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Advice NI Response to Second Independent Review of the Personal Independence Payment (PIP) Assessment Process in Northern Ireland

September 2020

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Preamble

Advice NI submitted recommendations to the first *Independent Review of the Assessment Process in NI* (attached with this submission), and we welcome this opportunity to contribute to the second independent review.

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. We provide our members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, delivery of accredited and non-accredited training, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout NI dealing with over 400,000 enquiries per annum on an extensive range of matters including: social security (82%), housing, debt, consumer and employment issues. For further information, please visit www.adviceni.net.

Response

Advice NI advisers and members have informed us about many concerns and problems claimants have experienced in their interactions with the PIP assessment process. This section of the report presents those concerns and problems, organised under a number of headings for ease of reading.

Application of legislation:

Advisers and members highlighted the high rate of PIP awards being overturned at Tribunals—to summarise TAS appeal figures in relation to PIP appeals in NI:

- Successful = 8,756 (62%),
- Unsuccessful = 5,463 (38%).

Advice NI investigated further and produced a paper entitled *Concerns about the PIP Assessment Process* which is attached with this submission. In that paper we outline the key problems and evidence from the advisers. We also suggest that the high success rate at appeals is due to a flawed PIP assessment process which results in too many PIP decisions being wrong in the first instance. We believe that at the heart of the problem lies the fact that PIP forms and guidance aren't properly applying PIP Regulation 7 (the majority test), Regulation 4 (the reliability tests) and Regulation 2 and Schedule 1 (the need for aids and appliances). Our paper makes legislative and non-legislative recommendations.

Frequency of PIP renewals:

PIP renewals are now becoming more commonplace because PIP reassessment is more frequent compared with the old system, even with the newly introduced minimum award length of 18 months. Feedback from members and advisers is telling us that the pressure of renewals, and the frequency of their occurrence, is causing additional and unnecessary difficulties and stress for claimants. For certain claimants e.g. those with degenerative diseases whose condition will not get any better but will only get worse, it has to be questioned why they're being assessed so frequently. Perhaps, reassessment could be optional for those claimants, only to happen if they think their condition has worsened and their award should increase accordingly.

Access to further medical evidence:

There have been a range of concerns relating to further medical evidence, some of which are:

- The Mail Opening Unit in DfC has been problematic, with further medical evidence going astray or slow to reach its destination. Evidence sometimes does not reach Capita or the Tribunal Panel at all by the time it reaches its destination, it's too late and advisers report that Capita have already written their report without getting sight of the evidence. This leaves advisers and claimants with little confidence that claimant medical conditions are being accurately assessed or that further medical evidence is being taken into consideration at all. There have been examples where the Tribunal Panel has not received further medical evidence and the appeal has had to be adjourned. While some improvements may have been made by DfC, it is important to raise the issue here because medical evidence simply must go to the right place and in a timely fashion.
- There is confusion around who is responsible for retrieving further medical evidence. Many claimants assume that if they provide contact details for the GP or other healthcare professional: Capita and DfC will go out of their way to retrieve the

relevant medical evidence but in reality, that has not been the case. Claimants may attempt to retrieve medical evidence themselves by asking for supporting letters, but often GPs refuse to provide supporting letters saying that if DfC want evidence, they will contact them directly. Greater clarity is needed.

- There is not enough transparency about Capita's role in accessing third party information and more clarity is needed. A range of issues have been noted by advisers:
    - Is it the responsibility of Capita to gather further medical evidence and can the amount of further evidence required be quantified?
    - What criteria do Capita use to decide what kind of medical evidence to access and when they need to do so? Sometimes they do not ask for any evidence, other times they seem to ask for evidence that has no relevance to the claimant's assessment. Sometimes they have requested evidence for depression or back pain and yet, for example, they ask for no further evidence for a rare condition such as Charcot-Marie-Tooth disease.
    - How effective is Capita in accessing further medical evidence?
    - How often does Capita seek to retrieve further medical evidence?
- While generalist assessors are required who can take an overview of everything, there also needs to be specialist assessors for claimants with unique problems. And for those claimants, further evidence should be a given. In addition, more weight should be placed on evidence provided by GPs and senior healthcare professionals.
- In the case of migrant workers, who have opted to go back to their country of origin to see a consultant, Tribunal Panels have been known to reject evidence and reports from countries of origin and to challenge the credentials of GPs and consultants in the other country. Advisers are concerned about this approach, citing potential racism.

