

ACCESS DENIED

**BARRIERS TO JUSTICE
IN THE DISABILITY BENEFITS SYSTEM**

BY JEN DURRANT

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Acknowledgements

Many thanks to each of the research participants who volunteered to share their personal stories and provide an honest insight into the human impacts of the welfare benefits system. This report is dedicated to them, and to the thousands of others who have been adversely affected by ESA or PIP but have not had the opportunity to voice their experiences.

Who are Z2K

Zacchaeus 2000 Trust (Z2K) is an advice and campaigning charity working across London to solve problems within the social security and welfare benefits system. Every year we help over 500 clients with their applications, assessments and appeals for disability benefits.

Charity Registration No. 1110841

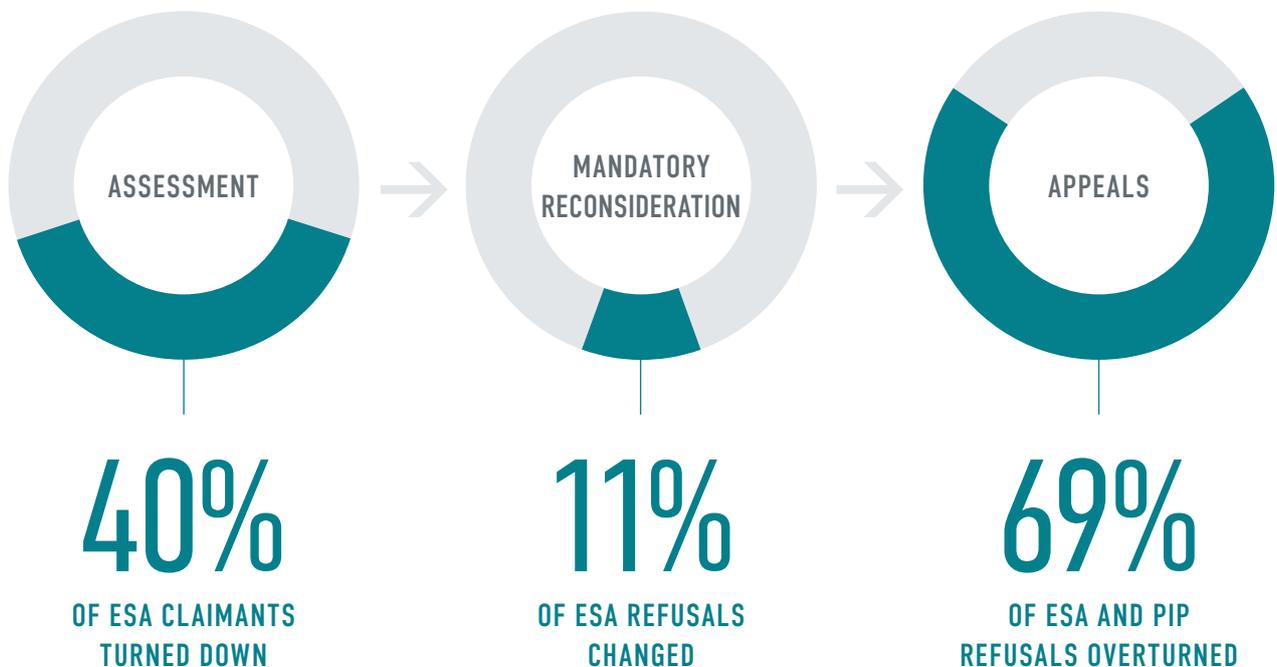
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ESA AND PIP: THE FACTS

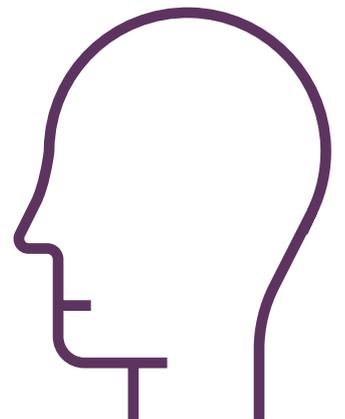
PIP and ESA assessments are failing, forcing ill and disabled people to go through Mandatory Reconsideration and appeal just to access the payments they are entitled to. Instead of getting it right first time, the Government is spending millions of pounds on incorrect decisions.

DISABILITY BENEFITS PROCESS



The worst thing is the downright lies, cos it's hard not to take that personally. How can they sleep at night, when they do that?

LUCY, ESA CLAIMANT



MoJ SPENDING IN 2015 ALONE

ON ESA AND PIP TRIBUNALS



It's massively inefficient for DWP and the courts and UK taxpayers that all of these people are having to go through appeal. It's so obviously avoidable.

ALYA, PRO BONO LAWYER

DWP SPENDING SINCE 2013



£969m

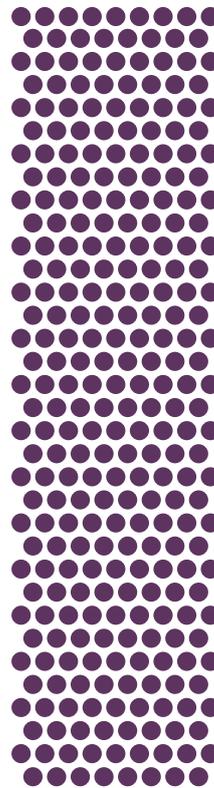
ON THE ASSESSMENT
CONTRACTS
WITH ATOS, CAPITA
AND MAXIMUS

£108m

ON TWO
YEARS OF
APPEALS
AND REVIEWS

£45m

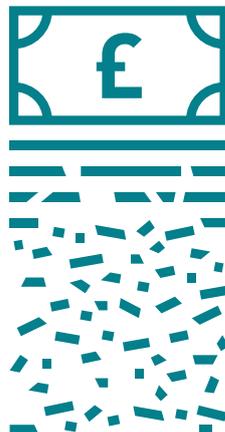
ON MANDATORY
RECONSIDERATIONS



99%

CUT IN LEGAL
AID GRANTS

FOR DISABILITY CASES SINCE 2012



It's putting people through unwarranted suffering.

MANISH, ESA CLAIMANT

**DISABLED PEOPLE'S LIVES ARE
BEING TURNED UPSIDE DOWN AS THE
INCOME THEY HAVE RELIED ON FOR
YEARS IS STOPPED BY THE DWP.**

FOREWORD

Since 2016, we have seen an increase in the numbers of disabled and unwell Londoners coming to the Zacchaeus 2000 Trust (Z2K) for help with their disability benefits that have been stopped by the Department for Work and Pensions (DWP). Their lives are turned upside down as the income they relied on for years is stopped, followed quickly by the removal of passported benefits like Housing Benefit and Council Tax Support. Many will fall into rent arrears and are forced to rely on foodbanks as a result. Others will find themselves facing bailiffs. All living with a level of uncertainty and worry that prevents them from getting on with their lives.

Like other small advice agencies and charities, Z2K is now dedicating a huge part of our limited service to helping people at risk of poverty to challenge these unfair decisions. Our advisors and legal volunteers have represented nearly 800 disabled people at appeal – winning in over 80% of cases – and have supported hundreds more through the initial assessment and Mandatory Reconsideration.

In the absence of legal aid, organisations like us rely on the commitment of corporate law firms and individual volunteers to continue our work defending disabled people's rights. It is a tragedy that so many ill and disabled people are unable to access their entitlements because demand for these services far outstrips what we can provide.

Zacchaeus 2000 Trust is committed to achieving systemic changes in the social

security system, to enable the Londoners we work with to continue living in and contributing to our city. As deepening cuts and the rollout of Universal Credit cause further problems, particularly for ESA claimants, the hard work and collaboration of advice agencies is now more important than ever. We hope this report resonates with the many rights-based organisations who, like us, work closely with their communities to challenge unfair benefit decisions.

This report is a stark reminder of the suffering these decisions cause. The clients interviewed here are not those with the worst experiences. Their stories are similar to the many others we have helped and, we believe, to the hundreds of thousands of disabled and unwell people who have had the income they rely on removed in the past decade's tsunami of welfare reforms.

Core to our disability benefits work is a desire to empower our clients, and provide them with emotional and additional support, to help them continue to live with the uncertainty that comes with waiting to secure the benefits they are entitled to. We are extremely grateful to our clients, for speaking out, sharing their stories and giving their recommendations on the changes that are so desperately needed.



Raji Hunjan

Chief Executive Officer of Zacchaeus 2000 Trust

**THIS REPORT ILLUSTRATES THE
MANY BARRIERS TO JUSTICE THAT
DISABLED PEOPLE FACE – AND
HIGHLIGHTS POTENTIAL SOLUTIONS.**

EXECUTIVE SUMMARY

Disability benefits are crucial for offsetting the additional costs and disadvantages that people with disabilities and long-term health conditions face. Currently, however, hundreds of thousands of people are being prevented from accessing the support they need.

The transfer from incapacity benefits to Employment and Support Allowance (ESA) and from Disability Living Allowance (DLA) to Personal Independence Payment (PIP) – and in particular, the introduction of deeply flawed assessment and Mandatory Reconsideration (MR) systems to decide eligibility – has had devastating impacts.

The assessments' poor design and implementation mean hundreds of thousands of disabled and unwell people are being wrongly turned down. The scale of failure is proved by the staggering rate of appeal success, with 69% of original decisions changed at appeal.¹ Incorrect refusals at

assessment are pushing many ill and disabled people into problem debt, eviction and homelessness – and causing a great deal of emotional and physical suffering.

Using in-depth research with a range of claimants, this report illustrates the many barriers to justice that disabled people face – and highlights the potential solutions. While each person's story is unique, the cases included here are alarmingly typical of the hurdles and hardships that hundreds of thousands of people are having to face. Their experiences demonstrate the need for immediate and meaningful change.

The Government and Department for Work and Pensions (DWP) must urgently commit to ensuring that all disabled and seriously unwell people receive the social security benefits they are entitled to. They must make it their priority to fix the assessment and MR processes and ensure that ESA and PIP provide the support that people need.

Ultimately this requires fundamental changes to the criteria on which eligibility is decided, to better reflect the realities of different conditions, their holistic impacts on people's lives and, in the case of ESA, the requirements and challenges of modern work.

Assessments

Real reform will require time and consideration; meanwhile, therefore, the Government must urgently improve the way the existing assessments are carried out.

¹ Ministry of Justice 2018, Tribunals and Gender Recognition Statistics Quarterly, October to December 2017

THE GOVERNMENT MUST
URGENTLY IMPROVE
THE WAY EXISTING
ASSESSMENTS
ARE CARRIED OUT.

