not sufficient to dismiss any of the point-scoring descriptors. Rather, it was held that descriptor 9d – the claimant cannot engage with other people – must apply due to the infrequent nature of the claimant engaging with others (i.e. less than 50% of the time per reg 7) and their verbal aggression which denoted both a lack of acceptable standard and potential risk of safety per reg 4(2A) must be taken into account. Thus the claimant was awarded the maximum points under descriptor 9d(ii) this activity.[548]

---

[544] *ML v SSWP (PIP)* [2017] UKUT 0171 (AAC).
[545] Department for Work and Pensions, 'PIP assessment guide part 2: the assessment criteria' (*DWP*, 21 July 2022) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-2-the-assessment-criteria> accessed 15 July 2022, [2.2.12].
[546] The Social Security (Personal Independent Payment) Regulations 2013, Sch 1 para 1; For clarification of the overlap between 'engaging socially' and 'engaging with others', see *SF v SSWP* [2016] UKUT 0543 (AAC).
[547] *AM v Secretary of State for Work and Pensions* (PIP): [2017] UKUT 7 (AAC).
[548] The other maximum point-scoring descriptor for engaging with others face to face is descriptor 9d(i), which is selected where a claimant cannot engage with others due to overwhelming psychological distress (OPD). OPD is defined in the PIP assessment guide as distress related to a mental health condition or intellectual or cognitive impairment, which results in a severe anxiety state in which the symptoms are so severe that the person is unable to function - Department for Work and Pensions, 'PIP assessment guide part 2: the assessment criteria' (*DWP*, 21 July

Although the two regulations complimented each other in the case of *AM,* there are times where the operation of reg 7 and reg 4(2A) have been in conflict, and the DWP decision-makers were held to have applied the 'wrong' regulation in that through applying the law in that manner, the DWP was held to have contravened parliamentary intention. It was demonstrated in the joint case of R*J, GMcL and CS,*[549] in which all claimants had seizure conditions, that DWP decision-makers were dismissing the 'dire' risks to the personal safety of the claimants when undertaking activities such as preparing food and bathing due to the remoteness of a seizure coinciding with the undertaking of said activities. The DWP decision-makers applied reg 7 in their decisions against the appellants in this case and stated that safety as included in reg4(2A) did not apply due to the fact that the appellants were unlikely to be harmed when undertaking activities.[550]

In reaching its decision in this case, the panel of judges for this hearing considered a case study included in the government consultation paper to the PIP Regs 2013 which it was 'said that Mary would be assessed as unable safely to use a cooker because of the risk of injury from seizures which occurred on average three times a month.' Clearly, an occurrence of three times a month falls short of the 50% rule established by reg 7. Thus, the panel of judges when determining the nature of safety in the context of reg 4(2A) held:

An assessment that an activity cannot be carried out safely does not require
that the occurrence of harm is "more likely than not". In assessing whether a person can carry out an activity safely, a tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. It follows that both the likelihood of the harm occurring and the severity of the consequences are relevant.[551]

One method to ensure that DWP Case Managers, and also HCPs undertaking functional assessments, do not disregard regulation 4(2A) and regulation 7 of the PIP Regs 2013

2022) < https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-2-the-assessment-criteria> accessed 15 July 2022.
[549] [2017] AACR 32.
[550] The Social Security (Personal Independence Payment) Regulations 2013, r. 4(4).
[551] [2017] AACR 32 [56].

would be to integrate them into the PIP2 form and allow claimants to provide testimony on how they are functionally limited in line with these regulations.

Recommendation 6G: amend the PIP2 form to include the tick box options and bullet point explanations for each of the functional activities, along with the open-ended section in which the claimant's story can be told

Specifically, the above recommendation could use the following options and explanations:

Please indicate with an X the percentage of days in a year that your health condition or disability affects your ability to carry out this activity:									
10%	20%	30%	40%	50%	60%	70%	80%	90%	100%

Please indicate whether you can undertake this activity							
Safely:		Repeatedly:		To an Acceptable Standard		In a Reasonable Time Period	

- Safely means unlikely to cause harm to yourself or someone else, either while carrying out this activity or afterwards.
- Repeatedly means as often as is required for the activity to be completed
- Reasonable time period means less than twice the amount of time someone without your disability or health condition would take to complete the activity
- Acceptable standard means to the level that would be usually be expected for the activity.

The inclusion of the above tick box options in the PIP2 form would satisfy the general obligation in Article 4 CRPD to provide accessible information to persons with disabilities about support services, and thus the dimension of information accessibility, in that it would provide claimants with a clear request to supply information that can influence the outcome of their claim for a support service, ensuring that no claim was without this vital information. Article 21 CRPD would also be satisfied here as these tick box options would allow PIP claimants to exercise their right to impart information and ideas on an equal basis in that all PIP2 forms would include reports of claimant's

functionality in line with the 2013 PIP regs. The dimension of accessibility of the justice system as protected by Article 13 CRPD would also be satisfied here as a failure by decision-makers, when carrying out their quasi-legal determinations of eligibility,[552] to factor claimant's reports in these tick boxes would provide claimants with a clear ground to make a legal challenge.

6.3.1.2. DWP Decision-Making and the Language of the Descriptors

Even when the PIP Regs 2013 are not engaged and the role of the DWP Case Manager is simply to select the most relevant of the descriptors, errors can still be made due to confusion regarding the language adopted for each descriptor. For example, in cases where even when factoring in the PIP Regs 2013, descriptor 9d does not apply, then a DWP Case Manager must decide whether to apply descriptor 9c which only applies when social support is required and scores four points, or apply descriptor b which applies when a claimant requires prompting to engage with others. In *SSWP v MM*,[553] the Supreme Court held that there is an overlap between descriptors 9b and 9c in that 'prompting' can be a form of social support for the purposes of 9c so long as it is provided by 'a person trained or experienced in assisting people to engage in social situations'.[554] In *MM,* it was determined that a person trained or experienced in assisting people to engage in social situations does not need to be trained professional carer or personal assistant. Rather, this helper may well be a family member or friend of the claimant who has specific experience in assisting the claimant with social situations.[555] However, this helper will only be deemed to be providing social support for the purposes of descriptor 9c based upon their level of experience or training undertaken to support the claimant. The mere fact that the claimant is more confident due to being in the presence of a person with whom they share a close and comforting relationship would not be sufficient to meet descriptor 9c.[556] If support is argued to be coming from a regular meeting with an acquaintance that makes the claimant more confident to undertake other social engagements, this would not pass the threshold for descriptor 9c and would instead be deemed as prompting under descriptor 9b.

[552] Leeds Disability Law Hub, 'For the Record: Evaluating the Need to Provide Recording Equipment in PIP Assessments and Tribunal Hearings to Facilitate Accessibility in the UK' (2019) University of Leeds International Disability Law Clinic [5.4].
[553] *SSWP v MM* [2019] UKSC 34.
[554] SSWP v MM [33-38]; The Social Security (Personal Independence Payment) Regulations 20132013, Sch1 Para 1.
[555] SSWP v MM [33-38].
[556] *ibid* [34].

The extent of the overlap between these two descriptors is made even more unclear following the decision reached in *MM* which holds that in order for help to be deemed as social support for the purposes of descriptor 9c, it does not have to be given at the exact moment of the engagement.[557] Indeed, as stated in the case of *MM*,

> It is not difficult to contemplate a situation in which the trained or experienced supporter is aiming to make progress so that a claimant, who initially cannot manage without the supporter physically present during the face-to-face engagement, learns in stages to manage with the supporter at the door of the room next door, leaving the building for a short period during the meeting, bringing the claimant to the meeting and collecting him after it, and so on.558

A claimant reporting substantial difficulty in engaging with others may benefit from the ruling in the case of *SSWP v AS*.[559] This case held that in order for a claimant to be able to undertake this activity, they 'must be able to interact with others contextually and socially in an appropriate way; understand body language; and establish relationships.'[560]

With all of the above, it is difficult to predict whether a claimant with communication difficulties who attends group meetings every weekday at which they do not speak but communicate via non-verbal nods and cues, and who is accompanied by their mother who speaks on their behalf, would be determined to fit under descriptor 9b, 9c or 9d. Moreover, despite these meetings occurring five days a week, it may be decided that these meetings do not supersede 50% of the time for which the claimant undertakes activities and so Regulation 7 may apply here.

Indeed, although there are several decided cases that go some way to unpick the differences between the descriptors and identify where each should be applied as well as where the PIP Regs 2013 are engaged, the HCPs and DWP Case Managers must be aware of their existence and rulings for them to be of use prior to an appeal. HCPs and DWP Case Managers are not trained lawyers, and so their knowledge of case law relevant to PIP decision-making is not guaranteed.

---

[557] *ibid* [41-43].
[558] *ibid* [41].
[559] [2017] UKUT 454.
[560] *ibid* [6].

Having now established where faulty and improper decision-making occurs when a claim is handled by a DWP Case Manager, section 6.3.2 now considers how claims for DA are managed by Deciding Officers in Ireland.

6.3.2. THE DSP DECISION-MAKING PROCESS FOR DA ELIGIBILITY

In many ways, the role of a DSP Deciding Officer is the same as a DWP Case Manager. Deciding Officers review the testimony of the claimant along with any supporting evidence and a report from an independent HCP in order to determine eligibility. However, there are differences in the decision-making process as undertaken by DSP Deciding Officers than by DWP Case Managers. The key difference between the decision-making process for DA eligibility compared to that for PIP is that the means – money either in the form of cash income, maintenance payments or capital/savings – of a claimant are factored into eligibility assessments for DA whereas they are not for PIP.

As such, section 6.3.2.1 below will outline the assessment of means for DA claimants, which is absent from PIP decision-making, and section 6.3.2.2 will analyse the decision-making process for DA eligibility as it relates to disability.

6.3.2.1. DSP Decision-Making and the Assessment of the Means of a Claimant

The means test for DA directly impacts the amount of money a successful DA claimant is awarded. Unlike PIP, which is paid at various rates depending on whether a claimant is determined to be eligible for either a standard or enhanced award depending on the extent of their functional limitations, DA is paid at one standard rate. In 2022, that weekly rate is €208.00. Claimants who are successful in determining their eligibility for DA are *de facto* entitled to this amount. However, depending on the weekly means of a claimant, the €208.00 is tapered down in graduations of €2.50 to a minimum of €3.00 awarded to claimants with weekly means between €205.00 and €207.50. Claimants with weekly means above €207.50 do not qualify for DA.

The means test for DA takes into account the financial situation of a claimant both as an individual and in relation to any children, partners, and cohabitants. As stated above in Chapter 4.4, the DA1 form screens for the financial details of both the claimant and their partner. The questions relating to means in the DA1 form require information regarding

both the claimant and, if applicable, their partner in relation to capital savings,[561] maintenance payments and to cash income.[562]

The means assessment for DA requires DSP Deciding Officers to note the amount recorded under each section above, apply a series of disregards to each and carry out a calculation to determine whether a) the claimant is eligible for DA on the grounds of means, and b) whether, if successful in their claim, the weekly award of DA needs tapering due to the means of the claimant.[563]

Neither the DA webpage on Gov.ie,[564] nor the publicly available Operational Guidelines for DA,[565] contain clear guidance as to how any of the disregards for means apply for the purposes of the DA means test. There are Operational Guidelines for Means Assessment,[566] but these guidelines include information on how the means test for several different social welfare benefits operate, each with their own different relevant factors, disregards and calculations. This makes the Operational Guidelines for Means Assessment an inaccessible document for an individual seeking clarification on the means test of only DA.[567] A solution to improving accessibility in relation to the means assessment for DA was suggested in the previous chapter with recommendation 5D:

[561] Including stocks, shares, or capital held in savings accounts.
[562] Including from employment (including self-employment and employment schemes), other social security payments, land and property ownership both in terms of regular rent and from the sale of any property, money incoming from a claim for compensation, pension lump sum or inheritance, or from any other source.
[563] The law governing the means test for DA is included in the Social Welfare Consolidation Act 2005, part 2 to schedule 3 part 2 part 1 to schedule 4. The legislative provisions allowing for the means test are written densely, and the average DA claimant without legal training would require a plain English or plain Irish guide to the operation of the means test.
[564] Department of Social Protection, 'Disability Allowance' (*Gov.ie*, 4 May 2022) < https://www.gov.ie/en/service/df6811-disability-allowance/?referrer=http://www.gov.ie/DA/ > accessed 29 July 2022.
[565] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[566] Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).
[567] Although there is no official guidance from the Irish government on this matter, Citizen Information hosts three webpages on each of the three major areas of means assessment – Cash Income, Capital, and Maintenance Payments - and embeds these pages on its general Disability Allowance information page - Citizens Information, 'Cash income not included in the means test' (Citizens Information, 23 June 2022)<https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/cash_income_not_included_in_the_social_welfare_means_test.html > accessed 29 July 2022.
Citizens Information, 'Capital and social welfare payments' (Citizens Information, 7 July 2022) <https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/how_to_assess_your_means_from_capital_for_social_welfare_payments.html > accessed 29 July 2022.
Citizens Information, 'Maintenance and social welfare payments' (Citizens Information, 20 February 2022) < https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/maintenance_and_social_welfare_payments.html > accessed 29 July 2022.

Recommendation 5D: Ireland should develop an information booklet similar in style to that which accompanies the PIP2 so that all claimants have a baseline level of guidance to assist completion of the DA1.[568]

Adoption of this recommendation would make it clear to DA claimants how their means would be assessed by DSP Deciding Officers and whether any disregard would apply to their finances. This would not only improve the current standard of information accessibility but in allowing DA claimants a greater opportunity to estimate how much their weekly DA award would be, would also improve the standard of economic accessibility currently displayed by Irish law.

Information regarding each of the areas considered by DSP Deciding Officers as part of their means assessment for DA eligibility are outlined below.

Cash income from paid work, including self-employment, will be counted towards the means of a claimant, but significant disregards apply. The first net €140.00 that a claimant earns a week is entirely disregarded from their means.[569] 50% of any net income that a claimant earns a week between €140.00 and €375.00 is also disregarded.[570] Thus, if a claimant was to earn €375.00 a week, their weekly means would be calculated at €187.50 a week. In line with the Social Protection Rates of Payment 2022,[571] and if this income were the only means of the claimant, then they would receive a weekly DA award of €23.50. Any income from paid work above €375.00 is assessed in full and as this would be far above the maximum qualifying total weekly means of €207.50,[572] would disqualify a claimant from an award of DA.[573] Any money claimants receive from DSP payments other than DA, save for a maximum award of Jobseeker's Allowance, is not counted towards means.[574]

---

[568] Recommendation 5E suggested that the lengthy DA1 form be separated into two halves – a means half and a functional limitation half - and that the adoption of this recommendation would require two separate information booklets, one on each different element of DA eligibility.
[569] Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).
[570] ibid.
[571] Department of Social Protection, Social Protection Rates of Payment 2022 (DSP 2022) 65.
[572] *ibid.*
[573] 60% of any income that the cohabitant of a claimant earns is also assessed, but €20.00 a day are disregarded from this, up to a maximum weekly disregard of €60.00 per week - Citizens Information, 'Disability Allowance' (*Citizens Information,* 15 June 2022) < https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/disability_allowance.html > accessed 29 July 2022.
[574] Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022); Citizens Information, 'Cash income not included in the means test' (*Citizens Information,* 23 June

Capital held by the claimant will usually not benefit from any disregard,[575] other than a disregard of €190,500 from the sale of the residence of the claimant. DSP Deciding Officers translate the amount of capital held by a DA claimant into weekly means available to the claimant according to a set formula. Any capital value under €50,000 is entirely disregarded. For the next €10,000 between €50,000.01 and €60,000, each €1,000 constitutes €1.00 of weekly means.[576] For example, a claimant with a total capital value of €53,000 would be calculated to have weekly means from capital of €3.00, and if this were their only means, a weekly DA award of €205.50.[577] For the next €10,000 between €60,000.01 and €70,000, each €1,000 constitutes €2.00 of weekly means.[578] For any capital value upwards of €70,000.01, each €1,000 constitutes €4.00 of weekly means.[579] Thus, a claimant with a total capital value of £80,000 would have a weekly means of €70.00, and if this were their only means, a weekly DA award of €138.00.[580]

Maintenance payments are payments made to the claimant by a former partner, married or unmarried, from whom they are separated. This is due to the legal obligation of Irish citizens to maintain their dependants.[581] Usually, in this context, a dependant is a child of the claimant, but in some circumstances, a DA claimant could themselves be a financially dependent adult who is owed maintenance by a separate partner.[582] Maintenance payments can be made voluntarily or can be legally enforced against a separated partner through a maintenance order.[583] 50% of any maintenance payments received by the

2022)<https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/cash_income_not_included_in_the_social_welfare_means_test.html > accessed 29 July 2022.

[575] Some disregards may apply when the DA claimant holds capital in a joint account with another person. Although legally the total amount in a joint account is the entire property of each person named on the account, in reality the assessment of capital in a joint account is often limited in line with the circumstances of the claimant. Where the joint account is owned by the claimant and their cohabitant, and where both claimant and cohabitant are either in receipt of or have a claim open for means-tested benefits, then only a portion of the total in the joint account relative to the amount that they have deposited into the account is considered. However, where a joint account is opened to allow a second person to inherit the savings upon the passing of the claimant, or where a second name is added to aid ease of cash withdrawal, then the total savings in the account are considered as means of the claimant. Where an account in the name of solely the claimant is being operated as a *de facto* joint account, and it is claimed that a portion of the money in the account belongs to a second party, the total of the account is still considered as the means of the claimant - Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).

[576] ibid.

[577] Department of Social Protection, Social Protection Rates of Payment 2022 (DSP 2022) 63.

[578] Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).

[579] *ibid*.

[580] Department of Social Protection, Social Protection Rates of Payment 2022 (DSP 2022) 63.

[581] Family Law (Maintenance of Spouses and Children) Act 1976.

[582] Such circumstances relate to low income, poor earning potential and high financial responsibilities - Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, s.45.

[583] Family Law (Maintenance of Spouses and Children) Act 1976, s.5; District Court Rules 1997, orders 54-55.

claimant are considered as means for the means test.[584] Regardless of whether a maintenance order or agreement specifies how much of the payment is intended for the child and for the parent, 50% of the total maintenance payment is still considered to be the means of the claimant. Up to a total of €95.23, housing costs are also disregarded from maintenance payments.[585]

The means assessment is a much-maligned facet of the administration of DA. Parents of DA claimants report being concerned that, when their children inherit any capital or property on their passing, the DA payments to their children will either be capped or stopped entirely.

Recommendation 6H: Remove an assessment of means from the eligibility requirements for DA.

