



House of Commons
Work and Pensions Committee

Decision making and appeals in the benefits system

Second Report of Session 2009–10

*Report, together with formal minutes, oral and
written evidence*

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The Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

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Contents

Report	<i>Page</i>
1 Introduction	3
2 The Decision Making and Appeals (DMA) System: 1998 reforms to present	5
DMA reforms since 1998	5
Responsibility for decision making	5
Challenging decisions	5
Responsibility for appeals	6
Monitoring standards of decision making	7
Impact of reforms to DMA	7
Abolition of the roles of Chief Adjudication Office (CAO) and Adjudication Officer (AO)	8
Measures of decision making standards	8
Monitoring standards of decision making	11
3 Collecting and Evaluating Evidence	16
Collecting evidence	16
Benefit complexity	16
Claim forms	17
Medical assessments	18
Evaluating the evidence	21
Weight given to medical assessments	21
Training for decision makers	22
Contact with claimants	24
Notification Letters	25
4 Reviewing Decisions	28
The dispute period	28
Reconsiderations for DLA and AA	29
Reconsideration for Incapacity Benefit (IB) and Employment and Support Allowance (ESA)	31
5 The Appeals Process	34
Appeals guidance	34
Welfare rights advice	34
Time limits for submitting evidence	35
Recording appeals as an end-to-end process	36
Oral hearings	37
Claimants' experience of the tribunal	38
Employment and Support Allowance appeals	39
Attendance of DWP presenting officers	40
Feedback to individual decision makers on appealed decisions	41
Reducing the number of appeals: the Alternative Resolution Pilot	42
6 Conclusion	43

Recommendations	45
Annex A : Appeals Statistics	52
Annex B: Organogram of the decision making and appeals process	55
Annex C: Note of meeting with judges from the Administrative Appeals Chamber of the Upper Tribunal, 22 October 2009	56
Annex D: Note of Committee visit to Leeds, 2 November 2009	59
Formal Minutes	67
Witnesses	68
List of written evidence	68
List of Reports from the Committee during the current Parliament	70

1 Introduction

1. The current system for decision making and appeals in connection with social security benefits was established following the introduction of the Social Security Act 1998. This legislation passed ultimate responsibility for benefits decisions from the Chief Adjudication Officer to the Secretary of State for Work and Pensions. The task of everyday decision making is carried out by a large number of staff in Jobcentre Plus, the Pension, Disability and Carers Service and local authorities who make decisions on claimants' entitlement to social security benefits.

2. In 2003, the National Audit Office (NAO) published a report on improving the Department of Work and Pensions' (DWP) decision making standards. The report concluded that standards "remain a concern" and recommended that DWP should take action to improve decision makers' training, address inconsistencies in decision making, set minimum standards for the process of reconsidering decisions, increase the proportion of decisions that are pre-checked, make more effective use of personal communication with claimants, and improve the way in which decision making standards are monitored.¹

3. It is clear from the evidence we have received that DWP has responded to some of the NAO's recommendations. However, there remain areas in which it has either yet to improve or is simply not adequately reporting its progress. We have spoken to claimants, their representatives and officials to examine the effectiveness of the existing system, particularly for those claimants who challenge a DWP decision by either asking for a reconsideration or choosing to appeal against it.

4. We invited written evidence for this inquiry on 2 July 2009. Memoranda were received from both individuals and organisations. The organisations that submitted written evidence were Age Concern/Help the Aged, CLIC Sargent, RSI Action, Work Directions, Vocalink, West Lothian Council Revenue and Benefit Unit, Asbestos Victims Support Groups' Forum UK, T_hCell, Public and Commercial Services Union (PCS), National Association of Welfare Rights Advisers (NAWRA), Parliamentary and Health Service Ombudsman, the National AIDS Trust, The Action Group, Centrepoint, the Tribunals Service, RNIB and Action for Blind People, Mind, The National Deaf Children's Society (NDCS), The National Autistic Society (NAS), Lancashire County Council Welfare Rights Service, the Department for Work and Pensions (DWP), the Parkinson's Disease Society, Citizens Advice and the Administrative Justice and Tribunals Council. The Committee also received memoranda from HH Judge Robert Martin, President of the Social Entitlement Chamber, Neil Bateman (a welfare rights adviser) and a number of individual claimants, some of whom requested anonymity.

5. The Committee took oral evidence on Monday 26 October from Patrick Hill, Housing and Welfare Rights Officer, HARP—Manchester Assertive Outreach and member of the National Association of Welfare Rights Advisers (NAWRA); Daphne Hall, Welfare Rights Adviser, Bristol City Council Welfare Rights and Money Advice Service and member of the National Association of Welfare Rights Advisers (NAWRA); Alan Barton, Social Policy

¹ National Audit Office (2003), *Getting it right, putting it right—Improving decision making and appeals in social security benefits*, pp.8–9

Officer, Citizens Advice; Paul Farmer, Chief Executive, Mind; Dr Mark Baker, Head of Social Research and Policy, Royal National Institute for Deaf People (RNID) and Sally West, Policy Adviser (Income), Age Concern/Help the Aged.