Holistic understanding

To improve the realistic assessment of people's conditions, DWP must:

- Recognise that claimants are valid and reliable experts of their conditions, and instruct assessors to give due weight to claimants' accounts of their functional capabilities, accepting them as correct unless medical evidence directly contradicts them
- End the use of informal observations and require that contractors train assessors to achieve a holistic understanding of people's conditions through effective direct questioning
- Require contractors to improve the medical expertise, understanding and questioning skills of their assessors

Medical evidence

To ensure decisions are made on the basis of valid medical evidence, DWP must:

- Require assessors, and not claimants, to collect additional medical evidence for all cases, allowing claimants to submit further evidence if they wish
- Make it clear to healthcare professionals and claimants exactly what type of evidence is expected, and make clear this is to be provided to claimants free of charge
- Require assessors and decision makers to prove they have fully considered all the evidence, with a thorough justification of why they chose to override it when claims are refused

Transparency

To prevent false reporting and restore public trust, DWP must:

- Immediately institute recording of all assessments, for both PIP and ESA, and ensure claimants are allowed to view and comment on their report during the assessment
- Send all claimants a copy of the assessment report and recording
- Introduce a new quality management framework, using recordings to monitor how assessments are carried out and using meaningful penalties to hold contractors to account

If the current contractors cannot provide the necessary improvements to ensure assessments offer the full and fair evaluation they are intended to, then DWP must bring the assessments in-house.

Mandatory Reconsiderations

In addition, the Mandatory Reconsideration (MR) process which was introduced to review and correct these flawed assessments is failing. Despite the huge inaccuracies in the assessments, fewer than one in five MRs make any alteration to the original decision.

The expertise and effort needed to submit an MR request, coupled with the dejection of being refused a second time, means that for many people the MR is acting as a significant obstacle to justice, preventing them from

continuing their appeal and getting the income they need.

In order to address this, DWP must:

- Require MR decision makers – and give them sufficient time and training – to conduct a full case review. This means considering all the evidence, addressing any oversights shown in the assessment report and recording, and if necessary contacting the claimant for further information
- Pay the ESA assessment rate for claimants awaiting the outcome of their MR
- Extend the deadline for claimants to submit an MR request from 28 to 56 days

If the MR process cannot be radically improved – to offer a true reconsideration of each claimant’s conditions, case and, where appropriate, capacity to work – then it should be stopped, and claimants be allowed to go straight to appeal.

Appeals

It is only at tribunal that most claimants receive a fair hearing. However, many people never make it to this stage. Overcoming the hurdles of MR and the complexities of the appeal process requires huge amounts of energy, expertise and assistance. With drastic

cuts to legal aid and reduced funding for advice agencies, tens of thousands of ill and disabled people cannot access the necessary support. As a result, they are being denied their fundamental right to justice.

In order to correct this, the Government must:

- Reinstate legal aid for all disability benefits cases
- Extend the standard deadline for lodging an appeal from 28 to 56 days
- Immediately stop discouraging GPs from issuing fit notes and instead inform them, as well as claimants and job centre staff, of how ESA pending appeal can be claimed
- Introduce a ‘PIP pending appeal’ rate for those previously on DLA or PIP, and provide clear guidance on how it can be claimed
- Stop spending money on presenting officers and instead invest in making the correct decisions at assessment and MR

Under ESA and PIP, hundreds of thousands of people are being denied access to the support, justice and dignity they deserve. The individual experiences shared in this report highlight the devastating impacts of the current system, and the need and potential for urgent, meaningful change. It is time the Government listens to the people it has ignored for too long.

IT IS ONLY AT TRIBUNAL THAT MOST CLAIMANTS RECEIVE A FAIR HEARING.



THE BENEFIT SYSTEM IS THERE TO PROTECT PEOPLE FROM POVERTY, AND ILLNESS. PEOPLE SHOULDN'T BE LEFT TO SLIP THROUGH THE SAFETY NET, SO WHY ARE THEY?

MANISH, ESA CLAIMANT

INTRODUCTION

A vital issue

The UK's social security system, including the NHS, public services and welfare benefits, helps each of us to different and varying levels throughout our lives. It is essential to the role of government and to our values as a fair and inclusive society that we provide the necessary support – whether medical, social or financial – to enable everyone to live free from poverty and discrimination.

A vital part of this is assistance for the 13.9 million people – including one in five working-age adults – who have disabilities or long-term illnesses, and experience multiple disadvantages as a result.²

Disability benefits are crucial for offsetting the barriers disabled people face, whether they are in or out of work, and for enabling them to maintain and manage their health and independence.

Currently, however, hundreds of thousands of disabled people are being denied access to the support they need. The removal of previous benefits and their replacement with Employment and Support Allowance (ESA) and Personal Independence Payment (PIP) has had terrible impacts on countless ill and disabled people. In particular, the introduction of deeply flawed assessments means many people are being wrongly turned down – and have to suffer months or even years of emotional and financial hardship as a result.

The scale of failure

The huge failures of the PIP and ESA assessments – and the subsequent Mandatory Reconsideration (MR) process – are evidenced by the staggeringly high rate of appeal success: 69% of the claimants who make it through to tribunal have their assessment decision overturned.³ Moreover, this figure – and the numbers of people reaching appeal – would be much higher if everyone had access to the support required to navigate the complex, draining process of MR and appeal. Drastic cuts to legal aid and reduced funding for advice charities mean many claimants are being denied their fundamental right to justice.

The effects of this on disabled and unwell people – who are, by definition, already struggling with serious mental and physical illnesses and impairments – are devastating.

² DWP 2018, Family Resources Survey 2016/17

³ Ministry of Justice 2018, Tribunals and Gender Recognition Statistics Quarterly, October to December 2017

DISABILITY BENEFITS
ARE CRUCIAL FOR
OFFSETTING THE
BARRIERS DISABLED
PEOPLE FACE.

Cutting costs

Both ESA and PIP are being used as cost-saving measures to meet the Government's explicit ambition to reduce spending on disability benefits, with the result that thousands of people are not getting the income they need.

ESA

ESA was introduced in 2008 to replace incapacity benefits as the support for working-age people whose conditions prevent them from maintaining employment. Entitlement is determined through the face-to-face Work Capability Assessment (WCA), which is carried out by the private contractor Maximus. After this a decision maker from the Department for Work and Pensions (DWP) assigns claimants to one of two levels:

- **Work Related Activity Group (WRAG)** – those who cannot currently work but are required to undertake activities to move towards employment receive the lower payment rate
- **Support Group** – those with the most debilitating conditions are not required to undertake any activities and receive the higher payment rate

With the focus on reducing spending, 46% of new ESA claimants have been found 'fit for work,' and turned down.⁴ In addition, the Government cut the WRAG rate in 2017 from £102 to £73, leaving new claimants with a loss of over £1,500 a year. Ministers said this cut was designed to 'incentivise' claimants to get back into work – despite there being no evidence that the higher rate had deterred them from doing so.

PIP

Since 2013 PIP has replaced Disability Living Allowance (DLA) as the non-means-

tested benefit for offsetting the additional costs that disabilities cause. Like DLA, it is available to people regardless of employment status. Unlike DLA, PIP claimants must undergo a face-to-face assessment, where they are given points for their mobility and daily living needs. This is carried out by the private contractors Atos and Capita, after which a DWP decision maker decides the level of award. The weekly award amounts and assessment points required for each component are shown below.

COMPONENT	STANDARD RATE		ENHANCED RATE	
	POINTS REQUIRED	WEEKLY AWARD	POINTS REQUIRED	WEEKLY AWARD
DAILY LIVING	8	£57.30	12	£85.60
MOBILITY	8	£22.65	12	£59.75

The Government has made it clear that the shift from DLA to PIP was intended to save around £2billion.⁵ The desire to cut costs has led to the removal of the lowest support rate (previously in the care component under DLA) and a restriction of the eligibility criteria, making it much harder for people to qualify for the higher rate of mobility. As a result of these changes, almost half (48%) of people previously on DLA who have been reassessed for PIP have either completely lost their award or had their payments lowered.⁶ This has left many disabled and unwell people without vital income.

Ignoring the problems

The Government's drive to cut costs has led to deep flaws in the way ESA and PIP assessments are both designed and carried out. Many of these issues have been highlighted by independent

⁴ DWP 2018, Employment and Support Allowance: Outcomes of Work Capability Assessments Official Statistics

⁵ DWP 2012 PIP Impact Assessment

⁶ Disability Benefits Consortium 2017, Supporting Those Who Need It Most? Evaluating Personal Independence Payment

reviewers, disability rights agencies and the parliamentary Work and Pensions Select Committee (WPSC), as well as by thousands of the claimants themselves.

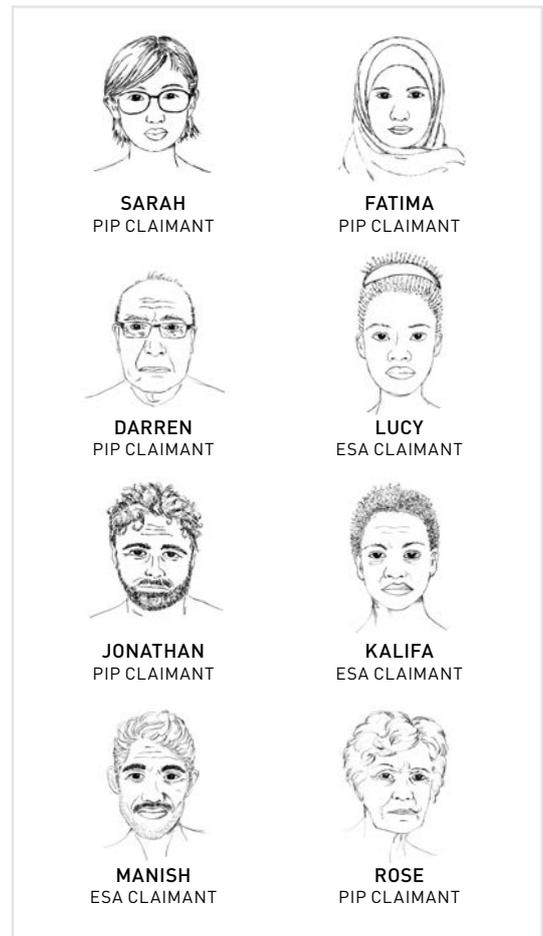
Yet despite this mounting body of evidence, and the scale of harm being caused, the Government has continually failed to address the problems. The official response to the latest WPSC report – in which the Government claimed that “the assessment process works well”⁷ – exemplifies its refusal to deal with the fundamental issues in the assessment systems, or even to recognise the destructive impacts they are having on ill and disabled people.

This is unacceptable. With more and more people having their rights removed, the rollout of universal credit making the WCA increasingly significant and the number of appeals continuing to rise, the need for change can no longer be denied.

The scope of this report

Going beyond the existing evidence, this report uses primary research and the shared experiences of Z2K clients to illustrate the many barriers to justice that disabled people face. It demonstrates not only the problems with the current system, but also the potential solutions.

The quotes and case studies showcased here have been captured through in-depth semi-structured interviews with a range of PIP and ESA claimants, and with the corporate lawyers who provide pro bono legal representation for them at tribunal. Although each person’s story is unique, their cases are alarmingly typical of the hurdles and hardships that hundreds of thousands of people are having to face. The claimants interviewed are in different financial and social circumstances and have a variety of illnesses



and disabilities. The one thing they all have in common is the harrowing experience of being betrayed, let down and mistreated by the very system that is meant to support them.

Drawing on their insights, this report highlights the urgent need for policymakers to take action. It also recognises the vital role played by advice agencies, medical professionals and carers in supporting people through the enormous and unnecessary obstacles to accessing what is rightfully theirs. Most importantly of all, this report gives voice to the people suffering because of faults in the design and implementation of ESA and PIP, whose views have so long been missing from policy discussions. Their stories illustrate the harmful human impacts of the current system – and demonstrate the need for immediate, meaningful change.