As stated in Chapter 4.4, DA claimants in receipt of the maximum, untapered award receive a weekly rate is €208.00, which amounts €10,816 per annum. In 2021, Indecon International Research Economists prepared a report for the DSP that indicated that disabled people spend an average of €9,027 more than non-disabled people due to costs related to disability, special versions of products, and transport and mobility.[586] Thus, should a DA claimant in receipt of the full award of DA have expenditures of €9,027 on disability-related costs, that would leave only a total of €1,789, or €34.40 a week to cover other living costs. This dangerously low amount of real-term support for DA claimants itself engages the economic dimension of accessibility. However, any reduction of the award of DA claimants must be viewed as a violation of both the economic dimension of accessibility and of the obligations imposed by Article 28 CRPD – the right to an adequate standard of living and social protection - on States to ensure access to disabled people to social protection programmes and poverty reduction programmes,[587] and to assistance from the State with disability-related expenses.[588]

[584] Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).
[585] For a claimant with housing costs exceeding €95.23, their weekly means from maintenance payments would be half of the total maintenance payment for parent and child left over after subtracting the housing disregard. For example, if a claimant with housing costs exceeding €95.23 received a maintenance payment of €150.00, then the calculation would be €150.00 less €95.23, which leaves the balance of €54.77, and this balance is then halved, resulting in €27.38 in weekly means for the claimant.
[586] Indecon, 'Cost of Disability Research Project: Report submitted to the National Disability Authority by Indecon International Economic Consultants' (Indecon 2022) 92.
[587] CRPD Art 28(2)(b).
[588] CRPD Art 28(2)(c).

Having now explained how the means test for DA operates and indicated where this element of decision-making falls below CRPD standards, the next section examines how eligibility for DA is assessed based on how the disabilities and health conditions of the claimant affect their functionality.

6.3.2.2. DSP Decision-Making and the Assessment of the Functional Limitations of the Claimant

As indicated in Chapter 4.4, the eligibility for DA is not based solely on a claimant having a disability or health condition. The Social Welfare Consolidation Act 2005 provides that, in order to be eligible for DA, a claimant must be substantially restricted in undertaking employment of a kind which, if the person was not suffering from that disability, would be suited to that person's age, experience and qualifications.[589] Following an amendment to the law in 2019,[590] there is now the further requirement that the reason that the claimant is incapable of work must be due to the substantial restriction stemming from their disability and that if it were not for the substantial restriction, the claimant would be available to work.[591]

Further context as to what is meant by 'substantially restricted' in undertaking employment is provided for by a statutory instrument. As per article 137(1) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007,

> a person shall be regarded as being substantially restricted in undertaking suitable employment by reason of a specified disability where he or she suffers from an injury, disease, congenital deformity or physical or mental illness which has continued or, in the opinion of a deciding officer or an appeals officer, may reasonably expect to continue for a period of at least 1 year.[592]

[589] Social Welfare Consolidation Act 2005, s.210(b).
[590] Social Welfare (No.2) Act 2019, s.4(e)(i-ii).
[591] Social Welfare Consolidation Act 2005, s.210(ba-bb).
[592] The Disability Act 2005 definition of disability is very similar to the definition provided by Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, art 137. The Disability Act 2005, s. 2(1) provides that disability 'in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment'.

Plainly, if it were only necessary for a claimant to demonstrate the existence of a health condition or disability that has lasted or is likely to last for a year, then not only would the process to determine DA eligibility be much simpler, but then the majority of the *DA1 Medical Report for Disability Allowance* (Parts 9-12 of the DA1 form) would be redundant. Indeed, there would be no requirement for the claimant to indicate how their mental health, physical health or ability to carry out their home maintenance or hobbies is affected by their health conditions. Nor would the GP of the claimant be required to tick the boxes of the ability/disability profile (figure 2) to indicate where a claimant has either a mild, moderate, severe or profound affectation in undertaking activities. Yet, as will be explained below, it is apparent that the testimony provided by the claimant and their GP in these sections impacts the decision-making process of Deciding Officers. In order to demonstrate this, the annual reports of the Social Welfare Appeals Office (SWAO),[593] which contain summaries of appeals against DA decisions,[594] must be consulted. This is because of a lack of evidence from the DSP on the subject of its decision-making for DA eligibility, and an absence of guidance in legislation or guidelines on how the process should operate. The impact of the limited information regarding DSP decision-making is expanded upon below.

The DA appeal summaries included in the SWAO annual reports which challenge DSP decision on the grounds of an error in the medical assessment all contain reference to the *DA1 Medical Report for Disability Allowance*,[595] with a particular focus being placed on the ability/disability profile by SWAO officers. Moreover, in the case of the ability/disability profile are quoted by officers of the Social Welfare Appeals Office (SWAO) as informing their decision to either allow or deny appeals,[596] further demonstrating the importance of the testimony reported in these sections of the DA1 form to decision-making. Thus, by analogy of its importance to SWAO decision-making upon appeal, the content of the *DA1 Medical Report for Disability Allowance* must be equally significant in the decision-making process of DSP Deciding Officers.

[593] The Social Welfare Appeals Office is the venue to which DA claimants take their legal challenges against DSP decisions. DA claimants can bring legal challenges against decisions they disagree with in relation to the outcome of either the medical test or the means test at the SWAO.
[594] Social Welfare Appeals Office and Joan Gordan, Social Welfare Appeals Office Annual Report 2020 (SWAO 2020) 60-62.
[595] The Social Welfare Appeals Office Annual Reports is where a selection of case summaries regarding social security appeals are published, of which some discuss DA appeals. These case summaries tend to be between two and five paragraphs long. Other than those DA appeals that continue onto court due to an error on a point of law, this is the only place where DA appeals are published, and even then only in part - Social Welfare Appeals Office and Joan Gordan, Social Welfare Appeals Office Annual Report 2020 (SWAO 2020).
[596] *ibid.*

It is only by analogy to SWAO decision-making that any determination on how DSP Deciding Officers assess the medical content of DA claims can be made. Indeed, no clarity can be sought from the law. There are no statutory references to the impact that either the self-reported testimony from the DA claimant regarding their ability to undertake activities or the medical report and ability/disability profile from the GP has on determining DA eligibility.[597] Further, there is no reference to these factors in either the Operation Guidelines for DA,[598] or the Operational Guidelines on Decision Making and Natural Justice.[599]

Thus, the legislative provisions allowing for DA can rightly be labelled as opaque. This is especially the case when comparing the approach taken with legislative provisions for PIP in the UK, which include an entire framework for the number of points scored for each level of capability a claimant demonstrates in undertaking an action, and how many points are required to receive an award of PIP.

Further, no empirical study has been undertaken to investigate how the process of decision-making to determine eligibility for DA operates in practice. This means that as well as a dearth of clarity from the relevant legislative provisions, there has been no reporting on the exact process through which eligibility is determined from disability rights organisations or academic institutions, which if available would have aided in developing knowledge of the decision-making process for DA eligibility in this chapter. The only source available to inform how eligibility might be determined based on the assessment of the functionality of a claimant is the series of annual reports of the SWAO.

[597] In relation to statutory references to the ability/disability profile, the Explanatory Note to the Social Welfare (Consolidated Claims, Payment and Control) (No.2) (Partial Capacity Benefit) Regulations 2012, which govern the law relating to a different disability-specific welfare benefit – Partial Capacity Benefit (PCB) – defines a profound limitation as capacity not more than a quarter of the norm for a person of the same age who has no restriction, a severe limitation as capacity greater than one quarter and less than one half of the norm for a person of the same age who has no restriction, and a moderate limitation as capacity greater than one half but less than four fifths of the norm for a person of the same age who has no restriction. Confusingly, despite the same language being utilised in the Disability Allowance ability/disability profile, the above PCB definitions do not apply and it is currently unknown exactly what mild, moderate, severe or profound mean in the context of Disability Allowance.
[598] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[599] Department of Social Protection, Operational Guidelines: Decision Making and Natural Justice (DSP 2022); In the Decision Making Operation Guidelines, Deciding Officers are provided with a list of questions to consider when reviewing evidence in a benefit application. Other than several questions relating to employment, which are not relevant to DA, a Deciding Officer is only told to consider previous benefit rejections, and to establish 'whether the benefit is or is not […] payable', which is tautologous with the function of a Deciding Officer. This list is a recreation of the factors for assessment listed in section 302(2)(a) of the Social Welfare Consolidation Act 2005.

Appeal summaries in the SWAO annual reports all reference the number of mild, moderate, severe and profound limitations recorded by the GP of the claimant in the ability/disability profile element of the *Medical Report for Disability Allowance.* For example, in case summary 2020/18,[600] the appeal was disallowed and the summary report states that 'indicators shown on the ability/disability profile which indicated that the appellant's ability was normal in 14 of the 16 activities profiled.'. Similarly, in case summary 2020/16,[601] in which the appellant suffered from anxiety and in which the only limitation noted on the ability/disability profile was a moderate affection to the applicant's mental health and behaviour, the appeal was disallowed. However, case summary 2020/17,[602] in which the applicant had diagnoses of epilepsy and chronic obstructive pulmonary disease (COPD), had a different result. In case summary 2020/17, the ability/disability profile of the applicant demonstrated 'his condition as affecting him to a severe degree in relation to consciousness/seizures, climbing stairs/ladders and walking, to a moderate degree in relation to balance/coordination and standing and to a mild degree in relation to lifting/carrying'. The appeal in case summary 2020/17 was allowed and concludes with the following paragraph:

> The Appeals Officer concluded that the appellant had met the qualifying criteria for receipt of Disability Allowance in that he was substantially restricted in undertaking suitable employment by reason of a specified disability, as outlined in the governing legislation.[603]

Thus, despite the decision-making process being opaque and certainly more complex than a binary decision based on whether the health condition or disability is likely to continue beyond one year, it is clear that the ability/disability profile has a major impact on whether a claimant is awarded DA. This would make the assessment process similar to that for PIP in the UK, in that a certain amount of points and descriptors must be scored to indicate the appropriate severity of limitation to undertake daily activities in order for a claim to be successful. For PIP, these descriptors and points are included in the Social Security (Personal Independence Payment) Regulations 2013. For DA, how exactly an allocation

[600] *ibid* 62.
[601] *ibid* 60.
[602] *ibid* 61.
[603] As previously outlined, government legislation does not appear to sufficiently outline the eligibility criteria for DA. It is submitted, therefore, that reference to legislation in DA appeal summaries by the SWAO is not useful.

of a certain number of mild, moderate, severe or profound limitations in the ability/disability profile leads to a decision is not a matter of public record.

Recommendation 6I: to establish a formalised scoring system from the ability/disability profile

This recommendation would create consistency in how similar claims are treated by both the DSP and SWAO. This would satisfy the general accessibility obligation under Article 4 CRPD in that the clarity of the information available to DA claimants is increased and is thus more accessible. Further, the dimension of information accessibility as protected by Article 21 CRPD would be satisfied here because this makes information in the public domain accessible. It is already known that DA eligibility is determined by functional limitations and an ability/disability profile, however, this information would be made accessible to disabled people by making explicit how these factors determine eligibility.

Recommendation 6J: to codify this scoring system into law so that DSP deciding officers have a legal duty to apply objective standards when assessing limitations and to treat similar cases in a similar fashion.

This would satisfy the dimension of accessibility of the justice system, specifically the Article 13 CRPD requirement that procedural accommodations are implemented in order to facilitate the participation of persons with disabilities in all legal proceedings, including during preliminary and investigative stages. Specifically, this would allow for active participation of disabled people when challenging the decisions of the DSP in that they (or their representatives) could easily point to clear grounds for legal challenge if they believe points were misapplied.

Other factors routinely referenced in the Social Welfare Appeal Office Annual Reports case summaries of DA appeals are whether the appellant was under the care of a specialist consultant for their disability or health condition, and whether or not the appellant received medication or treatment for the health condition or disability. This would suggest that these above factors similarly are considered as part of the decision-making process.[604]

[604] Social Welfare Appeals Office and Joan Gordan, Social Welfare Appeals Office Annual Report 2020 (SWAO 2020) 60-62.

6.3.2.3. DSP Decision-Making and the Role of Medical Assessors

Despite the above, one element of the decision-making process of DSP Deciding-Officers that is relatively clear is the consideration that is given to medical evidence, particularly the reports DSP Medical Assessors generate. Indeed, DSP Deciding Officers have the statutory right to consult Medical Assessors when determining whether to find a claimant eligible for DA.[605] The Operational Guidelines for DA state that 'Medical Assessors may give an opinion on the evidence submitted as to the nature and extent of the disability and its effect on the person's capacity to work.'.[606]

Similarly to the HCPs for PIP, Medical Assessors are fully qualified and experienced practitioners who provide a second opinion to that of the doctors and consultants who have provided evidence on behalf of the claimant.[607]The Operational Guidelines for Medical Assessment stated that:

> The Medical Assessor's role is to assess how the medical condition which has been diagnosed adversely affects the person with reference to their activities of daily living, work related activities and resultant care needs. The Medical Assessor considers the severity of the condition, its expected duration and resultant care needs and gives an opinion as to whether or not the person satisfies the medical criteria of eligibility for whichever illness-related scheme is being applied for.[608]

There are two key differences between HCPs working for assessment provider companies in the UK and Medical Assessors in Ireland.[609]

Firstly, the assessment undertaken by Medical Assessors is usually a 'paper assessment', in that the Medical Assessor will consider the documentary evidence provided by the claimant, primarily focusing on their diagnoses. Despite several criticisms against the employment of informal observations in face-to-face functional assessments for PIP, and

[605] Social Welfare Consolidation Act 2005, s.300A.
[606] Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
[607] Department of Social Protection, *Operational Guidelines: Medical Assessments* (DSP 2020).
[608] *ibid*.
[609] A third difference that may be noted is that, where HCPs carrying out functional activities in the UK work for third party private organisations, Medical Assessors are direct employees of the Department of Social Protection and so work alongside DSP Deciding Officers, which will be demonstrated as leading to claims of bias and preferential treatment. However, given that the organisations that employ assessing HCPs in the UK are contracted by the UK government, it is argued that this leads to the same net result.

indeed recommendations to amend and abolish this practice, the absence of any informal observations by Medical Assessors for DA is similarly concerning. This is because, without the additional components of reporting on informal observations and the results of a physical examination as is the case with PIP, the role of Medical Assessor appears to be to generate an abridged and editorialised version of the medical evidence already made available by the DA claimant.

Secondly, recent Irish case law has demonstrated departmental bias in the DSP through the weight given to evidence supplied by Medical Assessors as opposed to the claimant and their GP.

The case of *B v Minister for Social Protection,*[610] a case which discusses Domiciliary Care Allowance (DCA) rather than Disability Allowance but which applies to DSP Deciding Officers for all DSP benefits, lends some transparency to the impact of DSP Medical Assessor reports. In *B v Minister for Social Protection,* it was shown that the Deciding Officer had not once in over 3,000 cases departed from the Medical Assessor report. This resulted in the deciding officer being found to have foregone their statutory duty to decide claims in their role as Deciding Officer as it was determined that for these claims, it was the Medical Assessor who was *de facto* deciding DCA claims on which their opinion was sought. Further, the standard required of a Deciding Officers is that they are 'required to be free and unrestricted in the discharge of their functions',[611] and in cases where a Deciding Officer defers wholly to the opinion of the Medical Assessor, a Deciding Officer falls below the standard required. Despite this, the Operation Guidelines for Decision Making and Natural Justice place the authority to determine the relevance of evidence with the Deciding Officers.[612] In these guidelines, it is stated that the relevance of evidence is determined by many factors and that the:

> weight to be given to such factors must be carefully considered and is a matter of judgement for the individual DO/DPs concerned.[613]

Thus, it can be said that DSP Deciding Officers have a history of paying undue deference to the opinions of Medical Assessors rather than giving these opinions equal weight to

[610] [2014] IEHC 186.
[611] McLoughlin v. Minister for Social Welfare [1958] IR 1.
[612] Department of Social Protection, Operational Guidelines: Decision Making and Natural Justice (DSP 2022).
[613] *ibid.*

evidence from the claimant or their doctors and are actively supported to do so by Operational Guidelines. This is despite statutory obligations and decided cases requiring that Deciding Officers reach decisions on their own in a manner that is free and unrestricted.

Recommendation 6K: the role of Medical Assessor should be abolished, and the decision-making process should solely consider eligibility based on the assessment and certification of functional limitation to be undertaken by a member of the healthcare team of the claimant.

This recommendation is similar to recommendation 6D above, and also follows the approach of Spicker in *What's Wrong with Social Security Benefits*,

Section 6.4 now analyses the actions taken by Decision Makers at the final stage of the decision-making process – the drafting of the decision notice – and the subsequent actions available to claimants in line with the content of the decision notice they receive.

6.4. THE OUTCOMES OF THE DECISION-MAKING PROCESS TO DETERMINE ELIGIBILITY FOR PIP AND DA

After considering all available evidence to determine the level of impairment to the functional activity of the DA or PIP claimant and attributing scores correlating to the level of impairment, Decision Makers produce a letter that is sent to claimants notifying them of the outcome of the assessment – the decision notice. The decision notices produced by DWP Case Managers and DSP Deciding Officers have several key differences that influence both the nature of the award allocated to successful claimants and the options available to unsatisfied claimants wanting to challenge the decision.

This section will outline the features of the decision notices for PIP and for DA as well as the options available to claimants, both when the claimant satisfies the eligibility criteria for PIP and DA and when the Decision Maker makes a determination that the claimant is ineligible for the benefit.

6.4.1. DECISION NOTICE OF OUTCOME OF CLAIM FOR PIP AND POTENTIAL AWARD

As with other documents utilised throughout the PIP claiming process such as the PIP2 form, the PIP decision notice generated by DWP Case Managers has a fixed structure to ensure that all claimants receive information regarding the outcome of their claim in the same, consistent format. Ensuring consistency in formatting and thus avoiding the potential for information being presented differently to different claimants satisfies the dimension of non-discrimination of securing accessibility. The structure of PIP decision notices is the same both when a claimant is determined to be eligible and ineligible for PIP. Further, as PIP is divided into two separate components, a PIP decision notice may inform claimants that they have secured an award under one component but are determined to be ineligible for the other. Where eligibility is secured, the claimant will be made aware of the duration of their award.

The first section of a PIP decision notice clarifies to the claimant the level of award they have been allocated and the cash amount this translates to. For example, the front page of a PIP decision notice where a claimant has been determined eligible for the standard rate of only one component would read:

> Dear [Name]
> Thank you for claiming Personal Independence Payment (PIP).
> PIP is made up of two parts: help with daily living needs and help with mobility needs.
> I have looked at your claim and decided:
> - I can award you the standard rate of £21.80 a week to help with your mobility needs from 23 November 2016 to 7 March 2020.
> - At this time I can't award you PIP for help with your daily living needs from 23 November 2016.[614]

The claimant is then made aware of the start date for payments and that further payments will be made every four weeks. Any back-payment due to the claimant is also indicated in this section.

[614] Easy-to-Read guidance ref here

The subsequent two sections inform claimants of the operation of PIP policy in plain language. Under the *Making sure the PIP you get is right* heading, claimants are informed that the duration of any award is limited due to the changing nature of the needs of people, and that any significant changes must be reported to the DWP. Under the *How I made my decision* heading, claimants are informed that the Case Manager made a decision by reviewing all available information including the PIP 2 form and HCP report following functional assessment and that scores were allocated according to the level of limitation in undertaking the activities of the PIP2 that the Case Manager determined to be correct. Claimants are informed that a score of 8 – 11 points would secure a standard rate award for a PIP component and that 12 points or higher would secure an enhanced award.

The claimants are then provided with the list of the ten daily living and two mobility activities, with the Case Manager indicating both the score that they allocated to the claimant for each and the language of the descriptor that the points relate to. For example, when a Case Manager allocates 4 points to a claimant due to their limitation in undertaking the *dressing and undressing* activity, the claimant is informed of their score of 4 points and that the points were scored because 'You need assistance from another person to dress or undress your upper body.'

