

A Rubber Stamp?

Mandatory Reconsideration in the Personal Independence Payment application process

Commissioned by Surrey Research and Campaigns Group in collaboration with Surrey-wide Citizens Advice local offices.



Surrey Research and Campaigns Group

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Introduction

Background (For more detailed information on the background of both PIP and MR, see Appendices 1, 2 and 3).

In April 2013, Personal Independence Payment, or 'PIP' gradually began to replace the disability benefit Disability Living Allowance, or 'DLA'. The aim was to balance the needs of those in our society with facing the greatest challenges to living an independent life with that of the taxpayer, within a context of fiscal austerity. Whilst the new PIP system may be working for some, we have seen people experience multiple barriers to receiving the support they need.

Mandatory Reconsideration in particular, often called 'MR', has contributed towards unnecessary delays and distress. This extra step in the disability benefit process requires claimants to request that the Department of Works and Pensions, known as 'DWP', reconsider their original decision if they wish to dispute it, before they are allowed to apply for appeal. MR was introduced shortly after PIP in October 2013, with the intention of resolving disputes as early as possible and reducing unnecessary demand on Her Majesty's Courts and Tribunal Service, or 'HMCTS'. However, there is little faith amongst claimants that the process does anything more than 'rubber stamp' the original decision. PIP appeal tribunal judges have expressed similar concerns about the thoroughness of MR.

73% of DWP decisions on PIP that are taken to an appeal tribunal are overturned in favour of the claimant, suggesting that the current system is not working. Furthermore, many people have found MR confusing and stressful and have experienced a worsening of health conditions and financial circumstances whilst they endure the associated delays. We have seen people in Surrey left with deteriorating mental health, in considerable debt and at risk of homelessness.

PIP is the most common benefits area on which people contact us for advice across Surrey, comprising 20% of all instances of people being advised on benefits of any kind. This proportion has risen steadily from 6% to 20% since 2014, when the effects of the 2013 introduction of PIP first began to impact our services. Employment Support Allowance, or 'ESA', which has the same MR system and similar appeal overturn rates, is a close second at 18%.

Urgent reform is required in various areas to rectify the current situation, which is having a profound effect on the people we help, as well as the Citizens Advice service itself.

National Impact

In November 2017, Senior President of Tribunals Sir Ernest Ryder reported that after a spot check on the PIP files awaiting appeal, his judges found that in 60% of cases 'there could be no argument in law or on facts that the appellant wouldn't win'. This suggests that a large proportion of PIP applications should not be progressing to appeal stage, as their entitlement to a PIP award is so apparent. He also declared the volume of appeals for which DWP had no justifiable defence 'an inappropriate use of judicial resource, an inappropriate experience for the users' and that 'the cost is simply not right'¹. A year later in December 2018, 73% of MR decisions for PIP were being overturned

¹ Sir Ernest Ryder, speaking at Bar Council event November 2017, Available at: <https://www.buzzfeed.com/emilydugan/most-dwp-benefits-cases-which-reach-court-are-based-on-bad>

at tribunal nationally, meaning 73% of claimants taking their application to appeal were awarded PIP by a tribunal.

The average individual cost to HMCTS of a First-tier Social Security and Child Support (SSCS) tribunal increased from £258 to £579 from 2013/14 to 2014/15, and was standing at £543 in 2016/17. According to former Minister of State for Courts and Justice, Dominic Raab, this is because 'PIP appeals now comprise a much larger proportion of the caseload and PIP cases require more members on the tribunal panel, which increases the average cost'.² From October to December 2018, PIP appeals accounted for 52% of all SSCS tribunals³.

The SSCS appeal overturn rate has been rising since 2014, as PIP appeal data becomes available. For example, for the first quarter of 2015, the overturn rate for all SSCS disposals cleared at hearing was 51%. This was an increase from 41% in the same quarter in the previous year⁴. For the whole of 2014, appeal overturn rates for DLA, were consistently between 42% and 49%. This is much lower than the current PIP appeal overturn rate of 73%, which has steadily increased almost every quarter after the new benefit was introduced⁵. These figures suggest that in its current form, MR in the PIP process is failing in its proposed remit to reduce unnecessary demand on HMCTS and delaying justice for many of the most vulnerable people in our society.

Research Methods

This report aims to examine the impact of MR on people we help with their PIP applications in Surrey and to draw conclusions about its value in the PIP process nationally. The evidence section below consists firstly of three anonymised case studies. These are adapted from three people who were advised by different Citizens Advice offices across Surrey. Secondly, statistics are presented from our internal database, which show the number of instances in which Citizens Advice have advised people on making and managing a PIP claim, applying for MR and applying for appeal across all 13 Surrey boroughs, followed by a brief data analysis. The conclusion consists of a justification for the five findings and exploration of the four recommendations of this report, which are each outlined briefly below. Supporting evidence from external sources on the effectiveness and wider impact of MR is included. These sources comprise: the two Independent Reviews of the PIP assessment by Paul Gray, the Final Report on PIP claimant research by the Department of Work and Pensions (DWP), Oral evidence from the Works and Pensions Committee Inquiry on PIP, the Disability Rights UK response to that inquiry and Citizens Advice Scotland. Full details and further examples of this evidence are included in the appendices.

Our recommendations include amending MR into a quick, independent check that happens automatically if someone applies for appeal, rather than something people have to apply for themselves. This would be to rule out any obvious errors and stop PIP cases unnecessarily going to appeal. People also need further clarification surrounding what kind of evidence is required during

² Response from Dominic Raab MP MoJ regarding PIP and ESA appeals, p.3, November 2017, Available at: <https://www.parliament.uk/documents/commons-committees/work-and-pensions/11.%20Response%20from%20Dominic%20Raab%20MP%20MoJ%20regarding%20PIP%20and%20ESA%20appeals%204.12.17.pdf>

³ 'Tribunal and GRC Statistics Quarterly, October to December 2018 (Provisional)', p.3, 14th March 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785695/Tribunal_and_GRC_statistics_Q3_201819.pdf

⁴ Tribunal and GRC Statistics Quarterly, January to March 2015 (Provisional)', p.16, 11th June 2015, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf

⁵ Ministry of Justice, Jan – Mar 2014, Apr – Jun 2014, Jul – Sep 2014, Oct – Dec 2014, <https://www.gov.uk/government/collections/tribunals-statistics>

the PIP process and who should be providing it. Furthermore, we call for significant improvements in the initial PIP assessment. If correct decisions were made at this stage it could remove the need for further steps such as MR and appeal and prevent delays. Finally, we call for further research to be carried out into the long delays we have seen in people receiving MR decisions, as well as across the PIP process in general.

Five findings

1. MR is delaying the amendment of what are likely to be inaccurate initial decisions on PIP awards by DWP.
2. We have seen delays caused by MR leave people in financial difficulty or worsen already difficult financial circumstances.
3. We have seen the MR process as a whole increase stress and worsen health conditions.
4. The MR process is often confusing and poorly understood.
5. The introduction of MR provides the opportunity to slow down or even stall the PIP process.

Four recommendations

1. MR should be amended to an efficient, independent check that occurs automatically should a claimant apply for appeal, to rule out administrative or other obvious errors.
2. The PIP assessment process should be improved and brought in line with decisions made by tribunal judges, especially with regard to fluctuating physical and mental health conditions, in order to reduce the need for MR in its current form and potentially relieve pressure on HMCTS.
3. Clarification should be provided by DWP regarding the provision of medical evidence.
4. Further research should be conducted into the reasons behind the delays in receiving MR decision notices, as well as other forms of delay detailed in the case studies.