⁷ Government Response to the Work and Pensions Select Committee’s Seventh Report of 2017–19



FOR THE PAST TWO YEARS I'VE BEEN SURVIVING ON FOODBANKS, BORROWING MONEY AND WELL-WISHERS HELPING ME. EVEN NOW I'VE GOT OVER £8,000 DEBTS TO PAY PEOPLE.

KALIFA, ESA CLAIMANT

WHY IT MATTERS: THE IMPACTS OF BEING TURNED DOWN

“I had sleepless nights, I had serious depression. That was the worst. I was telling them why you have to stop it when my condition has got worse, not better.”

ROSE, PIP CLAIMANT

The flaws in the ESA and PIP assessments mean ill and disabled people are being wrongly denied access to the benefits they need. This has devastating impacts, severely undermining their ability to pay for essentials, maintain their independence or manage their ill health.

Financial impacts

“I had no money. I’d paid for my mum’s funeral costs before, that used up all my savings, I couldn’t work and then they stopped this. I had no money.”

MANISH, ESA CLAIMANT

Losing the essentials

Successive governments have acknowledged that life is more expensive for disabled people: from the price of specialist equipment to higher insurance premiums, disabilities create multiple additional costs in daily life. After housing, long-term ill and disabled people spend 49% of their income on condition-related costs – even with benefits.⁸

The loss of these benefits therefore exacerbates the disadvantage disabled people face, and quickly throws those already struggling with low incomes into severe financial difficulty. Many are pushed into problem debt and cannot afford essentials such as food, utilities and care. We have even seen severely ill and disabled clients who, following the rejection of their claim for PIP or ESA, have been found in a state of starvation.

“I did fall into debt, I had to make agreements with my gas and electricity supplier cos I couldn’t pay them on time, and I fell behind on my rent.”

JONATHAN, PIP CLAIMANT

“[The loss of DLA/PIP] leaves me with a deficit of £144 a month... I had to make my mind up about paying for my gas and electricity, or paying for my carer. Isn’t that disgraceful?”

FATIMA, PIP CLAIMANT

From ESA to JSA

The loss of payments can be particularly drastic for those on income-related ESA, who by definition have no other income or savings and are too ill to work. When their ESA is stopped, they have no choice but to claim Jobseeker’s Allowance (JSA). Not only does this mean a significant drop in

⁸ Scope 2018, The Disability Price Tag



KALIFA'S STORY

ESA AND JOBSEEKING

Kalifa's primary aim is to manage her health and regain her independence. However her conditions – including HIV/AIDS, osteoporosis, osteoarthritis, a lapsed cervix and eye damage, together causing her extreme exhaustion and frequent falls – make this extremely hard.

"It's a really difficult life, I can't climb stairs, I can't do many things... but I want to move on, I want to work. I want to help others, I want to help myself and my family."

In 2016 her ESA (Support Group rate) was stopped, pushing her into debt and forcing her to turn to foodbanks to feed her

children. She had to claim JSA to survive, but even getting to the job centre was extremely costly.

"So that little £73 [JSA you receive], you should make sure that you have got £10 for the taxi to come in, £20 for the taxi to come home."

The physical effort of travelling to the job centre, combined with the emotional burden of having to apply for jobs and the threat of sanctions, caused her health to deteriorate.

"It really made me feel worse, because I haven't been well and being made just to go to sign for a signature... At times they [the staff at the job centre] would

even say 'why did you come when you are so ill?' But if you don't sign you don't get your payment, so you have got to struggle being ill like that."

The burden of JSA requirements prevented Kalifa from focusing on her recovery, and made it even harder for her to look after her children.

"It's just making your life miserable. Rather than you looking after yourself trying to make yourself get better, you are putting yourself down."

Kalifa was eventually awarded the Support Group rate at appeal.

income for those with the most debilitating conditions, from £110.75 Support Group rate to £73.10 JSA, it also makes them vulnerable to the heavy burden of job-seeking conditionality.

“They say if you can make it to the job centre you can work. But they don’t know what it cost me to get there.” MANISH, ESA CLAIMANT

Despite their illnesses, they are forced to travel to the job centre and prove they are actively seeking employment. This in itself can be extremely draining, costly and damaging for people, as Kalifa’s story (page 18) shows. In addition, many job centre staff do not have sufficient expertise or training to support disabled or vulnerable clients appropriately. This means the threat of JSA sanctions is often strictly applied, with no allowances made for an individual’s personal capability or the debilitating impacts of their conditions.

“It’s really upsetting when they’re having a go at me, some of the advisors within one week they said ‘what have you applied for?’ I said ‘I’m not well,’ she said ‘I know you’re not well but you can still work.’” LUCY, ESA CLAIMANT

Rent arrears and eviction

In addition, the connections between PIP and ESA and other benefits mean that when a person’s claim is turned down they lose far more than just their weekly payments. All of a sudden they can find themselves subject to the benefit cap and – depending on their local authority – liable to pay full council tax and no longer eligible for a travel pass.⁹

“I was – and I won’t use this word lightly – petrified that on the occasions when I do go out I’d have to pay for the travel. It’s even more isolating than I am now.” SARAH, PIP CLAIMANT

Most significantly of all, the loss of PIP and ESA can stop a claimant’s entitlement to housing benefit. For too many people this enormous and unexpected change forces them into rent arrears and debt, which can rapidly spiral out of control. Rose’s story (page 20) illustrates the scale of damage this can cause. Without the income they relied on and with the sudden increase in rent, people quickly become vulnerable to eviction.

“When ESA was stopped I got a letter to say not only had ESA stopped, you’ve failed the assessment and hello, we’ve stopped your housing. What the hell? I nearly got kicked out, I got a red letter saying I was being evicted.” LUCY, ESA CLAIMANT

Many are also forced to undergo the extremely stressful experience of being referred to bailiffs. As well as a great deal of distress, this causes further debts, as they are forced to pay fees and court costs on top of their existing arrears. As a result, the loss of ESA or PIP can throw people into a dangerously overwhelming financial crisis from which it is difficult to recover.

“Just on Saturday I got a letter to say if you don’t pay the £364 we are sending the bailiffs, and they will top up £55-something onto your debt to pay for their travel to your place.” KALIFA, ESA CLAIMANT

Impacts on wellbeing

“Psychologically, emotionally, you’re under pressure all the time. It doesn’t help with your psyche, your state of mind, worrying what’s going to happen tomorrow.” JONATHAN, PIP CLAIMANT

Emotional strain

Being denied the benefits they need does not only damage people’s finances: it also causes a great deal of harm to their physical and

⁹ Zacchaeus 2000 Trust and Child Poverty Action Group 2016, Still Too Poor To Pay: Three Years of Localised Council Tax Support in London



ROSE'S STORY

PIP AND HOUSING BENEFIT

Rose is 61 years old and suffers from arthritis, nerve damage, memory loss, incontinence and depression. In 2015 she was awarded the standard rate for both the mobility and daily living components of PIP for the next three years.

However, in 2017 she was called for early reassessment and told her daily living component was being stopped. The removal of this component meant Rose – who lives with her adult son – was no longer exempt from non-dependent deductions, so her housing benefit was suddenly reduced. Before, it had covered most of her rent, and she was able to top up the remainder with her limited salary.

Once the non-dependent deductions were taken, however, the shortfall between her housing benefit and rent more than tripled, from £200 to £650. As a result, Rose has fallen into arrears and is facing eviction.

“Thirty-five years you been paying rent, and one day they say ‘because they reduce your money we’re not going to give you housing benefit.’ They sent bailiffs for council tax, and the housing, the rent people are calling me, every week they are writing me letters, they are going to repossess your house your rent is going up it’s not going down, all together, everything after one another.”

The financial pressure Rose is now under and the threat of losing her home has had a severe impact on her mental health. It has also affected her son, who is struggling to support her and pay the sudden rise in rent, and her 95-year-old mother, who she is now finding it increasingly difficult to care for.

“Every week I have sleepless nights, they’re triggering me, depressing me, you can see how easily somebody can be depressed. It’s too much for my brain, it’s too much to deal with.”

mental health. This affects not just the individual but also the people around them.

“My mental health deteriorated, I was put on stronger medication, I was more tearful, I wasn’t eating properly... My son was even thinking of not going to university. He really didn’t want to leave me, I was in such a distressed state.”

SARAH, PIP CLAIMANT

“It affected me mentally, it was very hard. The distress, the pressure on your head... I was crying a lot, it was hard to cope. It affected how I cared for my dad [who has dementia], I couldn’t look after him.”

MANISH, ESA CLAIMANT

The strain of losing such vital income can prevent people from recovering or managing their conditions, as the financial and emotional pressures they find themselves under mean they can no longer concentrate on their health.

“[When I was receiving DLA] I could be busy with my recovery and trying to do my exercises and that, and I didn’t have to worry about ‘my god, will I be able to pay the rent?’ Now, that’s how I’m living. That’s the difference the DLA made... It wasn’t much of a life but I didn’t have to worry. Now that’s been taken from me.”

FATIMA, PIP CLAIMANT

A liar and a fraud

“They’re saying you’re capable of working. You feel like a liar and a fraud.” LUCY, ESA CLAIMANT

As well as the stress of financial insecurity, being denied disability benefits is immensely distressing because of the way people are made to feel like frauds. DWP’s failure to recognise the severity of their conditions is akin to suggesting they have been lying about it. Not only is this incorrect, it’s also hugely damaging to people’s wellbeing – and further undermines their respect for the system.

“When I got the letter back from them saying that my claim had been rejected, that felt like a real kick in the teeth. It’s like they’re saying ‘well you’ve lied to us all this time, there’s nothing wrong with you, you’ve just got to get on with it.”

SARAH, PIP CLAIMANT

“They make you feel as if, if something doesn’t happen it’s because of you, it’s not because of them, you’ve done something wrong. It’s not fair and it’s not right.”

DARREN, PIP CLAIMANT

“They treat you like because they’ve seen one person who has been pretending, now they take all people in one circle to say these people are all cheats. They don’t understand, they don’t take the individual as they come.” KALIFA, ESA CLAIMANT

RECOMMENDATION



The Government must urgently commit to ensuring that all disabled and seriously unwell people receive the social security benefits they are entitled to.

BEING DENIED DISABILITY BENEFITS IS IMMENSELY DISTRESSING.



ALL THE PERSON RECONSIDERING
THE DECISION DOES IS RELY ON THE
ORIGINAL ASSESSMENT AND SAY 'THE
ASSESSMENT SAID THIS SO THEREFORE
IT'S FINE.' IT'S POINTLESS FRANKLY.

ANTHONY, PRO BONO LAWYER

MANDATORY RECONSIDERATION: A FALSE HOPE

“They said zero, still zero. No one checked it. Did they analyse their mistake from the first one? Not at all. If they had, I wouldn’t have got zero.” MANISH, ESA CLAIMANT

After being wrongly turned down at assessment, claimants can have their initial decision reviewed by requesting a Mandatory Reconsideration (MR). The MR process was introduced in 2013 to correct flawed assessment decisions without the case going to court, and since then there have been almost one million MR requests made against PIP and ESA decisions.¹⁰ This figure reflects the huge problems with the assessments – and highlights the need for an effective review process.