The next section, is headed *My decision*. This is a report indicating why the score that was allocated to the claimant was determined to be correct, and is signed by a named DWP Case Manager. In this report, the Case Manager makes clear how they undertook the decision-making process by discussing how they utilised the evidence available to them to determine where points should be scored. For example, when justifying the allocation of zero points under the *engaging with others face to face* activity, the Case Manager may report:

> You reported that you do not like to engage with others due to the risk of a seizure; however you have enrolled in university which would indicate that you would be able to interact with other people. You maintained adequate rapport [with the assessor] and your cognition was of an adequate standard. I have decided you are able to manage this activity unaided.

In line with the concerns discussed above in section 6.3.1, this firmly demonstrates the impact that the report of the HCP following functional assessment has on the decision-

making process and further demonstrates how errors in observation can lead to erroneous outcomes at the stage where DWP Case Managers review evidence. Moreover, the reference to enrolment at University negating limitations in interpersonal engagement is not presented with any medical justification. Indeed, if this is an observation and opinion solely of the Case Manager, an individual with no inherent greater medical expertise than the claimant, then this would be an example of discrediting the testimony of the claimant through a position of authority, which is argued by Davies to be a practice that adheres to the medical model of disability,[615] and is thus antithetical to the social model and human rights model of disability that inform the purpose of the CRPD (See Chapter 5.5.2.).[616]

Recommendation 6L: to disallow DWP Case Managers from applying observations and opinions that are not supported by the medical evidence submitted.

Similar to the second section, the final section of the decision notice provides claimants with a series of plain-language summaries of PIP policy under headings including *Other benefits, support and advice* and *If your condition changes*. Crucially, the first heading in this section, presented in a coloured box making it distinct from the rest, is *If you disagree with a decision.* Under this heading are three subheadings that explain the three options available to claimants who are dissatisfied with the decision reached by the Case Manager. First is *You can ask us to explain why*, which informs claimants that they may request further explanation from the DWP as to how the decision was made within one month of the date of the decision notice.[617] Second is *You can ask us to reconsider a decision,* which informs claimants that they can apply for a mandatory reconsideration of their claim where they believe an error or omission was made by the Case Manager or that the claimant has new evidence that would affect the decision. The mandatory reconsideration must also be applied for within one month of the date of the decision notice. Third is *When you've done this you can appeal,* which informs claimants that they may appeal to a tribunal, but that 'you must wait for the Mandatory Reconsideration Notice before you start an appeal.'.

[615] N Ann Davis, 'Invisible Disability' (2005) 116(1) University of Chicago Press 153, 182.
[616] CRPD Art 1.
[617] By clarifying that the active date here is the date of the decision letter and not date of receipt by claimant, this shortens the duration of time that a claimant has to generate a letter requesting further explanation.

These options that are available to PIP claimants who are unsatisfied with the outcome reported on the decision notice are discussed in section 6.5.[618]

Before moving to analyse the decision notices for DA, one final aspect of the decision notice for PIP must be analysed.

Where a claimant is successful in attaining an award and does not wish to challenge this,[619] this does not mean that the claimant has reached the conclusion of the benefit application process. Save for in specific cases of terminal illness,[620] an award for PIP is always allocated for a limited duration. Thus, near the conclusion of the allotted duration of the award, PIP claimants are required to complete another form that screens for any changes in their disabilities and health conditions and resultant functional limitations. This new form – the AR1 form, share the *How your disability affects you* title with the PIP2 form and can be described as an abridged version of the PIP2. The AR1 form requires PIP claimants to again list their health conditions and disabilities, their medications and their treatments along with information regarding the functional activities. For each of the functional activities, claimants are required to provide answers to three questions:

> Tell us if something has changed and approximately when.
> Tell us how you manage this activity now, including the use of any aids that you need.
> Tell us about any changes to the help you need or the help you get from another person.

Unlike with the PIP2, there are no exemplar answers provided, and the space for responses is much more limited, with claimants being provided with a 15mm by 85mm box to respond to each of the above questions.

[618] The word dissatisfied is purposefully used here rather than unsuccessful. This is because claimants may either be successfully awarded one component and not the other and believe this to be an error, or be awarded at the standard rate but believe that their limitations are severe and thus should be awarded an enhance rate for either or both components - Welfare Reform Act 2012, ss. 78-79; The Social Security (Personal Independence Payment) Regulations 2013, rr. 5-6.
[619] i.e. where only one component has been allocated an award or when standard rate awards were allocated where enhanced rate are believed by the claimant to be the correct outcome.
[620] Welfare Reform Act 2012, s.82.

Despite this form requiring only that a PIP claimant update the DWP as to any changes or to confirm that no changes have occurred in relation to their functional limitations, claimants must still attach supporting medical evidence to the AR1 form, even where no change is reported.

Section 6.4.2 below now analyses the decision notice for DA that is sent to claimants by DSP Deciding Officers.

6.4.2. DECISION NOTICE OF OUTCOME OF CLAIM FOR DA

It was not possible to source a DA decision notice when writing this thesis. However, through consultations with Irish disability lawyers and advocacy groups, several key characteristics of DA decision notices were identified.

Similarly to a PIP decision notice, the first section of a DA decision notice outlines whether the claimant has been determined as eligible for an award of DA, and where the claimant is successful, identifies the amount of the award.

In cases where the decision is not made in favour of the claimant, then the decision letter must contain the reasons for this, including both the grounds for disallowance and the reasons for which the Deciding Officer holds that the grounds for disallowance apply.[621] However, there is no obligation on Deciding Officers to explain their reasoning for finding a claimant eligible for DA should they come to a favourable decision. Thus, in cases where a claimant is successful in their claim for an award of DA, but is dissatisfied with the amount awarded, the claimant will not have clear grounds to cite if and when challenging the decision. This clearly engages the access to justice dimension of accessibility in that, unlike with PIP, successful but dissatisfied DA claimants have no insight into the decision-making process of Deciding Officers and cannot identify where faulty decisions may have been made.

Recommendation 6M: to provide DA claimants with an outline of how the decision for their claim was reached as with PIP, regardless of whether the claimant was successful in being awarded.

[621] Department of Social Protection, Operational Guidelines: Decision Making and Natural Justice (DSP 2022).

The second section of a DA decision notice outlines the options available to a claimant who believes the decision to be incorrect. These actions are now discussed in section 6.5.

6.5. ACTIONS AVAILABLE TO PIP AND DA CLAIMANTS FOLLOWING RECEIPT OF THE DECISION NOTICE

This section identifies and compares the actions that a claimant can take to challenge the decision reached on their PIP or DA claim when they are dissatisfied with the decision and believe the decision reached does not accurately reflect their circumstances. The post-decision actions that a PIP or DA claimant can take are to either:

a) have the decision reviewed by a Decision Maker from the DWP in the UK or DSP in Ireland, or
b) to appeal the decision to an appeals body independent of the DWP or DSP.

A full analysis of how dimensions of accessibility are engaged through the second of these post-decision actions is beyond the scope of this thesis. However, one key facet of the appeals process for PIP and DA claims that requires brief mention is the likelihood of favourable outcomes for claimants.

Indeed, the average success rate of PIP claimants at appeal to the Social Security and Child Support Tribunal (SSCS) being above 70% for several years running,[622] and the annual SWAO reports consistently state a success rate of above 50% for appeals against social welfare benefit decisions.[623] This suggests, as discussed particularly regarding the decision-making process with PIP in the UK in Chapter 6.3.1, that the methods through which decisions are reached in the DWP and DSP are so faulty as to allow claimants such a high likelihood of success at appeal. Therefore, it is the further decision-making undertaken by the DWP and DSP that requires focus in this section, and thus sections 6.5.1 and 6.5.2 analyse how officers of the DWP and DSP further carry out decision-making into PIP and DA claims upon a request that a claim is reviewed.

[622] Ministry of Justice, 'Official Statistics Tribunal Statistics Quarterly: April to June 2022' (*Gov.UK*, 8 September 2022) <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2022/tribunal-statistics-quarterly-april-to-june-2022> accessed 10 August 2024.
[623] The SWAO reports unfortunately do not provide analysis of the success rates for cases regarding each separate social welfare provision that is appealed - Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2021 (SWAO 2021).

Before considering how the post-decision action of requesting a decision be reviewed by the DWP or DSP available to claimants operates, it is necessary to briefly revisit the Accessibility Framework (Chapter 3.4) in order to clarify the application of the accessibility dimension of accessibility of the justice system. This is because, as will be demonstrated, the post-decision actions available to claimants are the chief area in which the accessibility dimension of accessibility of the justice system is most significantly and regularly engaged. The dimension of accessibility of the justice system was determined to be enshrined in the CRPD via Article 13, (Chapter 3.3.2.4). The dimension of accessibility of the justice system as included in the Accessibility Framework considers both the decision-making process in PIP and DA claims and the departmental review of claims by the DWP in the UK and DSP in Ireland to be 'investigative and other preliminary stages of legal proceedings' for the purposes of Article 13(1) CRPD. Further, the dimension of accessibility of the justice system as included in the Accessibility Framework considers DWP and DSP Decision Makers to thus be 'administrators of justice' as per Article 13(2).

Having now established how the actions of DWP and DSP Decision Makers engage the accessibility dimension of accessibility of the justice system even prior to independent appeals bodies.

6.5.1. MANDATORY RECONSIDERATION OF PIP DECISIONS BY THE DWP

Mandatory reconsideration (MR), as the name suggests, is a mandatory action that a PIP claimant must take before having leave to appeal to the SSCS. Where a PIP claimant is dissatisfied with the award (or lack thereof) allocated, or disagrees with the descriptors that were selected by the DWP Case Manager for each of the functional activities, the PIP claimant begins their challenge against the decision through an MR. PIP claimants are informed of their right to request an MR in their decision notice under the heading *You can ask us to reconsider a decision*, which informs claimants that they can apply for a mandatory reconsideration of their claim where they believe an error or omission was made by the Case Manager or that the claimant has new evidence that would affect the decision.

In order to commence an MR, the PIP claimant must notify the DWP of their desire to have their claim decision reviewed within one month of receipt of the initial decision

notice.[624] This can be done either via a telephone call to the DWP or via written communication. Then, the PIP claimant sends a written notice to the DWP that outlines the reasons for their request for an MR. A PIP claimant may request an MR based on any ground, in that there is no specific point of law or fact that must be established to make an MR admissible.[625]

As an MR can be requested on any ground, the claimant is not required to adhere to any particular format when generating their written notice. However, a standardised MR form – *If you disagree with a decision made by the Department for Work and Pensions,* or Form CRMR1 - is available from the gov.uk website and a blank copy can be requested from the DWP.[626] In the CRMR1 form, the relevant sections that inform a claimant of the information required for an MR request are laid out in the section headed *Why you disagree with the decision*. Under this heading, there are four questions which each have a free text box below. These questions are:

i. What part(s) of the decision do you disagree with and why?
ii. Do you have any new information we have not seen or heard of?
iii. Have you attached all the evidence listed?
iv. Details of why you have not attached the additional information.

From this, three concerns are raised.

First, although PIP claimants are made aware of their right to request an MR in their decision notice, the only guidance given here is that an MR can be requested where the claimant believes an error or omission was made. This does not clearly explain that the claimant is expected to specifically identify the parts of the decision notice – either the narrative provided by the case manager or the points scored for the functional activities – as is explained on in the CRMR1 form.

Recommendation 6N: to include the *Why you disagree with our decision* questions from the CRMR1 form in the decision notice, so as to clearly instruct claimants on how to frame their request for MR.

[624] The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, r 5(b).
[625] *ibid*, r 5.
[626] Department of Work and Pensions, If you disagree with a decision made by the Department for Work and Pensions (DWP 2023).

This recommendation would satisfy the information dimension of accessibility in that PIP claimants are provided with a clear structure by which to produce their written notice of request for MR. This recommendation would also satisfy the accessibility dimension of accessibility of the justice system, as ensuring that PIP claimants include all of the above information in their MR request necessarily ensures sufficient detail of their challenge against the DWP if the MR decision is further appealed.

Second, questions ii – iv above demonstrate continued reliance on medical evidence in support of the claim and further suggest an inherent distrust in the testimony of the claimant. This builds further on the argument submitted by Davies that:

> The belief that scientific and medical personnel are specially — perhaps uniquely—well qualified to assess disability and should thus be accorded gatekeeper status has some disquieting implications.[627]

Thus, the requirement for further medical evidence to legitimise a request for MR is again a practice that adheres to the medical model of disability, and is thus antithetical to the social model and human rights model of disability that inform the purpose of the CRPD.

Third, regarding the practice of MR as a whole, Gray in his second independent review of PIP assessments, indicated that both claimants and tribunal judges question the usefulness and thoroughness of the reviews undertaken by DWP Case Managers who review claims when an MR is requested.[628] Indeed, Gray's review indicates that the perception of the practice of MR is to 'rubber stamp' the initial decision, and that additional evidence submitted along with the MR is not always reviewed.[629] A related point here is that, where a DWP Case Manager reviews a decision following a request for MR, the Case Manager may in fact decide that the claimant is even less eligible for PIP than the original decision. For example, a PIP claimant may request an MR due to only scoring 6 points in the daily living component and thus not being eligible for either an enhanced or standard rate award of PIP. The Case Manager undertaking the MR may ultimately decide that the initial Case Manager erred in their decision and instead determine that the PIP claimant only scored 4 points. In these instances, the PIP claimant will have waited multiple weeks, without an interim benefit award, between submitting

[627] N Ann Davis, 'Invisible Disability' (2005) 116(1) University of Chicago Press 153, 179.
[628] Paul Gray, The Second Independent Review of the Personal Independence Payment Assessment (DWP 2017) 9.
[629] *ibid* 24.

their request for MR and receiving the second decision notice, only to find that an appeal to Social Security tribunal is necessary in order to (only potentially) receive an award of PIP.

From this, it can be argued that the MR process serves only to delay the eventual appeal to the Social Security tribunal by the PIP claimant, and in many instances discourage claimants from challenging the decision via appeal due to the exhaustion and overwhelm caused. Indeed, data collected by Gray in the second review of PIP assessments indicated that only 57% of PIP claimants challenged the original decision to the MR level, and then only a subsequent 36% continued the challenge to appeal to Social Security tribunal.[630] While some of those who did not challenge decision would likely not have done so due to positive outcomes in their decision notices, the 70% overturn rate at Social Security tribunal indicates that this is not the norm, and so many PIP claimants do not challenge their decision despite being dissatisfied with the outcome.

Recommendation 6O: to abolish the MR process and allow PIP claimants to move directly to appeal where they are unsatisfied with the decision reached by the DWP.

6.5.2. REVISION OF DA DECISIONS BY THE DSP

As with the DWP and PIP, a second review of a DA claim by a DSP Deciding Officer is mandatory before the claimant can proceed to an appeal at the SWAO. However, the rationale for having DSP Deciding Officers undertake review of a DA claim prior to appeal appears to be different to that employed by the DWP in the UK.

Indeed, rather than the claimant first having to pass an interim stage between claim and appeal as with mandatory reconsideration, it is the SWAO that requests the DSP review its decisions.

When an appeal is lodged with the SWAO by a DA claimant against their initial decision, the DSP is then notified of this appeal. This notification of appeal includes the grounds for appeal cited by the claimant, along with any evidence that the claimant submitted when lodging the appeal, which is not limited to the medical evidence submitted with the DA1 at the start of the Application Process, but may also include additional evidence

[630] *ibid* 25.

secured by the claimant. Here, it is important to restate that unlike those for PIP, DA decision notices do not necessarily include a summary of the decision-making process as pertaining to their claim, which makes determining specific grounds for challenge more difficult for DA claimants. Thus, recommendation 6M similarly applies here:

> **Recommendation 6M:** to provide DA claimants with an outline of how the decision for their claim was reached as with PIP, regardless of whether the claimant was successful in being awarded.

Moreover, the lack of a codified system through which DA benefit applications are scored as is the case with PIP similarly creates difficulty in determining a ground for challenge and thus recommendation 6I applies here:

> **Recommendation 6I:** to establish a formalised scoring system from the ability/disability profile

Upon receipt of the notification that a DA claimant has appealed their decision, the DSP must make a submission to the SWAO.[631] This submission will take one of two forms. The DSP will either return a statement by or on behalf of the Deciding Officer to the SWAO 'showing to what extent the facts and contentions advanced in the grounds of appeal are admitted or disputed.',[632] or 'make a revised decision on the question at issue but only if such a revised decision would be in favour of the appellant'.[633]

Where the DSP returns a list of contentions with the DA appeal lodged by the claimant, then the SWAO enter this into evidence and proceeds with an appeal. However, where the decision is revised by the DSP, then the appeal is not convened and the case against the initial decision ends.[634]

Section 301 of the Social Welfare Consolidation Act 2005 grants DSP Deciding Officers the power to revise benefit decisions reached previously by the DSP so long as at least one of the three grounds for revision is met. These statutory grounds for revision are that:

---

[631] https://www.gov.ie/en/publication/eeb34f-appeals-procedures/#making-an-appeal.
[632] *ibid.*
[633] *ibid.*
[634] Should the claimant then disagree with the revised decision of the DSP, this can then be challenged through a new appeal to the SWAO.

i. the decision was reached by reason of some mistake having been made in relation to the law or the facts;[635]
ii. the decision was determined to be erroneous in the light of new evidence or of new facts received by the DSP since the date of the initial decision,[636]
iii. there has been any relevant change of circumstances since the decision was given.[637]

As demonstrated by grounds ii and iii above, a decision being revised is not an indication that the DSP Deciding Officer made an incorrect determination at the time of the initial decision. Indeed, and as the SWAO Chief Appeals Officer holds,[638] a revised decision may be made due to new evidence being furnished at the appeal stage which provides the DSP with more clarity as to the circumstances of the claimant and thus alters their decision.

Of the 5,575 DA appeals handled by the SWAO in 2021,[639] only 643 (11.5%) were concluded by the DSP making a revised decision in favour of the claimant before the appeal was determined by the SWAO.[640] This is unsurprising when considering that a revised decision following the lodging of an appeal can only be made by the DSP when it is positive for the claimant.

Thus, unlike with the mandatory reconsideration process with PIP in the UK that can lead to a less favourable outcome for the claimant than reached in the initial claim, the DSP will only revise decisions following notification a lodged appeal where the outcome is positive for the claimant. As such, the DSP is precluded from unnecessarily taking up time between the claimant lodging the appeal and the appeal being decided before the SWAO by revising its decision to either reach the same outcome or one which is worse for the claimant.

Section 6.6 now concludes this chapter.

[635] Social Welfare Consolidation Act 2005, s.301(1)(a).
[636] *ibid.*
[637] *ibid.*
[638] SWAO 2021, p8.
[639] SWAO 2021, p31
[640] In 2020, 8.9% of appeals were settled via revised DSP decision, and in 2019, 10.3% of appeals were settled via revised DSP decision.

6.6. CONCLUSION

Where chapter 5 considered the actions taken by claimants of PIP in the UK and DA in Ireland from the point of commencing their claim for primary disability welfare benefit through to submitting their testimony as to their limitations caused by their disabilities, this chapter has considered how said testimony informs the decision-making process of government Decision-Makers, and how this decision is communicated back to claimants.