Evidence

Anonymised Case Studies⁶

Case Study 1: Magid

Magid has had an autoimmune disorder since birth, which has many side effects including seizures several times a week, which are hard to control. The seizures are unpredictable and leave him in a confused state, thus he requires full time supervision from his father to make sure he is safe. Before

⁶ Each Case Study is based on someone asking for help with their MR application since April 2017 from across the Surrey boroughs. Names and certain details have been changed to preserve confidentiality; however, the structure, timescales and outcomes of the cases are preserved.

applying for PIP, he received DLA middle-rate care and lower-rate mobility. Magid's father received Carer's Allowance with an income support top-up, because he provides care at least 35 hours a week. Since Magid was in full-time education, his father also received Child Benefit and Child Tax Credit.

Magid was told his DLA was stopping and he could apply for PIP instead. However, after assessment he was not given enough points to be awarded any PIP. His father's Carer's Allowance and Income Support stopped as a result. Magid's father could not go to work since he still needed to provide full time care.

It took nearly two months for DWP to return a Mandatory Reconsideration notice, which ultimately upheld the decision.

An appeal was put in and six months after the Mandatory Reconsideration notice, a tribunal heard the case and Magid was awarded enhanced rate PIP for both daily living and mobility for 3 years.

DWP then said that it was considering appealing to the Upper Tribunal. We could not see that there was any basis for them to appeal. This meant that there was a further delay in any benefit payment. Magid had not received any disability benefit for over seven months and Magid's father had also had no Carer's Allowance. Furthermore, DWP would not let Magid's father claim Income Support even though they had the discretion to do so in cases such as these. They said that the delay whilst DWP decided whether or not to appeal seemed like a punishment to them.

After one month, we rang DWP to see whether or not they had reached a decision. After speaking to several people, Citizens Advice managed to escalate the query and finally discovered that they were not appealing and would in fact put the PIP into payment as ordered by the tribunal.

Finally, nine months after DLA was stopped by DWP, Magid's PIP and his father's Carer's Allowance was started. During these nine months all they had to live on was Child Benefit and Child Tax Credit. Magid and his father were desperate at times and had to borrow money or leave bills unpaid.

Case Study 2: Jocelyn

Jocelyn, now in her 60s, has had severe PTSD since she was a teenager. She has also developed a debilitating musculoskeletal condition, which is deteriorating and causes constant pain. Jocelyn is a regular at Citizens Advice, requiring frequent support to complete basic tasks, such as purchasing white goods and booking medical appointments. We have subsequently observed Jocelyn's physical mobility struggles and mental health symptoms first hand on many occasions. She has consistently presented to us as someone in severe physical pain and struggles with walking even a few metres across our waiting room. Jocelyn also exhibits disruptive levels of poorly controlled anger and an inability to sustain a focused conversation. This affects her relationships in her daily life and has made navigating the many administrative stages of the PIP process extremely arduous.

Jocelyn was told that her DLA was stopping in a few months and that she needed to apply for PIP. Jocelyn relied on us heavily to help her complete the form and then later to confirm the assessment details. After assessment, Jocelyn called us in extreme distress to tell us that she had been denied any

PIP award. She reported that she felt the assessor did not listen to her and was very upset about how she'd been treated.

We helped Jocelyn write and submit her Mandatory Reconsideration letter, explaining the extent of her physical and mental disability as she describes them and as we have observed. Even with our help, it took Jocelyn two weeks to submit her Mandatory Reconsideration application and then two weeks for DWP to return a decision, ultimately adding an extra month of little to no income. Mandatory Reconsideration confirmed the result of the assessment and Jocelyn was again denied PIP. Her Clinical Psychologist reported that Jocelyn was experiencing worsening mental health symptoms as a result of this decision.

We helped Jocelyn begin the appeal process. She was confused and frustrated by this as she had thought Mandatory Reconsideration was the appeal. Due to her difficulties with concentration and deteriorating mental state, Jocelyn was unable to submit her appeal within the one-month time frame. The appeal was allowed regardless but this time limit caused her extra stress.

Jocelyn's GP explained that they were reluctant to give her a sick note because she was not on any medication and that although Jocelyn was certainly experiencing severe PTSD, her condition was untreatable and not going to change. The GP really wanted some guidance from DWP and asked if there was anyone there that they could write to for clarification on their role in the PIP process. We explained that the assessment centres were contracted by DWP and that PIP award decisions are based on evidence from these assessments, which are often not fit for purpose. The GP was aware of this and agreed from his experience with his patients.

Seven months later, the appeals tribunal awarded enhanced rate of Daily Living and standard rate for Mobility, for 5 years. Jocelyn went from 0 points at assessment and Mandatory Reconsideration to 14 points at appeal. Jocelyn's GP and Clinical Psychologist provided medical evidence for the appeal, alongside first-hand evidence from Jocelyn concerning how her disability affects her. The appeal decision letter explained that more weight was given to the medical evidence provided by Jocelyn's GP, as well as Jocelyn's oral evidence, than evidence from DWP's assessors. During the PIP process Jocelyn had been surviving on nothing but food vouchers, Local Assistance Scheme grants and borrowing money from friends. She was left at risk of homelessness and she also experienced a notable worsening of her condition.

Case Study 3: Kasia

Kasia was required to be reassessed for PIP. She was suffering from bipolar II disorder, including severe depression and manic episodes. She was out of work as a result. She had received support from the psychology unit at the local hospital and had recently been put into the support group after being assessed for Employment Support Allowance. At her most recent assessment two years prior to this, she had been awarded 11 points for daily living. She attended the assessment and was refused PIP, on the basis that she had only scored 2 points for daily care and 4 for mobility. At least 8 points are required for a standard rate PIP award and at least 12 points are required for the enhanced rate.

Having just gone through a very turbulent period of her life, Kasia had already accumulated debts of several thousand pounds, but had so far been managing to make minimum repayments.

She requested a Mandatory Reconsideration. Kasia gave her permission for DWP to contact the psychology unit at the hospital for a recent assessment, but in their response to the Mandatory Reconsideration, DWP claimed that it was not within their remit to do this. After having to wait two months, Kasia's Mandatory Reconsideration was rejected on the basis that Kasia had appeared to be appropriately dressed at the assessment, not malnourished and was able to walk. DWP dismissed the fact that Kasia had significant mental health problems due to the fact that she was not currently attending the mental health clinic or taking the standard dose medication which had been prescribed.

Kasia asked for our help to mount an appeal. She asked for a letter from her GP, who confirmed that she was out of work and on a downward spiral. Her medication had been increased and she had been referred back to the Mental Health team.

It was not until 9 months later that Kasia received a letter informing her of her appeal hearing date, which was 14 months after her reassessment had been rejected and her money stopped.

The appeal ruling was that Kasia was entitled to the standard rate of PIP for daily living for 4 years. The reasons given for the award by the tribunal were that Kasia relied heavily on prompting and supervision in day to day life and concluded that by reason of mental health difficulties she was significantly limited. Particular weight was given to Kasia's oral evidence and information contained in the appeal bundle.

At the tribunal it was pointed out that the fact that Kasia no longer received support from the Mental Health team did not mean that she was cured. She had been removed because there were no appropriate therapies available. The tribunal also concluded that if DWP were not able to ask for a recent assessment from the hospital, the previous assessment when Kasia was awarded 11 points for daily living should have stood.

Although Kasia had been advised of the award, still no money had been paid at the time of writing this report, two months after the appeal date. DWP have advised that it takes them between 3-6 weeks to process claims. Kasia has been encouraged to complete a budget pack to deal with her debts and is now likely to be applying for a Debt Relief Order.