6. We also took oral evidence on Monday 9 November from HH Judge Robert Martin, President of the First tier Social Entitlement Chamber and Jonathan Shaw MP, Minister for Disabled People, who was supported by Jeremy Groombridge CB, Director of Transformation and Product Management, Jobcentre Plus, Vivian Hopkins, Chief Operating Officer, Pension, Disability and Carers Service and Kevin Sadler, CEO, the Tribunal Service.

7. As part of the inquiry, we also undertook a visit to Leeds, where we met officials from the DWP, Jobcentre Plus, the Pension, Disability and Carers Service and the Tribunals Service in addition to groups of claimants and welfare rights advisers. We also met informally with a number of judges from the Administrative Appeals Chamber of the Upper Tribunal. Reports on all of these meetings are contained in Annexes C and D to this report. We are extremely grateful to all of those who took the time to meet with us and for the valuable input they provided into our inquiry.

8. We would also like to thank Professor Roy Sainsbury, Research Director of the Social Policy Research Unit at the University of York for assisting us as Specialist Advisor during the inquiry.² We very much appreciate the contribution he made to our work.

² The Committee formally noted that Professor Sainsbury had no relevant interests at its meeting on Wednesday 1 July 2009. Formal minutes of the Committee are available at http://www.parliament.uk/parliamentary_committees/work_and_pensions_committee/wapfmhomepage.cfm

2 The Decision Making and Appeals (DMA) System: 1998 reforms to present

DMA reforms since 1998

9. DWP's decision making and appeals (DMA) system was established following the introduction of the Social Security Act 1998. This legislation paved the way for a major overhaul of the DMA process with the aim of improving the accuracy of decision making and reducing error. There were four areas in which significant changes were implemented: responsibility for decision making; challenging decisions; responsibility for appeals; and monitoring standards of decision making.

10. In its 2003 report, the NAO produced a flow-diagram to illustrate the complex DMA process. We have reproduced this diagram at Annex B to the report.³

Responsibility for decision making

11. Section 1 of the Social Security Act 1998 transferred responsibility for all decision making from adjudication officers to the Secretary of State. Before the 1998 reforms, decisions regarding legal entitlements to benefits or child support were made by adjudication officers or child support officers, under the authority of the statutorily independent Chief Adjudication Officer, whereas administrative decisions (such as those concerned with information collection) were taken under the authority of the Secretary of State.

12. The consultation that preceded the introduction of the Act found that respondents who were in favour of the creation of a single status decision maker supported the proposal because they believed it would help to create a simplified and efficient system, which in turn, was expected to improve decision making accuracy. Those who opposed the change, argued that the transfer of responsibility for decisions from adjudication officers to DWP decision makers would compromise the independence of the decision making process.⁴

Challenging decisions

13. Prior to the 1998 reforms, claimants had three months in which to appeal against a decision. For some benefits, such as Disability Living Allowance, there was an in-built formal review before an appeal, whereas for other benefits, such as Income Support, adjudication officers could only review decisions where there was an error of law, a mistake in material fact, or a relevant change of circumstances.⁵

³ Adapted from National Audit Office (2003), *Getting it right, putting it right improving decision making and appeals in social security benefits*, HC 1142 Session 2002–03: 7 November 2003

⁴ Department of Social Security (1997) *Consultation on Improving Decision Making and Appeals in Social Security: Analysis of responses* pp 24–25

⁵ Department of Social Security (1997) *Consultation on Improving Decision Making and Appeals in Social Security: Analysis of responses* p 29

14. Following the reforms, the process of challenging a decision changed in two fundamental ways. Firstly, Section 9 of the Social Security Act 1998 introduced the possibility for decisions to be either revised, without needing to establish grounds for a review, or to be superceded. A revision would replace the original decision and take effect from the date that decision was first made. A supersession would insert a new decision that would take effect from a date later than the original decision. Secondly, the time limit in which claimants were able to request that their decision be either reviewed (reconsidered) or superceded was reduced from three months to one month.

15. Again, the consultation elicited different opinions on these proposals. Those in favour of the introduction of new methods of reconsideration, particularly if, as the Green Paper suggested, they could be conducted “by telephone or interview”, supported the extension of grounds on which a review could be undertaken and argued that the changes could reduce the number of “unnecessary” and “hopeless” cases progressing to appeal.⁶

16. Respondents who opposed the introduction of the new review procedures voiced their concern that claimants who were unsuccessful at this stage may feel discouraged and decide not to pursue an appeal they might win. Others argued that the introduction of a formal reconsideration process would create an additional tier that may increase the complexity of the DMA process for the claimant. In order to address these concerns, a number of respondents argued that the Benefits Agency (the body then responsible) should produce a written record of the review proceedings or a written, reasoned decision if appropriate.⁷

Responsibility for appeals

17. Section 4 of the Social Security Act 1998 created a system of unified appeal tribunals, to replace the Independent Tribunal Service. In its place, the Appeals Service was established, which comprised the tribunals responsible for the judicial functioning of appeals, headed by a President of Appeal Tribunals and an executive agency responsible for the administration of appeals.