There is little evidence, however, that the MR corrects the injustices of the assessment and offers the fair and comprehensive review it needs to. Of the cases that make it through to MR, just one in five (18%) PIP decisions¹¹ and a mere one in 10 (11%) ESA decisions are changed.¹² Perhaps this is not surprising given that up until December 2017, DWP had an “aspiration” to ensure at least 80% of assessment decisions were upheld at MR.¹³

Considering the huge inaccuracy of assessment decisions – as evidenced by the fact that 69% are overturned at appeal¹⁴ –

the intention to uphold 80% of them appears misguided at best. As all cases that reach appeal have been through MR, the very high appeal success rate is a clear reflection not just of the assessment system’s gross inadequacy, but also of the MR’s failure to address it.

Lack of consideration

At MR many claimants are left with the impression that DWP has made no effort to re-evaluate their decision, to take into account the additional evidence or, in some cases, to even look at their claim. DWP staff have reported that the “pressure to turn out numbers” means decision makers do not have enough time to fully review cases, and tend to uphold the original decision simply because it is easier to “rubber stamp” it than challenge it.¹⁵

“It seems the DWP don’t spend a lot of time on a Mandatory Reconsideration unless they have to... They’ll just say ‘OK, we looked at this health assessment again, nothing seems to have changed therefore – denied,’ and that’s it.” BRONWYN, PRO BONO LAWYER

In a significant number of cases this is illustrated by the short timescales in which decisions are returned: since 2015 median MR

10 Work and Pensions Select Committee 2018, PIP and ESA Assessments Seventh Report of Session 2017-19

11 DWP 2017, Personal Independent Payment: Official Statistics

12 DWP 2017, ESA-WCA Outcomes to June 2017 Quarterly Statistics

13 DWP 2017, Oral Evidence to the WPSC Inquiry into PIP and ESA Assessments

14 Ministry of Justice 2018, Tribunals and Gender Recognition Statistics Quarterly, October to December 2017

15 Public and Commercial Services Union 2017, Written Evidence to the WPSC Inquiry into PIP and ESA Assessments

clearance times for ESA have ranged from six to 15 calendar days.¹⁶ Given the amount of time and effort claimants put into collating their MR requests – and the large caseload DWP staff are dealing with – it is somewhat doubtful they are being fully reconsidered in this time.

“The turnaround was just too quick, and that sounds ironic cos normally you’re waiting and waiting, but this was like a click of fingers. It came back within about five days. I don’t think they reconsidered anything. They just seem to go through the form and say ‘oh she’s lying.’ It wasn’t a reconsideration at all.” SARAH, PIP CLAIMANT

All too often the MR decision maker seems to look only at whether there has been a change to the severity of the claimant’s condition, rather than whether the original decision itself was inaccurate.

“It was like they’ve literally just thought ‘oh god here we go’ and then just ticked the boxes and sent it back. I didn’t feel they’d even looked at it, cos the guy that reconsidered it just agreed with everything the assessor had done.” SARAH, PIP CLAIMANT

This happens even when claimants submit additional medical evidence and detail extensively the impacts of their conditions and the reasons why the original decision was wrong.

“They said ‘you’ve handed us more doctors notes but there doesn’t seem to be anything in your condition that’s worsened and according to the health assessment you score zero points on everything and therefore you’re fine to work and you won’t get any ESA.’” BRONWYN, PRO BONO LAWYER

“I just think it’s very worrying that I still got zero, so I don’t know what’s going on there. What is the process, are they not actually reading the information? I gave all the

evidence and I still got zero so something is clearly very wrong.” LUCY, ESA CLAIMANT

In the minority of cases when the initial decision is changed at MR, it is usually revised but not reversed. This still leaves people without the full award they are entitled to.

“We went through MR when they relented and gave me the low rate of mobility, but they would not reinstall my higher rate.”

FATIMA, PIP CLAIMANT

RECOMMENDATION



DWP should require MR decision makers – and give them sufficient time and training – to conduct a full case review. This means considering all the evidence, addressing any oversights shown in the assessment report and recording, and if necessary contacting the claimant for further information.

An obstacle to justice

Not only does the MR fail to properly review and correct the initial decisions, it also acts as a significant barrier to people getting the award they deserve. Appeal judges have voiced concerns about this, with the Second Independent Review reporting that:

“Tribunal Judges... were also sceptical about the thoroughness of the Mandatory Reconsideration process. They felt it has turned into an additional administrative barrier for claimants who wish to challenge their decision rather than a substantive re-examination of the evidence.”¹⁷

This ‘administrative barrier’ is so great that many people are unable to overcome it, and cannot submit their request to get the reconsideration they deserve.

¹⁶ DWP 2018, ESA-WCA outcomes to September 2017 Quarterly Statistics

¹⁷ Paul Gray 2017, The Second Independent Review of the Personal Independence Payment

A difficult process

The process of collating, preparing and submitting an MR request is a daunting prospect, and many claimants – who are already having to deal with debilitating conditions – do not have the energy, knowledge and support required to complete it. Without the necessary legal expertise, many rely on the support of charities and pro bono lawyers to navigate the system and submit their MR request.

“I didn’t understand it, the first appeal, the Reconsideration. I couldn’t have done it myself, I wouldn’t know where to start... If Z2K wasn’t there I would have had to live with no money.” MANISH, ESA CLAIMANT

“Having to prepare the Reconsideration letter was probably the worst stage, it’s like you need to be a lawyer to do it.” LUCY, ESA CLAIMANT

However, the scale of demand for these services means many organisations are struggling to provide the advice and support people need.

Tight deadlines

Accessing the necessary support is particularly difficult given the system’s tight deadlines: claimants must submit their MR request within one month of receiving their assessment decision.

“It’s hard to find legal advice, I mean if you go to the CAB you could be waiting a good few months, and you’ve got to respond within 28 days. It’s trying to find a solicitor, a legal agent.” JONATHAN, PIP CLAIMANT

The short deadline does not give claimants enough time to gather additional evidence, as PCS, the main union for DWP staff, has pointed out.¹⁸ It also makes little allowance for complicating circumstances, including a worsening or flare-up in people’s

conditions, and increases the pressure they are under.

“They should give more time to check people’s condition before they conclude, they should wait and see how you get on with day-to-day activities and everything and maybe you need surgery, maybe you need another thing, it depends on the surgeon what he said, they shouldn’t make a quick decision before your health. Your health should come first.” ROSE, PIP CLAIMANT

This means countless ill and disabled people – who will never show in official statistics – are being made to suffer without vital benefits, simply because the initial assessment got it wrong and the MR is too difficult a process for them to complete in time.

RECOMMENDATION



DWP should extend the deadline for claimants to submit an MR request from 28 to 56 days.

Long waits

While claimants must adhere to strict deadlines for submitting their MR request and additional evidence, DWP can take up to several months to review their decision. Although median clearance times are low, a significant number of claimants are forced to wait weeks for the result of their MR. This creates a great deal of stress and anxiety for people, who are forced to live with the uncertainty of whether their payments will be reinstated.

It also creates further financial pressure, particularly for ESA claimants already struggling with low income. Whereas those awaiting their assessment decision can be paid the ESA ‘assessment rate’ (up to

¹⁸ Public and Commercial Services Union 2017, Written Evidence to the WPSC Inquiry into PIP and ESA Assessments

£73.10 per week), those awaiting an MR decision receive no such payment. Their only option is to claim JSA – but this comes with the strict, and often detrimental, requirements to fulfil job-seeking activities as discussed on page 17.

“My anxiety went through the roof cos then I’m going down to the job centre and being told I need to job-hunt 40 hours a week to be on JSA to get some sort of money.”

LUCY, ESA CLAIMANT

RECOMMENDATION



DWP should pay the ESA assessment rate for claimants awaiting the outcome of their MR.

A dangerous disincentive

The difficult ordeal of the MR process – and the fact that for the vast majority of claimants it does nothing to correct the initial decision – creates a significant deterrent preventing people from going to appeal. For many claimants the very existence of the MR stage is confusing, giving the impression it is the only way to appeal. When their initial rejection is unchanged at MR, therefore, they mistakenly believe that is the final decision and they have no further opportunity to challenge it.

“I think essentially my clients just almost gave up hope of being able to overturn the decision after the assessment and the subsequent Mandatory Reconsideration not to award.” ALYA, PRO BONO LAWYER

Others are aware that a further appeal is possible, but after having struggled through the ordeal of the MR they lack the energy or ability to go through yet another difficult process.

“Getting turned down again puts people off appealing. I just had no idea how difficult it was, I submitted extra evidence but I still got zero. I just thought, I didn’t want to push it.” LUCY, ESA CLAIMANT

While the majority of those who go through to appeal do win, many never make it to that stage because the MR acts as such a confusing and demoralising barrier. As Darren’s story (page 27) shows, many people would not make it through without external support: it is crucial for helping people understand their rights, navigate a complex system and continue through this stressful ordeal.

“I could never have done it without Z2K, I would have given up. It’s the rejection, it’s very difficult. No one was considering what I was going through. I was sick, and it’s like they say you’re not sick, you can move your hands.” MANISH, ESA CLAIMANT

There are countless others, however, for whom the necessary support is not available. For them, the MR stage is not a route to a fair hearing but a barrier against it. What was designed to improve people’s access to justice is instead acting as a major obstacle, preventing people from getting the benefits they are entitled to and claiming what is rightfully theirs.

RECOMMENDATION



If the MR process cannot be radically improved – to offer a true reconsideration of each claimant’s conditions, case and, where appropriate, capacity to work – then it should be stopped, and claimants be allowed to go straight to appeal.



DARREN'S STORY

THE NEED FOR SUPPORT

When Darren was 42, he had a severe stroke. For the last 19 years he has suffered with muscle weakness, pain, dizziness, fatigue, memory loss and anxiety. He needs a walking stick to get around, has to take frequent stops and requires an adapted bath and toilet. The damage to his memory makes simple acts such as cooking difficult or even dangerous, and his speech impairments mean social interactions are often extremely difficult.

In 2016 he was assessed for PIP – and turned down. Fortunately Darren was able to get support from Citizens Advice, who helped him submit an MR request. However, the

decision remained unchanged – with little sign that DWP had looked into it at all.

“I’d sent the forms off to DWP on a Thursday by recorded delivery, so I could check they’d received it on the Friday, and on the Tuesday they wrote to me to say no – and the Monday was a bank holiday.”

Citizens Advice staff told Darren he could appeal, but the ordeal of the MR was so draining he felt unable to continue.

“I went to see my doctor and I said ‘I can’t stand this anymore.’ I would wake up in the middle of the night worrying about this. I said ‘I’m just going to stop this now, I’m not going to take this any further.’”

It was only because of his GP’s help that Darren managed to not give up.

“He said ‘you mustn’t do that, you mustn’t let them do this to you.’ So I thought well ok he’s a GP and he wants me to carry on so that’s what I did.”

With the support of his GP, Citizens Advice and Z2K, Darren was able to go on to appeal – where he was awarded the enhanced rate for both components.