Responsibility for making decisions:

DfC has told us that if evidence is forthcoming and compelling, they can change the decision at any point from application to MR to appeal. However, our experience contradicts that. There seems to be an abdication of responsibility on the part of the DfC when it comes to making decisions about PIP awards. We highlight in our paper on *PIP Process and Appeals* that bad decisions routinely go unnoticed at Mandatory Reconsideration (MR) and that rather than scrutinise the original award, DfC more often than not rubberstamp the Capita decision, even in the face of clear evidence for an award or higher award. Some advisers have been told that decisions, new evidence or reconsideration of decisions always have to go back to Capita. And in response to submissions to previous reviews, Advice NI has been told that decisions are based on the assessment reports. If that is the case, then it is Capita who is the decision-maker and not DfC. The general feeling within the advice sector is that Capita makes the decisions and that their decision is final. It is clear therefore that the Department must take steps to provide confidence in the decision making process.

We need clarity on exactly what the decision-making process is and who has the final say in a decision. We need clarity on where the responsibility lies and we need the decision-making process to become more robust, with more power and authority in the hands of DfC

decision-makers. Can a DfC presenting officer, for example, in the face of strong evidence, determine that an appeal is unnecessary and that they can make a decision? Can DfC change the decision at any point in the process?

Confusion over appointee input at assessments:

Assessors are not consistent in their treatment of appointees. Many claimants find that their appointee is not allowed to speak at all at assessments, even when DfC has already acknowledged the extra help the claimant needs from another person. In one example, a claimant was asked about suicide; the appointee intervened and was told to stay quiet. In other cases, involving children, where the assessment is for DLA-PIP and where a parent is the appointee, they have not been allowed to speak. Further, assessors often want to go ahead with the assessment even if the appointee is not there. In cases, for instance, where the claimant has autism, the claimant tends to agree with whatever the assessor says so the appointee needs to intervene but they are not allowed to do so. Advisers are unclear why appointees are present in assessments if they are not allowed to speak, take notes, intervene. We need clarification from both DfC and Capita on role of the appointee and what they can and cannot do. Their voice needs to be heard if the claimant cannot articulate their situation for themselves.

Communication between DfC and Capita and the role of decision-makers:

Delays in communication between DfC and Capita seem to be causing delays in decisions and time is spent waiting on each information request to and fro. This in turn creates distress for clients who can be waiting up to five months for a decision from MR. One claimant was invited to assessment before his PIP2 form was returned and the resulting decision had multiple factual inaccuracies. When advisers query the delays, DfC tell them they are waiting for Capita to get back or to return documents. This is inefficient and unfair to claimants.

The poor communication channels between PIP and Capita is connected to the previously discussed concerns in earlier sections about decision-making. Because of the perception that decision-making seems to lie with Capita, DfC insist on decisions being based on Capita assessments, thus creating a need to request information from Capita. This plays a big part in why claimants are experiencing delays in having decisions finalised.

There is a possible legislative issue here. Does this process of having to base decisions on Capita reports have any basis in the legislation? If not, it should be ended and delays should be minimised or eliminated.

In general, to ensure the process is conducted correctly and that claimants receive fair and consistent treatment, DfC should more closely scrutinise and monitor Capita throughout the process.

