advice ni
the independent advice network

Advice NI Response

Work & Pensions Committee Inquiry

May 2022

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Health assessments for benefits including Personal Independence Payment (PIP), Employment and Support Allowance (ESA), Disability Living Allowance (DLA), Attendance Allowance and Industrial Injuries Disablement Benefit.

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Suitability of assessments

1. How could DWP improve the quality of assessments for health-related benefits?

There are certain fundamentals that directly impact upon the quality of assessments for health-related benefits. Firstly, the finance available within the assessment contracts dictates the delivery model, the formula of number of assessments x time allocation, the staffing profile, the quality assurance systems. So therefore it follows that increasing the value of the assessment contracts should have a direct impact on quality.

"Should have" being the key phrase. Being private sector profit making organisations, there is no guarantee that increasing the value of the contracts will have a direct impact on quality. Hence Advice NI has called for assessments for health-related benefits to be brought in-house.

Secondly, another aspect of improvement would be to benchmark the approach to assessment for health-related benefits to other similar areas where health assessment is required. For example, in Northern Ireland a Troubles Permanent Disablement Payment Scheme has been put in place, which will include an assessment process. It would be interesting to benchmark the approach of benefit assessments to assessments for this scheme – for example it is interesting that one of the processes for the Troubles Scheme is as follows: "The Departments of Justice and Health, General Practitioners and the assessment body are currently designing a process so that an applicant's appropriate medical records can be accessed."

Advice NI has identified serious issues and difficulties with the medical assessments and indeed within administrative and decision making processes within the Department.

The medical assessments are often inadequate and too basic and overlook serious difficulties that claimants have. We also feel that the apparent reluctance to seek and meaningfully assess additional evidence is contributing to a high rate of disallowance.

This fundamental problem with the assessments bleeds into the decision making process of the Department because entitlement to PIP is to a large extent determined by the assessment report. To illustrate this point, an Advice NI adviser represented two clients at appeal recently. Both women had been awarded 0 points initially. One had a learning disability and one a brain injury, both women had been assessed to have no 'cognitive deficit' or disorder by the (different) assessors. At appeal both women were awarded enhanced Daily Living and the Mobility awards were Enhanced and Standard respectively.

The situation is exacerbated by 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.

We suggest that the high success rate at appeals is due to a flawed assessment process which results in too many decisions being wrong in the first instance. We believe that regarding PIP, guidance is not properly applied in terms of Reg 7 (majority test), Reg 4 (reliably test) and Reg 2 (need for aids and appliances).

a. Have you seen any specific improvements in the process since the Committee last reported on PIP and ESA assessments, in 2018?

It is perhaps damning of the assessment process, that an improvement has been the empowerment of decision makers / case managers to make decisions without the necessity of any engagement with the assessment provider. The following extracts from the Department for Communities response to the Second Independent Review of the Personal Independence Payment Assessment Process[1] refers:

"It is important that those claiming PIP have trust and confidence in the decision making process. We agree with the Reviewer that Case Managers should feel empowered to make accurate decisions regardless of the title of their role. This should include determining eligibility, the correct rate and length of award and ensuring claimants do not face unnecessary Assessments."

"The Department has put in place a process to ensure Case Managers feel empowered to make decisions. We will support Case Managers in their role and will also ensure they continue to feel empowered to critically challenge advice in an Assessment report where there is evidence which may suggest a different descriptor choice is appropriate."

"Case Managers make decisions on Award Review applications if they feel it is appropriate to do so, without the need for Capita to carry out an up-to-date Assessment."

2. Are there any international examples of good practice that the Department could draw on to improve the application and assessment processes for health-related benefits?