“It was only because my GP was such a nice man and was so helpful to me that I carried on. Otherwise I would have just stopped.”



**MORE THAN ANYTHING IT WAS THE
MOST STRESSFUL TIME FOR ME, AND
I SUFFER FROM DEPRESSION AND
ANXIETY AT THE BEST OF TIMES.**

SARAH, PIP CLAIMANT

APPEAL: THE LONG ROAD TO A FAIR HEARING

When the MR fails to correct the assessment and award the appropriate benefits, claimants must then appeal to the First Tier Social Security and Child Support Tribunal. This is managed by the Ministry of Justice (MoJ), and is effectively the first time their claim is assessed independently of DWP. The tribunal system demonstrates that a fairer decision-making process is possible – but in order to reach it, there are yet more barriers claimants must overcome.

Lack of legal support

“They said ‘we hope somebody’s going to represent you.’ I said ‘what do you mean? I can’t go along to this sort of thing on my own, how am I going to cope?’ I was in such a panic.” DARREN, PIP CLAIMANT

A complex task

Lodging, preparing and completing an appeal is a complex and daunting process, particularly for people with no experience of legal or benefits systems who are struggling with difficult conditions. Lawyers estimate it can take them up to 25 hours’ work to submit an appeal, even with in-depth legal understanding and expertise. For claimants with no legal background, submitting an appeal can

therefore be overwhelmingly difficult, to the point of impossible.

“If you don’t have any legal help and you don’t have a legal background I don’t see how you could do the appeal. Because first of all you’d have to know where to find the rules, all of those ESA regulations, you’d have to know which ones to apply because there are different ones, and you’d have to know that you have to meet specific descriptors and how to link your evidence to those specific descriptors, and I think that’s quite a difficult task.” BRONWYN, PRO BONO LAWYER

What’s more, having professional representation at the tribunal increases people’s chances of winning their appeal: the success rate for clients represented by Z2K is 88%. Without proper legal support, therefore, people risk losing their PIP or ESA simply because they do not have the necessary expertise to present their case.

The loss of legal aid

Crucially, the sweeping removal of disability benefits is happening at the same time as drastic cuts to legal aid, with over £350 million cut from the budget.¹⁹ As a

¹⁹ The Law Society 2017, LASPO 4 years on: Law Society review

result, the number of disabled and unwell people granted legal aid to appeal their benefits decisions fell by a staggering 99% between 2012 and 2017. Last year just 308 disability benefit claimants received assistance.²⁰ This means that thousands of people who are incorrectly refused PIP or ESA must appeal at the First Tier Tribunal without any financial support for legal advice or representation at all.

As a result, many ill and disabled people – already struggling with the financial pressures of having their benefits stopped, and utterly unable to afford private solicitors – are being denied access to justice. Often they cannot even lodge an appeal. If they do, the prospect of going to court without any legal support or experience can be so distressing that they cannot continue.

“It would have been too much of a struggle to appeal on my own... I was too mentally and physically unwell to deal with the pressure. You are an ill person.”

JONATHAN, PIP CLAIMANT

“It says you can appeal and I thought ‘court? But I don’t want to do that.’” LUCY, ESA CLAIMANT

With legal aid gone and thousands of disabled and unwell people left without representation, advice charities and volunteer lawyers have had to pick up the pieces. But the sheer scale of demand for these services far outweighs capacity. As assessments continue to unfairly deny people’s benefits, demand for these already overstretched services is growing.

“All of the other organisations are all absolutely overwhelmed with these cases like mine.” FATIMA, PIP CLAIMANT

The requirement that claimants’ appeal requests are submitted within one month

of the MR decision further adds to the pressure. Most claimants are unaware that DWP can grant a discretionary extension, and many are unable to find legal advice in time. Increasingly therefore, an individual’s access to benefits is contingent on the good fortune of finding immediately-available voluntary legal support, rather than on the validity of their claim. As a result, thousands of ill and disabled people who cannot afford private lawyers are being denied their fundamental right to justice.

“I find it really sad that if you happen to not get a representative because people are too busy or you don’t know where to go, your chances of getting your appeal granted are a lot smaller. So it’s just luck. And that’s not how justice is supposed to work.”

BRONWYN, PRO BONO LAWYER

RECOMMENDATIONS

The Government should reinstate legal aid for all disability benefits cases.

DWP should extend the standard deadline for lodging an appeal from 28 to 56 days.

The long wait

“I think the big issue with the appeal is the length of time, it’s four or five months. It’s a long time for a person who’s ill.”

JONATHAN, PIP CLAIMANT

For those who are able to find legal support and complete their submissions, there is then the long wait for a hearing. In January 2018, the median waiting time for a case to be heard was 24 weeks from the date the appeal was lodged – with many people having to wait much longer.²¹ Being forced to endure such a long wait before their

20 Ministry of Justice 2018, Response to written question 130690

21 Ministry of Justice 2018, Tribunals and Gender Recognition Statistics Quarterly, October to December 2017

benefits can be reinstated places people under a huge amount of emotional and financial pressure. And as long as the assessments keep failing to award people what they are entitled to, the backlog of appeals – and the damaging impacts of the long wait – will only increase.

‘Pending appeal’ payments

In order to offset the financial harm that the long wait causes, claimants contesting an ESA decision can apply for ‘ESA pending appeal’ (up to £73.10 a week).

However, there is currently no ‘pending appeal’ payment for PIP. This leaves people who were previously on DLA or PIP with a significant shortfall. Given that seven in 10 claimants go on to win their appeal and prove their entitlement to PIP, and given how long claimants have to wait for a hearing, Z2K believes people who were previously on DLA or PIP should be paid a pending appeal rate of PIP as they are with ESA.

“It took forever for me to actually get a court date, it was about seven or eight months. That put enormous pressure on me, and I actually found myself going into debt because that safety net of PIP, that money, was gone.” SARAH, PIP CLAIMANT

RECOMMENDATION ★

The Government should introduce a ‘PIP pending appeal’ rate for all those previously in receipt of DLA or PIP.

Even for ESA claimants, getting the pending appeal payment is extremely difficult, as the lack of understanding around it means many do not receive what they are entitled to. DWP does not usually mention it on the MR decision letter, so people do not know they can claim it. Even when claimants are

informed of it, usually by a charity, they are often incorrectly turned away by job centre staff who are unaware of its existence or the eligibility criteria, as Manish’s story (page 32) shows.

“The staff at the job centre tried to put me off getting it. If Z2K hadn’t told me to keep trying, cos I was entitled, I wouldn’t have known.” MANISH, ESA CLAIMANT

Again, this highlights the difficulties for people who do not have support from a relevant organisation – particularly the most vulnerable and socially-isolated claimants. The lack of understanding and information from DWP means they do not get the payments they are entitled to.

In addition, applying for ESA pending appeal creates an additional burden for claimants as they must submit regular ‘fit notes’ – previously known as sick notes – from their GP. All too often DWP’s administrative errors cause huge delays in this process which, as Manish’s experience shows, adds to claimants’ stress and further damages their health.

RECOMMENDATION ★

DWP must inform all claimants of their right to ESA pending appeal, and provide clear guidance on how to claim it, with their MR decision letter.

DWP must also ensure that job centre staff are sufficiently trained on the existence of ESA pending appeal and how to support people to claim it.

Preventing payment

Most concerning of all, however, is the fact that DWP is now attempting to dissuade GPs from issuing fit notes at all. Z2K clients



MANISH'S STORY

ESA PENDING APPEAL

Manish is 49 years old and has Crohn's disease. He suffers from profuse diarrhoea, severe weight loss, pain and exhaustion, and is often bed-bound.

At his WCA he was awarded zero points.

With help from Z2K he submitted an MR request – where again he was awarded zero points.

He then lodged an appeal, and was thus eligible to claim ESA pending appeal. He was told by DWP advisors, however, that he was not entitled to it.

"I called them to say I'm appealing the decision and he said I'm not entitled to it. But

Z2K said I am, so I told him... eventually he changed his mind."

Without Z2K's support, Manish would have been without income. Even once he had submitted his fit notes and letter of appeal, however, DWP's administrative errors meant he did not receive his payments.

"You get a letter saying they haven't received your sick note, then two days later another letter saying they haven't received your sick note, then two days later another letter... But I'd sent it, they'd lost it."

Dealing with these errors, and the amount of effort it took just to be granted what he was

already entitled to, was hugely draining for Manish.

"They said I had to get another copy, so I had to make another appointment with my GP, I'm not well, I have to go there and get the document, not a copy an original document, then I have to go to the job centre and scan it in – all because they lost the first one. That happened three times. I sent it in the post and they signed for it, the delivery, and then they say they don't have it. It's exhausting."

After being given zero points at both assessment and MR, and after the long struggle to get ESA pending appeal, Manish was eventually awarded 22 points at tribunal.

have recently been affected by DWP's practice of sending letters to claimants' GPs urging them to encourage the claimant back to work – despite their health conditions – and to stop issuing fit notes. The letter, known as ESA65B, states [bold typeface as in the original]:

“As a result of this decision, ←client→ is not entitled to ESA from ←date→ and **you do not need to provide any more fit notes to him relating to his disability/health condition for ESA purposes.**”

There is no mention that the claimant can appeal the decision or claim ESA pending appeal. Nor is there anything to direct the doctor to further information if required. The Minister for Disabled People, Sarah Newton MP, has confirmed that the letter is sent to the GP of every claimant who is refused ESA.²² As a result, GPs are ceasing to provide fit notes – leaving severely ill and disabled claimants unable to get ESA pending appeal.

As well as being a worrying indication of DWP's determination to influence the medical decisions of experts, this gravely affects claimants. With no income, they are forced to claim JSA – which can be highly damaging to their health, as Kalifa's story (page 18) shows. The consequent deterioration in their health may prevent them from being able to continue their appeal, denying them the benefits and justice they deserve.

RECOMMENDATION



DWP must immediately stop discouraging GPs from issuing fit notes and instead return to the original wording of the letter, informing doctors of the process through which their patients can claim ESA pending appeal.

²² Sarah Newton
2018, Hansard
Written
Answers 132726

Emotional impacts

Having to lodge and submit an appeal and then wait an unknown number of months for a hearing date before their payments can be reinstated causes people a huge amount of stress and anxiety.

“For about five, six months I was a mess. You're in limbo basically, it was awful. It's almost like getting a death sentence. It's not a nice feeling at all.”

SARAH, PIP CLAIMANT

The financial pressure they find themselves under, coupled with the uncertainty over when and whether their benefits will ever be reinstated, causes a great deal of harm to people's wellbeing. The prospect of going to court and being made to feel like they are at fault simply because they are ill can also be extremely distressing.

“Terrible. It's like a stress, a worry, you're not thinking about it all the time but every now and then when you start to think about it, it just drives you mad... I had nine months of just really worried, nervousness.” LUCY, ESA CLAIMANT

“I haven't committed a crime, but I'm being put in a court. That alone really hurts me. What crime have I committed that I should have all those people looking at me?”

KALIFA, ESA CLAIMANT

Many of our clients say the stress caused by this long drawn-out process is so extreme that without the support of advice agencies, friends and family they would have given up, as Darren's story (page 27) shows. Many people – particularly those who are socially isolated, have debilitating conditions or cannot access professional support – are unable to continue because of this. People who should have been awarded

benefits in the first place are therefore forced to live without them, with potentially drastic implications for their health.