Safeguarding:

Advice NI has written a paper about *Safeguarding and Vulnerability* that is attached with this submission. Originally intended as a submission to DfC's review of its complex needs toolkit and guidance for UC, many of the same issues raised there about vulnerable claimants are also relevant to PIP and therefore, to this review. We would like all branches of DfC and Capita to be aware of the difficulties being experienced by vulnerable claimants. Does PIP Branch within DfC have a safeguarding champion, and if so, can the advice sector be made aware of who they are? We would like to see Capita put in place a safeguarding champion.

We would further like to mention that we contacted Capita to request a copy of their safeguarding and complex needs guidelines and policies in order to share them with our membership. Despite email requests for the documents, sent on 17 October 2019, 29 October, 7 November, 24 January 2020 and 13 May, we have yet to receive a copy of their guidelines. They were informed that we would raise this at the PIP review. We would like to know why they did not meet our simple request. We would also like to know how they approach safeguarding of vulnerable people and would like a copy of the documents requested.

Complaints process:

The complaints process, for the assessment itself and for the assessment report, is deemed ineffective and inconsistent. Issues raised include:

- Responses to complaints are always from Capita—who themselves even acknowledge problems with the complaints process.
- Responses are almost identical in wording, essentially 'copy-and-paste'. Advisers believe that this one-size-fits-all approach is off-putting and they have no faith in the complaints process. Many do not even bother to help claimants make complaints.
- Claimants themselves are reluctant to make complaints because they believe it will have negative repercussions, will be used against them or will impact their assessment outcome.
- The complaints process can be so lengthy that claimants who do go to the bother of lodging a complaint give up.
- A complaint halts the assessment procedure until whenever the complaint is resolved. This poses another barrier for the claimant who simply wants to get their award as soon as possible and does not want a complaint holding things up.
- At Tier 1 of the process, an issue raised is not even flagged as a complaint but it should be. So clearly the concern is that DfC data in relation to complaints is inaccurate and flawed.
- In some cases, claimants who made complaints received monetary sums in compensation. For example, a deaf claimant who asked to have a speech-to-text machine at his assessment, had four assessments cancelled because the machine was not available; his adviser lodged a complaint and provided comprehensive medical information; finally, a paper-based assessment was carried out and the

claimant got £200 in compensation for days taken off work. But in general, this does not happen often and more often than not, both advisers and claimants give up on the complaints process.

- The fact that so many claimants are deterred from making complaints is a genuine concern because DfC uses complaints statistics as a gauge of the Department's effectiveness. In years gone by, a Minister has been quoted as saying that "this process [assessment process] works as we've only had 9 complaints".
- Few DfC staff seem to be focused on complaints or on monitoring complaints. It is an important role that needs more robust monitoring by DfC, especially on the performance of Capita. We would be interested in knowing what the monitoring process is in the first place.
- We would like more clarity on the actual complaints process and more clarity on the pathway i.e. whether the complaint be lodged with DfC or Capita.
- We would like to see a more robust and effective complaints process.

Terminal illness and 6-month rule:

The Rader recommendation on terminal illness was not implemented but we would like to offer it again in this Second Review.

Mobility car:

If a claimant is undergoing reassessment, they should be allowed to retain their mobility car, if they have one, up until their appeal is heard (or beyond) and a definitive decision is made.

Assessments in-house:

The DWP minister has announced the idea of having a single PIP/ESA assessment or a single assessor, and said for a trial period the 'single assessment process' is in-house. The in-house aspect is important as it gives more control over the assessment and the quality of the assessment. We believe the private sector, where generalist assessors are used to assess specific needs, is not fit to deliver this type of service. DWP is implicitly acknowledging there is a problem by bringing the trial single assessments in-house. Our view is that assessments should be in-house and subject to more control.

Informal observations at assessments:

Informal observations at assessments are routinely subjective and not based on objective evidence or medical expertise. For example, a claimant could attend their assessment and have an unkempt appearance but the report will say the "client looked well". Or when advisers sitting in on assessments take notes, they can scarcely believe the difference between their notes and what the assessor recorded through informal observation. Advisers notice that the bulk of assessment reports seem to be computer-generated. They use the same language and stock phrases and are deeply formulaic rather than personalised.