In 2016, the Scottish government commissioned a report[2], which provided comparisons of aspects of financial support models for people receiving disability benefits in five countries: Denmark, France, New Zealand, Norway, and Sweden. The report notes:

'The UK is the only country in this comparison to use a functional limitation[3] approach to disability assessment. The UK is also the only country in this report to use privately contracted assessors – though, it is apparent that UK disability benefits have a significantly larger caseload than others compared here.[4]'

[1] https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-response-to-second-pip-independent-review.pdf
[2] International Comparison of Disability Benefits
[3] The functional limitation approach – Assesses basic simple actions, such as: lifting, standing, handling, hearing, seeing, and concentrating [definition provided in report, reference below]
[4] https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2018/07/foi-18-01623/documents/foi-18-01632-international-comparison-disability-benefits-report-pdf/foi-18-01632-

The report includes the Denmark example: 'Assessment process decided and arranged at discretion of case-specific social worker, according to circumstances and needs of claimant. The social worker is the final decision maker'. Compared to the UK model, with the involvement of Capita as well as the department; if only 1 case manager was assigned to see the process through from start to finish, there may be fewer appeals.

Norway employs a practical approach regarding re-assessments:

'There is no face-to-face assessment for any of the benefits, and final decisions are made at the discretion of the NAV (DWP equivalent) doctor….. if a claimant has lost both of their legs, NAV will make sure that they are not called for annual reassessment. It is clear that that is a permanent disability, and the award would reflect that. However, no award is never reviewed.'[5]

While PIP offer a 10-year review for those chronic [long-term] cases, a common-sense approach is vital to ensure the claimant is not made stressed or anxious, due to unnecessary reviews.

3. Do the descriptors for PIP accurately assess functional impairment? If not, how should they be changed?

There should be greater emphasis on the ability of the claimant to complete an activity safely, reliably, repeatedly, within reasonable time period, to acceptable standard. Too often we see assessment reports that focus on the ability of the claimant to perform an activity at all, with little or no reference to these criteria.

Advice NI contends that it should read from 'highest' to 'lowest' in terms of the points available within each descriptor.

4. Do the descriptors for ESA accurately assess claimants' ability to work? If not, how should they be changed?

As with PIP, there should be greater emphasis on the ability of the claimant to complete an activity safely, reliably, repeatedly, within reasonable time period, to acceptable standard. Too often we see assessment reports that focus on the ability of the claimant to perform an activity at all, with little or no reference to these criteria.

5. DLA (for children under the age of 16) and Attendance Allowance usually use paper-based rather than face-to-face assessments. How well is this working?

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international-comparison-disability-benefits-report-pdf/govscot%3Adocument/FOI-18-01632%2B-%2BInternational%2BComparison%2Bof%2BDisability%2BBenefits%2B-%2BReport.pdf

[5] IBID

a. Before PIP replaced DLA for adults, DLA was also assessed using a paper-based system. What were the benefits and drawbacks of this approach?

6. How practical would it be for DWP's decision makers to rely on clinician input, without a separate assessment, to make decisions on benefit entitlement? What are the benefits and the drawbacks of such an approach?

Please see the Department for Communities response to the Second Independent Review of the Personal Independence Payment Assessment Process. This report acknowledges this very point, that often assessments are not required, that decisions makers / case managers should be empowered to make decisions "when it is appropriate to do so" with the support of additional medical evidence.

Of course the question then becomes do decision makers have the skills and capacity to interpret this evidence? Do they need better training? There is also the problem of generic recruitment at this level of the civil service – perhaps pot luck whether staff at this grade have the ability to make these decisions. However, we feel that this approach has greater potential to improve the process as opposed to exclusively focussing on the assessment provider.

Currently there is confusion around who is responsible for retrieving further medical evidence. Many claimants assume that if they provide contract details for their GP or other healthcare professional, then the Department or the Assessment Provider will retrieve all relevant medical evidence, but in reality this is not the case. In NI, the Ombudsman found that more often than not additional evidence is not sought; when it is sought, it is not received; when it is received, it is not used. It can be very difficult for claimants to obtain medical evidence, often GP's refuse to provide additional evidence, when it is provided it may be of poor quality and also may attract a significant charge.

Clear guidelines are needed to clarify the role of the Assessment Provider in accessing third-party evidence. We recommend making available specialist assessors for claimants with unique and unusual problems, making the need for further evidence a default; placing more weight on evidence provided by GPs and senior healthcare professionals; ensuring assessors explicitly indicate how they used additional medical evidence, with justification where their view differed from the additional medical evidence in relation to each appropriate activity and descriptor within.