A concern common to both PIP and DA is the prevalence claimants, upon receiving a notice of rejection, reporting a lack of understanding of why they were deemed ineligible for social security. This lack of understanding makes it difficult for claimants to identify the grounds upon which to appeal their decision, thus representing a barrier to the accessibility dimension of access to justice. The lack of understanding as to why claims are rejected seems to share a common cause: confusion regarding the eligibility assessment for social security. However, the reasons for this confusion occurring in Ireland and the UK are diametrically opposed.

In Ireland, DA claimants face the issue of legal opacity and vagueness, resulting in a lack of clarity as to what claimants should record in their benefit applications in order to satisfy an eligibility assessment. Conversely, in the UK, PIP claimants can access myriad information that explains the exact impairment level they must report to satisfy an eligibility assessment and still find their claim rejected.

The final research aim of this thesis is to offer recommendations as to how the UK and Ireland could improve practice in the operation of primary disability welfare benefits in order to ensure CRPD standards of accessibility, with a particular focus on identifying where it would be appropriate to adapt and transpose UK or Irish provisions into the legal system of the other State.

Through comparing and contrasting the operation of both PIP and DA, apparent areas of good practice have been identified in and among the potential violations of the right of accessibility. These instances of good practice, if adopted by the other State, would ameliorate these potential violations. Indeed, facets of each legal system currently in place for the primary disability welfare benefit of the UK and Ireland operate well and as such should be transposed into the legal system of the other State in order to address the issue of claimant confusion.

In Ireland, the ability/disability profile found in the application form for DA had the potential to ensure that like cases were treated alike for claimants, but without a standardised system of scoring, its usefulness as a predictor of benefit claim outcomes is limited. Thus, recommendation 6J was put forward:

> **Recommendation 6J:** to codify this scoring system into law so that DSP deciding officers have a legal duty to apply objective standards when assessing limitations and to treat similar cases in a similar fashion.

Through transposing the approach currently in place in the UK of assigning numerical points to each distinct level of impairment, and codifying these in law, the ability/disability profile will provide both a predictive tool for claimants but also a clear basis from which to develop grounds for appeal to the SWAO.

In the UK, the functional assessments undertaken by HCPs contracted by provider companies have been identified as, at best, replicating information already supplied by the claimant through their testimony and medical evidence attached to their application form.[641] Thus, recommendation 6B was put forward:

> **Recommendation 6B:** The certification of functional limitation to be completed by a member of the healthcare team of the claimant should be adopted from the ability/disability profile adopted in the DA1 form in Ireland, with a wider range of functional activities included for assessment.

By transposing the approach currently in place in Ireland through utilising a variant of the ability/disability profile as a standardised template for medical certificates in support of PIP applications, there will transparency and objectivity in all medical evidence submitted and the oft-criticised functional assessments can be dispensed with.

The next chapter concludes the thesis.

[641] Paul Spicker, What's Wrong with Social Security Benefits? (Policy Press 2017); The justification for the current functional assessments is to ensure that eligibility for PIP is determined in a dynamic, fair, transparent and objective manner - Paul Gray, *The Second Independent Review of the Personal Independence Payment Assessment* (DWP 2017) [1].

CHAPTER 7: CONCLUSIONS

7.1. INTRODUCTION

The aim of this thesis was to critically evaluate how the welfare systems of the UK and Ireland currently promote and protect for disabled persons the right of accessibility, with a view to determine methods through which aspects of the relevant law and policies that fall below the CRPD standard of accessibility can be improved, thus generating greater protection of the human rights of disabled persons. To this end, the reader was guided through the complicated and knotty process through which a claimant applies for the primary disability benefit, taking them from the point of initiation as the claimant accesses an application form all the way through to receiving and legally challenging a decision on their claim.

As stated at the outset of this thesis, the research was prompted by the continued failure of the UK welfare system to meet CRPD standards of human rights protection for disabled people following its violation of multiple CRPD provisions in 2016. This conclusion reached by the CRPD Committee – to hold the UK as the first CRPD State Party to have gravely and systematically violated the CRPD – begged the question: do the welfare systems other CRPD State Parties meet and exceed CRPD standards, or are the standards set by the CRPD as interpreted by the CRPD Committee too high for even modern rights-respecting liberal democracies to meet. In an attempt to unpick this question, the research were inspired to undertake a comparative study.

The comparator State chosen was Ireland, which was selected due to being a modern rights-respecting democracy, its 2018 ratification of the CRPD, and the lack of formal testing from the CRPD Committee into the extent to which Irish law met CRPD standards. Thus, where this thesis analysed the nexus between the CRPD right of accessibility and the operation of Irish disability welfare benefit law, unique contributions to legal scholarship were made.

The purpose of this concluding chapter is to revisit and draw together key threads from earlier chapters in order to identify how the research aims of the thesis were met and to determine an answer to the overall research question. To recap, the research aims for this thesis were:

1. To identify the significant differences between the laws governing the operation of the primary disability welfare benefit in the UK and Ireland, given the differing historico-social understandings of disability in the two jurisdictions.
2. To determine which of the laws governing the operation of the primary disability welfare benefit in the UK and Ireland currently meet CRPD standards of accessibility;
3. In light of the above, to offer recommendations as to how the UK and Ireland could improve practice in the operation of primary disability welfare benefits in order to ensure CRPD standards of accessibility, with a particular focus on identifying where it would be appropriate to adapt and transpose UK or Irish provisions into the legal system of the other State.

The following three sections of this chapter now demonstrate how each of these aims were met.

7.2. IDENTIFYING SIGNIFICANT DIFFERENCES BETWEEN THE UK AND IRISH PRIMARY DISABILITY WELFARE BENEFIT

Before commencing with the identification of significant differences between the law and policy governing the operation of the primary disability welfare benefits of the UK and Ireland, it was first necessary to define 'primary disability welfare benefit' for the purpose of this thesis. It was then necessary to identify areas of similarity between the two systems, in order to ensure that recommendations based on transposing legal provisions from one State into the other would have a chance to be successful.

Taking first the definition of primary disability welfare benefit, Chapter 4.2 established that a primary disability welfare benefit:

i) is a 'disability-specific' benefit, and
ii) is the disability welfare benefit which has the fewest basic qualifying factors, and
iii) is the disability welfare benefit with the highest number of claimants.

In the UK, Personal Independence Payment (PIP) met these criteria and the primary legal provision governing the operation of PIP was identified as the Welfare Reform Act 2012. In Ireland, Disability Allowance (DA) met these criteria and the primary legal provision

governing the operation of DA was identified as the Social Welfare Consolidation Act 2005.

Both PIP and DA, as the primary disability welfare benefit of their State, serve the same legal function – that of providing financial support to disabled persons. Thus, application of the Functional Method, which itself is a specific formulation of the Comparative Legal Method, was utilised in this thesis (Chapter 2.3.1). Further formulations of the Comparative Legal Method were utilised in this thesis – namely the and the Law-In-Context and Historical Methods (Chapter 2.3.2). Indeed, as Van Hoecke identified, legal comparative research cannot be limited to comparison purely of 'black-letter' legal rules, concepts or systems,[642] because law in action is often very different to how it appears as written in legislation.[643]

These formulations of the Comparative Legal Method were applied in Chapter 3.2.3, which provided the historico-social context behind differing models of disability, namely the charitable, medical, social, and human rights models of disability, which were referenced regularly throughout the thesis due to the close relationship between the social and human rights models with the purpose of the CRPD, and the medical and charitable models being antithetical to that purpose.

Despite governing functionally equivalent systems, the laws governing PIP and DA as written are extremely different. Despite this, the operation of PIP and DA in their practical context are so similar as to allow both to be meaningly compared. Indeed, to allow for meaningful comparison between both welfare systems, the Application Process for a claim for PIP and DA was established in Chapter 4.5, which consisted of three broad stages that are common between applications for DA in Ireland and PIP in the UK. To recap, the stages of the Application Process as laid out in Chapter 4.5 and discussed at length in Chapters 5 and 6 were:

a. The claimant provides testimony as to how they meet the qualifying factors and eligibility criteria for the benefit,
b. The testimony of the claimant is assessed and a decision on eligibility is reached
c. The decision of (in)eligibility for the benefit is either accepted or challenged.

[642] Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 16.
[643] *ibid, 22.*

Returning to significant differences between the welfare systems in the UK and Ireland, one such difference between the laws as written in each State is the level of detail and complexity demonstrated by the UK law, and the opposite case in Ireland. Indeed, where the primary legislation governing PIP, the Welfare Reform Act 2012, dedicates five sections to defining the requirements for PIP eligibility, which are then further clarified through the descriptors as contained in the schedules to the Social Security (Personal Independence Payment) Regulations 2013, there are only two individual legal provisions across two statutory instruments that attempt to define eligibility for DA in Ireland. In Ireland, section 210 of the Social Welfare Consolidation Act 2005 outlines that eligibility for DA is dependent on a claimant demonstrating that they are substantially restricted in undertaking employment of a kind which, if the person was not suffering from that disability, would be suited to that person's age, experience and qualifications,[644] and 'substantial restriction' for this purpose is further defined in the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, which provide that a restriction caused by a specified disability will be substantial if the disability lasts for, or is reasonably expected to last for, over one year.[645]

This significant difference relates to the matter of legal complexity as outlined by Harris in *Complexity in the law and administration of social security: is it really a problem?*,[646] which was identified in Chapter 3.3.1.4 as a matter that engaged the information dimension of accessibility. However, though the laws governing PIP in the UK and DA in Ireland each engage the dimension of information accessibility due to the matter of legal complexity, the manners in which the information dimension of accessibility are diametrically opposed.

Whereas Harris identified the law governing PIP to be so complex that it causes claimants to be unsure about their rights and grounds for legal challenges in relation to their claims,[647] and negatively impacts the decision-making process employed by DWP Case Managers,[648] the law governing DA falls afoul of the warning issued by Harris that given that the law is inherently complex, to force simplification onto a legal system creates its own dangers.[649] Through reducing the legal provisions for DA eligibility to the

[644] Social Welfare Consolidation Act 2005, s.210.
[645] Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, art 137.
[646] 'Complexity, Law and Social Security in the United Kingdom' (2006) 8(2) Eur J Soc Sec 145.
[647] *ibid* 212.
[648] *ibid* 211.
[649] *ibid* 213.

requirement of a substantial restriction (meaning a restriction that continues for one year) in undertaking employment, this oversimplifies the law and thus makes building a case against which to challenge violations of this law extremely difficult. This provided the impetus for several recommendations, the discussion of which will be picked up in section 7.4 below. However, before this, section 7.3 identifies how the second research aim of this thesis, which required the application of the Accessibility Framework (Chapter 3.4) was met.

7.3. DETERMINING THE EXTENT TO WHICH THE UK AND IRISH PRIMARY DISABILITY WELFARE BENEFIT MEETS THE CRPD STANDARD OF ACCESSIBILITY

The Accessibility Framework was developed in Chapter 3.4 for this thesis to determine which aspects of the legal framework governing the welfare systems of the UK and Ireland met the CRPD standard of accessibility and thus meet the second research aim of this thesis.

In line with the Comparative Legal Method, the Accessibility Framework is a unique creation of the researcher informed by existing legal sources and developed through their understanding of the relevant law for the specific purpose of addressing the research questions, which acts as the standard against which examine common elements from the legal systems of the UK and Ireland were compared.[650]

The Accessibility Framework was developed from provisions of the CRPD that promote and protect the right of accessibility. The primary provision here was Article 9 CRPD, which is the express accessibility provision of the convention. In Chapter 3.3.1, Article 9 was subjected to a textual analysis that resulted in a finding that the express accessibility provision of the CRPD reflected multiple dimensions of accessibility, specifically the four dimensions of accessibility is established in a guidance note to the International Covenant on Economic, Social and Cultural Rights (ICESCR):

i. Non-discrimination,
ii. Physical accessibility,
iii. Economic accessibility,

[650] Mathias Siems, *Comparative Law* (1st edn, Cambridge University Press 2014) 26; Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) 4 Law and Method 1, 27; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015) 148-154.

iv. Information accessibility.[651]

Chapter 3.3.2 considered how other dimensions of accessibility were generated by other CRPD provisions which contain obligations and rights of accessibility. Chief among these for the purpose of this thesis was Article 13, which was determined to reflect the accessibility dimension of accessibility of the justice system (Chapter 3.3.2.4).[652] Thus, the Accessibility Framework developed for this thesis consisted of five dimensions:

i. Non-discrimination,[653]
ii. Physical accessibility,[654]
iii. Economic accessibility,[655]
iv. Information accessibility,[656]
v. Accessibility of the Justice System.[657]

Chapter 3.4.1 explained how the Accessibility Framework was utilised as the analytical prism throughout the thesis. To recap, the operation of the Accessibility Framework was a four-stage process, with the first two stages relating to the identification of relevant laws, which was discussed above in section 7.2. Of relevance to this research aim was the third stage of the Accessibility Framework, which required that a:

> determination will be made as to whether the operation of the selected laws and policies engage any of the five dimensions of accessibility that comprise the Accessibility Framework. Where any dimensions of accessibility are determined to be engaged, an assessment will be undertaken to determine whether the CRPD standards for each of the dimensions of accessibility are being met by the selected laws and policies, informed by and in line with the approach taken by the CRPD Committee in both its cases and State inquiries in that the CRPD Committee concludes that failure by States to uphold standards espoused by CRPD provisions constitutes violations of those CRPD provisions.[658]. Crucially, if any one of the dimensions of accessibility

[651] CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' UN Doc E/ C12/ 2000/ 4 (11 August 2000) [12b].
[652] CRPD Committee *Gemma Beasley v Australia* CRPD/C/15/D/11/2013 (01 April 2016); CRPD Committee *Michael Lockrey v Australia* CRPD/C/15/D/13/2013 (01 April 2016).
[653] CRPD arts 5, 9.
[654] CRPD art 9.
[655] CRPD arts 9, 28.
[656] CRPD arts 4, 9, 21.
[657] CRPD art 13.
[658] This includes individual cases in which the correspondents were from the UK and the Inquiry Report in response to welfare reform in the UK.

> is not met by the operation of disability welfare law in either the UK or Ireland, this would then constitute a potential CRPD violation.

Having now outlined the method through which CRPD compliance was determined and, as such, how the second research aim of the thesis was met, section 7.4 now discusses the final research aim of the thesis, which is where the final stage of the application of the Accessibility Framework was triggered, which was to

> propose recommendations that suggest how both the UK and Ireland could amend laws, policies and practices in order to ensure compliance with CRPD accessibility rights, with a particular focus on identifying areas of potential legal transplant of CRPD compliant law from one State into the legal system of the other.

7.4. RECOMMENDATIONS TO IMPROVE THE COMPLIANCE OF THE WELFARE SYSTEMS OF THE UK AND IRELAND WITH CRPD STANDARD OF ACCESSIBILITY

Across both Chapter 5 (*Telling the Claimant's Stories*) and Chapter 6 (*Retelling, Rating and Reviewing the Claimant's Stories*), a total of 24 specific recommendations were submitted that aimed to improve the standard of accessibility in both the welfare systems of the UK and Ireland. A snapshot of these recommendations is provided by Appendix A and Appendix B attached to this thesis.

This section will now analyse two pairs of recommendations – one pair that suggests an element of the Irish welfare system be transposed into that of the UK, and one pair that suggests an element of the UK welfare system be transposed into that of Ireland. To this end, the manner by which specifically identified potential CPRD violations would be ameliorated through the transposition of the foreign facet will be given.

7.4.1. RECOMMENDATIONS 6A AND 6B: TRANSPOSING IRISH PRACTICES INTO UK LAW

The Irish practice recommended to be transposed into the UK by recommendations 6A and 6B is to adopt the Ability/Disability profile aspect of the benefit application process and thus eliminate the input of government-contracted healthcare professionals during the assessment process.

Recommendation 6A: the functional assessment for PIP in its current formation as undertaken by HCPs contracted by assessment provider companies should be replaced with a new system of assessment and certification of functional limitation to be undertaken by a member of the healthcare team of the claimant.

Recommendation 6B: the certification of functional limitation to be completed by a member of the healthcare team of the claimant should be adopted from the ability/disability profile adopted in the DA1 form in Ireland, with a wider range of functional activities included for assessment.

Currently, the system through which PIP eligibility is assessed sees claimants being judged based on a xerox of a xerox. Indeed, especially where a decision is challenged via a mandatory reconsideration, the decision-making process employed by DWP Case Manager requires the use of a report based on the findings of a second Case Manager, which in turn is based on a report produced by a healthcare professional who does not personally know the claimant and who based their report on an interaction with the claimant that lasted for less than an hour, which in turn is required to scrutinise the testimony of the claimant. Though recommendations 6A and 6B above do not entirely shift out of the medical model of disability, they ensure greater compliance of the information dimension of accessibility by streamlining all of the aforementioned reports of functional limitations into one distinct document prepared by a medical practitioner known to the claimant. Further, these recommendations ensure greater compliance of the accessibility of the justice system dimension by allowing a simple base from which to generate grounds for legal challenge in that, where a simple system such as the Ability/Disability profile is adopted, the findings of the DWP Case Manager can be directly compared against this.

7.4.2. RECOMMENDATIONS 6I AND 6J: TRANSPOSING UK PRACTICES INTO IRISH LAW

The UK practice recommended to be transposed into Irish law by recommendations 6I and 6J is to establish a formalised scoring system and to codify this scoring system into law so that DSP deciding officers have a legal duty to apply objective standards when assessing limitations and to treat similar cases in a similar fashion as is the case with PIP,

which utilises the scoring system codified in the Social Security (Personal Independence Payment) Regulations 2013.

> **Recommendation 6I:** to establish a formalised scoring system from the ability/disability profile for DA.
>
> **Recommendation 6J:** to codify this scoring system into law so that DSP deciding officers have a legal duty to apply objective standards when assessing limitations and to treat similar cases in a similar fashion.

Continuing the discussion in section 7.2 above, these recommendations serve to ameliorate the issue of oversimplification of a complex legal matter as outlined by Harris,[659] swinging the pendulum in the opposite direction from dense, incomprehensible law to law that is not complex enough to meet the aim of defining DA eligibility criteria. Recommendations 6I and 6J, then, ensure greater compliance with the dimension of information accessibility through ensuring that the legal provisions designed to define the eligibility criteria for DA and thus are the crux of whether a claimant receives an award or not, are written to meet a minimum degree of complexity to ensure their functionality. This in turn ensures greater compliance with the dimension of accessibility of the justice system though making potential grounds for legal challenge clearer for claimants.

7.5. RESEARCH QUESTION: HOW THE WELFARE SYSTEMS OF THE REPUBLIC OF IRELAND AND UNITED KINGDOM UPHOLD THE RIGHT OF ACCESSIBILITY FOR DISABLED PERSONS

When research began for this thesis, the researcher hypothesised that the law and policy governing the operation of Irish disability welfare benefits would consistently be found to outperform those laws to which they are functionally equivalent from the UK in terms of the protection and promotion of CRPD rights. To this end, the focus of analysis and initial approach to the research was entirely in a single direction with view to determine only which Irish provisions may be adapted and transposed into the legal framework governing the UK welfare system. However, through the writing of this thesis, it became apparent that there were instances of the UK welfare system either matching or surpassing the extent to which the Irish welfare system met CRPD standards. This saw the research evolve into an omni-directional analysis, as is outlined in the research aims for the thesis.