Informal observations are problematic from a legal standpoint too. The assessor is observing the claimant once when PIP legislation specifies that the claimant should be assessed on whether they can carry out a task repeatedly. If they cannot repeat it, they cannot do it at all. Observing someone informally, only once, does not meet the test of case law. Tribunals are critical of this very issue and we address it in our *Concerns about the PIP Assessment Process* paper mentioned previously and attached with this submission.

The Rader report recommended that the PIP process should revise informal observation and made mention of audio recording as a possible solution. We agree with this recommendation and believe that DfC should remove informal observations from the process.

Impact of COVID-19 pandemic:

Due to the pandemic, reassessment for existing PIP claimants and face-to-face assessments for new claimants have been suspended and communication via telephone has become more prevalent. In face-to-face assessments, the assessor observes the claimant doing something and then infers a great deal from that observation. But telephone assessments effectively 'blindfold' the assessor and as a result, it would appear that claimants are getting more favourable assessments because the assessor is not adding their own in informal observations. Lessons can be learned from this to help improve the assessment process.

In-person appeals have also been suspended due to the pandemic and we have concerns that The Appeals Service (TAS) is making efforts to say 'we can process by paper-based decisions and we are developing a digital system'. Advice NI has put together a short briefing paper on this issue entitled *Digital Social Security Appeal Hearings*, which provides more information. The paper is attached with this submission.

Recommendations

1. **Recommendations from the *PIP Process and Appeals* paper:**
    1) All PIP guidance documents should be updated to more accurately reflect Regulation 7, Regulation 4, and Regulation 2 and Schedule 1.
    2) All PIP guidance documents should be kept current with case law. Case law evolves on a regular basis and assessors and Departments must keep abreast of changes.
    3) The PIP form should be updated to more accurately to reflect the Regulations and case law.
    4) All Regulations and case law should be applied right across the process, from Departmental decision-making, to MRs, to the Appeal Tribunal and beyond.

5) Assessors and DfC officials should be trained to ensure they understand the requirements of the Regulations and case law and how to properly apply the legislation.
6) End the contract with the external contractor Capita.
7) Bring PIP assessments in-house.
8) Apply the outstanding recommendation as per the Rader Report 2018, DfC's independent review of PIP regarding terminal illness.

2. Reassessment should be optional for claimants with chronic conditions, only to happen if they think their condition has worsened and their award should increase accordingly.
3. The Mail Opening Unit must guarantee that medical evidence goes to the right place and in a timely fashion.
4. Clarity is needed regarding who is responsible for retrieving further medical evidence e.g. claimants, Capita, DfC.
5. Clarity is needed regarding Capita's role in accessing third party information.
6. Specialist assessors should be available for claimants with unique and unusual problems with the need for further evidence a default.
7. More weight should be placed on evidence provided by GPs and senior healthcare professionals.
8. The credentials and reports of medical professionals from other countries should be recognised and accepted.
9. Clarity is needed regarding the decision-making process and who currently has the final responsibility for decisions.
10. The final responsibility for decisions all the way along the process should lie with DfC and not Capita.
11. Clarity is needed from both DfC and Capita regarding the role of the appointee.
12. The voice of the claimant needs to be heard and the appointee can play a crucial part in that but they must be guaranteed the right to interact during assessments, as and when necessary.
13. To minimise delays in processing claims and to ensure reports and decisions are informed by evidence, communication between DfC and Capita must be improved, and the need to base all decisions on Capita assessments should stop as we doubt this has any grounding in legislation.
14. Capita should be more closely scrutinised and monitored throughout the process.
15. Clarity is needed regarding the complaints process and on the pathway of the process i.e. whether the complaint be lodged with DfC or Capita.
16. A more robust and effective complaints process is needed.