7. Appeals data shows that, for some health-related benefits, up to 76% of tribunals find in favour of the claimant. Why is that?

a. What could DWP change earlier in the process to ensure that fewer cases go to appeal?

Often it is the starting point that is important – the starting point for assessment providers often seems to be on the basis that the claimant is not entitled, whereas the starting point for tribunals is neutral.

We also understand that the Department would argue that tribunals make their decision based on ocular evidence (being able to see the claimant) and sometimes because additional evidence is available (often GP notes). This raises serious questions as to why the assessment provider face to

face assessment did not pick up on the ocular evidence and why additional evidence could not be made available earlier in the process.

8. Is there a case for combining the assessment processes for different benefits? If not, how else could the Department streamline the application processes for people claiming more than one benefit (eg. PIP and ESA)?

There is little doubt that trust in this Government in terms of it's commitment to support people with disabilities is fatally eroded given the track record in what is known as the decade of austerity. Some would fear that combining assessment processes is less an attempt to provide the right support: rather it is really a cynical attempt to remove even more financial support from people with disabilities. The following paragraph in the Health & Disability Green Paper is a case in point:

"We must ensure that disabled people and people with health conditions are effectively supported. This Green Paper will consider whether the money we spend on supporting disabled people and people with health conditions is spent well. This includes ensuring that we have the right checks in place to make sure we are paying people the right amount of money for their particular circumstances. This is because we want to ensure that the health and disability benefits system is effective and sustainable in the future."

We believe that safeguarding, or lack of it, is the reason for many of the poor outcomes from assessments. We recommend: putting in place safeguarding champions in DWP/DfC and Capita; training assessors so they're more mindful of safeguarding duties and the potential impact of 'opening up' very sensitive mental health issues, in particular where suicidal thoughts are involved; instructing staff to be more lenient in the case of vulnerable claimants and to consider what additional support can be given; ensuring Capita staff are aware, in the case of missed PIP assessments, of the need to be more lenient and to offer additional support.

9. What are your views on the Department's "Health Transformation Programme"? What changes would you like to see under the programme?

a. (For people claiming) Would you like to be able to manage your benefit claim online?

b. What would be the benefits and drawbacks of DWP bringing assessments "in house", rather than contracting them to external organisations (Capita, Atos and Maximus)? In particular, would this help to increase trust in the process?

It is clear that the action of DWP in terms of support for people with disabilities has been at least a contributory factor in the deaths of some social security claimants. What could be described as harassment of claimants; the failure to engage with and adopt safeguarding processes and procedures; the removal of financial support; all form part of the perception and reality for many people with disabilities who rely on the social security system.

An essential starting point moving forward will be to do more to find out about the needs of and barriers facing people with disabilities. The Government and DWP should resist what appears to be an overwhelming temptation on cutting costs – such an approach will inevitably create fear and lead to resistance from claimants and representative organisations alike.

Advice NI has long advocated for social security benefit medical assessments being brought back in-house to address the serious delivery issues associated with profit-making private sector providers – the most recent being the finding of 'systemic maladministration' on the part of Capita in their role as Personal Independence Payment (PIP) assessment provider by the NI Public Service Ombudsman (NIPSO).

Having assessments conducted by private sector companies driven by a profit motive does little to instil confidence in the assessment process.

DWP ministers have previously announced the idea of having a single PIP/ESA assessment or a single assessor, and said for a trial period the 'single assessment process' would be 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. We recommend: bringing assessments in-house so they can be subject to more control. Failing that, we recommend: creating an 'oversight panel' to oversee and provide an independent element of scrutiny for Capita complaints handling and DWP/DfC's audit function of Capita; strengthening the audit function of DfC by monitoring the quality of Capita assessments.

10. What lessons should the Department learn from the way that it handled claims for health-related benefit claims during the pandemic: for example, relying to a greater extent on paper-based assessments, or using remote/telephone assessments?

a. Is there a case for making some of the changes permanent?