18. The tribunal system was amended again in 2006, following the Leggatt review, which aimed to create a more coherent and rationalised structure by creating the Tribunals Service.⁸ In its memorandum to the Committee, the Tribunals Service explained that amendments to the administrative structure meant that:

“Tribunals outside the Ministry of Justice and its predecessors transferred into the new organisation, as well as new jurisdictions being added. One of the most significant impacts of the then Appeals Service (now SSCS) joining the Tribunals Service was the separation from DWP and the visible independence this brought by

⁶ Department of Social Security (1997) *Consultation on Improving Decision Making and Appeals in Social Security: Analysis of responses* pp. 31–32

⁷ Department of Social Security (1997) *Consultation on Improving Decision Making and Appeals in Social Security: Analysis of responses* pp. 35

⁸ Leggatt (2001) *Tribunals for Users One System, One Service: Report of the Review of Tribunals* by Sir Andrew Leggatt, March 2001

physically establishing the division between First Tier Agency decision makers and those responsible for the administration of appeals.”

19. Further reforms, following the Tribunals, Courts and Enforcement Act (2007), created a new judicial framework by bringing all tribunals into a two-tier system made up of expert judges, with total independence from Government.

Monitoring standards of decision making

20. The Social Security Act 1998 brought in new methods of evaluation for decision making. Prior to the Act’s implementation, standards of decision making were monitored by the Chief Adjudication Officer (CAO), who reported annually to the Secretary of State. When the role of CAO was abolished under the Act, new duties were introduced for the Secretary of State and the President of Appeal Tribunals. Section 8 of the Social Security Act 1998 called upon the Secretary of State to:

“[...] prepare, either annually or at such times or intervals as may be prescribed, a report on the standards achieved by the Secretary of State in the making of decisions against which an appeal lies to an appeal tribunal.”⁹

21. Schedule 1, Section 10 of the Act stated that:

“Each year the President shall make to the Secretary of State a written report, based on the cases coming before appeal tribunals, on the standards achieved by the Secretary of State in the making of decisions against which an appeal lies to an appeal tribunal; and the Secretary of State shall publish the report.”¹⁰

22. DWP also established a Decision Making Standards Committee, which is a non-executive body, that provides advice to the Chief Executives of Jobcentre Plus and the Disability and Carer’s Service. According to the Committee’s website, it was set up to “maintain an independent element within the decision making reporting process.”¹¹

Impact of reforms to DMA

23. The reforms made following the 1998 Act have now been in place for over a decade and DWP have told us that the current system “is accessible, thorough and comprehensive”.¹² We have considered in turn the major changes since 1998 and the ways in which their impact have been measured, including payment accuracy, claim clearance and error rates and appeals statistics.

⁹ Social Security Act 1998, Part IV, Section 81

¹⁰ Social Security Act 1998, Schedule, Section 10

¹¹ DWP Decision Making Standards Committee webpage: <http://www.dwp.gov.uk/publications/specialist-guides/dwp-decision-making-standards/what-we-do/>

¹² Ev 126, para 1.3

Abolition of the roles of Chief Adjudication Office (CAO) and Adjudication Officer (AO)

24. HH Judge Robert Martin, the President of the Social Entitlement Chamber of the First-tier Tribunal, argued that the abolition of the CAO and AO roles and the restructuring of responsibility in the decision making process had compromised objectivity by transferring responsibility from independent officers to departmental officials. He suggested that the previous system placed:

“[...] a premium on professional independent decision making. After the change which vested decision making in the Secretary of State and officers under the Minister there was a loss of that independence and operational pressures focusing on targets, which essentially were about the throughput of claims, took pride of place. I believe there was a deterioration in the quality of decision making through that internal reorganisation.”¹³

25. The Administrative Justice and Tribunals Council (AJTC) agreed that the post-1998 arrangements for DWP Chief Executives to have ultimate responsibility for decision making is “not generally perceived to be as independent as the former Chief Adjudication Officer”.¹⁴

26. We note the concerns of some witnesses that the transfer of responsibility for decision making to the Secretary of State for Work and Pensions from the Chief Adjudication Officer has led to a reduction in the independence of decision making and even a deterioration in the quality of decision making. We ask DWP to set out how the existing system safeguards objectivity in the decision making process.

Measures of decision making standards

27. The Department provided three alternative measures of its decision making standards: payment accuracy, claim clearance rates and official error.