Surrey statistics from 2014 – 2019

By fiscal year from 2014 – 2019 from data gathered in Citizens Advice offices across the 13 Surrey boroughs, the table below shows the following:

- Number of instances where people were advised on making and/or managing a Personal Independence Payment claim ('PIP applications')
- Number of instances where people were advised on applying for Mandatory Reconsideration ('MR')
- Number of instances where people were advised on progressing to appeal ('Appeal')

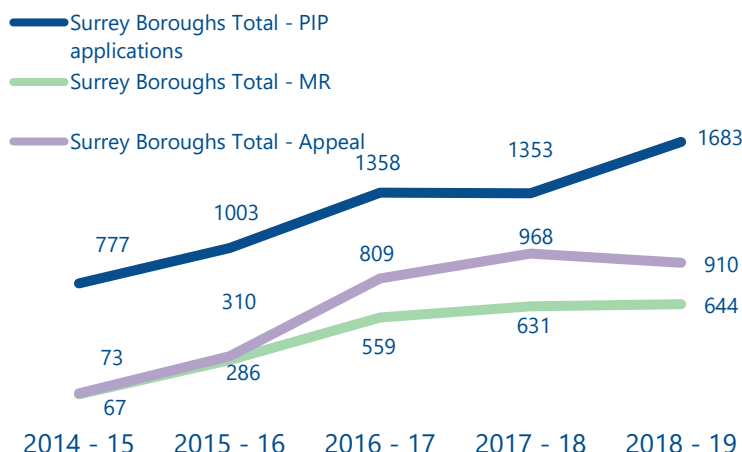
Surrey Borough and advice type	2014 - 15	2015 - 16	2016 - 17	2017 - 18	2018 - 19
Ash - PIP applications	54	56	96	109	119
Ash - MR	5	18	53	31	33
Ash – Appeal	1	20	60	61	36
Camberley- PIP applications	64	90	94	129	200
Camberley - MR	6	38	51	54	52
Camberley – Appeal	6	28	42	67	67
Caterham and Warlingham- PIP applications	9	16	18	17	27
Caterham and Warlingham- MR	0	3	10	8	7
Caterham and Warlingham – Appeal	1	5	18	17	16
Elmbridge - PIP applications	37	53	67	60	65
Elmbridge – MR	2	23	33	25	34
Elmbridge – Appeal	1	28	40	25	52
Epsom and Ewell - PIP applications	117	162	155	128	149
Epsom and Ewell - MR	13	68	57	45	46
Epsom and Ewell – Appeal	4	59	83	108	170
Esher - PIP applications	36	57	72	89	149
Esher – MR	2	9	41	50	46
Esher – Appeal	7	12	57	80	170
Guildford - PIP applications	100	146	181	173	236
Guildford – MR	8	21	49	38	41
Guildford – Appeal	7	34	86	66	59
Mole Valley - PIP applications	59	71	164	140	164
Mole Valley – MR	3	15	51	95	73
Mole Valley – Appeal	8	20	72	172	101
Oxted - PIP applications	5	4	12	14	24
Oxted – MR	0	5	4	7	8
Oxted - Appeal	0	1	29	10	19
Reigate - PIP applications	32	38	69	73	63
Reigate – MR	2	14	38	36	58
Reigate – Appeal	1	22	52	54	67
Runnymede-PIP applications	86	81	106	151	203
Runnymede – MR	4	36	48	112	101
Runnymede – Appeal	6	19	90	114	103
Waverley - PIP applications	93	118	175	126	161
Waverley – MR	12	22	79	74	65
Waverley – Appeal	14	33	124	118	106
Woking - PIP applications	85	111	149	144	200
Woking – MR	10	14	45	56	86
Woking – Appeal	17	29	56	76	75
Surrey Boroughs Total - PIP applications	777	1003	1358	1353	1683
Surrey Boroughs Total - MR	67	286	559	631	644
Surrey Boroughs Total - Appeal	73	310	809	968	910

Data Source: In house Citizens Advice database 'Casebook'

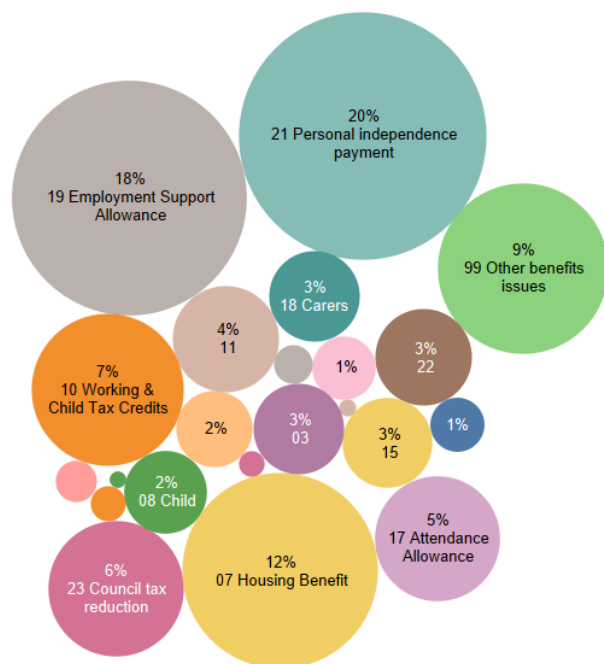
What this means

- There were huge increases in people coming to see us for help with MR applications in 12 out of 13 boroughs from **2015-16 to 2016-17**, with Surrey-wide rates **increasing** by **95%**. This can be linked to the influx of claimants being moved from the old disability benefit DLA to PIP over time.
- Instances of people contacting us for advice on PIP have continued to increase across Surrey. As shown by the graph below, from **2017-18 to 2018-19** PIP application advice figures have **increased** by **24.4%** and MR and Appeal advice figures have remained high.

Citizens Advice Epsom and Ewell have reported that some judges, having awarded someone PIP at an appeal, have indicated that the case should not have reached that stage. We have even seen this result in an apology from the judge to the claimant.



- Despite the fact that most people do not progress to appeal after losing at MR, there are now considerably more instances of people being advised on Appeals than on MRs across Surrey, **increasing** from an **8.4%** difference in **2015 - 16** to **41.3%** for **2018 - 19**. It is hard to draw concrete conclusions from this data, however; these figures may suggest that the people who do progress to appeal require more help by this stage. This could be due to the stress and exhaustion caused by the PIP process so far, including MR. This possibility is discussed further in Finding 3 on page 13.



Benefits advice given by proportion, 2018 - 19

- In the year **2018 - 19**, PIP was the **most common benefits area** on which people contacted us for advice across Surrey, comprising **20%** of all instances of people being advised on benefits of any kind. This proportion has risen steadily from **6%** to **20%** since **2014**, when the effects of the **2013** introduction of PIP first began to impact our services. Employment Support Allowance, which has the same MR system and a similar appeal success rate, is a close second at **18%**.

An Advice Session Supervisor at Citizens Advice Mole Valley reported that; *'There have been several weeks where we have struggled to cope with the demand from people for help with Mandatory Reconsideration and appeals, we felt like that was all we were doing in our office.'*

Conclusion

Justification of five findings

Based on the case studies and statistics above, as well as wider research, this report presents the following five findings regarding Mandatory Reconsideration (MR) in the Personal Independence Payment (PIP) process:

Finding 1: MR is delaying the amendment of what are likely to be inaccurate decisions on PIP awards by DWP.

In the case studies provided there was no change in PIP award after MR. At the end of January 2019, this was also the case with '81% of new claims and 76% of reassessment decisions'⁷ reviewed at MR. In each case, a tribunal overturned the decisions that were made at assessment and confirmed at MR. This was the result for 73% of PIP appeals nationally, according to the Ministry of Justice for the most recent period of available data, October to December 2018⁸. Considering the extensive needs of the people denied PIP in the case studies, this report suggests that DWP was at fault, rather than the tribunal.