[659] Neville Harris, 'Complexity in the law and administration of social security: is it really a problem?' (2015) 37 (2) JSWFL 209.

The research concluded with a total of 14 different recommendations submitted in regard to specifically identified facets of the UK welfare system that constitute potential violations of the CRPD right to accessibility. In stark contrast to the initial hypothesis of the researcher at the commencement of this thesis, the Irish welfare system garnered only two fewer recommendations, with a total of 12 different recommendations submitted in regard to potential CRPD violations through facets of the laws and policies governing DA.

This, then, suggests that the CRPD standards of accessibility may indeed be difficult to reach even by modern rights-respecting liberal democracies; however, it is imperative that both the UK and Ireland are ambitious and strive towards these standards to ensure that the rights of disabled people are realised. Indeed, as the human rights model of disability argues, human rights are fundamental rights. They cannot be gained or taken away from an individual or a group. They are acquired qua birth and are universal, i.e., every human being is a human rights subject.[660] Thus, the right to accessibility is a fundamental right to be enjoyed by all persons, disabled or not, and the practices currently employed by the UK and Ireland that bar the enjoyment of this right by PIP and Da claimants must be addressed.

[660] Theresia Degener, 'Disability in a Human Rights Context' in Anna Arstein-Kerslake (eds), *Disability Human Rights Law* (MDPI AG 2017) 4.

BIBLIOGRAPHY

TABLE OF CASES

UK CASES

- *AM v Secretary of State for Work and Pensions* (PIP): [2017] UKUT 7 (AAC).
- *Blackburn v Attorney-General* [1971] 2 All ER.
- *Mallinson v Secretary of State for Social Services* [1994] 1 WLR 630.
- *MH v Secretary of State for Work and Pensions* (PIP) [2016] UKUT 531 (AAC).
- *ML v SSWP* (PIP) [2017] UKUT 0171 (AAC).
- *Moyna v Secretary of State for Work and Pensions* [2003] UKHL 44; [2003] 1 W.L.R. 1929.
- *R (on the application of RF) v Secretary of State for Work and Pensions* [2017] EWHC 3375 (Admin).
- *R v Judge of the City of London Court* [1892] 1 QB 273.
- *R v National Insurance Commissioner, Ex parte Secretary of State for Social Services* (The Packer Case) [1981] 1 WLR 1017.
- *RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ* (PIP) [2017] UKUT 105 (AAC).
- *Secretary of State for Work and Pensions v AS* (PIP) [2017] UKUT 454.
- *SF v SSWP* [2016] UKUT 0543 (AAC).
- *SSWP v MM* [2019] UKSC 34.
- *SSWP v MM* [2019] UKSC 34.
- *The King (on the application of) Ms Helen Timson v Secretary of State for Work and Pensions v Severn Trent Water Plc* [2022] EWHC 2392 (Admin).

IRISH CASES

- *B v Minister for Social Protection* [2014] IEHC 186.
- *McGee v Attorney General* [1974] IR 284.
- *McLoughlin v Minister for Social Welfare* [1958] IR 1.
- *Minister for Social, Community and Family Affairs v Scanlon* [2001] 1 IR 64.
- *Murphy v Stewart* [1973] IR 97.
- *Norris v Attorney General* [1984] IR 36, 71 (SC).
- *Ryan v Attorney General* [1965] IR 294.

CRPD CASES

- CRPD Committee, *Bacher v Austria* CRPD/C/19/D/26/2014 (16 February 2018).
- CRPD Committee, *D.L. v Sweden* CRPD/C/17/D/31/2015 (22 May 2017).
- CRPD Committee, *F v Austria* CRPD/C/14/D/21/2014 (21 August 2015).
- CRPD Committee, *Fiona Given v Australia* CRPD/C/19/D/19/2014 (16 February 2018).
- CRPD Committee, *Gemma Beasley v Australia* CRPD/C/15/D/11/2013 (01 April 2016).
- CRPD Committee, *H.M. v Sweden* CRPD/C/7/D/3/2011 (19 April 2012).
- CRPD Committee, *Kenneth McAlpine v UK* (13 November 2012) UN Doc CRPD/C/8/D/6/2011.

- CRPD Committee, *L.M.L. v UK* (17 May 2017) UN Doc CRPD/C/17/D/27/2015.
- CRPD Committee, *Marie-Louise Jüngelin v Sweden* CRPD/C/12/D/5/2011 (02 October 2014).
- CRPD Committee, *Michael Lockrey v Australia* CRPD/C/15/D/13/2013 (01 April 2016).
- CRPD Committee, *Nyusti and Takács v Hungary* CRPD/C/9/D/1/2010 (16 April 2013).
- CRPD Committee, *X v Argentina* CRPD/C/11/D/8/2012 (11 April 2014).

ECHR CASES

- *Glor v. Switzerland* 2009-III 33; *Kiss v Hungary* App no 38832/06 (ECtHR, 20 May 2010).
- *Jivan v Romania* App no. 62250/19 (ECtHR, 8 February 2022).

LEGISLATION

UK LEGISLATION

- Care Act 2014.
- Disability Discrimination Act 1995.
- Equality Act 2010.
- European Union (Withdrawal) Act 2018.
- Social Security Act 1998.
- Social Security Contributions and Benefits Act 1992.
- The Personal Independence Payment (Transitional Provisions) Regulations 2013.
- The Personal Independence Payment (Transitional Provisions) Regulations 2013.
- The Scotland Act 2016 (Social Security) (Adult Disability Payment and Child Disability Payment) (Amendment) Regulations 2022.
- The Social Security (Personal Independence Payment) (Amendment) Regulations 2017.
- The Social Security (Personal Independence Payment) Regulations 2013.
- The Universal Credit Regulations 2013.
- The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.
- Welfare Reform Act 2007.
- Welfare Reform Act 2012.
- Welfare Reform and Work Act 2016.

IRISH LEGISLATION

- Bunreacht na hÉireann (1937).
- Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.
- Disability Act 2005.
- District Court Rules 1997.
- European Convention on Human Rights Act 2003.
- Family Law (Maintenance of Spouses and Children) Act 1976.
- Health Act 1970.

- Health Act 2004.
- Health Boards Regulations 1970.
- National Disability Authority Act 1999.
- Social Welfare Act 1996.
- Social Welfare (Consolidated Claims, Payment and Control) (No.2) (Partial Capacity Benefit) Regulations 2012.
- Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007.
- Social Welfare (Consolidated Payments Provisions) (Amendment) (No. 6) Regulations 1996.
- Social Welfare (Consolidated Payments Provisions) (Amendment) (No. 6) Regulations 1996.
- Social Welfare (Consolidation) Act 2005.
- Social Welfare (No.2) Act 2019.
- Social Welfare and Pensions Act 2007.
- Social Welfare Law Reform and Pensions Act 2006.

INTERNATIONAL TREATIES AND CONVENTIONS

- European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.
- International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969 (CERD).
- International Covenant on Civil and Political Rights, resolution adopted by the UN General Assembly, Resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 (ICCPR).
- International Covenant on Economic, Social and Cultural Rights, resolution adopted by the UN General Assembly, Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976 (ICESCR).
- UN Convention on the Rights of Persons with Disabilities, resolution adopted by the UN General Assembly, 13 December 2006, UN Doc. A/RES/61/106, entry into force 3 May 2008 (CRPD).
- UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex II (CRPD-OP).
- Universal Declaration of Human Rights, resolution adopted by the UN General Assembly, 10 December 1948, Paris, Resolution 217 A (III) (UDHR).
- Vienna Convention on the Law of Treaties, resolution adopted 22 May 1969, entry into force 27 January 1980 (VCLT).

UNITED NATIONS INQUIRIES, RESPONSES AND OTHER INTERNATIONAL LEGAL DOCUMENTS

- Ad Hoc Committee, 'Report of the Ad Hoc Committee on a comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities on its sixth session' UN Doc A/ 60/ 266 (17 August 2005) Annex II [66].
- Australian Government, 'Response of Australia to the Views of the Committee on the Rights of Persons with Disabilities in Communications No. 11/2013 (G.B. V Australia) and 13/2013 (M.L. V Australia)' (Remedy, 2017) <

https://remedy.org.au/reports/Aust_response_to_Lockrey&Beasley_FinalViews.PDF > accessed 10 August 2024.
- CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' UN Doc E/ C12/ 2000/ 4 (11 August 2000).
- Chair's 'Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities' (December 2003) prepared for discussion by the Ad Hoc Committee Working Group on Article 2(1).
- CRPD Committee, '18 Session (14 Aug 2017 - 01 Sep 2017)' (Tbinternet.OHCHR, 1 September 2017) < https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1158&Lang=en > accessed 10 August 2024.
- CRPD Committee, 'Summary record of the 348th meeting (re UK art 35 report)' (Docstore.OHCHR, 13 September 2017) < https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgEjn0tpN1slCSGfbZH1tmLV1XD%2bMik7fjSTAAlA6wUQm2BKit2xNgL1FDyYwMHyzjJlvHEcS5CuSAaYrfYv5BAOQ0NKUx%2bGb0aJuGyvCx5g > accessed 10 August 2024.
- CRPD Committee, 'Summary record of the 349th meeting (re UK art 35 report)' (Docstore.OHCHR, 13 September 2017) < https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgEjn0tpN1slCSGfbZH1tmKZg9agX5xy4XtnlerP9PsOe2FakefnvqBFQNNV9XBoa4I8o1bsyszdjqa7dt0pBw4B5kN31ffucpdQSnMn0IVx > accessed 10 August 2024.
- CRPD Committee, General Comment No 2 'Article 9: Accessibility' UN Doc CRPD/ C/ GC/ 2 (11 April 2014).
- CRPD Committee, Ron McCallum 'Opening remarks at the Day of General Discussion on Accessibility' (7 October 2010).
- Dag Hammarskjöld Library, 'What is the purpose of the Human Rights Treaty Bodies general comments?' (United Nations, 2020) <https://ask.un.org/faq/135547> accessed 10 August 2024.
- Department for Work and Pensions and the Office for Disability Issues, The United Kingdom of Great Britain and Northern Ireland's 2019 response to select concluding observations of the United Nations Committee on the Rights of Persons with Disabilities: Response to recommendation in paragraph 74 (DWP and ODI, 2019).
- Freyhoff G et al, 'Make it Simple: European Guidelines for the Production of Easy-to-Read Information for People with Learning Disability' ILSMH-EA (Inclusion Europe) 1998.
- International Disability Alliance, 'Inquiry procedure of the CRPD Committee under the Optional Protocol' (IDA) < https://www.internationaldisabilityalliance.org/inquiry-procedure-crpd-cmmttee#Linkuk > accessed 10 August 2024.
- OHCHR, 'Australia: the rights of two deaf citizens violated' (OHCHR, 11 May 2016) < https://www.ohchr.org/en/stories/2016/05/australia-rights-two-deaf-citizens-violated > accessed 10 August 2024.
- Remedy, 'Beasley v Australia (Committee object (4), 2016)' (Remedy) < https://remedy.org.au/cases/39/> accessed 10 August 2024.
- UNCRPD 'Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland' (3 October 2017) UN Doc C/GBR/CO/1.

- UNCRPD 'Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention' (17 September 2020) UN Doc CRPD/C/HUN/IR/1.
- UNCRPD 'Inquiry concerning Spain carried out by the Committee under article 6 of the Optional Protocol to the Convention' (4 June 2018) UN Doc CRPD/C/20/3.
- UNCRPD 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention' (6 October 2016) UN Doc C/15/R.2/Rev.1.
- UNCRPD 'List of issues in relation to the initial report of the United Kingdom of Great Britain and Northern Ireland' (20 April 2017) UN Doc C/GBR/Q/1.
- UNCRPD 'Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues' (21 July 2017) UN Doc C/GBR/Q/1/Add.1.
- UNCRPD 'The United Kingdom Government Response to the Report by the United Nations Committee on the Rights of Persons with Disabilities under article 6 of the Optional Protocol to the Convention' (7 November 2016) UN Doc C/17/R.3.
- UNHRC 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights' (16 November 2018) UN Doc A/HRC/41/39/Add.1.
- United Nations Department for Economic and Social Affairs, 'Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities' (United Nations) < https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/frequently-asked-questions-regarding-the-convention-on-the-rights-of-persons-with-disabilities.html#iq2> accessed 10 August 2024.
- United Nations Office of the High Commissioner of Human Rights, The Convention on the Rights of Persons with Disabilities Training Guide (United Nations Publications 2014).
- United Nations Treaty Collection, 'Convention on the Rights of Persons with Disabilities' (United Nations, 2020) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 10 August 2024.
- United Nations Treaty Collection, 'Optional Protocol to the Convention on the Rights of Persons with Disabilities' (*United Nations*, 2020) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en> accessed 10 August 2024.
- World Health Organisation, 'Disability and Health' (World Health Organisation, 24 November 2021) < https://www.who.int/news-room/fact-sheets/detail/disability-and-health > accessed 10 August 2024.
- World Health Organisation, International Classification of Functioning, Disability and Health (World Health Organisation, 2001) (ICF).
- World Health Organisation, International Classification of Impairments, Disabilities and Handicaps: a Manual of Classification Relating to the Consequences of Disease (World Health Organisation, 1980).

UK GOVERNMENT SOURCES

- Central Digital and Data Office, Understanding accessibility requirements for public sector bodies (DWP 2021).

- Department for Work and Pensions and Office for Disability Issues, The United Kingdom of Great Britain and Northern Ireland's 2019 response to select concluding observations of the United Nations Committee on the Rights of Persons with Disabilities: Response to recommendation in paragraph 74 (DWP & ODI 2019).
- Department for Work and Pensions and the Office for Disability Issues, The United Kingdom of Great Britain and Northern Ireland's 2019 response to select concluding observations of the United Nations Committee on the Rights of Persons with Disabilities: Response to recommendation in paragraph 74 (DWP and ODI, 2019).
- Department for Work and Pensions and Tomlinson J, Disabled people to have their say in shaping the future of the benefits system (DWP 2021).
- Department for Work and Pensions, Benefit and Pension rates 2022 – 2023 (DWP 2022).
- Department for Work and Pensions, Claimant views on ways to improve PIP and ESA questionnaires (DWP 2021).
- Department for Work and Pensions, Definition of disability under the Equality Act 2010 (DWP).
- Department for Work and Pensions, Disability Living Allowance (DLA) for adults (DWP).
- Department for Work and Pensions, DWP benefits statistics: February 2021 (DWP 2021).
- Department for Work and Pensions, DWP factual medical reports: guidance for healthcare professionals (DWP 2022).
- Department for Work and Pensions, Employment and Support Allowance (ESA) (DWP).
- Department for Work and Pensions, Employment and Support Allowance (ESA) changes from 3 April 2017 (DWP 2020).
- Department of Work and Pensions, If you disagree with a decision made by the Department for Work and Pensions (DWP 2023).
- Department for Work and Pensions, Medical guidance for DLA and AA decision makers (adult cases): staff guide (DWP 2022).
- Department for Work and Pensions, New Style Employment and Support Allowance (DWP 2022).
- Department for Work and Pensions, Official Statistics Personal Independence Payment: Official Statistics to January 2022 (DWP 2022).
- Department for Work and Pensions, Personal Independence Payment (PIP) (DWP).
- Department for Work and Pensions, Personal Independence Payment (PIP) How to Claim (DWP).
- Department for Work and Pensions, Personal Independence Payment Claimant Research – Final Report (RR 963, 2018) 1.
- Department for Work and Pensions, Personal Independence Payment statistics: background quality and methodology report (DWP 2021).
- Department for Work and Pensions, Personal Independent Payment: the claimant journey (DWP 2015).
- Department for Work and Pensions, PIP assessment guide part 1: the assessment process (DWP 2022).
- Department for Work and Pensions, PIP assessment guide part 2: the assessment criteria (DWP 2022).

- Department for Work and Pensions, PIP assessment guide part 3: healthcare professional performance (DWP 2022).
- Department for Work and Pensions, PIP Handbook (DWP 2021).
- Department for Work and Pensions, Public Consultation: Disability Living Allowance Reform (Cmd 7984, 2010).
- Department for Work and Pensions, Social support: changes to PIP law from 6 April 2016 (DWP 2022).
- Department for Work and Pensions, The Personal Independence Payment (PIP) toolkit (DWP 2021).
- Department for Work and Pensions, Universal Credit (DWP).
- Department for Work and Pensions, Universal Credit Statistics-29 April 2013 to 14 April 2022 (DWP 2022).
- Department for Work and Pensions, Universal Credit: welfare that works (Cm 7957, 2010).
- Department of Work and Pensions, Digital Strategy (DWP 2012).
- Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2021).
- Department of Work and Pensions, Personal Independence Payment How your disability affects you Information booklet and Claim form (DWP 2018).
- Gray P, An Independent Review of the Personal Independence Payment Assessment (DWP 2014).
- Gray P, The Second Independent Review of the Personal Independence Payment Assessment (DWP 2017).
- Jarett T, Jones A, Kennedy S, Powell A and Wilson W, 'The UN Inquiry into the Rights of Persons with Disabilities in the UK' (2017) 7367 HoC Library Briefing Papers 1.
- Jones A et al, 'The UN Inquiry into the Rights of Persons with Disabilities in the UK' (2017) 7367 HoC Library Briefing Papers 1.
- Kennedy S, 'Changes to the Personal Independence Payment eligibility criteria' (2017) 7911 HoC Library Briefing Papers 1.
- Kennedy S, Murphy C, Keen R and Bate A, 'Abolition of the ESA Work-Related Activity Component' (2017) 7649 HoC Library Briefing Papers.
- Legislation.Gov, EU legislation and UK law (Legislation.gov, 2021).
- Litchfield P, An Independent Review of the Work Capability Assessment - year five (DWP 2014).
- Ministry of Justice, 'Official Statistics Tribunal Statistics Quarterly: April to June 2022' (*Gov.UK*, 8 September 2022) <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2022/tribunal-statistics-quarterly-april-to-june-2022> accessed 10 August 2024.
- National Audit Office, Department of Work and Pensions: Dealing with the Complexity of the Benefit System (HC 592, 2005).
- Official Statistics Universal Credit statistics, 29 April 2013 to 8 July 2021(DWP 2021).
- Sainsbury R, Hirst M and Lawton D, Evaluation of Disability Living Allowance and Attendance Allowance (HMSO 1995).
- Scottish Government, What Adult Disability Payment is (Mygov.scot, 2022).
- Secretary of State for Work and Pension, National Disability Strategy (SSWP CP 512 July 2021).

- UK Government, 'The Social Security (Personal Independence Payment) Regulations 2013' (Legislation.gov) < https://www.legislation.gov.uk/uksi/2013/377/made > accessed 10 August 2024.
- Work and Pensions Committee, Benefits Simplification (HC 563-II, 2007).
- Work and Pensions Committee, Government support towards the additional living costs of working–age disabled people (HC 1493, 2012).
- Work and Pensions Committee, Universal Credit: support for disabled people (HC 1770, 2018).