Payment accuracy and clearance rates

28. In 2008–09, the Department had either reached or exceeded all but one of its targets for payment accuracy and claim clearance rates:

¹³ Q69

¹⁴ Ev 147, para 13

Figure 1 : DWP performance against payment accuracy and claim clearance rates targets

Benefit	Payment accuracy (%)	Payment accuracy target (%)	Average claim clearance rate (days)	Target for average claim clearance rate (days)
Carer's Allowance	99.4	98.0	12.4	13.5
Pension Credit	92.1	92.0	15	15.0
Housing Benefit / Council Tax Benefit	98	Not provided	26	Not provided
Disability Living Allowance ¹⁵	92.2	94.0	29.8	38.0
Attendance Allowance ¹⁶	94.1	94.0	12.3	16.0

Source: Ev 139 para. 5.3

29. The table above provides data on benefits administered by the Pensions, Disability and Carers Service (PDCS) and does not include data for Jobcentre Plus benefits. We asked DWP for figures on payment accuracy and claim clearance rates targets for Jobseeker's Allowance, Incapacity Benefit, Income Support, Employment Support Allowance but were told this data is not validated and is therefore not suitable for publication.¹⁷

Fraud and error

30. The DWP has seven Departmental Strategic Objectives (DSOs) which underpin its contribution to achieving the Government's cross-departmental Public Service Agreements (PSAs). DSO 6 encompasses the DWP's decision making standards and commits the Department to "pay [...] customers the right benefits at the right time."¹⁸ Progress against this objective is measured using the Office for National Statistics Fraud and Error Report. The 2009 Departmental Annual Report states that DWP has made "some progress" on this DSO, as fraud and error levels and benefit processing times had remained constant despite the increasing claimant count.¹⁹

31. Jeremy Groombridge, Jobcentre Plus' Director of Transformation and Product Management, outlined some of the initiatives that the agency had undertaken to tackle official error:

"Very recently we have taken steps to appoint what we call error reduction champions in each part of our business in our contact centres, benefit processing areas and the customer service directorate. We support them with error reduction

¹⁵ For DLA and AA the accuracy is measured in terms of the quality of the decision itself.

¹⁶ For DLA and AA the accuracy is measured in terms of the quality of the decision itself.

¹⁷ Ev 164

¹⁸ DWP (2008) The New Performance Framework

¹⁹ DWP (2009) Departmental Report 2009, Annex A, p 79

teams and generate important new products and checks to ensure that particularly our newer staff—we have recruited very large numbers of staff to cope with the recent downturn and consequent rise in volumes—are both checked and trained effectively.”²⁰

32. Similarly, Vivian Hopkins, Chief Operating Officer at the Pension, Disability and Carers Service (PDCS) explained that the Agency has:

“[...] a whole programme of activities to deal with new and repeat claims which include extra training for decision making, pre-payment accuracy checks and some sophisticated checking afterwards, highlighting the more complex cases or those where it is easiest for the customer or us to get it wrong, or where people are most likely to try to get it wrong.”²¹

33. The latest fraud and error statistics were published in November 2009. Those statistics showed that overpayments due to fraud and error had come down from 3.2% of benefits paid in 2000–01 to 2.2% in 2008–09. However, this figure masked an increase in overpayments due to official error from £0.4 billion in 2000–01 (or 0.4% of benefits paid) to £0.8 billion (or 0.6% of benefits paid) in 2008–09. Total underpayments resulting from official error and customer error have also increased from £0.8 billion (or 0.7% of benefits paid) in 2004–05 to £1.2 billion (or 0.9% of benefits paid) in 2008–09. Official error resulting in underpayments was responsible for £0.4 billion of these underpayments in 2004–05, rising to £0.5 billion in 2008–09.

Figure 2: Estimated overpayments due to fraud and error since 2000–01

Year	Fraud		Customer Error		Official Error		Fraud and Error			
	%	£bn	%	£bn	%	£bn	%	£bn	£bn	£bn
2000 01	2.1%	£2.2bn	0.7%	£0.7bn	0.4%	£0.4bn	3.2%	(-, -)	£3.3bn	(-, -)
2001 02	2.0%	£2.2bn	0.7%	£0.7bn	0.4%	£0.4bn	3.1%	(-, -)	£3.3bn	(-, -)
2002 03	1.6%	£1.8bn	0.6%	£0.6bn	0.6%	£0.6bn	2.8%	(-, -)	£3.1bn	(-, -)
2003 04	1.0%	£1.0bn	0.7%	£0.7bn	0.8%	£0.8bn	2.4%	(2.2, 2.7)	£2.6bn	(2.3, 2.8)
2004 05	0.8%	£0.8bn	0.8%	£0.9bn	0.8%	£0.9bn	2.3%	(2.1, 2.6)	£2.6bn	(2.3, 2.9)
2005 06	0.6%	£0.6bn	0.8%	£1.0bn	0.7%	£0.9bn	2.1%	(1.8, 2.5)	£2.5bn	(2.1, 2.9)
2006 07	0.6%	£0.8bn	0.8%	£0.9bn	0.8%	£0.9bn	2.2%	(1.9, 2.6)	£2.6bn	(2.3, 3.1)
2007 08	0.6%	£0.8bn	0.7%	£0.8bn	0.7%	£0.9bn	2.0%	(1.7, 2.4)	£2.6bn	(2.1, 3.0)
2008 09 Prelim	0.6%	£0.9bn	0.7%	£0.9bn	0.6%	£0.9bn	2.0%	(1.7, 2.3)	£2.7bn	(2.3, 3.2)
2008 09 Final	0.8%	£1.1bn	0.8%	£1.1bn	0.6%	£0.8bn	2.2%	(1.9, 2.6)	£3.0bn	(2.6, 3.5)