The first Independent Review 2014 found that claimants and their representatives expressed views that the impact of fluctuating conditions and mental health conditions may not be being effectively assessed⁹. Our three case studies reflect claimants with either fluctuating physical symptoms, such as Magid's seizures and mental health conditions like Kasia's bipolar II disorder and Jocelyn's PTSD. It is possible they were disadvantaged by inconsistencies in the PIP assessment, which is where the improvements need to be made, as was suggested by the Review three years prior to the incidents detailed in our case studies. According to the latest PIP official statistics to January 2019, '82% of new claims and 88% of reassessment claims are recorded as having one of the following most common disabling conditions: Psychiatric disorders (which includes mixed anxiety and depressive disorders), Musculoskeletal disease (general or regional), Neurological disease, Respiratory disease'¹⁰. This suggests that a very high percentage of PIP claimants could be affected.

The Second Independent Review also found that many claimants across the board, not just those with fluctuating or mental health conditions, believed that MR was simply 'a "rubber stamp" rather than a thorough audit of the original decision'.¹¹ As a result of a Freedom of Information request, it was revealed that DWP was using the following performance indicator for MR: 80% of original decisions to be upheld. Work and Pensions Committee Chair Frank Field asked in a letter 'how a target for

⁷ PIP: Official Statistics to January 2019, Department of Work and Pensions, p.6, 19th March 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786587/pip-statistics-to-january-2019.pdf

⁸ Tribunal and GRC Statistics Quarterly, October to December 2018 (Provisional)', p.3, 14th March 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785695/Tribunal_and_GRC_statistics_Q3_201819.pdf

⁹ 'An Independent Review of the Personal Independence Payment Assessment', Paul Gray, December 2014, p.45, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/pip-assessment-first-independent-review.pdf

¹⁰ PIP: Official Statistics to January 2019, Department of Work and Pensions, p.5, 19th March 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786587/pip-statistics-to-january-2019.pdf

¹¹ 'The Second Independent Review of the Personal Independence Payment Assessment', Paul Gray, March 2017, p.45 Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604097/pip-assessment-second-independent-review.pdf

upholding original decisions is compatible with ensuring that questionable reports are thoroughly investigated, and erroneous decisions identified and corrected?¹² Sarah Newton, Minister for Disabled People, Health and Work, responded that the target (which has now been dropped) was 'an internal measurement only used to indicate areas where the quality of initial decisions may not be meeting our expected high standards.'¹³ Regardless of the intention, the effect of a performance measure of this nature may have been to pressure DWP decision makers into simply 'rubber stamping' the original assessment decision and could reflect wider perfunctory attitudes towards MR in general within the department.

Finding 2: We have seen delays caused by MR leave people in financial difficulty or worsen already difficult circumstances.

PIP is vital to the independence and financial stability of the 2,051,000¹⁴ disabled people currently in receipt of an award. Whilst applying for PIP, Magid and his father from Case Study 1 were left to survive on Child Benefit and Child Tax Credit only. They had to borrow money and leave bills unpaid. MR increased this period of financial difficulty by nearly two months. Similarly, Jocelyn's PIP award was delayed by a month by the MR process and she relied on food vouchers, Local Assistance Scheme grants and borrowing money from friends and was at risk of becoming homeless. Finally, DWP took a full two months to return Kasia's Mandatory Reconsideration Notice. She was already in debt but making minimum repayments. However, by the end of her PIP application process, Citizens Advice was encouraging Kasia to complete a budget pack to deal with the further debt she had acquired during this period and advising her on applying for a Debt Relief Order.

This is consistent with evidence from Citizens Advice Scotland (CAS) in their 2016 'Living at the Sharp Edge' report, which finds that people can experience a period of acute income deprivation as a result of 'processing times [and] lack of eligibility for benefits during a reconsideration'. The report also found that 'those unable to work due to ill health and those with a disability are disproportionately affected by acute deprivation of income.'¹⁵ Furthermore, CAS research finds that benefit delays are 'the most common cause of someone needing to access emergency food aid'¹⁶. This delay caused by MR is in addition to the extremely long waiting times experienced by claimants waiting for appeal. Ministry of Justice (MoJ) official statistics state that PIP claimants nationwide have to wait an average of 30 weeks for PIP appeal cases to be disposed, six weeks more than the same period in 2017¹⁷.

¹² Work and Pensions Committee inquiry into PIP and ESA Assessments, 'Letter from the Chair to Minister of State for Disabled People Health and Work relating to PIP and ESA Assessments', p.2, 28th November 2017, Available at: <https://www.parliament.uk/documents/commons-committees/work-and-pensions/Correspondence/Letter-from-the-Chair-to-Minister-of-State-for-Disabled-People-Health-and-Work-relating-to-PIP-and-ESA-assessments-28-November-2017.pdf>

¹³ Work and Pensions Committee inquiry into PIP and ESA Assessments, 'Response from Sarah Newton MP (Minister of State for Disabled People, Health and Work) to letter from the Chair', p.2, 12th December 2017, Available at: <https://www.parliament.uk/documents/commons-committees/work-and-pensions/Correspondence/Response-from-Sarah-Newton-MP.pdf>

¹⁴ PIP: Official Statistics to January 2019, Department of Work and Pensions, p.1, 19th March 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786587/pip-statistics-to-january-2019.pdf

¹⁵ 'Living at the Sharp End', Citizens Advice Scotland, 2016, p68. Available at: https://www.cas.org.uk/system/files/publications/living_at_the_sharp_end_-_2016.pdf

¹⁶ Ibid, p. 30

¹⁷ 'Tribunal and GRC Statistics Quarterly, October to December 2018 (Provisional)', p.3, 14th March 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785695/Tribunal_and_GRC_statistics_Q3_201819.pdf

Finding 3: We have seen the MR process as a whole increase stress and worsen health conditions.

In Case Study 2, Jocelyn's Clinical Psychologist reported that she was experiencing a worsening of her mental health condition as a result of the MR decision. After being denied PIP again at MR, Kasia's GP in Case Study 3 described her as being in a 'downward spiral', which coincided with this decision. She was given a new medication prescription and she was referred back to the mental health team. Our case studies reflect the findings of CAS that loss of income as a result of benefit delays 'can cause serious consequences for an individual's relationships, stability, mental and physical health.'¹⁸

Similarly, wave three of DWP's Final Report finds that amongst their 1,205 survey respondents, 'of those who did not appeal their decision after having no change to their award at MR, the main reason was that the process would be too stressful (37 per cent). The reasons identified in the qualitative research included not being able to get help to navigate the appeals process, the view that the stress and anxiety that an appeal would cause would be detrimental to their condition, and not having the physical and emotional energy that the appeals process was deemed to require'.¹⁹ All three people in the case studies provided required significant practical and emotional support from Citizens Advice with both MR and appeal process.

There are now considerably more instances of people being advised on Appeals than on MRs across Surrey, increasing from an 8.4% difference in 2015 - 16 to 41.3% for 2018 - 19. Most people do not take their case to appeal if they lose at MR. Therefore, these figures may suggest that the people who do progress to appeal require more help by this stage, possibly due to the stress and exhaustion caused by the PIP process so far, including MR. Furthermore, there are likely to be people entitled to PIP who cannot navigate the appeal process alone or access support from services such as Citizens Advice due to the severity of their conditions. This is likely to affect the most vulnerable claimants with the greatest need. The most recent evidence suggests tribunals have overturned MR decisions 73% of the time but this figure may have been even higher if all claimants entitled for PIP were able to progress to appeal.

Finding 4: The MR process is often confusing and poorly understood.