IRISH GOVERNMENT SOURCES

- Callaghan N, 'Spending Review 2017: Disability Allowance Expenditure Drivers' (2017) IGEES Papers 1.
- Daly L, IGEES Unit and DCEDIY vote, Disability and Special Education Expenditure: Lifecycle of Supports Spending Review 2021 for Department of Public Expenditure And Reform (IGEES 2021).
- Department of Children, Equality, Disability, Integration and Youth, National Disability Inclusion Strategy 2017-2021 (DCEDIY 2020).
- Department of Social Protection, An analysis of Disability Allowance inflows and outflows (DSP 2018).
- Department of Social Protection, Disability Allowance (DSP 2022).
- Department of Social Protection, Domiciliary Care Allowance (DSP 2022).
- Department of Social Protection, Intreo - the Public Employment Services (DSP 2022).
- Department of Social Protection, Operational Guidelines: Decision Making and Natural Justice (DSP 2022).
- Department of Social Protection, Operational Guidelines: Disability Allowance (DSP 2022).
- Department of Social Protection, Operational Guidelines: Increase for a Qualified Adult (DSP 2022).
- Department of Social Protection, Operational Guidelines: Increase for a Qualified Child (DSP 2022).
- Department of Social Protection, Operational Guidelines: Invalidity Pension (DSP 2022).
- Department of Social Protection, Operational Guidelines: Means Assessment (DSP 2022).
- Department of Social Protection, Operational Guidelines: Medical Review and Assessment (DSP 2019).
- Department of Social Protection, Operational Guidelines: Medical Review and Assessment (DSP 2019).
- Department of Social Protection, Operational Guidelines: Medical Assessments (DSP 2020).
- Department of Social Protection, Operational Guidelines: Occupational Injuries Benefit - Disablement Benefit (DSP 2021).
- Department of Social Protection, Social protection Rates of Payment 2022 (DSP 2022).
- Department of Social Protection, Social Welfare Schemes and Services (DSP 2020).
- Department of Social Protection, Social Welfare Schemes and Services (DSP 2022).

- Department of Social Protection, Statistical Information on Social Welfare Services Annual Report 2020 (DSP 2020).
- Gannon B, 'Disability Benefit: Controlled or Under-Controlled?' (Budget Perspectives 2007, 2007).
- Health Service Executive, 'How much can you earn and still qualify' (HSE) https://www2.hse.ie/services/schemes-allowances/medical-cards/applying/how-much-you-can-earn/ accessed 10 August 2024.
- Indecon, 'Cost of Disability Research Project: Report submitted to the National Disability Authority by Indecon International Economic Consultants' (Indecon 2022).
- Irish Government Economic and Evaluation Service, IGEES Strategic Policy Discussions: Disability Policy (IGEES 2022).
- Judge C, Rossi E, Hardiman S, and Oman C, Department of Social Protection Report on Disability Allowance Survey 2015 (DSP 2015).
- Social Welfare Appeals Office and Gleeson G, Social Welfare Appeals Office Annual Report 2009 (SWAO 2009).
- Social Welfare Appeals Office and Gleeson G, Social Welfare Appeals Office Annual Report 2010 (SWAO 2010).
- Social Welfare Appeals Office and Gleeson G, Social Welfare Appeals Office Annual Report 2011 (SWAO 2011).
- Social Welfare Appeals Office and Gleeson G, Social Welfare Appeals Office Annual Report 2012 (SWAO 2012).
- Social Welfare Appeals Office and Gleeson G, Social Welfare Appeals Office Annual Report 2013 (SWAO 2013).
- Social Welfare Appeals Office and Gleeson G, Social Welfare Appeals Office Annual Report 2014 (SWAO 2014).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2015 (SWAO 2015).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2016 (SWAO 2016).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2017 (SWAO 2017).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2018 (SWAO 2018).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2019 (SWAO 2019).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2020 (SWAO 2020).
- Social Welfare Appeals Office and Gordan J, Social Welfare Appeals Office Annual Report 2021 (SWAO 2021).
- Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2022).
- Social Welfare Services, DA1 Application form for Disability Allowance (DSP 2018).

SOURCES PROVIDED BY IRISH DISABILITY ADVOCATES

- Community Law & Mediation Northside, 'Thematic Note of SWAO Case Studies: Partial Capacity Benefit 2009-2020' (CLMN 2021).
- Community Law & Mediation Northside, 'Thematic Note of SWAO Case Studies: Illness Benefit 2009-2020' (CLMN 2021).

- Community Law & Mediation Northside, 'Thematic Note of SWAO Case Studies: Disability Allowance 2009-2020' (CLMN 2021).
- Community Law & Mediation Northside, 'Thematic Note of SWAO Case Studies: Invalidity Pension 2009-2020' (CLMN 2021).
- Disability Federation of Ireland, Submission to Department of Social Protection on Budget 2023 (DFI 2022).
- Irish Human Rights and Equality Commission and Mel Cousins et al, 'Baseline analysis paper on the status of the CRPD Article 28 Adequate standard of living and social protection for persons with disabilities in Ireland' (IHREC 2019).
- Linehan C, O'Doherty S, Tatlow-Golden M, Craig S, Kerr M, Lynch C, McConkey R, & Staines A, 'Mapping the National Disability Policy Landscape' (TCD 2014).
- National Disability Authority, Code of Practice on Accessibility of Public Services and Information provided by Public Bodies (NDA).
- National Disability Authority, Ireland's Monitoring Report for the EU Web Accessibility Directive (NDA 2021).
- National Disability Authority, NDA Independent Assessment of Implementation of the National Disability Inclusion Strategy for 2021 (NDA 2022).
- National Disability Authority, Overview of UNCRPD Article 19 In Ireland - Living independently and being included in the community (NDA 2022).
- National Disability Authority, Overview of UNCRPD Article 27 in Ireland Right to Work and Employment (NDA 2020).
- National Disability Authority, Overview of UNCRPD Article 28 in Ireland Adequate Standard of Living and Social Protection (NDA 2021).
- National Disability Authority, Overview of UNCRPD Article 31 in Ireland Statistics and Data Collection (NDA 2020).
- National Disability Authority, Overview of UNCRPD Article 8 in Awareness Raising (NDA 2020).

JOURNALS

- Adams Z, Adams-Prassl A and Adams-Prassl J A, 'Online Tribunal Judgments and the Limits of Open Justice' (2022) 42 Legal Studies 42.
- Allen C and Hanly R, 'Legal systems in Ireland overview' (2020) Practical Law 1.
- Banich M T, 'Executive Function: The Search for an Integrated Account' (2009) 18(2) Current Directions in Psychological Science 89.
- Barnard C and Ludlow A, 'Administrative (in)justice? Appelants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406, 417.
- Barnard C and Ludlow A, 'Administrative (in)justice? Appellants' experiences of accessing justice in social security tribunals' (2022) Jul Public Law 406.
- Basuki D, Orbaningsih D, Hendrakusuma, FX. B, Handajani SPB, Hastuti S, 'Work Discipline, Work Motivation and Training Encouraging Performance Improvement of Social Security Administering Employees' [2023] 4 American International Journal of Business Management 13.
- Bell D, Eiser D and Phillips D, 'Stress Testing the Fiscal Framework' [2022] 260 National Institute Economic Review 64.
- Blaney I, 'Pious causes: the boundaries between charity law and ecclesiastical law' (2022) 24(3) Ecclesiastical Law Journal 309.

- Boardman L, Bernal J and Hollins S, ‘Communicating with people with intellectual disabilities: a guide for general psychiatrists’ (2014) 20(1) Advances in Psychiatric 27.
- Broderick A ‘Of rights and obligations: the birth of accessibility’ (2019) 24(4) IJHR 393.
- Chaney P, ‘Human rights and social welfare pathologies: civil society perspectives on contemporary practice across UK jurisdictions – critical analysis of third cycle UPR data’ (2021) 25(4) IJHR 639.
- Citizens Information Board, ‘Social Policy Updater’ (2022) 15(2) Citizens Information 1.
- Claessen D and others, ‘Bringing Human Rights Home: Access to Justice and the Role of Local Actors Implementing the United Nations Convention on the Rights of Persons with Disabilities’ [2023] 16 Journal of Human Rights Practice 554.
- Dai T, Sun W and Webb A, ‘How Do Subjective Mortality Beliefs Affect the Value of Social Security and the Optimal Claiming Ages?’ [2023] 19 International Studies of Economics 92.
- Dai T, Sun W and Webb A, ‘How Do Subjective Mortality Beliefs Affect the Value of Social Security and the Optimal Claiming Ages?’ (2023) 19 International Studies of Economics 92.
- Davis N A, ‘Invisible Disability’ (2005) 116(1) University of Chicago Press 153.
- Efthymiadou O, Kamphuis B, Gill J, Haig M, and Kanavos P, ‘Towards better outcomes in autism by addressing policy change’ (2022) LSE 1.
- Ferri D, ‘The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All about That … Internal Market?’ [2023] 257 European Law Review 280.
- Fiala-Butora J, ‘The Influence of the Convention on the Rights of Persons with Disabilities on the European Court of Human Rights in the Area of Mental Health Law: Divergence and Unexplored Potential’ [2024] 94 International Journal of Law and Psychiatry 101965.
- Gray A and others, ‘Editorial: The Commodification of the Public Good—Who Wins and Who Loses?’ [2023] 44 Public Money & Management 277.
- Harding M, ‘Charity and law: past, present and future’ (2022) 36(3) Trust Law International 124.
- Harris N and McKeever G, ‘Expediting access to benefits for those with terminal illness’ (2022) 29(2) JSSL 91.
- Harris N, ‘Complexity in the law and administration of social security: is it really a problem?’ (2015) 37 (2) JSWFL 209.
- Harris N, ‘Complexity, Law and Social Security in the United Kingdom’ (2006) 8(2) Eur J Soc Sec 145.
- Harris N, ‘Means-testing: present and future’ 19(1) (2012) JSSL 1.
- Harris N, ‘Welfare Reform and the Shifting Threshold of Support for Disabled People’ (2014) 77(6) MLR 888.
- Hoecke M V, ‘Methodology of Comparative Legal Research’ (2015) 4 Law and Method 1.
- Hohnerlein J, ‘Treaty rigidity and domestic democracy: functions of and constitutional limits to democratic self-binding’ (2022) 35(3) LJIL 595.
- Hutchinson T and Duncan N, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17(1) Deakin Law Review 83, 84-85.

- Johnson E A, Reed H R and Johnson M T, ‘Can Universal Basic Income Work for Disabled People? An Examination of Existing UK Organisational and Academic Positions’ [2023] Disability & Society 1.
- Martin A-M and Jones V, ‘Communication as a Basis for Person-Centred Support’ [2023] Intellectual Disabilities: Health and Social Care Across the Lifespan 15.
- Jorden U and Sage D, ‘A Constant Threat? A Narrative Exploration of the Relationship between Benefit Receipt, Mental Distress and the Threat of Homelessness’ [2023] Critical Social Policy.
- Kahn-Freund O, ‘Comparative Law as an Academic Subject’ (1966) 82 LQR 40.
- Kahn-Freund O, ‘On Uses and Misuses of Comparative Law’ (1974) 37 Modern Law Review 1.
- Keyes F, ‘Our Herculean Judiciary?: Interpretivism and The Unenumerated Rights Doctrine’ (2020) 4(1) Irish Judicial Studies Journal 45.
- Kilgannon D, ‘The Death of Veronica L.: Intellectual Disability and Statutory Welfare in Mid Twentieth-Century Ireland’ [2021] 45 Irish Historical Studies 81.
- Wamsley D, ‘Mapping the Coercive Turn: Universal Credit, Social Crisis, and the Politics of Welfare in Austerity Britain, 2010–2019’ [2024] 1 Critical Sociology 20.
- Legrand P, The Impossibility of 'Legal Transplants' (1997) 4 Maastricht Journal of European and Comparative Law 111.
- Leif E and others, ‘“I Look at Their Rights First”: Strategies Used by Australian Behaviour Support Practitioners’ to Protect and Uphold the Rights of People with Disabilities’ [2023] 8 Advances in Neurodevelopmental Disorders 17.
- Machin R and McCormack F, ‘The impact of the transition to Personal Independence Payment on claimants with mental health problems’ (2021) Disability & Society Online 1.
- Machin R and McCormack F, ‘The Impact of the Transition to Personal Independence Payment on Claimants with Mental Health Problems’ [2021] 38 Disability & Society 1029.
- Machin R, ‘Made to Measure? An analysis of the transition from Disability Living Allowance to Personal Payment’ (2017) 39(4) JSWFL 435.
- Machin R, ‘Regressive and precarious: analysing the UK social security system in the light of the findings of the UN Special Rapporteur on poverty and human rights’ (2020) 21(3) Social Work and Social Sciences Review 1.
- Mangan D, ‘Remote work in Ireland: dissuasion through legislation’ (2022) 68 Irish Jurist 110.
- Mantouvalou V, ‘Welfare-to-work, Structural Injustice and Human Rights’ [2020] 83 The Modern Law Review 929.
- Mari G and Keizer R [2020] Families of austerity: Benefit cuts and family stress in the UK 1.
- Martins R and others, ‘The Hidden Economic Consequences of Migraine to the UK Government: Burden-of-Disease Analysis Using a Fiscal Framework’ [2023] Journal of Health Economics and Outcomes Research 72.
- McKeever G, ‘Changes to mobility and daily living activities for PIP’ (2017) 24(2) JSSL 59.
- McKeever G, ‘Employment and support allowance’ (2015) 22(1) JSSL 6.
- McKeever G, ‘Employment and support allowance’ (2017) 24(2) JSSL 54.
- McKeever G, ‘Independent review of PIP’ (2017) 24(2) JSSL 53.
- McKeever G, ‘Personal independence payment’ (2015) 22(1) JSSL 4.

- McKeever G, ‘Personal independence payment’ (2015) 22(3) JSSL 106.
- Mills C and Pring J, ‘Weaponising Time in the War on Welfare: Slow Violence and Deaths of Disabled People within the UK’s Social Security System’ [2023] 44 Critical Social Policy 129.
- Model to Social Relational Model’ [2023] 82 Journal of Advance Research in Science and Social Science 95.
- Moloney M, Hennessy T and Doody O, ‘Reasonable adjustments for people with intellectual disability in acute care: a scoping review of the evidence’ (2021) 11 BMJ 1.
- Neville N, ‘Personal Independence Payment: getting a picture’ 21(3) JSSL 111.
- O’Sullivan C and McNamara D, ‘The ‘Necessity’ of Austerity and its Relationship with the UN Convention on the Rights of Persons with Disabilities: A Case Study of Ireland and the United Kingdom’ (2021) 00 Human Rights Law Review 1.
- Oliver M and Barnes C, ‘Back to the future: The World Report on Disability Article’ (2012) 27 (4) Disability & Society 575.
- Oltra Gras I, ‘Online Courts: Bridging the Gap between Access and Justice’ [2021] 10 UCL Journal of Law and Jurisprudence.
- Oorschot W J H v, ‘Non-take-up of social security benefits in Europe’ (1991) 1 JESP 15.
- Opgenhaffen T, ‘The Universal Right to Legal Capacity—Clearing the Haze’ (2022) 22(3) HRLR 1.
- Parnell T, ‘Humiliating and dividing the nation in the British pro-Brexit press: a corpus-assisted analysis’ (2021) Online Critical Discourse Studies 1.
- Pigott C, ‘It’s not what you said, it’s the way you said it…’ (2022) 9 NLJ 11.
- Pybus K, Pickett K E, Lloyd C, Prady S and Wilkinson R, ‘Functional assessments in the UK social security system: experiences of claimants with mental health conditions' (2021) 50(2) J Social Policy 305.
- Rab S and Court S, ‘Legal systems in the UK (England and Wales) overview’ (2019) Practical Law 1.
- Rab S and Court S, ‘Legal systems in the UK (England and Wales) overview’ (2019) Practical Law 1.
- Rahilly S, ‘Universal Credit’ 18(2) (2012) JSSL 61.
- Reitz J C, ‘How to Do Comparative Law’ (1998) 46(4) AJCL 617.
- Ropar D, Sheppard S, Loon E V and Underwood G, ‘Brief report: driving hazard perception in autism.’ (2010) 40(4) J Autism Dev Disord 504.
- Roulstone A, ‘Personal Independence Payments, welfare reform and the shrinking disability category’ (2015) 30(5) Disability & Society 673.
- Roulstone A, ‘Personal Independence Payments, Welfare Reform and the Shrinking Disability Category’ [2015] 30 Disability & Society 673.
- Seaman R and others, ‘Social Security Cuts and Life Expectancy: A Longitudinal Analysis of Local Authorities in England, Scotland and Wales’ [2023] 78 Journal of Epidemiology and Community Health 82.
- Simpson M, McKeever G and Fitzpatrick C, ‘Legal Protection against Destitution in the UK: The Case for a Right to a Subsistence Minimum’ [2022] 86 The Modern Law Review 465.
- Sotska A, Pavlovska N and Zaverukha O, ‘Legal Responsibility for Violations of the Social and Economic Rights of Persons with Disabilities’ [2023] 9 Baltic Journal of Economic Studies 185.
- Tarshish N, ‘‘Bottom Line is You Deserve These Things’: Experiences of Social Security Claimants as Lessons for Take-up Advocacy’ (2022) BJSW 1.

- Teubner G, ‘Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences’ (1998) 61 Modern Law Review 11.
- Thomas R and Tomlinson J, 'A different tale of judicial power: administrative review as a problematic response to the judicialisation of tribunals' (2019) (Jul) Public Law 537.
- Thomas R and Tomlinson J, 'Remodelling social security appeals (again): the advent of online tribunals' (2018) 25(2) JSSL 84.
- Thomas R, 'Administrative justice, better decisions, and organisational leraning' (2015) (Jan) Public Law 111.
- Thomas R, ‘Benefit complaints: a critical analysis' (2022) 44 Journal of Social Welfare and Family Law 258.
- Varghese N, ‘Sensitisation: Initiating the Paradigm Shift of Disability from Medical.
- Vollenwyder B et al, ‘How Compliance with Web Accessibility Standards Shapes the Experiences of Users with and without Disabilities’ (2022) Human-Computer Studies Online 1.
- Watson A, ‘Aspects of Reception of Law’ (1996) American Journal of Comparative Law 335.
- Watson A, ‘The Importance of “Nutshells”’ (1994) 42 American Journal of Comparative Law 1.
- Watson A, Legal Transplants: An Approach to Comparative Law (2nd edn, University of Georgia Press, 1993).
- Wood M, ‘Falling between the Cracks – the Experiences of Young Parents on Universal Credit’ [2023] Journal of Youth Studies 1.
- Yuh MN and others, ‘Invited to Dinner, but Not to the Table: Web Content Accessibility Evaluation for Persons with Disabilities’ [2023] 7 Research for All.

BOOKS

- Barnes C and Mercer G, *Disability* (Polity Press 2003).
- Barnes C, Thomas C, Swain J and French S, *Disabling Barriers- Enabling Environments* (Second Edition, SAGE Publications 2004).
- Bonner B, Williams D, Hooker I, Wikeley N, Wood P, Poynter R and White R, *Social Security Legislation 2015/16. Volume 1: Non means tested Benefits and Employment Support allowance* (Volume 1, Thomson Reuters UK Limited 2015).
- Borsay A, Disability and Social Policy in Britain Since 1750 (Palgrave 2005).
- Broderick A and Ferri D, International and European Disability Law and Policy – Text, Cases and Materials (Cambridge University Press 2019).
- Broderick A, The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on the Rights of Persons with Disabilities (Intersentia 2015).
- Butler C, Energy Poverty, Practice and Policy (Palgrave 2022).
- Charles de Secondat, Baron de Montesquieu, The Spirit of Laws (Thomas Nugent tr, Batoche Books 2001).
- Child Poverty Action Group, Personal Independence Payment What You Need To Know (2nd edn, CPAG 2016).
- Child Poverty Action Group, Universal Credit What You Need To Know (3rd edn, CPAG 2015).