²⁰ Q93

²¹ Q94

Figure 3: Estimated underpayments due to fraud and error since 2004–05

Year	Fraud		Customer Error		Official Error		Fraud and Error			
	%	£bn	%	£bn	%	£bn	%	£bn	Range	£bn
2004 05	0.0%	£0.0bn	0.4%	£0.4bn	0.3%	£0.4bn	0.7%	(0.6, 0.8)	£0.8bn	(0.7, 0.9)
2005 06	0.0%	£0.0bn	0.5%	£0.5bn	0.4%	£0.4bn	0.8%	(0.6, 1.1)	£1.0bn	(0.7, 1.2)
2006 07	0.0%	£0.0bn	0.5%	£0.6bn	0.3%	£0.4bn	0.8%	(0.6, 1.1)	£1.0bn	(0.7, 1.4)
2007 08	0.0%	£0.0bn	0.5%	£0.6bn	0.4%	£0.4bn	0.9%	(0.6, 1.2)	£1.1bn	(0.8, 1.5)
2008 09 Prelim	0.0%	£0.0bn	0.5%	£0.7bn	0.3%	£0.5bn	0.9%	(0.6, 1.2)	£1.2bn	(0.9, 1.7)
2008 09 Final	0.0%	£0.0bn	0.5%	£0.7bn	0.4%	£0.5bn	0.9%	(0.7, 1.2)	£1.2bn	(0.9, 1.6)

34. We commend the Department's performance against its targets for payment accuracy and claim clearance rates for a number of benefits. However, we were surprised to learn that the equivalent data for Jobseeker's Allowance, Employment Support Allowance, Incapacity Benefit or Income Support is not validated and is therefore not suitable for publication. We ask the Department to explain why it does not publish data on payment accuracy and claim clearance rates for these major benefits and recommend that it begins to do so as soon as possible.

35. We acknowledge the work the Department's agencies are undertaking to address error, including the appointment of "Error Champions" in Jobcentre Plus and pre- and post-payment accuracy checks in the Pension, Disability and Carers Service. We ask the Department to monitor the impact of these measures and to ensure that agencies share information about measures that are successful in reducing levels of official error.

36. However, we believe that the cost of official error due to overpayments of benefits is still far too high at £800 million in 2008–09, and we are concerned that this figure has risen significantly since 2000–01. We are equally concerned by the increase in the total amount of underpayments resulting from official error since 2004–05. In light of the 1998 reforms of the decision making and appeals system, which were designed to improve decision making, we ask the Department to explain why levels of official error have risen since 2000–01.

Monitoring standards of decision making

Report by the Secretary of State

37. The Social Security Act 1998 formally introduced reporting duties for the Secretary of State on standards of decision making. Since then, the Secretary of State has produced three reports on standards of decision making; the most recent was published in 2006 and covered decisions made in Jobcentre Plus, The Pensions Service and the Disability and Carers Service during the period 1 January 2002 to 31 December 2003 and in the Child Support Agency for the period 1 April 2002–31 March 2004.

38. The infrequency of report publication runs counter to assurances given in the House of Lords, during second reading of the Social Security Bill. The then Parliamentary Under-Secretary of State, Baroness Hollis of Heigham said:

“I can assure the House that it is our intention to produce reports annually or as near to each year as possible.”²²

39. The most recent report included the Secretary of State’s percentage breakdowns of the accuracy of initial decisions; the accuracy of reconsidered decisions; appeals statistics; and overpayment recoverability decisions. It also outlined initiatives that DWP’s agencies were undertaking to improve decision making. The document also included a report from the Comptroller and Auditor General which concluded that the Secretary of State’s assessment of the percentages of decisions that were correct and of the accuracy of both child support maintenance assessments and appeal submissions presented “a reasonable representation of the quality of decisions” made by DWP. However, he concluded that he could not validate the majority of data provided in the Secretary of State’s report, particularly:

- a) Information on the percentage of reconsiderations found to be correct ;
- b) Data on the applications for revisions and their outcome;
- c) Information on benefit appeals lodged, the number of appeals heard and appeal success rates;
- d) Percentage of appeal submissions meeting required standards; and
- e) Percentage of overpayment recoverability decisions found to be correct.