17. **Recommendations from the *Safeguarding and Vulnerability* paper:**
    1) Reconfigure the Toolkit to ensure staff proactively look for signs of vulnerability, checking the vulnerability checklist from the outset to identify vulnerable claimants, rather than simply signposting to the self-service and online route or putting the onus on the claimant to declare themselves vulnerable.

2) Ensure the Toolkit emphasises the need for staff to proactively offer digital support where necessary, and not put the onus on the claimant to ask for digital support.
3) Ensure the Toolkit emphasises the need for staff to proactively offer reasonable adjustments or tailored support where necessary, and not put the onus on the claimant to ask for reasonable adjustments. Under the Disability Discrimination Act 1995, DfC has a legal duty to provide reasonable adjustments disabled claimants.
4) Flag a claimant identified as vulnerable to ensure they continue to get additional and digital support.
5) Ensure the Toolkit emphasises the need for staff to proactively offer digital support where necessary.
6) Ensure the Toolkit emphasises the need for staff to proactively offer reasonable adjustments or tailored support where necessary.
7) Add clarity to the Toolkit about the quantity and/or severity of vulnerability indicators required to deem a claimant as vulnerable.
8) Hardship should be added to the Toolkit as an indicator of vulnerability and a suitable definition applied.
9) Add a 'case-closed' check to the Toolkit, for claimants flagged as vulnerable, that if their case has been closed, staff will follow-up to determine why the case was closed. In many instances, a case is closed because the claimant has struggled with the system and not because they actually want to close their case.
10) Reconfigure the Toolkit to have staff offer telephone support, home visits and agent by proxy support as the first options, before signposting them away from the JBO. Telephone support and home visits shouldn't be the last resort that they are currently.
11) Provide staff with more training when it comes to conducting telephone appointments to ensure claimants are getting the best outcomes.
12) Incorporate a safeguarding alert into the Toolkit to enable external advisers and others to notify DfC that a claimant is vulnerable.
13) Develop a series of visual 'journeys' or pathways in the Toolkit for UC, PIP, etc., tailored to capture the specific steps for different types of vulnerable claimants e.g. for those coming out of prison or care, etc. The 'journeys' would provide tailored support for claimants and would focus on potential points at which customers may fall into a 'non-compliance' position.
14) Provide additional safeguards to ensure that sanctions are avoided as much as possible for claimants who are vulnerable and who 'did not comply' with a mandated activity where their reason for 'non-compliance' was as a result of their circumstances and not a choice.
15) Instruct staff to offer additional support to a vulnerable claimant before imposing a sanction.
16) Apply easements more often before sanctions are ever considered. These allow conditionality to be switched off in certain circumstances and would effectively reduce the need for sanctions.
17) Instruct staff to be more lenient in the case of vulnerable claimants and to consider what additional support can be given.

18) Make Capita staff aware (in the case of missed PIP assessments) of the need to be more lenient and to offer additional support.
19) Provide staff with comprehensive safeguarding/vulnerability training and ensure they're familiar with the Toolkit and are applying it.
20) Put safeguarding champions in place.
21) Ensure there's no break in a claim when moving from legacy benefits to UC. For example, a claimant moving from ESA to UC closes their ESA claim on the day they make a claim for UC; if because they're vulnerable, they can't make their UC claim, that breaks the claim and can result in delays in getting payments. Staff should make it clear to claimants that they shouldn't cancel their legacy benefits, that they should just claim UC.
22) Incorrect identity details can delay a UC claim and prevent a stop notice going to the legacy benefits. The result will be an overpayment. To make sure this doesn't happen to vulnerable claimants, staff should help claimants make their initial claim and ensure their details are correct.

18. Allow claimants to retain their mobility car up until their appeal is heard (and beyond as appropriate) and a definitive decision made.
19. Bring assessments in-house and ensure they are subject to more control.
20. DfC should remove informal observations from the process and ensure compliance with PIP Regulations 7, 4 and 2. Some lessons can be learned from the way assessments are being conducted due to the ongoing pandemic that could help improve the process.

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