After MR, Jocelyn was frustrated at having to appeal as she thought she was already in the appeal process. DWP's Final Report found that 'there was... some confusion among participants in the qualitative research about the difference between MR and appeal, and why it was necessary to go through MR before being able to appeal'. The report also found that 'about half of claimants agreed that DWP made it clear how they had reached their decision (53 per cent)'.²⁰ This suggests a lack of comprehension of the MR decision-making process amongst 47% of claimants, a very large portion.

Additionally, Kasia gave her permission for DWP to contact the psychology unit for a recent assessment, yet in the Mandatory Reconsideration Decision Notice, DWP claimed it was not within their remit to do so, suggesting confusion surrounding who is responsible for gathering further evidence at the MR stage. The Final Report also found that 'among the 29 per cent of claimants who

¹⁸ 'Living at the Sharp End', Citizens Advice Scotland, 2016, p3. Available at:

https://www.cas.org.uk/system/files/publications/living_at_the_sharp_end_-_2016.pdf

¹⁹ 'Personal Independence Payment Claimant Research Final Report' DWP, September 2018, p. 9

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738909/summary-personal-independence-payment-claimant-research-final-report.pdf

²⁰ Ibid, p.8

did not submit any additional supporting evidence, the main reason was not knowing that they could'.²¹

The MR statistics across Surrey boroughs show that many people (631 in the last fiscal year as shown in the table on page 8) require external help from organisations such as Citizens Advice with the MR process. At Citizens Advice Mole Valley, staff have struggled to cope with the influx. This report suggests that the MR process is confusing, poorly understood and a significant drain on Citizens Advice resources and on other organisations similar to ours, as well as on claimants.

Finding 5: The introduction of MR provides the opportunity to slow down or even stall the PIP process.

Disability Rights UK published a survey on 18th April 2017 in response to the Work and Pensions Committee Inquiry on PIP 6th March 2017, with responses from advice workers from over 300 organisations that give advice directly to disabled people. One response states the following: 'from my experience the Mandatory Reconsideration process only serves to delay a decision being made and means the claimant is left a long time waiting for a decision. Also, in nearly all cases the reconsideration process only supports the original decision, thus leading to the more time consuming and court time wasting appeal process.'²² Similarly, The Second Independent Review 2017 found that 'Tribunal Judges were also sceptical about the thoroughness of the MR 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.'²³ Since the release of that review, tribunal decisions overturning those made at assessment and MR have steadily increased from 65%²⁴ to 73% of appeals.

At the time of writing this report, two months after Kasia's tribunal date, she had still not received any PIP payment. In Magid's case, DWP informed them they would be appealing the tribunal's decision to award PIP, despite the Citizens Advice office assisting him seeing no obvious reason for them to do so. DWP only finally confirmed that they were not in fact appealing after the Citizens Advice contacted them and escalated the query. At present it is hard to be certain about what is causing these delays; however, the cost of MR and appeals for DWP is very low²⁵. The most recent data, taken from the supporting statistics from the Work and Pensions Select Committee PIP and ESA assessments inquiry 2017²⁶, shows the following breakdown: PIP MRs including training: £55.07, PIP Reassessment MRs: £37.89, PIP Appeals including training: £211.39. PIP reassessment appeals: £93.9. This means that one person who is entitled to a PIP award but wrongly gets nothing could save DWP in two years around one hundred times the cost of the MR, which may provide an incentive to slow down or even stall the

²¹ Ibid, p.8

²² Disability Rights UK, 18th April 2017, 'Disability Rights UK response to the Work and Pensions Committee inquiry on Personal Independence Payment (PIP)', Compiled by Ken Butler, <https://www.disabilityrightsuk.org/disability-rights-uk-response-work-and-pensions-committee-inquiry-personal-independence-payment-pip>

²³ 'The Second Independent Review of the Personal Independence Payment Assessment', Paul Gray, March 2017, p.45 Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604097/pip-assessment-second-independent-review.pdf

²⁴ 'The Second Independent Review of the Personal Independence Payment Assessment', Paul Gray, March 2017, p.9 Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604097/pip-assessment-second-independent-review.pdf

²⁵ Benefits and Work, 11th December 2017, Why the DWP is happy to lose so many cut-price PIP and ESA appeals, Available at: <https://www.benefitsandwork.co.uk/news/3698-why-the-dwp-is-happy-to-lose-so-many-cut-price-pip-and-esa-appeals>

²⁶ Work and Pensions Select Committee PIP and ESA assessments inquiry supporting statistics, Tables, 4th December 2017, Sheet 24 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676491/tables-work-and-pensions-select-committee-pip-and-esa-assessments-inquiry-supporting-statistics.xlsx

PIP process. Most people who lose at MR do not go on to appeal, foregoing a significant chance of winning the PIP award they are entitled to.

Exploration of four recommendations

Based on the findings listed above, the four recommendations of this report regarding mandatory reconsideration (MR) in the Personal Independence Payment (PIP) process are as follows:

Recommendation 1: MR should be amended to an efficient, independent check that occurs automatically should a claimant apply for appeal, to rule out administrative or other obvious errors.

Another response to the Disability Rights UK survey states the following case for removing the MR process: 'We get very few decisions changed at this stage even when all the information supplied is the same as used when going to successful appeals. SO, NO, abolish it'.²⁷ This report takes into account these sentiments, whilst also considering the views expressed by Kayley Hignall (Head of Policy - Family, Welfare and Work at Citizens Advice) and Gary Edwards (Manager - Southampton Advice and Representation Centre) at the Work and Pensions Committee inquiry 2017.²⁸ Excerpts from the oral evidence submitted to this inquiry and a link to the full transcript can be found in Appendix D below. In discussion with the Chair, Frank Field, they assert that whilst MR in its current form has many problems, when performed correctly it can save people from the trauma of going through an appeal and that consequently some form of independent check would be preferable to abolishing MR completely.

This report suggests that if this were the case, MR would need to take place at pre-appeal stage. As referred to by the Chair of the inquiry, this was the case before the introduction of MR for the PIP process in April 2013. For example, if the claimant applies for appeal after the initial decision is made, MR should be performed automatically and should take the form of a quick scan for obvious administrative or otherwise blatant errors in the original assessment. It should not require an application from the claimant in order to avoid causing extra stress or confusion or unnecessary delay to the process. In addition, DWP should provide assurances that this form of MR was conducted by someone independent from the first decision maker in order to provide a genuine second opinion. A concern is that if MR were abolished entirely at this stage, without a significant overhaul of PIP assessor training and decision-making processes, DWP will continue to make incorrect decisions and even more claimants will progress to appeal, as they won't be put off at MR stage. A truly independent quality check, requiring no input from the claimant, combined with both better assessor training and more time and clarity in the evidence gathering stage, as detailed in recommendation 2 and 3 below, could result in less claimants unnecessarily going through an appeal.

Recommendation 2: The PIP assessment process should be improved and brought in line with decisions made by tribunal judges, especially with regard to fluctuating

²⁷ Disability Rights UK, 18th April 2017, 'Disability Rights UK response to the Work and Pensions Committee inquiry on Personal Independence Payment (PIP)', Ken Butler, <https://www.disabilityrightsuk.org/disability-rights-uk-response-work-and-pensions-committee-inquiry-personal-independence-payment-pip>

²⁸ 'Personal Independence Payment inquiry, Work and Pensions Committee Oral evidence: Personal Independence Payment, HC 1067', 6TH March 2017, p.13-14 Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/personal-independence-payment/oral/48725.pdf>

physical and mental health conditions, in order to reduce the need for MR its current form and potentially relieve pressure on HMCTS.

The primary focus of PIP reform as a whole should be on improving the assessment process by providing more rigorous training for PIP assessors, so that the disparity between assessor decisions and tribunal decisions is greatly reduced. The first Independent Review in 2014 highlighted concerns surrounding the reliability of the PIP assessment process,²⁹ especially with regard to fluctuating and mental health conditions.³⁰ All three case studies in this report took place at least 3 years after this recommendation was made, suggesting any improvements made in this area have not been adequate.