40. The Comptroller and Auditor General concluded:

“I have been unable to confirm that a substantial part of the information set out in the Secretary of State’s report is fair and balanced. The introduction of new material to the report in line with recommendations I have made previously to the Department is welcome. However, unless all such performance data is subject to satisfactory quality assurance processes as to its robustness, the resultant report will be of limited utility as a measure of the Department’s success in improving the accuracy of decision making.”²³

41. It is unacceptable that, despite the Government committing to publishing a report by the Secretary of State on the Department’s decision making standards “annually or as near to each year as possible” the most recent report was published in 2006 and only covered the 2002–03 period. The failure of the Secretary of State to provide an assessment of decision making in the last six years means the Department is not fulfilling promises made by the Government during the passage of the Social Security Act 1998. We ask the Secretary of State to explain why the Government’s commitment to publishing an annual report on decision making standards has not been fulfilled and to announce when reports will be published for the six years since 2003.

42. We note with concern that the Comptroller and Auditor General was unable to confirm that a substantial part of the information set out in the last report by the

²² Official Report, 20 April 1998; Column 926

²³ Report by the Secretary of State for Work and Pensions on the standards of decision making in Jobcentre Plus, The Pension Service, Disability and Carers Service and the Child Support Agency 2002 and 2003, p 19

Secretary of State was “fair and balanced”. We are further dismayed by his conclusion that the information within it would be of “limited utility as a measure of the Department’s success in improving the accuracy of decision making”. Reliable data are crucial to ensuring that decision making accuracy is measured effectively and the Department’s failure to collect this information reduces the likelihood of appropriate improvements being made to the system. We also ask the Secretary of State to provide evidence to demonstrate that data collection on decision making and appeals has improved since the last report was published.

President of Appeal Tribunals Report

43. The Social Security Act 1998 imposed a duty on the President of Appeal Tribunals to make an annual report, based on cases coming before tribunals, on the standards of decision making achieved by the Secretary of State. The President’s report was based on a sample of cases coming before the tribunal. In 2007–08, the sample size was 1,886 and reflected the range of appeals by benefit type.²⁴

44. In 2008, the final President of Appeal Tribunals annual report was published. The Tribunals, Courts and Enforcement Act 2007 wound up the Appeal Tribunals from 3 November 2008, along with the role of its President. The Act did, however, confer a duty on the Senior President of the new tribunal to provide systematic feedback to the Secretary of State on standards of decision making.

45. The 2007–08 report summarised the key themes that have emerged since publication began in 2001, as follows:

- a) DWP should engage in more face-to-face contact with claimants;
- b) There was no consistent evidence of the effectiveness of reconsiderations;
- c) Some medical reports have underestimated the severity of disability; and
- d) Benefit claims and the appeals process could be particularly difficult for people with specific disabilities such as mental health issues or sensory impairments.²⁵

46. The former President of Appeal Tribunals (now the President of the Social Entitlement Chamber of the First-tier Tribunal), Judge Robert Martin, told us that, despite raising similar concerns each year, he believed “no one” within DWP had listened to the conclusions and recommendations detailed in the President’s annual report.²⁶ He explained that he had, in the past, asked for examples from the Department, which could demonstrate how the President’s report had influenced or changed DWP decision making. He told us that, despite his request, he had received no examples from DWP to illustrate the report’s value.²⁷

²⁴ Apart from child support maintenance appeals, which constitute just 1% of appeals therefore are over-represented to allow meaningful analysis.

²⁵ Tribunals Service (2008) *President’s Report: Report by the President of Appeal Tribunals on the standards of decision making by the Secretary of State 2007–08*, p 7

²⁶ Q71

²⁷ Q71

47. We are surprised and disappointed to learn that the President of the First-tier of the Social Entitlement Chamber had seen no evidence that the Department has listened to the feedback provided in the annual reports of the President of Appeal Tribunals. We recommend that the new Senior President of Tribunals should continue to produce an annual report on standards of decision making and that the Secretary of State should undertake to publish a response to it within two months of its publication.

DWP Decision Making Standards Committee

48. As part of the DMA reforms, the then Benefits Agency set up a Decision Making Standards Committee, as an additional means of reviewing DWP's decision making standards. In February 2003, the Benefits Agency Decision Making Standards Committee was replaced by the DWP Decision Making Standards Committee. Like its predecessor, this remained a non-executive body, which monitors the standards of decision making in benefits across DWP and reports to the Chief Executives of Jobcentre Plus, and the Pension, Disability and Carers Service. In 2008, the Committee dropped "Decision Making" from its title to become the "DWP Standards Committee".