Due to the pandemic, reassessment for existing claimants and face-to-face assessments for new claimants were suspended and communication via telephone became 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 informal, often erroneous observations. Lessons can be learned from this to help improve the assessment process. On the other hand there is some evidence that inappropriate informal, erroneous assumptions are being made during telephone assessments (for example reports containing phrases such as 'did not detect audible pain', 'did not detect audible fatigue') which have been flagged with assessment providers and we are assured that this issue is being addressed.

11. Most assessments for Industrial Injuries Disablement Benefit were suspended during the pandemic. What has been the impact on people trying to claim IIDB?

a. Some IIDB claimants will receive a lower award than they might have, due to the suspension of assessments, because IIDB awards are linked to age. Should the Department compensate these claimants? How?

b. What lessons could the Department learn for how it deals with these claims in future, in the event of further disruption to normal services?

12. DWP believes that applications for some benefits dropped sharply at the start of the pandemic because claimants weren't able to access support (for example, from third sector organisations) to complete their applications. What are the implications of this for how the Department ensures people are able to access health-related benefits consistently?

a. How can the Department best help the third sector to support claimants in their applications?

Advice NI has long advocated that funding cycles last longer than 1 year. Many advisers have job insecurity as their contracts are reliant on the charitable organisation securing funding. Some advisers may feel they have to leave their current place of work; this interrupts the continuity of care provided to the clients. Vulnerable clients can struggle with change or new people, so it is in the interests of the client for the adviser to be available until the end of the application process.

Advice NI strongly recommends the funding processes/duration should be re-examined, to establish what funding process/mechanism going forward would best benefit the clients. Funders should implement 3 – 5 year full cost recovery funding settlements; also, more flexibility within the contract to adapt to the external and internal environments.

The acknowledgement of the role of the independent advice network in the Health & Disability Green Paper is to be welcomed. In NI, Independent advice agencies provide services in every community in every locality in Northern Ireland. Access to advice supports people to receive the benefits they are entitled to or resolve problems before they escalate. Timely debt advice, for example, enables people to alleviate their money problems and take charge of their financial future. Newcomers to Northern Ireland face particular difficulties and the advice sector plays a critical role in enabling migrants to enjoy their legal rights and entitlements. Regional infra-structural support organisations provide infra-structural support to frontline providers through a range of services; for example, information, training, ICT support, help with addressing social policy issues, assistance with governance and finance/funding issues and a broad range of other support functions to allow the frontline services to function effectively.

This range of independent advice network access in NI and indeed across the UK must not be taken for granted; these channels must be sustained and the necessary funding must be in place to allow them to function effectively, in particular if Government see a more prominent role in the future.

It is clear that, while on-line applications can help streamline and speed up the process for many claimants, on-line applications are not appropriate, or feasible, for vulnerable claimants. This could be because of lack of digital skills, mental health issues etc. It is vital that the department allow a variety of channels through which an application can be made: over the phone, in writing or on-line.

We recommend that claimants should be given an option of paper-based, face-to-face or remote/telephone assessments so the claimant can choose which medium best suits their needs.

The impact of assessment/application on claimants

13. DWP recently published research on the impact of applying for PIP or ESA on claimants' mental and physical health. What would be the best way of addressing this?

Advice NI believes it is crucial for DWP to listen to the claimants' views on how to improve the application process, specifically in practical terms. Some of their suggestions included:

- more routing within the questionnaires or separate questionnaires for different conditions or disabilities, this would provide greater clarity on which questions they need to answer;
- extending the deadline to six weeks, to allow more time for gathering evidence and/or accessing support to fill the questionnaire in[6]

Advice NI re-iterates that Decision Making needs to be more accurate, and request further medical evidence at the earliest stage, to avoid protracting the PIP application process and get the right decision first time.