Based on the case studies and wider research on PIP claimant experiences, this report argues that tribunal judges are making more accurate decisions than DWP. Bringing DWP decisions in line with those of tribunal judges would significantly reduce the need for MR in its current form, as claimants would be far more likely to be correctly assessed and awarded PIP after the initial assessment, with any obvious errors being caught by the independent check proposed in recommendation 1 above. The demand for PIP appeals could also be reduced if claimants were more likely to receive the appropriate award without having to progress to a tribunal. There is a risk that PIP appeals could increase without the off-putting barrier of applying for MR. However, the intention of an automatic, independent, pre-appeal check would be to filter out the obvious cases that seem to comprise such a high percentage of tribunal judges' workload and leave only complex cases that are appropriate for a tribunal. Furthermore, for the whole of 2014 appeal overturn rates for Disability Living Allowance (DLA - the disability benefit replaced by PIP), were consistently between 42% and 49%. This is much lower than the current PIP appeal overturn rate of 73%, which has steadily risen almost every quarter after the new benefit was introduced³¹. Nevertheless, the appeal rate would need to be closely monitored and reviewed as changes to the PIP process are made.

Recommendation 3: Clarification should be provided by DWP regarding the provision of medical evidence.

Because there is a poor success rate at application and MR compared with appeal, which allows more preparation, the focus of any PIP process improvement should be on giving people more time and guidance when preparing and gathering medical evidence at the first stage, as well as improving the initial PIP assessment, as outlined in the section above. There is confusion surrounding the provision of medical evidence at several stages in the PIP process, with many claimants struggling to provide evidence that may help them get an accurate PIP award. Wave two of the Final Report by DWP found that among the 1,203 survey respondents 'there was a widespread misconception... that DWP would gather medical evidence as part of the assessment process.'³²

²⁹ 'An Independent Review of the Personal Independence Payment Assessment', Paul Gray, December 2014, p.59 - 64, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/pip-assessment-first-independent-review.pdf

³⁰ Ibid, p. 61-62

³¹ Tribunal and GRC Statistics Quarterly, January to March 2015 (Provisional), p.16, 11th June 2015, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf

³² 'Personal Independence Payment Claimant Research – Final Report Summary', DWP, p.5, September 2018, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738909/summary-personal-independence-payment-claimant-research-final-report.pdf

In Kasia's case this misconception extends to the MR stage, at which point she believed that DWP would contact the psychology unit at the hospital for a recent assessment of her needs. She did not discover until she received her MR decision notice that DWP did not consider this to be within their remit and had not contacted the hospital. Furthermore, Jocelyn's GP in Case Study 2 was confused about their role in the PIP process and wanted to speak to someone at DWP about their concerns regarding providing continuous sick notes for a patient whose condition was not going to change. The Final Report found that of the '29 per cent of claimants who did not submit any additional supporting evidence [at MR] the main reason was not knowing that they could.'³³

Finally, in both Kasia and Jocelyn's cases, more weight was afforded at tribunal to their oral evidence and medical bundle than the observational evidence provided by DWP's contracted assessors. DWP should provide clarification on whose responsibility it is to gather evidence at each stage, what kind of evidence is required and permitted at each stage and what health practitioners should be expected to provide.

Recommendation 4: Further research should be conducted into the reasons behind the delays in receiving MR decision notices, as well as other forms of delay detailed in the case studies.

All three people in the case studies in this report were left struggling financially for weeks longer than necessary due to the MR process. This was as a result of the excessive time taken to receive MR decision notices and problems completing the MR application. For example, this was the case with Jocelyn in Case Study 2 due to the nature of her health condition impeding her ability to concentrate. The DWP allow themselves an indefinite amount of time to return MR decision notices, whilst vulnerable claimants with a variety of disabling conditions are subject to a one month time limit for MR applications. This pressure is likely to cause further undue stress, as was the case with Jocelyn. Other forms of delay include the kind experienced by Kasia in Case Study 3, who had not been awarded any PIP at the time of writing this report, over 2 months since her appeal date. Additionally, Magid's PIP award in Case Study 1 was subjected to further delay after DWP proposed to appeal the tribunal's decision and then failed to inform him that they were not in fact appealing until Citizens Advice chased them for clarification. This report suggests that there is evidence worthy of further research and monitoring regarding unnecessary delays within the PIP process at DWP, at the expense of the most vulnerable members of society. These delays are causing enormous distress to our clients and disabled people nationwide, as well as wasting HMCTS resources.

Appendices

1 - Background of Personal Independence Payment (PIP) (Paraphrased from An Independent Review, 2014³⁴)

- PIP gradually replaced Disability Living Allowance (DLA) from April 2013 (for people aged 16-64).

³³ 'Personal Independence Payment Claimant Research – Final Report Summary', DWP, p.8, September 2018, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738909/summary-personal-independence-payment-claimant-research-final-report.pdf

³⁴Paraphrased from 'An Independent Review of the Personal Independence Payment Assessment', Paul Gray, December 2014, p.2 - 5, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387981/pip-assessment-first-independent-review.pdf

- The new system was introduced in the context of fiscal austerity.
- It followed a 30% increase in DLA case load over previous 20 years.
- PIP was designed to balance the interests of taxpayers with the goal of targeting support on disabled people with the greatest challenges to remaining independent and participating in society.
- PIP also forms part of the Department's annually managed expenditure (AME) that is now constrained by the Welfare Cap. Higher (or lower) than planned costs of PIP can therefore now have consequences for other areas of social security spending.
- The intended shifts from DLA were:
 - A move to a more transparent and objective assessment of need, with assessments by health professionals employed by contracted providers, Atos and Capita.
 - A stronger emphasis on assessment of the functional impact of claimants' underlying disabling and medical conditions, not the conditions themselves.
 - A points-based system to assess eligibility for awards.
 - More regular reviews of eligibility for those receiving awards.
 - A greater focus on the needs of claimants with mental health conditions.

2 - Background of Mandatory Reconsideration (MR)

- 'MR was introduced in April 2013 for PIP claims'³⁵. This was 'as part of the appeals reform for all DWP administered benefits. The aim was to resolve disputes as early as possible and reduce unnecessary demand on HMCTS.'³⁶
- 'Once a claimant has received notification of their PIP award, they have one month from the date of the original decision to request an MR if they wish to dispute it.'³⁷
- DWP will then review the original decision made at assessment stage. 'The claimant must first ask the Department to reconsider the decision in this way before they can take their case to an Appeal Tribunal.'³⁸
- 'DWP doesn't have to make the decision within a specific timescale and sometimes it can take several months for a claimant to get a decision letter. This letter is called a 'Mandatory Reconsideration Notice.'³⁹
- If DWP changes their decision and the claimant is awarded PIP, the claimant should start getting their PIP payment straight away, backdated from the date of original application.
- 'If the MR is turned down the claimant can then appeal to a tribunal'⁴⁰.

3 - PIP award breakdown⁴¹

- There are two sections in the PIP test for each component of PIP: daily-living and mobility.

³⁵ 'Employment and Support Allowance and Work Capability Assessments', Work and Pensions Committee, 23rd July 2014, <https://publications.parliament.uk/pa/cm201415/cmselect/cmworpen/302/30209.htm>

³⁶ 'The Second Independent Review of the Personal Independence Payment Assessment', Paul Gray, March 2017, p.45 Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604097/pip-assessment-second-independent-review.pdf

³⁷ Ibid.

³⁸ Ibid.