49. The Standards Committee's webpage outlines its three key objectives:

- a) to provide independent advice to senior executives on whether reports on the standard of benefit decision making are accurate;
- b) to identify and make recommendations on the areas where standards can be improved; and
- c) to look at specific issues raised by the Agency Chief Executives that may affect the standard of decision making.²⁸

50. The Standards Committee is currently composed of a Chair and three members, who are independent of DWP, and provide objective advice on the decision making process.²⁹ DWP explained that the Standards Committee agreed its programme of work with Jobcentre Plus and PDCS, and focused on areas that might require improvement.³⁰

51. In 2005, the Standards Committee criticised DWP for failing to give decision making a big enough priority. In 2008, the Committee again expressed concern about decision making standards, concluding that there was an over-reliance on the medical model when making decisions on disability benefits and that some staff had "entrenched views" which impacted upon their approach to decision making.³¹

52. Lancashire County Council Welfare Rights Service told us that one of their advisers participated in the Standards Committee's Representatives Group and had reported that the Committee "dealt mainly with general issues [...] and was somewhat removed from effecting change in the frontline DWP decision making processes".³² The Administrative

²⁸ <http://www.dwp.gov.uk/publications/specialist-guides/dwp-decision-making-standards/standards-committee/>

²⁹ Ev 132, paras 7.1–7.4

³⁰ Ev 132

³¹ DWP Standards Committee (2008) Annual Report 2007–08

³² Ev 124

Justice and Tribunals Council (AJTC) argued that the Standards Committee's reports are "perhaps not generally perceived to be as independent as the former Chief Adjudication Office".

53. The Standards Committee produced four annual reports between 2003 and 2008, which have each identified areas where decision making needs to be improved. The first three reports included appendices which provided clearly presented updates on the progress the Department has made towards the recommendations made in the previous year's report. However, the style and format of the most recent report, published in 2008, has changed. Rather than providing a single written summary, tables of recommendations are given for different executive agencies throughout the report, whilst responses to those recommendations are given in a series of different tables.

54. The Standards Committee was established to monitor decision making within the Department and we believe that this important role should be more formally recognised. We recommend that "Decision Making" should be reinstated in its title to ensure that its main purpose is clear, both to internal and external stakeholders. We also recommend that the Department publish a response to the Standards Committee's recommendations within two months of the publication of a report of the Committee.

55. The change in format of the Standards Committee's annual report has resulted in an esoteric document, which we found less accessible than previous reports. It is important that the Standards Committee's conclusions and recommendations are clear and readily understandable. We ask the Standards Committee to reintroduce a summary of how the Department has responded to the previous year's recommendations.

3 Collecting and Evaluating Evidence

56. The Department explained that all benefit decisions followed the same process. A claimant submits an initial claim, and may provide evidence to support it. A decision maker will then assess the claim and issue a decision on it. Each benefit decision is followed by a dispute period of one month, during which time the decision can be reconsidered or an appeal lodged.³³

Collecting evidence

Benefit complexity

57. We received evidence to suggest that one of the difficulties DWP faced in improving the decision making process was the complexity of the social security system itself. The Administrative Justice and Tribunals Council (AJTC), which was established in 2007 (and is the successor non-departmental public body to the Council on Tribunals), suggested that the “undue complexity” of the benefits system complicated the decision making process from the outset and made it more difficult for claimants to know what they may be entitled to. It argued that:

“The complexity of the system derives not only from the rules for particular benefits but also as a result of the interaction between the conditions of entitlement for linked benefits and the complicated arrangements for review, revision and reconsideration of decision, which are not fully understood even by the decision makers themselves.”³⁴

58. Welfare rights adviser, Daphne Hall, concurred with this, suggesting that complexity can lead to a “huge amount of under-claiming”.³⁵ The Parliamentary and Health Service Ombudsman highlighted a number of cases featured in her annual report, which demonstrated how complex rules can lead to fraud and error and lengthy complaints by claimants. One such complaint, by a Mrs U in July 2006, was upheld after she was misled about whether she could claim Jobseeker’s Allowance (JSA) because the Jobcentre Plus adviser did not understand the “linking rules” that would apply. This complaint took over two years to reach a resolution, over three years after the original complaint was made.³⁶

59. Citizens Advice argued that deciding whether to award benefits becomes increasingly complex for disability and sickness benefits, such as Incapacity Benefit (IB), Employment and Support Allowance (ESA), Disability Living Allowance (DLA) and Attendance Allowance (AA). Unlike JSA, for which entitlement is determined by employment status and national insurance contributions, claimants of these benefits must satisfy a medical

³³Ev 127, para 2.1

³⁴ Ev 148, para 18

³⁵ Q20

³⁶ Parliamentary and Health Service Ombudsman (March 2009), *Putting things right: complaints and learning from DWP*, page 23

assessment, which involves a greater degree of discretion and subsequently, Citizens Advice argued, makes them more susceptible to error.³⁷

60. In 2006, we published a report on benefit complexity, which concluded that whilst there are no easy answers, a complex benefits system risks becoming a dysfunctional benefit system. We concluded that DWP had to make simplification a key priority to alleviate that risk.³⁸

61. Complexity in the benefits system remains a significant challenge for claimants, their representatives and the Department itself. We note the concerns raised to us in evidence that errors in decision making are inevitable if the social security system is too complex. We urge the Department to re-examine the conclusions of our report on Benefits Simplification with a view to simplification of the system.