- Child Poverty Action Group, Welfare Benefits and Tax Credits Handbook 2009/2010 (11th edn, CPAG 2009).
- Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook* (19th Edition, Child Poverty Action Group 2017).
- Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook* (16th Edition, Child Poverty Action Group 2014).
- Child Poverty Action Group, *Welfare Benefits and Tax Credits Handbook* (11th Edition, Child Poverty Action Group 2009).
- Child Poverty Action Group, Winning Your Benefit Appeal What You Need To Know (2nd edn, CPAG 2016).
- Clifford E, The War on Disabled People: Capitalism, Welfare and the Making of a Human Catastrophe (Zed Books 2020).
- Coffman E, *Stigma* (Penguin Books 1960).
- Collins N and Butler P, Cradden T, *Modernising Irish Government: The Politics of Administrative Reform* (Gill & Macmillan 2007).
- Conroy P, A Bit Different: Disability in Ireland (Orpen Press 2018).
- Cottam H, *Radical Help* (Virago Press 2018).
- Cousins M and Whyte G, Social Security Law in Ireland (3rd edn, Kindle edn, Wolters Kluwer, 2021).
- Disability Rights UK, Disability Rights Handbook Updater: February 2018 (Disability Rights UK 2018).
- Dixon J (eds), Social Welfare in Africa (1st edn, Routledge 1987).
- Dixon J (eds), Social Welfare in The Middle East (1st edn, Routledge 1987).
- Dixon J and Kim H S (eds), Social Welfare in Asia (1st edn, Routledge 1985).
- Dixon J and Macarov D (eds), Social Welfare in Socialist Countries (1st edn, Routledge 1992).
- Dixon J and Scheurell R P (eds), Social Welfare in Developed Market Countries (1st edn, Routledge 1989).
- Dixon J and Scheurell R P (eds), Social Welfare in Latin America (1st edn, Routledge 1990).
- Dixon J and Scheurell R P (eds), Social Welfare with Indigenous Peoples (1st edn, Routledge 1995).
- Fanning B, Kiely G, Kennedy P and Quin S, *Theorising Irish Social Policy* (University College Dublin Press 2004).
- Fraser D, The Evolution of the British Welfare State (2nd edn, MacMillan 1984).
- Gamble A, Can the Welfare State Survive? (Polity 2016).
- Genn H and Genn Y, The Effectiveness of Representation at Tribunals: Report to the Lord Chancellor (UCL Press, 1989).
- Greaves I (eds), Disability Rights Handbook: April 2008 - April 2009 (33rd edn, Disability Alliance 2008).
- Greaves I (eds), Disability Rights Handbook: April 2017 - April 2018 (42nd edn, Disability Rights UK 2017).
- Greaves I (eds), Disability Rights Handbook: April 2018 - April 2019 (43rd edn, Disability Rights UK 2018).
- Greaves I (eds), Disability Rights Handbook: April 2019 - April 2020 (44th edn, Disability Rights UK 2019).
- Greaves I (eds), Disability Rights Handbook: April 2020 - April 2021 (45th edn, Disability Rights UK 2020).

- Greaves I (eds), Disability Rights Handbook: April 2021 - April 2022 (46th edn, Disability Rights UK 2021).
- Greaves I (eds), Disability Rights Handbook: April 2022 - April 2023 (47th edn, Disability Rights UK 2022).
- Husa j, A New Introduction to Comparative Law (Hart Publishing 2015).
- Jolly A, Cefalo R and Pomati M (eds), Social Policy Review 34 (Bristol University Press 2022).
- Lawson A and Goodling C, *Disability Rights in Europe* (Hart Publishing 2005).
- Lawson A, *Disability and Equality Law in Britain* (Hart Publishing 2008).
- Lord J E et al (eds), Human Rights. YES! Action and Advocacy on the Rights of Persons with Disabilities (Human Rights Resource Center, University of Minnesota 2007).
- Mann T(ed) Australian Law Dictionary (OUP 2010).
- Martin J, The English Legal System (5th edn, Hodder Education 2008).
- Matthews A, Kiely G, Kennedy P and Quin S, *Contemporary Irish Social Policy* (Second Edition, University College Dublin Press 2005).
- McCann A, *2015 Taxation, Health and Social Welfare* (10th Edition, Orpen Press 2015).
- Monaghan K, *Blackstone's Guide to the Disability Discrimination Legislation* (Oxford University Press 2005).
- Morris J, Pride Against Prejudice: Transforming Attitudes to Disability: A Personal Politics of Disability (The Women's Press 1991).
- O'Malley T, *Sources of Law* (Second Edition, Round Hall LTD 2001).
- Office of the High Commissioner for Human Rights United Nations, The Convention on the Rights of Persons with Disabilities: A Training Guide (Professional training series) (United Nations Publications 2014).
- Oliver M, The Politics of Disablement: A Sociological Approach (Palgrave Macmillan 1997).
- Oliver M, Understanding Disability – From Theory to Practice (2nd edn, Palgrave 2009).
- Oorschot W J H V, Take it or Leave it: a study of Non-take-up of social security benefits (Tilburg University Press, 1994).
- Preston G, *A Route out of Poverty?* (Child Poverty Action Group 2006).
- Pyaneandee C, International Disability Law A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities, (Routledge 2019).
- Quinn G, Degener T et al, Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability (United Nations 2002).
- Redmond B and Quin S, *Disability and Social Policy in Ireland (*University College Dublin Press 2003).
- Redmond B and Quin S, *Mental Health and Social Policy in Ireland* (University College Dublin Press 2005).
- Robins J and Newman D, Justice in a Time of Austerity (Bristol University Press 2021).
- Ryan F, Crippled: Austerity and the Demonization of Disabled People (Verso 2019).
- Shakespeare T, Disability Rights and Wrongs (Routledge 2006).
- Shakespeare T, Disability Rights and Wrongs Revisited (Routledge 2014).
- Siems M, Comparative Law (1st edn, Cambridge University Press 2014).

- Spicker P, What's Wrong with Social Security Benefits? (Policy Press 2017).
- Thomas C, *Sociologies of Disability and Illness* (Palgrave Macmillan 2007).
- Turner D M, *Disability in Eighteenth-Century England* (Routledge 2012).
- Union of the Physically Impaired Against Segregation, Fundamental Principles of Disability (Union of the Physically Impaired Against Segregation 1976).
- Waite M (ed), Paperback Oxford English Dictionary (7th edn, OUP 2012) 4.
- Webster R, The Inclusion Illusion (UCL Press 2022).
- Wendell S, The Rejected Body (Routledge, 1996).
- Wikeley N (eds), Social Security Legislation 2015/16 Volume 1: Non Means Tested Benefits and Employment and Support Allowance (16th edn, Sweet & Maxwell 2015).
- Wistow J, Social Policy, Political Economy and the Social Contract (Bristol University Press 2022).
- Wright D, *Downs The History of Disability* (Oxford University Press 2011).
- Zweigert K and Kötz H, An Introduction to Comparative Law (1st edn, North-Holland Publishing 1977).
- Zweigert K and Kötz H, An Introduction to Comparative Law (2nd edn, OUP 1987).

CHAPTERS IN EDITED COLLECTIONS

- Adams M and Griffiths J, 'Against "Comparative Method": Explaining Similarities and Differences' in Maurice Adams and Jacco Bomhoff (eds), Practice and Theory in Comparative Law (Cambridge University Press 2012).
- Caughey C and Liu H, 'The Role of National Human Rights Institutions and Organizations of Persons with Disabilities in the National Monitoring of the CRPD' in Marcia H. Rioux, José Viera, Alexis Buettgen and Ezra Zubrow (eds) Handbook of Disability: Critical Thought, Human Rights and Social Change in a Globalizing World (Cham-Springer, 2022).
- Cera R, 'Article 21 – Freedom of Expression and Opinion, and Access to Information' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), The United Nations Convention on the Rights of Persons with Disabilities- A Commentary (Cham- Springer, 2017).
- Chynoweth P, 'Legal research' in Andrew Knight and Les Ruddock (eds), Advanced Research Methods in the Built Environment (Blackwell 2008).
- Degener T, 'A Human Rights Model of Disability' in Peter Blanck and Eilionóir Flynn (eds), The Routledge Handbook of Disability Law and Human Rights (Routledge 2017).
- Degener T, 'A New Human Rights Model of Disability' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), The United Nations Convention on the Rights of Persons with Disabilities- A Commentary (Cham- Springer, 2017).
- Degener T, 'Disability in a Human Rights Context' in Anna Arstein-Kerslake (eds), Disability Human Rights Law (MDPI AG 2017).
- Ferrajolo O, 'Optional Protocol to the Convention on the Rights of Persons with Disabilities' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), The United Nations Convention on the Rights of Persons with Disabilities- A Commentary (Cham- Springer, 2017).

- Fina V D, ‘Article 4 – General Obligations’ in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), The United Nations Convention on the Rights of Persons with Disabilities- A Commentary (Cham- Springer, 2017).
- Flynn E, Article 13 – Access to Justice’ in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), The United Nations Convention on the Rights of Persons with Disabilities- A Commentary (Cham- Springer, 2017).
- Hage J, ‘The Method of a Truly Normative Legal Science’ in Mark Van Hoecke (ed), Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (Hart 2011).
- Handler P, ‘Legal History’ in Dawn Watkins and Mandy Burton (eds), Research Methods in Law (2nd edn, Routledge 2018).
- Hoecke M V ‘What Method(s) for What Kind of Discipline’ in Mark Van Hoecke (ed), Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (Hart 2011).
- Hoecke M V, ‘Legal Doctrine: Which Method(s) for What Kind of Discipline?’ in Mark Van Hoecke (ed), Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (Hart 2011).
- Husa J, ‘Comparative Law, Legal Linguistics and Methodology of Legal Doctrine’ in Mark Van Hoecke (ed), Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (Hart 2011).
- Hutchinson T, ‘Doctrinal research: researching the jury’ in Dawn Watkins and Mandy Burton (eds), Research Methods in Law (2nd edn, Routledge 2018).
- Kelly R, ‘Political parties’ in Bill Jones and Philip Norton (eds), Politics UK (8th edn, Routledge 2014) 213.
- Lawson A, ‘Article 9- Accessibility’ in Ilias Bantekas, Michael Ashely Stein and Dimitris Anastasiou (eds.), The UN Convention on the Rights of Persons with Disabilities- A Commentary (Oxford University Press, 2018).
- Quinn G and Degener T, ‘The moral authority for change: human rights values and the worldwide process of disability reform’ in Gerard Quinn, Theresia Degener et al, Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability (United Nations 2002).
- Robinson K F, ‘The Form That Flattens’ in Aaron Parkhurst and Timothy Carroll (eds.), Medical Materialities: towards a material culture of Medical Anthropology (Routledge, 2020).
- Schur L, ‘The Difference a Job Makes: The Effect of Employment among People with Disabilities’ in Deborah A Ziegler (eds), Inclusion for ALL: The UN Convention on the Rights of Persons with Disabilities (IDebate Press 2010).
- Seatzu F, 'Article 9- Accessibility' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds.), The United Nations Convention on the Rights of Persons with Disabilities- A Commentary (Cham- Springer, 2017).
- Vranken J, ‘Methodology of Legal Doctrinal Research: A Comment on Westerman’ in Mark Van Hoecke (ed), Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (Hart 2011).

OTHER WEB SOURCES

- Ballsbridge Medical Centre, ‘Disability Allowance’ (Ballsbridge Medical Centre) < https://ballsbridgemedical.ie/information/disability-allowance-application-form-da1/ > accessed 10 August 2024.

- Bateman C, ‘DWP's 'secret tricks' on PIP and DLA claimants including 'deliberately broken' lifts’ (*My London* 23 July 2022) < https://www.mylondon.news/news/uk-world-news/dwps-secret-tricks-pip-dla-24571945 > accessed 10 August 2024.
- Benefits and Work, ‘Almost half a million PIP helpline calls deliberately disconnected in April’ (*Benefits and Work,* 13 June 2023) < https://www.benefitsandwork.co.uk/news/almost-half-a-million-pip-helpline-calls-deliberately-disconnected-in-april > accessed 10 August 2024.
- Benefits and Work, ‘New PIP 2 How Your Disability Affects You Form’ (BenefitsandWork, 12 March 2021) < https://www.benefitsandwork.co.uk/news/new-pip2-how-your-disability-affects-you-form > accessed 10 August 2024.
- Benefits and Work, ‘PIP assessments – 9 out of 10 are telephone or paper’ (*Benefits and Work,* 28 March 2022) < https://www.benefitsandwork.co.uk/news/pip-assessments-9-out-of-10-are-telephone-or-paper > Accessed 10 August 2024.
- Bentley D, ‘DWP reveals what illnesses and health conditions qualify for PIP’ (Cheshire Live, 2 August 2021) < https://www.cheshire-live.co.uk/news/chester-cheshire-news/dwp-reveals-what-illnesses-health-21194633> accessed 10 August 2024.
- Blair L, ‘A Rubber Stamp? Mandatory Reconsideration in the Personal Independence Payment application process’ (Citizens Advice, May 2019) < https://www.carbs.org.uk/wp-content/uploads/2019/05/PIP-MR-Report-Final-Copy.pdf > accessed 10 August 2024.
- Citizens Advice, ‘Getting evidence to support your PIP claim’ (Citizens Advice) <https://www.citizensadvice.org.uk/benefits/sick-or-disabled-people-and-carers/pip/help-with-your-claim/your-supporting-evidence/> accessed 10 August 2024.
- Citizens Advice, ‘Preparing for your PIP assessment’ (*Citizens Advice*) < https://www.citizensadvice.org.uk/benefits/sick-or-disabled-people-and-carers/pip/help-with-your-claim/your-assessment/ > Accessed 10 August 2024.
- Citizens Information, ‘Assessing the means of a couple for social assistance payments’ (Citizens Information, 22 June 2022) <https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/assessing_the_means_of_a_couple.html > accessed 10 August 2024.
- Citizens Information, ‘Benefits for people who are sick or have a disability’ (Citizens Information, 28 September 2022) < https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/benefits_to_people_who_are_sick_or_have_a_disability.html > accessed 10 August 2024.
- Citizens Information, ‘Capital and Social Welfare Payments’ (Citizens Information, 13 September 2022) < https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/how_to_assess_your_means_from_capital_for_social_welfare_payments.html > accessed 10 August 2024.
- Citizens Information, ‘Cash income not included in the means test’ (Citizens Information, 23 June 2022) < https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/cash_income_not_included_in_the_social_welfare_means_test.html > accessed 10 August 2024.

- Citizens Information, ‘Disability Allowance’ (Citizens Information, 15 June 2022) < https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/disability_allowance.html > accessed 10 August 2024.
- Citizens Information, ‘Disability and Illness’ (Citizens Information) < https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/disability_and_illness/ > accessed 10 August 2024.
- Citizens Information, ‘Find a Citizens Information Centre’ (Citizens Information) < https://centres.citizensinformation.ie/ > accessed 10 August 2024.
- Citizens Information, ‘GP Services to Medical Card Holderss’ (Citizens Information, 16 February 2020) < https://www.citizensinformation.ie/en/health/health_services/gp_and_hospital_services/gp_services_to_medical_card_holders.html> accessed 10 August 2024.
- Citizens Information, ‘GP Visit Cards’ (Citizens Information, 28 September 2022) < https://www.citizensinformation.ie/en/health/medical_cards_and_gp_visit_cards/gp_visit_cards.html > accessed 10 August 2024.
- Citizens Information, ‘GPs and private patients’ (Citizens Information, 22 September 2020) < https://www.citizensinformation.ie/en/health/health_services/gp_and_hospital_services/gps_and_private_patients.html> accessed 10 August 2024.
- Citizens Information, ‘Maintenance and Social Welfare Payments’ (Citizens Information, 20 February 2022) < https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/means_test_for_social_welfare_payments/maintenance_and_social_welfare_payments.html > accessed 10 August 2024.
- Citizens Information, ‘Maintenance orders and agreements’ (Citizens Information, 22 April 2022) < https://www.citizensinformation.ie/en/birth_family_relationships/separation_and_divorce/maintenance_orders_and_agreements.html > accessed 10 August 2024.
- Citizens Information, ‘Social Welfare appeals’ (Citizens Information, 19 May 2022) < https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_welfare_appeals.html > accessed 10 August 2024.
- Citizens Information, ‘State Pension (Contributory)’ (Citizens Information, 28 September 2022) < https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/older_and_retired_people/state_pension_contributory.html > accessed 10 August 2024.
- Disability Rights UK, ‘DWP has 80% targets for refusing benefit reconsiderations’ (*Disability Rights UK* 15 May 2017) < https://www.disabilityrightsuk.org/news/2017/may/dwp-has-80-targets-refusing-benefit-reconsiderations > accessed 10 August 2024.
- Disability Rights UK, ‘Systemic problem with the Healthcare Professional PIP and ESA assessment process, suggests President of Appeal Tribunals (Northern Ireland)’ (*Disability Rights UK* 09 May 2021) < https://www.disabilityrightsuk.org/news/2021/may/systemic-problem-healthcare-professional-pip-and-esa-assessment-process-suggests > accessed 10 August 2024.