³⁹ CitizensAdvice.org.uk, 'Challenging a PIP decision – Mandatory Reconsideration', Available at: <https://www.citizensadvice.org.uk/benefits/sick-or-disabled-people-and-carers/pip/appeals/mandatory-reconsideration/>

⁴⁰ Ibid – Paraphrased.

⁴¹ Personal Independence Payment (PIP) Assessment - What is the PIP test?, turn2Us, [https://www.turn2us.org.uk/Benefit-guides/Personal-Independence-Payment-\(PIP\)-Test/What-is-the-PIP-test](https://www.turn2us.org.uk/Benefit-guides/Personal-Independence-Payment-(PIP)-Test/What-is-the-PIP-test)

- There are activities in each section. You are awarded points for each activity, depending on your ability and how much help you need to do it. The points you score for each activity in a section are added together.
- If you score between eight and 11 points for your daily living needs in the PIP test, you get the standard rate of the daily living component. You get the enhanced rate of daily living component if you score 12 points or more.
- If you score between eight and 11 points for your mobility needs you get the standard rate of the mobility component. If you score 12 points or more you get the enhanced rate of mobility component.

4 - An Independent Review of the Personal Independence Payment Assessment, Paul Gray, December 2014

The Welfare Reform Act 2012 mandated two Independent Reviews of PIP. Paul Gray was selected to conduct these reviews.

Here are the key relevant findings of the First Independent Review:

- Main areas where comments were received from claimants and their representatives were... views that the impact of fluctuating conditions and mental health conditions may not be being appropriately addressed. (p.6)
- Some concerns have been expressed about the challenges for claimants with mental health conditions and learning disabilities in navigating the assessment process; this may have an impact on whether claimants in these groups are receiving appropriate outcomes from assessments and awards. (p.9)
- Psychiatric disorders (mental illness) in the charts above is the grouping for around 30 specific conditions including agoraphobia, depressive disorder, dementia and schizophrenia. This data shows that around 31 per cent of PIP non-SRTI claimants have psychiatric disorders (mental illness) as their main disability, with 33 per cent of all standard and enhanced daily living awards and 21 per cent of all standard and enhanced mobility awards falling into this category. (p.29)
- Many claimants, people who support claimants and disability organisations felt the assessor did not demonstrate an understanding of their condition and this was particularly strongly expressed in relation to mental health conditions. (p.38)
- Some health and social care professionals perceive that the assessment is not always effective for non-SRTI (normal rules) claims, especially for people with fluctuating conditions and mental health conditions. (p.45)
- Based on observations of face-to-face assessments and discussions with health professionals, the Review noted that health professionals sometimes feel they have sufficient knowledge about conditions and further evidence to understand the potential for reliability considerations and fluctuations without probing explicitly during the assessment. (p.61)

5 - The Second Independent Review of the Personal Independence Payment Assessment, Paul Gray, March 2017

Here are the key relevant findings of the Second Independent Review:

- Claimants expressed concern about the Mandatory Reconsideration process, in particular when relating this to the provision of Further Evidence, with many feeling that their decision was not looked at again in a sufficiently thorough way.(p.) Many felt that their evidence was ignored, with the reconsideration process being deemed to be a “rubber stamp” rather than a thorough audit of the original decision.(p.45)
- 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. (p.9)
- Currently 65% [as March 2017, figure from October to December 2018 is 73%) of appeal hearings overturn the initial decision. This is eroding the trust of claimants and stakeholders in the system. The Review has heard from claimants in the Call for Evidence and during focus group meetings, who have stated they could not face the stress of going through an appeal and decided against disputing the decision on their claim. In addition, the Review recognises the negative impact of the process on claimants who have appealed and subsequently had their award reinstated. (p.9)
- Discussions with Tribunal Judges have suggested that, rather than further written evidence, it is cogent oral evidence from the claimant at the hearing that is by far their most common reason for overturning decisions. This either means that this evidence is not sufficiently well-collected during the assessment or is not convincingly analysed or written-up. It may also mean that Tribunal Judges and Health Professionals are routinely coming to differing judgements based on the same evidence. (p.47)
- None of these is a comfortable conclusion to reach. The better the quality of the initial assessment and decision making process] is, the more likely it is that pressure on the reconsideration and appeals processes will be eased, and ultimately lead to improvement in the claimant experience... the Review would observe that the differing perceptions of why so many appeals overturn initial decisions highlights the case for further research into that question. (p.47)
- The Department should undertake and publish further research on the operation of PIP, in particular covering the consistency of outcomes, the effectiveness of Award Reviews and the effectiveness of the Mandatory Reconsideration process. (p.68)

6 - Personal Independence Payment inquiry, Work and Pensions Committee Oral evidence: Personal Independence Payment, HC 1067, 6TH March 2017

On the 6th March 2017, the Work and Pensions Committee heard oral evidence for an inquiry into PIP, chaired by Frank Field.

Relevant comments are included below from witnesses Sam Ashton (Senior Policy and Campaigns Officer, Z2K), Gary Edwards (Manager, Southampton Advice and Representation Centre (SARC)) and Kayley Hignell, (Head of Policy (Families, Welfare and Work), Citizens Advice):

- **Sam Ashton:** Of the hundreds of PIP cases, we have only seen an award change that Mandatory Reconsideration twice. Although we try to submit new evidence and we put in the

same arguments that we would in our appeal submissions of Mandatory Reconsideration, there is a complete failure by DWP decision-maker to properly re-examine the decision. (p.12)

- **Sam Ashton:** I would be delighted if [abolishing MR] were a recommendation you would consider. If you look at the statistics, at Mandatory Reconsideration an award has only been changed in 15% of cases. That is out of 280,000 Mandatory Reconsiderations. If you compare that to the 60% success rate at appeal, it shows that the appeal is getting it right and overturning on vastly more cases than at Mandatory Reconsideration.

Gary Edwards: I understand where Sam is coming from but I think our experience is we would like to keep it, because it does mean that some people don't have the trauma of going to an appeal.

Kayley Hignell: I would agree with colleagues here that there are a lot of problems with Mandatory Reconsideration, such as pure process, people knowing that they have fulfilled the process of submitting a Mandatory Reconsideration, knowing when the Mandatory Reconsideration is completed, knowing that it is not an appeal. A lot of our clients think that they have appealed when they go to Mandatory Reconsideration.... I would not abolish it for the same reasons as Gary, in the sense that we do want DWP to look at these decisions seriously and avoid delays.

Chair: They could do that pre-appeal stage, couldn't they, which they used to?

Kayley Hignell: Yes, so you could have a check at any point. The crucial bit is that there is another check on the decision, somebody independent from the first decision-maker. (p.13-14)

7 - Disability Rights UK response to the Work and Pensions Committee inquiry on Personal Independence Payment (PIP) 18th April 2017

Disability Rights UK (DR UK) is a pan disability membership organisation led by disabled people seeking change. Our membership includes individual disabled people and organisations working on their behalf including disabled people led organisations (DPULOs).

The following evidence is taken from the DRUK website:

Our evidence to the [Works and Pensions Committee inquiry on Personal Independence Payment (PIP)] has been informed by the response to a 'snap' survey we carried out among our individual members and organisation members. We received over 80 responses.

Q7 Is the Mandatory Reconsideration stage functioning properly? How could it be improved, or should it be abolished?

The common viewpoint of survey respondents was that PIP Mandatory Reconsideration process "seems pointless" and appears simply to "rubber stamp" the initial decision. Among advisers' comments were:

- "We get very few decisions changed at this stage even when all the information supplied is the same as used when going to successful appeals. SO, NO, abolish it."