In 2021, Ayaz Manji, Senior Policy and Campaigns Officer of MIND, stated to the Work & Pensions Committee:

'We carried out surveys a couple of years ago of 800 people with mental health problems claiming the PIP. Over a quarter said that they were unable to challenge their decision because of the impact of their health condition. They could not go through with it. Transparency is important, but we also think that there is a strong case for more independent accountability in the system. That may look like a form of regulator for social security. When we are seeing these inequities in such a widespread way, it cannot be left to individuals to have to deal with what is a systematic problem[7].'

If the correct determinations were made in the first place, the claimant would not be obliged to force themselves through the appeal process, or sacrifice their claim.

"Easier", "simpler", "shorter" and "clearer" were the words suggested by claimants in this research when it came to what they needed from assessments. We would concur with the need for assessments to be easier, simpler, shorter and clearer.

The research mentioned the need for more transparency on eligibility and how award levels are assessed and, on providing more consistent access to support with filling in the questionnaire. Further, a number of sections in the research, for example "Improvements specific to PIP questionnaire", "PIP entitlements by points" and "What to expect if you are invited to a face-to-face assessment", pointed out concerns with the assessment process which several of the recommendations we have made already could help to address.

A good start would be to ensure that the descriptors and points system are routinely made available to all applicants.

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[6] https://www.gov.uk/government/publications/claimant-views-on-ways-to-improve-pip-and-esa-questionnaires/claimant-views-on-ways-to-improve-pip-and-esa-questionnaires

[7] https://committees.parliament.uk/oralevidence/218/pdf/

Waits for assessments

14. What could the Department to do to shorten waits for health-related benefit assessments—especially for ESA/UC?

a. How effectively does the "assessment rate" for ESA cover disabled peoples' living costs while they wait for an assessment? Is there a case for introducing an assessment rate for other health-related benefits?

It is noteworthy that the UK Government has to be forced via successful court action to trigger payment of the pending appeal award on a more timely basis immediately after a negative decision, not after a Mandatory Reconsideration decision. Therefore it is clear that any advances are made on a begrudging basis on the part of the Government.

The situation concerning Universal Credit is worthy of close attention in terms of negative decisions involving the work capability element. Building on the logic of the ESA 'payment pending appeal' award, is there not an argument that a claimant should be awarded a nominal 'LCW pending appeal award' added to the UC standard allowance.

Health assessments in the devolved administrations

15. The Scottish Government intends to introduce its own assessment process for the Adult Disability Payment, which will replace PIP in Scotland from 2022. What could DWP learn from the approach of the Scottish Government?

a. PIP started rolling out in Northern Ireland in 2016. Is there evidence that the Department learned from the experience of rolling out PIP in the rest of the UK?

The fundamental decision to accept and implement the recommendations of the independent Welfare Reform Mitigations Working Group Report (the Evason Report[8]) highlights that politicians and policy makers in NI understood that the ultimate goal was about cost-cutting and that additional mitigation and support would be needed to ensure that people would not needlessly suffer pending the outcome of a successful PIP appeal. Politicians and policy makers also knew that twice as many people claimed DLA (by head of population) compared to elsewhere in the UK, with mental health being a major disability type.

Therefore the UK Government policy created the potential for human hardship on an unimaginable scale in NI, hence the safeguards that were put in place. Learning did not come into the equation.

However, as a reality check, it is worth noting that the success rate for people moving from DLA to PIP during the reassessment process was 76% - consistent with the Treasury prediction in 2010 that

[8] https://www.executiveoffice-ni.gov.uk/publications/welfare-reform-mitigations-working-group-report

such a reassessment process would generate 20% savings by expenditure and caseload. The additional 4% obviously to take account of successful appeal cases.

The two independent PIP Review Reports make for interesting reading and illustrate how improvements can be made if the will is there.

Policy development

16. How effectively does DWP work with stakeholders—including disabled people—to develop policy and monitor operational concerns about health-related benefits?

a. What steps could the Department take to improve its engagement with stakeholders?

To be fair in NI, there is effective engagement between the Department for Communities and key stakeholders – consultative forum with the advice sector is particularly effective. Perhaps there is potential for learning by having more direct engagement with claimants by channels such as 'Voice of the Claimant' events.

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