“It was only because other people were supporting me at that time that I was able to continue. For other people who aren’t well and they don’t have anybody to help them, god it must be so hard.”

DARREN, PIP CLAIMANT

Costing the government

“The government spend more money, [rather] than rectifying it at the beginning so that it doesn’t escalate, they let it escalate, and the money that we spend will be more than what they should have used in arresting the situation at the beginning.”

ROSE, PIP CLAIMANT

As well as being incredibly financially and emotionally draining for claimants, the need for people to go all the way through to appeal in order to get the benefits they are entitled to is also extremely costly for the government.

In 2015 alone, the appeal hearings cost MoJ £103 million.²³ Meanwhile Freedom of Information requests show DWP has spent £108 million on contested decisions in the last two years, including £22 million on newly-appointed ‘presenting officers.’ DWP claims these are there to improve transparency and feedback in the tribunal process.

In practice, however, it often seems to claimants that the presenting officers’ role is to act as a further barrier to them getting the benefits they are entitled to. Given that the rate of claimants winning appeals has continued to rise even since the introduction of presenting officers, it is questionable whether they represent the best use of taxpayer money.

“This man who was acting for the DWP was asking me questions, and at some point the judge stopped him and said ‘look, he’s already answered your question, why are you asking the same thing again?’ All the time he was deliberately trying to get me agitated so I couldn’t think properly.”

DARREN, PIP CLAIMANT

RECOMMENDATION



DWP should stop spending money on presenting officers and instead invest in making the correct decisions at assessment and MR.

A fair hearing

For those people who do manage to get the necessary legal support, make it through the financial and emotional pressures of the long wait and overcome the many hurdles placed in their way, the appeal tribunal does eventually offer a fair hearing. As outlined above, almost seven in 10 rule in the claimant’s favour – and we believe this figure would be much higher if more people could get legal support. What’s more, claimants report that although they find having to go to court extremely stressful, once there they are finally understood. Their conditions, and their entitlement to benefits, are recognised, and they are granted the awards they need.

Limited relief

Having their PIP or ESA reinstated after months of stress, uncertainty and hardship has a huge impact on people’s wellbeing.

“It’s pressure off your head, it’s a weight off your shoulders.” MANISH, ESA CLAIMANT

23 Ministry of Justice 2017, Letter from Dominic Raab to Frank Fields regarding the PIP and ESA Assessments Inquiry

“For one I’ve stopped worrying about being evicted, two that you’re going to have some gas or electric, you have food in the cupboard, or lighting. Them basic, basic rights.” JONATHAN, PIP CLAIMANT

It is important to note, however, that simply winning the appeal does not undo the months of suffering people have had to endure. The huge loss of income means people are often still in debt after their awards have been backdated, and the difficulty of getting housing benefit and the appropriate disability premiums reinstated means arrears can continue to build.

“When I went back on ESA you’d think there is a person responsible for linking up, but no, the housing stopped again, so twice it’s put me behind with rent. They said it would take 10 days, it’s probably about 12 working days now, I’ve had to call the housing many times to explain.” LUCY, ESA CLAIMANT

“I’m getting this money now but I don’t like what they’ve done, I don’t like how I feel now. It’s like they don’t care about that at all.” DARREN, PIP CLAIMANT

In addition, the initial relief of winning their appeal is quickly reduced by the threat of reassessment. Even people with permanent and degenerative conditions are called for reassessment, often a year or more before their award period has ended. The failures of the assessment system – outlined in the following chapter – and the long ordeal which people have to go through in order to get their benefits reinstated make the thought of having to go through it all again intensely distressing. This can detract from a person’s ability to focus on improving and managing their health, causing further detriment to their wellbeing.

“I’m already getting anxious, already now, about being reassessed. They said it would

be two years but what if they say I have to do another assessment in that period? What if I’m not recovered in time? My whole goal is to recover from this illness, to get better, but that’s a weight on my mind, the thought of that.” MANISH, ESA CLAIMANT

“I don’t want to think about it but god I’ve got 18 months before I have to go through the whole process again.” LUCY, ESA CLAIMANT

An unnecessary ordeal

The appeal system offers crucial redress for those who have been wrongly denied the benefits they need. Reaching this stage, however, comes at great cost – from the huge price for government, to the financial and emotional harm to disabled people.

“It’s putting people through unwarranted suffering.” MANISH, ESA CLAIMANT

The tribunals show that more accurate decision-making can be achieved, but this is currently only available to those who make it through the long – and unnecessary – ordeal of getting there. Rather than having to suffer in this way, the hundreds of thousands of people who have their decisions overturned at appeal – and the countless others who never make it – should have been correctly understood at assessment. The following chapter shows why this is not happening, and what must be done to change it.



IT'S A DEGRADING PROCESS. THE INDIVIDUALS THAT ARE DOING IT DON'T SEEM TO HAVE ANY KIND OF RESPECT, TRAINING OR UNDERSTANDING FOR WHO THEY'RE DEALING WITH AND HOW IT'S GOING TO AFFECT THEM.

JONATHAN, PIP CLAIMANT

ASSESSMENT: WHAT'S GOING WRONG

“The PIP assessment process needs to be empathetic, and avoid the mechanistic, tick-box approach adopted in the WCA in 2008.”^{WPSC 2012}

“What they’ve all got in common is that they’ve not been assessed properly, or else they’ve been assessed by someone who lacks empathy or understanding and has just gone through a tick-box exercise.”

ANTHONY, PRO BONO LAWYER

“It was traumatic.” **MANISH, ESA CLAIMANT**

The root of the problems with ESA and PIP – and the cause of so much suffering – is the assessment process. Despite the evidence from disability experts, the WPSC, Independent Reviews and claimants themselves, the Government has done little to address the issues. Their response to the WPSC’s latest report shows a continued refusal to do anything more than make marginal changes.

For the millions of ill and disabled people who require support, this is unacceptable. The system is fundamentally flawed, both in its design and the way the assessments are being carried out. This chapter shows where the problems are and what must be done to change them in order to avoid the devastating impacts on disabled people outlined above.

A flawed design

ESA

The WCA’s purpose is to assess “a person’s functional ability in relation to capability for work in the modern workplace.”²⁴ However, the tasks examined in the WCA bear almost no relation at all to the activities and capabilities required for the realities of today’s working world.

“The assessment only looks at if you’re able to move your hands, move around. There’s a preconception that if you can move then you’re able to work, but that’s not realistic.” **MANISH, ESA CLAIMANT**

The WCA also takes no consideration of how carrying out work could affect a claimant’s health, or the type and level of support people may require from an employer. In addition, the structure of the assessment treats each individual condition and capability separately, rather than considering the combined impacts on people’s overall health.

PIP

Similarly, the overly narrow criteria on which PIP assessments are based do not reflect the range of ways in which different conditions can affect people’s mobility and daily life. The rigid focus on a set list of tasks takes no account of levels of pain, difficulty or distress – or indeed people’s ability to carry out other activities not included.

²⁴ Maximus 2017, Revised WCA Handbook

“It starts with the legislation. The fact that some of the requirements have become so much harder to satisfy isn’t a good thing.”

BRONWYN, PRO BONO LAWYER

The failure to consider people’s conditions in their totality – including multiple conditions, their combined physical and mental impacts and their effects on all aspects of people’s lives – means the PIP criteria often bear little resemblance to the realities of living with a disability or long-term illness.

“The doctor [at tribunal] said ‘the thing is, with conditions like yours, a lot of your symptoms don’t fit into the descriptor boxes.’ I was thinking well there’s quite a few things that you can fit in. I knew what he meant though – there’s a lot of descriptors that just aren’t there for us.”

LUCY, PIP CLAIMANT

RECOMMENDATION



The Government must make it their priority to fix the fundamental structure of the assessments – with proper consideration for the views of disabled people, disability experts and rights organisations – to ensure that ESA and PIP provide the support that disabled people need.

Treating claimants as frauds

“The whole process felt like I was a fraud, that’s what it made me feel like, and that made me feel worse.” SARAH, PIP CLAIMANT

In addition to their inadequate design, the assessments are even failing to assess eligibility in their own terms because of the way they are being carried out. A fundamental problem is the underlying

assumption that claimants are ‘faking it.’ Academic research has revealed WCA assessors assume that people are lying about or exaggerating their conditions,²⁵ and many claimants report being treated as if their application is fraudulent. For people who are dealing with extremely difficult disabilities and illnesses, the suggestion that they are lying about their conditions is highly distressing, and offensive.

“Why should I lie? When they ask these questions it’s a torture to genuine people like me who really want to do something but can’t.” KALIFA, ESA CLAIMANT

“I needed someone to tell you ‘this is not your fault.’ That’s how it feels. You’re ill, it’s not your fault. They make you feel like it is.” MANISH, ESA CLAIMANT

A predetermined outcome?

The underlying assumption that claimants are trying to cheat the system – and the reluctance to fully recognise the severity of their conditions – significantly affects the assessment outcome. Almost half (48%) of people previously on DLA have either completely lost their award or had their payments lowered when reassessed for PIP,²⁶ and over half (55%) of those who have applied for PIP but were not on DLA have had their claim refused.²⁷ Similarly, almost half (47%) of new ESA claimants are being turned down.²⁸ Often it is as if the refusal has been decided before the assessment even begins.

“I got the impression from the way the report was written that the assessor was looking for reasons to score her low on the descriptors.” ALYA, PRO BONO LAWYER

“It was almost like they were going through the motions, they had to do the assessment like this is what we do this is how we do it,

25 Ben Baumberg Geiger 2018, A Better WCA is Possible

26 Disability Benefits Consortium 2017, Supporting Those Who Need It Most? Evaluating Personal Independence Payment

27 DWP 2018, Personal Independence Payment: Official Statistics

28 DWP 2018, Employment and Support Allowance: Outcomes of Work Capability Assessments Official Statistics

and then you automatically get a rejection letter.” SARAH, PIP CLAIMANT

Lack of empathy

As well as determining the outcome, the belief that claimants are at fault affects how they are treated during the assessment itself. Assessors frequently show a lack of empathy for the realities of people’s conditions and the difficulties they face in managing them, making little allowance for their specific needs. This includes refusing to let claimants move to a more comfortable chair, asking questions in a way they cannot understand, preventing them from using the toilet and treating them as wholly inferior.

“There was an inhuman element to it ... I’m hard of hearing and I asked her to move closer to me. She would not, [so] I didn’t know if I was giving the answer to the appropriate question.” FATIMA, PIP CLAIMANT

“You wouldn’t treat somebody like that, there is zero empathy. When you’re dealing with people who are not well, you have to make allowances for how they are.” DARREN, PIP CLAIMANT

“They treat you like you are not a person.” KALIFA, ESA CLAIMANT

There is also a lack of sensitivity regarding how difficult it is for some claimants to discuss their medical history and the debilitating impacts of their conditions on their everyday lives. Assessors’ failure to be

considerate of this can make what is already a difficult situation extremely damaging.