- Gold S, ‘Four healthcare systems divided by the English language’ (Guardian, 11 July 2021) < https://www.theguardian.com/healthcare-network/2011/jun/07/healthcare-systems-ireland-nhs-usa-medicare > accessed 10 August 2024.
- Gold S, ‘Four healthcare systems divided by the English language’ (Guardian, 11 July 2021) < https://www.theguardian.com/healthcare-network/2011/jun/07/healthcare-systems-ireland-nhs-usa-medicare > accessed 10 August 2024.
- Hazelhill Family Practice, ‘Disability Allowance Application Form (DA1)’ (Hazelhill Family Practice) < https://www.hazelhillfamilypractice.com/3forms-and-links/3-2-1disability-allowance-application-form-da1/ > accessed 10 August 2024.
- Hyde J, ‘Raab's Bill of Rights officially killed off’ (*The Law Society Gazette* 27 June 2023) < https://www.lawgazette.co.uk/news/raabs-bill-of-rights-officially-killed-off/5116465.article > accessed 10 August 2024.
- Johnson M et al, Winning the vote with a universal basic income Evidence from the 'red wall’ (Compass 2022)
- Kenny A, ‘Disability allowance should not be means tested, say advocates’ (Irish Times, 4 May 2021) < https://www.irishtimes.com/news/ireland/irish-news/disability-allowance-should-not-be-means-tested-say-advocates-1.4554298?__twitter_impression=true > accessed 10 August 2024.
- Law Centre NI, ‘When considering PIP Activity 9c, tribunals should apply the wider definition of ‘social support’ adopted by the Supreme Court in SSWP v. MM [2019] UKSC 34.’ (LawCentre NI, 13 September 2021) < https://www.lawcentreni.org/case-digest/personal-independence-payment-pip-activity-9-engaging-with-other-people-face-to-face > accessed 10 August 2024.
- Machin R, ‘Four reasons why welfare reform is a delusion’ (LSE Blog, 27 June 2017) <blogs.lse.ac.uk/politicsandpolicy/four-reasons-why-welfare-reform-is-a-delusion/ > accessed 10 August 2024.
- McShane A, ‘People in England will be given a £1,600 lump sum with no conditions every month for two years under a trial of universal basic income (UBI).’ (*LBC* 05 June 2023) < https://www.lbc.co.uk/news/universal-basic-income-of-1-600-a-month-to-be-trialled-in-england/ > accessed 10 August 2024.
- McShane A, ‘Universal basic income of £1,600 a month to be trialled in England’ (*IBC* 05 June 2024) < https://www.lbc.co.uk/news/universal-basic-income-of-1-600-a-month-to-be-trialled-in-england/ > Accessed 28 June 2024.
- Mental Health and Money Advice, ‘DWP publishes mental health conditions for PIP back payments’ (Mental Health and Money Advice, 14 June 2014) < https://www.mentalhealthandmoneyadvice.org/en/top-tips/dwp-publishes-mental-health-conditions-for-pip-back-payments/> accessed 10 August 2024.
- Moore J, ‘Why disability in Britain remains a hidden story’ (*Independent* 21 January 2023) < https://www.independent.co.uk/voices/uk-census-data-disability-media-representation-b2266560.html > accessed 10 August 2024.
- Morrissey F, ‘Catherine's law removes just one barrier facing people with disabilities’ (Irish Examiner, 14 March 2021) < https://www.irishexaminer.com/opinion/commentanalysis/arid-40243418.html > accessed 10 August 2024.
- Murray S, ‘People with disabilities: ‘Our lives shouldn't be subject to availability’ (*Irish Examiner* 19 August 2022) < https://www.irishexaminer.com/news/arid-40943723.html > accessed 10 August 2024.

- Pinto M, ‘International Covenant on Economic, Social and Cultural Rights’ (Legal UN, November 2020) < https://legal.un.org/avl/ha/icescr/icescr.html > accessed 10 August 2024.
- PIP Info, ‘Daily living - Activity 9: Engaging with other people face to face’ (PIP Info) < https://pipinfo.net/activities/engaging-with-other-people-face-to-face > accessed 10 August 2024.
- Pring J, ‘‘Fitness for work’ test changes are ‘horrendously dangerous’, activists warn’ (*Disability News Service* 07 September 2023) < https://www.disabilitynewsservice.com/fitness-for-work-test-changes-are-horrendously-dangerous-activists-warn/ > accessed 10 August 2024.
- Pring J, ‘Benefit claimants back up MP’s claims of assessment secret tricks’ (*Disability News Service*, 28 July 2022) < https://www.disabilitynewsservice.com/benefit-claimants-back-up-mps-claims-of-assessment-secret-tricks/ > accessed 10 August 2024.
- Pring J, ‘Broadcaster’s silence over ‘rabblerouser’ tweet on disability benefits’ (*Disability News Service*, 01 June 2023) < https://www.disabilitynewsservice.com/broadcasters-silence-over-rabblerouser-tweet-on-disability-benefits/ > accessed 10 August 2024.
- Pring J, ‘Call for urgent investigation into DWP’s shocking PIP figures’ (*Disbility News Service*, 09 February 2023) < https://www.disabilitynewsservice.com/call-for-urgent-investigation-into-dwps-shocking-pip-figures/ > accessed 10 August 2024.
- Pring J, ‘Citizens Advice signed ‘gagging clause’ in exchange for £21 million from DWP’ (*Disability News Service*, 09 February 2024) < https://www.disabilitynewsservice.com/citizens-advice-signed-gagging-clause-in-exchange-for-21-million-from-dwp/ > accessed 10 August 2024.
- Pring J, ‘Coroner silent on why DWP was not questioned at inquest, despite ‘nightmare’ messages’ (*Disability News Service*, 16 December 2021) < https://www.disabilitynewsservice.com/coroner-silent-on-why-dwp-was-not-questioned-at-inquest-despite-nightmare-messages/ > accessed 10 August 2024.
- Pring J, ‘Disabled people’s trust in PIP assessments is ‘severely lacking’, says Tory MP’ (*Disability News Service* 07 September 2023) < https://www.disabilitynewsservice.com/disabled-peoples-trust-in-pip-assessments-is-severely-lacking-says-tory-mp/ > accessed 10 August 2024.
- Pring J, ‘DWP admits: We’re too slow, too inaccurate, too costly, and claimants don’t trust us’ (*Disability News Service*, 29 June 2023) < https://www.disabilitynewsservice.com/dwp-admits-were-too-slow-too-inaccurate-too-costly-and-claimants-dont-trust-us/ > accessed 10 August 2024.
- Pring J, ‘DWP contractors carry out secret tricks on disabled claimants, Tory MP has been told’ (*Disability News Service*, 21 July 2022) < https://www.disabilitynewsservice.com/dwp-contractors-carry-out-secret-tricks-on-disabled-claimants-tory-mp-has-been-told/ > accessed 10 August 2024.
- Pring J, ‘DWP finally admits nearly all its websites were rated ‘very high risk’ on access’ (*Disability News Service*, 15 June 2023) < https://www.disabilitynewsservice.com/dwp-finally-admits-nearly-all-its-websites-were-rated-very-high-risk-on-access/ > accessed 10 August 2024.
- Pring J, ‘DWP hid vital evidence from starvation death inquiry, board confirms’ (*Disability News Service*, 18 May 2023) < https://www.disabilitynewsservice.com/dwp-hid-vital-evidence-from-starvation-death-inquiry-board-confirms/ > accessed 10 August 2024.

- Pring J, 'DWP is refusing to correct injustice caused to 118,000 claimants, says ombudsman' (*Disability News Service*, 13 January 2022) < https://www.disabilitynewsservice.com/dwp-is-refusing-to-correct-injustice-caused-to-118000-claimants-says-ombudsman/ > accessed 10 August 2024.
- Pring J, 'DWP loses court case over inaccessible benefit letters… but keeps sending them' (*Disability News Service*, 03 August 2023) < https://www.disabilitynewsservice.com/dwp-loses-court-case-over-inaccessible-benefit-letters-but-keeps-sending-them/ > accessed 10 August 2024.
- Pring J, 'DWP staff admit inflicting 'psychological harm' on claimants during coalition years' (Disability News Service, 1 April 2021) < https://www.disabilitynewsservice.com/dwp-staff-admit-inflicting-psychological-harm-on-claimants-during-coalition-years/> accessed 10 August 2024.
- Pring J, 'DWP tried to prevent Atos winning £338m assessment contract, court documents suggest' (*Disability News Service* 10 August 2023) < https://www.disabilitynewsservice.com/dwp-tried-to-prevent-atos-winning-338m-assessment-contract-court-documents-suggest/ > accessed 10 August 2024.
- Pring J, 'DWP's 'shocking' refusal to allow benefit appeal for woman who was sectioned' (*Disability News Service*, 15 June 2023) < https://www.disabilitynewsservice.com/dwps-shocking-refusal-to-allow-benefit-appeal-for-woman-who-was-sectioned/ > accessed 10 August 2024.
- Pring J, 'Five disabled peers help defeat government's attack on right to protest' (*Disability News Service*, 20 January 2022) < https://www.disabilitynewsservice.com/five-disabled-peers-help-defeat-governments-attack-on-right-to-protest/ > accessed 10 August 2024.
- Pring J, 'Fresh doubts over impact of government's 'scrap the WCA' plans' (*Disability News Service*, 25 May 2023) < https://www.disabilitynewsservice.com/fresh-doubts-over-impact-of-governments-scrap-the-wca-plans/ > accessed 10 August 2024.
- Pring J, 'Government side-stepping UN examination 'shows contempt for disabled people' (*Disability News Service* 17 August 2023) < https://www.disabilitynewsservice.com/government-side-stepping-un-examination-shows-contempt-for-disabled-people/ > accessed 10 August 2024.
- Pring J, 'Half a million set to lose out when DWP scraps 'fit for work' test, figures show' (*Disability News Service*, 27 July 2023) < https://www.disabilitynewsservice.com/half-a-million-set-to-lose-out-when-dwp-scraps-fit-for-work-test-figures-show/ > accessed 10 August 2024.
- Pring J, 'Minister ridiculed over 'global leadership on disability inclusion' claim' (*Disability News Service* 01, December 2022) < https://www.disabilitynewsservice.com/minister-ridiculed-over-global-leadership-on-disability-inclusion-claim/ > accessed 10 August 2024.
- Pring J, 'Ministers could merge disability benefits and want to cut future spending, says green paper' (Disability News Service, 22 July 2021) < https://www.disabilitynewsservice.com/ministers-could-merge-disability-benefits-and-want-to-cut-future-spending-says-green-paper/ > accessed 10 August 2024.
- Pring J, 'PIP telephone waiting-times continue to rise, DWP figures show' (*Disability News Service*, 15 June 2023) < https://www.disabilitynewsservice.com/pip-telephone-waiting-times-continue-to-rise-dwp-figures-show/ > accessed 10 August 2024.

- Pring J, ‘Pursglove fails to express concern over Access to Work and PIP waiting-times’ (*Disability News Service*, 01 December 2024) < https://www.disabilitynewsservice.com/pursglove-fails-to-express-concern-over-access-to-work-and-pip-waiting-times/ > accessed 10 August 2024.
- Pring J, ‘Recording shows Atos nurse lied repeatedly in PIP assessment report’ (*Disability News Service* 10 August 2023) < https://www.disabilitynewsservice.com/recording-shows-atos-nurse-lied-repeatedly-in-pip-assessment-report/ > accessed 10 August 2024.
- Pring J, ‘Research exposes how DWP ‘weaponised’ time to avoid accountability for deaths’ (*Disability News Service*, 03 August 2023) < https://www.disabilitynewsservice.com/research-exposes-how-dwp-weaponised-time-to-avoid-accountability-for-deaths/ > accessed 10 August 2024.
- Rabbitte A, ‘Anne Rabbitte: Massive disability investment not translating to services’ (*Irish Examiner* 06 May 2022) < https://www.irishexaminer.com/news/politics/arid-40866512.html > accessed 10 August 2024.
- Ryan F, ‘Good riddance to the work capability assessment, the cruellest social policy of modern times’ (*The Guardian* 22 March 2023) < https://www.theguardian.com/commentisfree/2023/mar/22/good-riddance-tories-work-capability-assessment-cruellest-social-policy > accessed 10 August 2024.
- Scope ‘Making connections: Supporting disabled young people to live their lives’ (Scope) < https://www.scope.org.uk/campaigns/research-policy/making-connections-disabled-young-people/> accessed 10 August 2024.
- Stanforth K, ‘I was reported to DWP and it Broke Me’ (Wheelair, 22 February 2021) < https://wheelair.co.uk/i-was-reported-to-dwp-and-it-broke-me/> accessed 10 August 2024.
- The Academic Network for European Disability Experts, Mark Priestley, and Rosa Morris, ‘Disability Assessment – Country Report: United Kingdom’ (ANED, 5 February 2019) < https://www.disability-europe.net/downloads/930-country-report-on-disability-assessment-united-kingdom > accessed 10 August 2024.
- The Academic Network for European Disability Experts, Sinead Keogh, and Cliona de Bhailis, ‘Disability Assessment – Country Report: Ireland’ (ANED, 5 February 2019) < https://www.disability-europe.net/downloads/912-country-report-on-disability-assessment-ireland > accessed 10 August 2024.
- The Academic Network of European Disability Experts (ANED) and Anna Lawson, ‘United Kingdom’ (ANED) < https://www.disability-europe.net/country/united-kingdom > accessed 10 August 2024.
- The Academic Network of European Disability Experts (ANED) and Eilionoir Flynn, ‘Ireland’ (ANED) < https://www.disability-europe.net/country/ireland > accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Fill in the Personal Independence Payment (PIP) form’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Fill-in-PIP-form#guide-content > accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Get Personal Independence Payment (PIP) documents’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Get-PIP-documents#guide-content > accessed 10 August 2024.

- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Get ready for the Personal Independence Payment (PIP) medical assessment’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Get-ready-for-PIP-medical-assessment#guide-content> accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Getting a Personal Independence Payment (PIP) decision’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Getting-a-PIP-decision > accessed 10 August 2024.
- Turn2Us, ‘Claiming Personal Independence Payment (PIP) - Getting a Personal Independence Payment (PIP) decision’ (*Turn2Us*) < https://www.turn2us.org.uk/get-support/information-for-your-situation/claiming-personal-independence-payment-pip/getting-a-personal-independence-payment-pip-decision > accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Going to the Personal Independence Payment (PIP) medical assessment’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Go-to-PIP-medical-assessment#guide-content> accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Review or renew a Personal Independence Payment (PIP) claim’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Review-or-renew-PIP-claim#guide-content> accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - Send in the Personal Independence Payment (PIP) form’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Send-in-PIP-form#guide-content > accessed 10 August 2024.
- Turn2Us, ‘Claiming Personal Independence Payment (PIP) - Start your PIP Claim’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/Start-your-PIP-claim > accessed 10 August 2024.
- Turn2US, ‘Claiming Personal Independence Payment (PIP) - When do Personal Independence Payment (PIP) payments start?’ (Turn2Us, November 2022) < https://www.turn2us.org.uk/Benefit-guides/Claiming-Personal-Independence-Payment/When-do-PIP-payments-start#guide-content> accessed 10 August 2024.

APPENDIX A: LIST OF RECOMMENDATIONS PUT FORWARD IN CHAPTERS 5 AND 6 RELATING TO PIP IN THE UK:

Recommendation 5A: the Welfare Reform Act 2012, the Equality Act 2010, and the Gov.UK PIP webpage should all be amended to reflect the language employed by CRPD Article 1 and which is presently employed in the PIP Assessment Guide in order to reflect the inclusion of sensory and intellectual disabilities.

Recommendation 5C: the UK should adopt the Irish approach to make the PIP2 form more widely physically accessible from universal public services, including *inter alia* GP surgeries, local authority information points, and libraries and thus satisfy the dimension of physical accessibility as protected by Article 9(1) CRPD.

Recommendation 5F: to provide PIP and DA claimants with space for an open-ended response, along with the instruction that their response must demonstrate their ability or lack thereof to undertake the necessary functional activities.

Recommendation 5G: include spaces in the PIP2 form to allow for open-ended responses, amending the PIP2 form to include a section where claimants are asked to provide an open-ended report of a typical day, including how they manage activities for daily living such as shopping, housework and leisure, as is the case with the DA1 form.

Recommendation 5H: to include the PIP descriptors from the PIP Regs 2013 on the Gov.UK PIP webpage.

Recommendation 5K: place the cost of securing medical evidence on the DWP.

Recommendation 6A: the functional assessment for PIP in its current formation as undertaken by HCPs contracted by assessment provider companies should be replaced with a new system of assessment and certification of functional limitation to be undertaken by a member of the healthcare team of the claimant.

Recommendation 6B: the certification of functional limitation to be completed by a member of the healthcare team of the claimant should be adopted from the ability/disability profile adopted in the DA1 form in Ireland, with a wider range of functional activities included for assessment.

Recommendation 6C: to either limit the observations made by HCPs during functional assessments to solely matters corresponding to the functional activities listed in the PIP2 form.

Recommendation 6D: to inform PIP claimants in writing prior to the arrangement of any functional assessment as well as verbally and in writing prior to the commencement of a functional assessment that informal observations will be made of their behaviour and actions which will be used by the HCP to evidence the findings and recommendations on their report to the DWP Case Manager.

Recommendation 6G: amend the PIP2 form to include the tick box options and bullet point explanations for each of the functional activities – as set out below – along with the open-ended section in which the claimant's story can be told

Please indicate with an X the percentage of days in a year that your health condition or disability affects your ability to carry out this activity:									
10%	20%	30%	40%	50%	60%	70%	80%	90%	100%

Please indicate whether you can undertake this activity							
Safely:		Repeatedly:		To an Acceptable Standard		In a Reasonable Time Period	

- Safely means unlikely to cause harm to yourself or someone else, either while carrying out this activity or afterwards.
- Repeatedly means as often as is required for the activity to be completed
- Reasonable time period means less than twice the amount of time someone without your disability or health condition would take to complete the activity
- Acceptable standard means to the level that would be usually be expected for the activity.

Recommendation 6L: to disallow DWP Case Managers from applying observations and opinions that are not supported by the medical evidence submitted.

Recommendation 6N: to include the *Why you disagree with our decision* questions from the CRMR1 form in the decision notice, so as to clearly instruct claimants on how to frame their request for MR.

Recommendation 6O: to abolish the MR process and allow PIP claimants to move directly to appeal where they are unsatisfied with the decision reached by the DWP.

APPENDIX B: LIST OF RECOMMENDATIONS PUT FORWARD IN CHAPTERS 5 AND 6 RELATING TO DA IN IRELAND:

Recommendation 5B: the DA1 application form, the Gov.ie Disability Allowance webpage, and the Operation Guidelines for DA should be updated to include a wider definition of a qualifying health condition.

Recommendation 5D: In order to fulfil its obligation under the non-discrimination dimension of accessibility, and in order to avoid engagement of both the physical and economic dimensions of accessibility, it is advised that Ireland develops an information booklet similar in style to that which accompanies the PIP2 so that all claimants have a baseline level of guidance to assist completion of the DA1.

Recommendation 5E: to adopt a two-stage benefit application approach as is utilised in the UK in order to make the DA claim form more accessible.

Recommendation 5F: to provide PIP and DA claimants with space for an open-ended response, along with the instruction that their response must demonstrate their ability or lack thereof to undertake the necessary functional activities.

Recommendation 5I: to adopt an approach to space provided for claimant responses no less than the PIP2 Form and allow at least one side of A4 per functional activity for a claimant to record their limitations.

Recommendation 5J: to waive charges for GP appointments which are booked for the completion of Part 11b of the DA1 until a claim has been decided.

Recommendation 6E: to expand the list of fields of the ability/disability profile to include all functional activities screened for in Part 9 of the DA1 form to be commented on by the GP of the claimant and to allow for any functional limitations under these activities to be directly assessed.

Recommendation 6F: to move the following excerpt into Part 11b and strengthen the language (i.e. replace 'you should request to enclose […]' with 'you are required to enclose […]'):

> In addition to your doctor completing Part 11b, you should request them to enclose copies of any recent reports from specialists such as consultants, psychiatrists, psychologists, physiotherapists and counsellors. Your doctor should also enclose any test results or other information that they think is relevant. This will ensure we have a full picture of your medical condition when we make a decision on your claim.

Recommendation 6H: Remove an assessment of means from the eligibility requirements for DA.

Recommendation 6I: to establish a formalised scoring system from the ability/disability profile for DA.

Recommendation 6J: to codify this scoring system into law so that DSP deciding officers have a legal duty to apply objective standards when assessing limitations and to treat similar cases in a similar fashion.

Recommendation 6K: the role of Medical Assessor should be abolished, and the decision-making process should solely consider eligibility based on the assessment and certification of functional limitation to be undertaken by a member of the healthcare team of the claimant.

Recommendation 6M: to provide DA claimants with an outline of how the decision for their claim was reached as with PIP, regardless of whether the claimant was successful in being awarded.