- "In my experience, Mandatory Reconsideration don't change the decision made by the initial PIP assessment - it is at Appeal stage when the outcomes has been overturned. It feels like this stage is just drawing out the process for claimants".
- "I find hardly any decisions, even those highly evidenced are altered at this stage. They tend to stand by the decision of the assessor, even if further medical evidence has been supplied."
- "From my experience the Mandatory Reconsideration process only serves to delay a decision being made and means the claimant is left a long time waiting for a decision. Also in nearly all cases the reconsideration process only supports the original decision, thus leading to the more time consuming and court time wasting appeal process."

Q8 What is the impact on claimants of delays in getting an accurate decision on their claim, and how could this be reduced or better managed?

- If the assessment process were conducted in a fair and unbiased manner, there would be far less need for MRs or appeals. The process of filling in forms, gathering evidence and attending face to face assessments, MRs and Appeals, often alongside ESA awards reviews is a punishing process for our members who have very limited resources of energy and the continual stress caused by this relentless process leads to relapses and more members becoming housebound and bedbound as a result.

8 - Personal Independence Payment Claimant Research – Final Report Summary, DWP, September 2018

In their response to The Second Independent Review, the government claimed they would produce an overarching final report in early 2018(p.22). This final report, consisting of three waves of qualitative and quantitative research exploring claimants' experiences of the PIP claim process, was published in September 2018.

Here are the relevant key findings:

- The qualitative research revealed that claimants were sometimes reluctant to contact DWP for advice or further information after receiving their decision letter, due to concerns that it would not be impartial. There was also some confusion among participants in the qualitative research about the difference between MR and appeal, and why it was necessary to go through MR before being able to appeal. (p.8)
- At MR, 65 per cent of claimants submitted additional supporting evidence, although of these, 35 per cent said they submitted evidence they had already provided. The main reasons for submitting additional evidence at MR, rather than earlier in the process, were that they did not have it in time for the original application (29 per cent) or that they did not know it would be useful when they submitted their application (27 per cent). Among the 29 per cent of claimants who did not submit any additional supporting evidence, the main reason was not knowing that they could. (p.8)
- Some claimants who requested MR also reported on their initial and post-MR award outcome in this survey. Half of these claimants reported they did not receive an award at either stage

(52 per cent). One-quarter had an award which was not changed after MR (25 per cent) and 15 per cent received a new or improved award as a result of MR. These outcomes broadly reflect the outcomes of MR applicants as a whole. (p.9)

- About half of claimants agreed that DWP made it clear how they had reached their decision (53 per cent) and one-quarter felt the decision was based on all the information available to DWP (25 per cent). This is lower than the 68 per cent who felt their form, assessment and evidence had been taken into account in reaching the original decision. (p.9)
- Most (61 per cent) claimants agreed that information in the MR notice about appeals was clear but one-third (33 per cent) did not. Over three-quarters (77 per cent) did not seek any information or advice from DWP about the appeals process before making an appeal. Where information was sought from DWP, over half (58 per cent) said the information was clear, while 35 per cent said the information was not very or not at all clear. The main reasons for appealing the MR decision among those who had no change to their award at MR were that they did not get an award (42 per cent), that DWP did not take their evidence into account (26 per cent) or that the assessor was unfair at the face-to-face assessment interview (25 per cent). (p.6)
- The qualitative research also showed that some claimants doubted their application had been properly reconsidered at the MR stage, as the initial decision letter and MR notice were so similar. (p.9)
- Of those who did not appeal their decision after having no change to their award at MR, the main reason was that the process would be too stressful (37 per cent), while one fifth mentioned that they did not expect the award to change (20 per cent) or that they were too unwell (20 per cent). The reasons identified in the qualitative research included not being able to get help to navigate the appeals process, the view that the stress and anxiety that an appeal would cause would be detrimental to their condition, and not having the physical and emotional energy that the appeals process was deemed to require. (p.9)
- For those survey participants who appealed and also reported on their post-MR and appeal award outcome, over half went from having no award at MR to having an award, or having an increase in their award (34 per cent and 22 per cent respectively). (p.10)
- Participants were asked what they considered to be the reason for their award changing at appeal. The main reason given for the outcome among those who received a new or improved award after appeal was a belief that the original assessment understated their condition (23 per cent). The qualitative research showed that claimants felt the tribunal panel were independent and impartial and valued the expertise of the doctor on the panel. (p.10)
- After the appeal outcome, the majority said they understood the decision (83 per cent), how the judge reached their decision (73 per cent) and the reasons for the decision (74 per cent) which shows a higher level of understanding than after MR. (p.10)

9 - Citizens Advice Scotland (CAS) – Burden of Proof Summary May 2017

Here is relevant information on MR from a CAS report on the role of medical evidence in the benefits system:

- Many clients experience barriers when obtaining evidence at Mandatory Reconsideration stage, including tight timescales, physical and mental health conditions, as well as financial barriers. (p.2)
- Tribunal receipts were lowest during the period between January to March 2014 (the year following the introduction of Mandatory Reconsideration), and 67% lower than the same period of 2013. Social Security and Child Support (SSCS) accounted for 38% of these receipts and drove the overall downward trend. The official report from this quarter suggests that “this could be due to ... the introduction of Mandatory Reconsideration across DWP benefits.”²⁵ However, the most recent official statistics from the HMCTS shows that social security appeals have been increasing since April-June 2014. For the October to December 2016 quarter, when compared to the same quarter in 2015, overall receipts for all tribunals increased by 4% while Social Security and Child Support (SSCS) tribunal receipts increased by 47%. The official report recognises that “this increase is driven by two types of benefit – Personal Independence Payment and Employment Support Allowance, up 71% and 58% respectively”²⁶. (p.19)

10 - Citizens Advice Scotland – Living at the Sharp End Report - 2016

Here is relevant information on financial effects of benefits delays from a CAS report on CAB client in crisis, all taken from the ‘Conclusions’ section on page 68:

- Recent changes to the social security system, benefit rates not keeping pace with inflation, low pay, insecure work and rising costs of living have all contributed to people’s decreasing resilience to income shocks. Where someone on a higher salary might call a gap in income or sudden, unexpected high expenditure a ‘cashflow’ problem, and resort to savings or credit; someone who has been in receipt of income replacement benefits or minimum wage from a part time job will not have any savings to resort to and therefore no resilience to endure a gap in income of even one week.
- Citizens advice bureaux in Scotland too often see clients who arrive hungry, having not eaten in a number of days, with no money for gas, electricity or other essentials. Bureaux are also increasingly seeing clients who have exhausted all forms of government provided support and whose only option is to go to a food bank. This suggests that the root causes of the problem are not being addressed, either by the individual or by service providers.
- The causes of gaps in income are complex and various, and can include sudden, unexpected changes in personal circumstances, employment related issues, health related issues and debt related issues, but gaps in income for CAB clients are most often caused by the benefits system. Loss of mail within DWP systems, processing times, lack of eligibility for benefits during a reconsideration and benefit sanctions are all factors which can result in a client experiencing a gap in payments. Furthermore, CAS evidence has shown that there is a lack of awareness amongst benefit claimants of Short-Term Benefit Advances and Hardship Payments, and DWP provided crisis support is not always quick and responsive enough to address people’s immediate need. The UK Government and DWP should introduce policies to prevent these problems occurring, and to provide adequate support to individuals who do experience problems with their claims. Spending any amount of time without income can have serious consequences for an individual’s relationships, stability, mental and physical health. It can also lead to the accumulation of arrears which are often recovered through direct deductions from

benefits payments. CAS evidence has shown that young people, those unable to work due to ill health and those with a disability are disproportionately affected by acute deprivation of income. It is some of the most vulnerable people in society who endure this kind of financial hardship and destitution; the Scottish and UK Governments should introduce policies that better protect those with ill health, disabilities and those at the outset of their adult lives.

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