“The questions they ask, some of them are really painful, they are so bitter, it’s bringing back bad memories and making you go down... the way they assess people is just putting you back to illness, instead of moving on.” KALIFA, ESA CLAIMANT

“After the assessment I threatened suicide. It really was terrible. The assessor reminded me of school bullies, she really did.” FATIMA, PIP CLAIMANT

“It was horrendous. I cried for days, literally. It was horrible.” SARAH, PIP CLAIMANT

Outright lies

The assumption that claimants are faking it, coupled with the lack of consideration shown by assessors and a systemic ‘refusal as default’ attitude, leads to gross inaccuracies in the assessment reports. Crucial information is left out, incorrect details are put in and, in some cases, there are outright lies.

“I said I need wheelchair assistance. Did that go in the report – no. Don’t you think that’s quite relevant?” LUCY, ESA CLAIMANT

“I’m moderately to severely deaf in both ears, I require two hearing aids, and she said [in her report] I could hear perfectly well. I told her I was in pain, I couldn’t sit

THE ASSUMPTION THAT CLAIMANTS ARE TRYING TO CHEAT THE SYSTEM SIGNIFICANTLY AFFECTS THE ASSESSMENT OUTCOME.

IN CONTRAST, TRIBUNAL PANELS DO NOT BEGIN WITH THE ASSUMPTION THAT CLAIMANTS ARE LYING.

upright and I apologised. She said I moved around the bed with no apparent effort.”

FATIMA, PIP CLAIMANT

Currently, claimants can request a copy of their report – but only those with sufficient expertise and experience are able to do so, leaving many of the most vulnerable people with no idea that the refusal of their claim is based on false information. In addition, DWP’s refusal to institute recording of all assessments as standard or to hold contractors to account means bad practice is allowed to continue unchecked.

also treat people with a basic level of respect and courtesy, which is all too often missing from the assessments. This includes taking steps to communicate clearly with claimants and making adjustments for their needs. This allows claimants to feel more at ease, enabling them to explain the impacts of their conditions simply because they feel listened to.

“I thought they were really very nice, they asked me some questions and if I didn’t understand exactly what they were saying they put it in another way. They were very nice.” DARREN, PIP CLAIMANT

RECOMMENDATIONS

DWP should immediately institute recording of all assessments, for both PIP and ESA.

Claimants should be allowed to view and comment on their report during the assessment and be sent a copy of the recording and the report.

DWP should introduce a new quality management framework, using audio and visual recordings to monitor how assessments are carried out and using meaningful penalties to hold contractors to account.

“The tribunal was excellent. They were friendly, and they explained the whole process what’s going to happen.” MANISH, ESA CLAIMANT

“They allowed my client [the claimant] to speak, the lawyer on the panel and the doctor were receptive and sympathetic, they only questioned so far as they needed, and when she was getting upset they didn’t cut her off too soon so she was able to make the points she wanted to.”
ALYA, PRO BONO LAWYER

A better way: respect for the individual

In contrast, tribunal panels do not begin with the assumption that claimants are lying. Instead they give them the opportunity to explain their conditions, and recognise that their insights and accounts are valid. They

RECOMMENDATION

DWP must recognise that claimants are valid and reliable experts of their conditions, and instruct assessors to give due weight to claimants’ accounts of their functional capabilities, accepting them as correct unless medical evidence directly contradicts them.

Lack of medical expertise

“An assessment done in isolation by somebody that hasn’t got the full range of medical training on the relevant health conditions can’t assess you clearly.”

JONATHAN, PIP CLAIMANT

A further major problem with PIP and ESA is the assessors’ lack of medical expertise. Assessors come from a range of professional backgrounds such as nursing or physiotherapy, but are not required to have extensive medical qualifications. The union for DWP staff reports that some assessors’ only ‘medical’ qualification is as a gym instructor.²⁹ Atos, Capita and Maximus argue this is not problematic as assessors are all given sufficient training to enable them to assess the impacts of conditions on people’s day-to-day functional capabilities. Many claimants, however, find this is inadequate, as the assessors’ lack of medical expertise means they fail to understand the nature and complexities of people’s conditions.

“She said that she is a physiotherapist but she never understand, she’s not experienced.” ROSE, PIP CLAIMANT

“Unfortunately the people [at the assessment] don’t seem to know what they’re doing, they don’t have the experience to really understand what is going on. Often things aren’t

straightforward, they’re a bit sort of grey. They didn’t seem to understand why I would get worried or stressed about something. But it wasn’t like that at the tribunal, they understood exactly why.”

DARREN, PIP CLAIMANT

The lack of understanding shown in the assessments is in direct contrast to the appeal tribunal, where the involvement of a doctor enables the panel to develop a much more comprehensive insight into people’s conditions. With sufficient medical understanding, they are able to recognise the significance of claimants’ accounts and their supporting evidence. The disparity between points awarded at assessment and tribunal demonstrates how severely the assessors’ lack of medical knowledge affects the outcome.

“The doctor said he couldn’t believe the assessment report. He said ‘I can’t believe this, out of 22 points available they gave you zero. You should never have had to come here.’” MANISH, ESA CLAIMANT

Rigid and irrelevant questions

Assessors’ lack of medical knowledge also means they often fail to ask appropriate questions. With no background understanding of the problems claimants are facing, they do not know when to probe or ask follow-up questions. This is particularly problematic for claimants who find discussing their health embarrassing

ASSESSORS' LACK OF MEDICAL EXPERTISE MEANS THEY FAIL TO UNDERSTAND THE NATURE AND COMPLEXITIES OF PEOPLE'S CONDITIONS.

²⁹ Public and Commercial Services Union 2017, Written Evidence to the WPSC Inquiry into PIP and ESA Assessments

or distressing, and for those who do not have sufficient insight into their conditions to be able to explain them fully.

“Through the whole process you’re not given much opportunity to explain anything ... This person was literally reading a script off the monitor, if you deviated away from the script they weren’t interested.”

JONATHAN, PIP CLAIMANT

The rigid questioning means the assessment often bears little relevance to the realities of people’s conditions, particularly for people with uncommon or complex illnesses, mental health issues or chronic pain. As a result, oral evidence from claimants – which DWP says should be one of the key factors in decision-making – is not being properly collected purely because the narrow confines of the questioning mean claimants are not given the opportunity to provide it.

“I think the lady that was doing mine was a nurse but she had no experience in mental health whatsoever. All the questions I felt were geared to someone with a physical disability, in no way were any of the questions geared towards someone with a mental health problem.”

SARAH, PIP CLAIMANT

In contrast, tribunal panels tend to tailor their inquiries to people’s specific conditions and circumstances. Rather than restricting themselves to a rigid tick-box style of questioning in the way assessors do, they adapt their questions to the individual and, crucially, give them the opportunity to explain their answers.

“Virtually none of the questions that they asked me in the tribunal were asked when I went to see the medical people [in the assessment].”

DARREN, PIP CLAIMANT

“The appeal doctor was asking me all the right questions, how it affects you, what are you going through, can you cope with work, are you able to get out of the house... He didn’t bother with can you lift your arms, he went straight to the right questions.”

MANISH, ESA CLAIMANT

Tribunal panels also tend to take a more holistic approach, considering how people’s conditions affect all aspects of their day-to-day activities. This is particularly important for people who may not be able to express exactly how their conditions affect them, and for those whose conditions are not adequately covered by the assessment script.

RECOMMENDATION



DWP should require contractors to improve the medical expertise, understanding and questioning skills of their assessors through extensive training and qualification requirements.

Failure to recognise fluctuations

Rigid questioning and a lack of medical expertise mean the assessment fails to take account of how conditions – and the functional impacts on people’s daily life – vary at different times and in different situations. For many people, focusing on the positives and what they can achieve is an important part of their strategy for managing their illness. So when asked about their ability to perform specific tasks, claimants tend to describe what they are capable of on a ‘good’ day. That is not to say, however, that they do not have to struggle a great deal to complete those tasks, or that their ability is not far more impaired on some days than others.

“The thing which worries me worst is at times you are called when you are in a

better mood, when you are in a better position with your health, and I can't lie and go there pretending to be the way I am in my worst mood, which is the way I am in 98% of my life." KALIFA, ESA CLAIMANT

It is vital that assessors understand that conditions fluctuate and explore the impacts of those fluctuations through further questioning. All too often assessors incorrectly assume the maximum level of functioning from a 'good' day is representative of a person's daily life, which is rarely the case.

"Clearly when they say a typical day, apparently they don't like it when you say 'I've got a bad day and a good day.' They've got to understand that this whole typical day doesn't work for some. They need to have some more flexibility within that, they could ask for examples of good and bad, if it fluctuates." LUCY, ESA CLAIMANT

The failure to understand fluctuations is exacerbated by the use of 'informal observations' to judge the severity of people's conditions by their actions and appearances on the day. The reliance on these observations – encouraged in the PIP assessment guide – leads to hugely misguided outcomes, as they take no account of the less visible impacts of conditions or how they vary. For many claimants attending the assessment takes a great deal of effort, and they struggle to do what is required of them once there. Informal observations made during the assessment cannot therefore be taken as representative of people's functional capabilities in everyday life.

The so-called "Mental State Examination" (MSE) used during PIP assessments is an example of this. It has no basis in medical

expertise and is not an accurate diagnostic tool, particularly considering the complex and variable nature of most mental health conditions. One PIP assessment trainer employed by Capita described the MSE as "...a very, very shallow assessment."³⁰ Using such inaccurate methods distorts the assessment outcome. It also increases the unpleasant sense that claimants are being treated as frauds.

"They said that when they called my name out I responded and I thought well of course I bloody responded, it's been my name for 50 years, what do you expect me to do? They said that showed mental ability or something like that. I thought that was outrageous." SARAH, PIP CLAIMANT

"It started before she arrived, I got a telephone call. She asked me how to get to my flat via bus routes, I said I didn't know ... So she said [in her report] I could use my phone to make calls and texts. I didn't say I couldn't but that is a deceitful way to find out." FATIMA, PIP CLAIMANT

Rather than relying on informal observations and assumptions drawn from a claimant's appearance on the day, tribunal panels use direct and comprehensive questioning to understand the nature and variability of a person's conditions. In part this is due to the tribunal doctor's medical expertise, but it is also a reflection of the panel's willingness to ask exploratory questions and develop a more holistic understanding of an individual's situation.

"The tribunal got it. The doctor actually said 'it's a difficult one 'cos one day you might be seen carrying a shopping bag, and the next you can't get out of bed.' The judge said 'it's quite up and down your condition isn't it.'" LUCY, ESA CLAIMANT

RECOMMENDATION

DWP must immediately end the use of informal observations and require that contractors train assessors to achieve a holistic understanding of people's conditions through effective direct questioning.

Dismissal of supporting evidence

“The first thing in my file is a letter from my consultant about my stroke. If they'd have looked at that letter, it tells you straight away what you need to know. But nobody did that. Nobody seems to have paid any attention to that whatsoever.”

DARREN, PIP CLAIMANT

Another crucial flaw of many assessments is the refusal to take additional evidence into account. Given assessors' lack of medical expertise, the inaccuracy of informal observations and the fact that many conditions are too complex for claimants to fully explain, proper consideration of additional evidence is vital for achieving a fair outcome. Yet multiple barriers prevent people from submitting the required information – and even when they do, this is all too often dismissed by assessors with no understanding of its importance.

Difficult to obtain

Requiring claimants to collect all the necessary medical evidence themselves places a heavy burden on people already dealing with difficult illnesses, and discriminates against those with certain conditions.

Many claimants – particularly those with complex mental health, language or learning difficulties – do not have sufficient insight

into the system and their own conditions to understand the need for medical evidence. The demand that claimants provide all the supporting evidence themselves, and the tendency to reject their claim if they don't, therefore risks discriminating against the most vulnerable.

This confusion is compounded by the fact that claimants are called to a 'health' or 'medical' assessment, suggesting their conditions will be examined by a medical expert. In addition, the fact that the application forms ask for their doctors' details implies that DWP will collect any medical information they require. As a result, many people do not submit supporting evidence simply because they do not understand they need to.

“On the assessment form they ask for your doctor's details, but they didn't get in touch with them. If they'd asked my doctor, I wouldn't have got zero.” MANISH, ESA CLAIMANT

Even for those who do understand the need for additional evidence, contacting multiple medical professionals and getting the information they need is often extremely draining and stressful. The pressure is exacerbated by the rigidity in DWP's timescales, which make no allowance for unforeseen circumstances or the reality of doctors' schedules.

“It's a nightmare, chasing them. One letter didn't arrive in time cos it took him [the doctor] about a month. It's fair enough cos he was away on holiday, but that was another thing – it was Christmas time, but the DWP don't really take that into consideration.” LUCY, ESA CLAIMANT

When they do manage to get medical evidence, claimants often find it is disappointingly different to what is

required. Whereas doctors tend to focus on how conditions affect their patients' health, eligibility for PIP and ESA is based on a person's day-to-day functional capabilities. Obtaining medical evidence that directly relates to the descriptors – which most claimants and doctors do not know about – is almost impossible.

“What they say, it doesn't help. It's just the history of my tablets. I thought it was a medical letter [but] it was just the medication I have been taking, no explanation of 'on this stage she was like this, day-to-day she is like this.'”

KALIFA, ESA CLAIMANT

“It's difficult because they only say what medication you're on, it's not enough, they don't say how the condition affects you, what it means.” MANISH, ESA CLAIMANT

Collecting evidence can also be very expensive, with doctors charging up to £180 for a medical letter – which may then turn out not to be relevant to their claim. For people already dealing with the combined effects of illness and low income – who are by definition in need of state support – having to pay to prove their eligibility for support is wholly unjust.

“It was very difficult with the GPs, the GPs are making us pay. For the list of tablets, for that she charged me £8, then if I

really need a really up-to-date medical certificate it will be £86. The government say I don't pay for my treatment [prescriptions] because I am ill [and on low income]. Then the GP says I have to pay for a certificate £86.” KALIFA, ESA CLAIMANT

RECOMMENDATIONS

DWP must require assessors, and not claimants, to collect additional medical evidence for all cases, allowing claimants to submit further evidence if they wish.

DWP must explain to healthcare professionals and claimants exactly what type of evidence is required, and make clear this is to be provided to claimants free of charge.

Ignoring the evidence

Even after claimants have overcome all the barriers to getting medical evidence and managed to submit it in time, it is often completely ignored by assessors.

“If they'd looked at that letter from the consultant they could have approached the whole thing differently. But they didn't want to do that, all they wanted to do was to say no.” DARREN, PIP CLAIMANT

Prejudices about what counts as 'valid' evidence mean many claims are refused

**FOR PEOPLE ALREADY DEALING WITH ILLNESS
AND LOW INCOME, HAVING TO PAY
TO PROVE THEIR ELIGIBILITY IS UNJUST.**

purely because the person is not currently seeing a specialist. This discriminates against those for whom specialist treatment is unavailable or inappropriate.

“What they picked up on in the assessment was that I didn’t have an ongoing back specialist, but the reason is when every back specialist you see tells you they can’t help you, you stop going. If you’re told this is an inoperable injury, why would you go back?” FATIMA, PIP CLAIMANT

“My GP specialises in mental health, which is why I went to him in the first place. For me he’s been fantastic so for the last six years I haven’t been under a psychiatrist or mental health service, I’ve been through my GP. So in their eyes they were thinking my condition is not so severe, which is a wrong assumption.” SARAH, PIP CLAIMANT

In addition, the narrow focus on medical evidence from a specialist means that other equally important evidence is not taken into account. The testimonies of friends, neighbours and carers, for example, are often not given full consideration, and nor is the evidence from social services and other support agencies.

“There was one person who had a full time live-in carer because she was basically unable to do anything, but she was signed off as fit for work.” ANTHONY, PRO BONO LAWYER

“Think of it, a social worker has assessed me, I’ve gone for assessment with the council, I’ve got a special bed which should be regulated and put into position, I’ve got steps to climb to the bed, in the bathroom everything has been put in for me not to fall, and I’ve got a pot because I’m incontinent. All those things I was given. It wasn’t me who asked for the council to come in and assess my home to give me all those things, it was through my GP. But when you tell them all that [in the assessment], they don’t understand, they think you are pretending.” KALIFA, ESA CLAIMANT

Again, the tribunal shows that a better alternative is possible. DWP argues that the majority of decisions are changed at appeal because of “the provision of additional evidence that was not available to the original decision maker [at assessment or MR].”³¹ Official figures, however, show that this is incorrect: in 63% of cases the decision is changed because of oral

IN MOST CASES THE TRIBUNAL PANEL REACHES A DIFFERENT CONCLUSION NOT BECAUSE NEW EVIDENCE HAS BEEN SUBMITTED BUT BECAUSE THEY LISTEN TO THE CLAIMANT.

contributions from the claimant – which would have been just as available at assessment as they were at tribunal.³²

DWP has consistently sought to disguise this fact, with the then-Minister for Disabled People in 2016 stating:

“New oral or documentary evidence supplied at the hearing are the leading reasons for PIP decisions being overturned in 75% of overturns recorded.”³³

It was only on further questioning that he clarified:

“The 75% can be broken down as follows: Cogent oral evidence – 66%. Cogent documentary evidence supplied at the appeal – 9%.”³⁴

In most cases the tribunal panel reaches a different conclusion not because new evidence has been submitted, but because they listen to the claimant – and take account of the medical evidence that was already there.

“It said in their response that they relied on ‘the totality of the evidence.’ They looked through the submissions and all the GP, registrar, physio and what-have-you letters that we submitted, and came to the conclusion that she clearly couldn’t work.” BRONWYN, PRO BONO LAWYER

31 DWP 2017, Written Evidence to the WPSC Inquiry into PIP and ESA Assessments

32 Work and Pensions Select Committee 2018, PIP and ESA Assessments Seventh Report of Session 2017-19

33 Justin Tomlinson 2016, Hansard Written Answers 37130

34 Justin Tomlinson 2016, Hansard Written Answers 37774

RECOMMENDATION

DWP must require assessors and decision makers to prove they have fully considered all the evidence, with a thorough justification of why they chose to override it when claims are refused.



THEY'RE TRYING TO STAMP OUT PEOPLE
ABUSING THE SYSTEM, BUT AT WHAT
COST? AT WHAT COST? IT HAS TO WORK
BOTH WAYS, THEY NEED TO WEED OUT THE
CULPRITS BUT THEY SHOULDN'T LET
PEOPLE FALL THROUGH THE GAPS LIKE THIS

MANISH, ESA CLAIMANT

RECOMMENDATIONS: WHAT NEEDS TO CHANGE

The assessment systems and MR processes for both PIP and ESA are deeply flawed, causing claimants undue suffering and preventing countless ill and disabled people from getting the income they need and deserve.

The Government must urgently commit to ensuring that all disabled and seriously unwell people receive the social security benefits they are entitled to, making it their priority to fix the assessment and MR process and ensure that ESA and PIP provide the support that people need.

Ultimately this requires fundamental changes to the criteria on which eligibility is decided, to better reflect the realities of different conditions, their holistic impacts on people's lives and, in the case of the WCA, the requirements and challenges of modern work.

This will require time and consideration; meanwhile, therefore, the Government must urgently improve the way the existing assessments are carried out.

Assessments

Holistic understanding

To improve the realistic assessment of people's conditions, DWP must:

- Recognise that claimants are valid and reliable experts of their conditions, and instruct assessors to give due weight to claimants' accounts of their functional capabilities, accepting them as correct unless medical evidence directly contradicts them
- End the use of informal observations and require that contractors train assessors to achieve a holistic understanding of people's conditions through effective direct questioning
- Require contractors to improve the medical expertise, understanding and questioning skills of their assessors

Medical evidence

To ensure decisions are made on the basis of valid medical evidence, DWP must:

- Require assessors, and not claimants, to collect additional medical evidence for all cases, allowing claimants to submit further evidence if they wish
- Make it clear to healthcare professionals and claimants exactly what type of evidence is expected, and make clear this is to be provided to claimants free of charge
- Require assessors and decision makers to prove they have fully considered all the evidence, with a thorough justification of why they chose to override it when claims are refused

Transparency

To prevent false reporting and restore public trust, DWP must:

- Immediately institute recording of all assessments, for both PIP and ESA, and ensure claimants are allowed to view and comment on their report during the assessment
- Send all claimants a copy of the assessment report and recording
- Introduce a new quality management framework, using recordings to monitor how assessments are carried out and using meaningful penalties to hold contractors to account

If the current contractors cannot provide the necessary improvements to ensure assessments offer the full and fair evaluation they are intended to, then DWP must bring the assessments in-house.

Mandatory Reconsiderations

The MR currently provides little redress for the failures of the assessment, and instead acts as a significant obstacle to justice preventing people from getting the benefits they need. In order to address this, DWP must:

- Require MR decision makers – and give them sufficient time and training – to conduct a full case review. This means considering all the evidence, addressing any oversights shown in the assessment report and recording, and if necessary contacting the claimant for further information
- Pay the ESA assessment rate for claimants awaiting the outcome of their MR
- Extend the deadline for claimants to submit an MR request from 28 to 56 days

If the MR process cannot be radically improved to offer a true reconsideration

of each claimant's conditions, case and, where appropriate, capacity to work, it should be stopped, and claimants be allowed to go straight to appeal.

Appeals

With appeals currently offering the only opportunity for claimants to get a fair hearing, the fact that many people are prevented from reaching this stage is a gross injustice. In order to correct this, the Government must:

- Reinstate legal aid for all disability benefits cases
- Extend the standard deadline for lodging an appeal from 28 to 56 days
- Immediately stop discouraging GPs from issuing fit notes and instead inform them, as well as claimants and job centre staff, of how ESA pending appeal can be claimed
- Introduce a 'PIP pending appeal' rate for those previously on DLA or PIP, and provide clear guidance on how it can be claimed
- Stop spending money on presenting officers and instead invest in making the correct decisions at assessment and MR

Under ESA and PIP, hundreds of thousands of people are being denied access to the support, justice and dignity they deserve. The individual experiences shared in this report highlight the devastating impacts the current system is having, and the need and potential for meaningful change. It is time the Government listens to the people it has ignored for too long.

"I just hope they make it easier for people who are having a hard enough time as it is without being put on trial." SARAH, PIP CLAIMANT



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