Claim forms

62. A number of organisations argued that the claim forms for some benefits are too long and can be difficult for claimants to understand, resulting in incorrect or incomplete information being provided, thereby increasing the likelihood of errors in decision making. Welfare rights adviser, Daphne Hall, told us that:

“The forms are not always the most accessible to write down what you want to say. They are not always the easiest to understand [or determine] what information is important.”³⁹

63. Dr Mark Baker, Head of Social Research and Policy at the Royal National Institute for the Deaf (RNID), agreed; he emphasised the difficulties some claimants face in completing the 58-page Disability Living Allowance claim form, noting that many find it “utterly mystifying”.⁴⁰

64. We have raised the issue of complex claim forms in the past with DWP, and the Department has acknowledged this is an area of concern. In 2003, the NAO also identified the detrimental effects of “long and confusing forms” on decision making accuracy, particularly for disability benefits.⁴¹ Vivian Hopkins, Chief Operating Officer at PDCS, accepted that “there are segments of our customer base which struggle more than others with the claim packs” and told us that DWP agencies are working with claimants and their representatives to tackle this.⁴²

65. West Lothian Council provided an example of where efforts made by DWP have improved claim forms to good effect. It welcomed the introduction of DWP’s “Performance Standard Fund” for local authorities, which it said had funded “major

³⁷ Ev 140

³⁸ Seventh Report, Session 2006–07, HC 463, Summary

³⁹ Q13

⁴⁰ Q51

⁴¹ National Audit Office (2003), *Getting it right, putting it right— Improving decision making and appeals in social security benefits*, p. 5

⁴² Q114

redesigns of correspondence, customer guidance and claim forms” and had been the “catalyst” for reductions in overpayments of Housing Benefit and Council Tax Benefit.⁴³

66. In order for decisions to be timely and accurate, decision makers must have access to as much information as possible, relevant to a person’s claim. If claim forms are long and complex, which would appear inevitable in an excessively complex benefit system, the likelihood increases that errors or omissions will occur in the initial application process which may, in turn, affect the quality of decisions. We welcome the work the Department is undertaking to improve benefit claim forms but we acknowledge the scale of this task given the complexity of the system. However, we believe more work is required to tackle this problem and to address the persistent concerns of claimants and their representative groups.

Medical assessments

67. The medical assessment is a fundamental part of the claims process for individuals applying for disability or ill health related benefits. DWP has contracted Atos Healthcare to provide medical advice to assist decision makers in reaching a decision regarding entitlement to Employment Support Allowance, Incapacity Benefit, Disability Living Allowance, Attendance Allowance and Industrial Injuries Disablement Benefit. Atos Healthcare employs over 1,700 healthcare professionals, who are responsible for processing over 1.2 million referrals for medical advice annually and completing 600,000 face to face assessments on behalf of DWP.⁴⁴ Atos Healthcare uses a computer programme, LiMA (Logic Integrated Medical Assessment), during the medical assessment. This web-based system was introduced by Atos “to improve legibility, consistency and accuracy of the medical reports”.⁴⁵

68. The Work Capability Assessment (WCA) was introduced in October 2008, and is used to determine claimants’ entitlement to Employment and Support Allowance. The assessment contains a series of questions, “called descriptors”, that relate to physical and mental functions, and from which claimants score points. Those found fit for work must claim JSA; those with severe restrictions on their ability to work are exempt from work-related activity and are placed in the ESA support group; and those with some, but limited, capacity to work are placed in the “work-related activity” ESA group and are required to attend work focused interviews. This categorisation is based on the points score. There were 189,800 WCA assessments up to the end of August 2009. Of these assessments:

- a) 10% have been assessed as eligible for the ESA support group;
- b) 22% have been assessed as eligible for the ESA work related activity group; and
- c) 69% have been deemed Fit for Work.⁴⁶

⁴³ Ev 66, para 5

⁴⁴ <http://www.atoshealthcare.com>

⁴⁵ Atos Origin/DWP (2006) *LiMA— Evidence based medicine in action*

⁴⁶ DWP (2009) Employment Support Allowance: Work Capability Assessment Statistical Release (October 2009)

69. Many organisations were critical of the medical assessment process. Citizens Advice referred us to their 2006 report, *What the doctor ordered?* which they argued, raised concerns that remain relevant to the current medical assessment process. They claimed that:

“CAB evidence indicates that the conduct of examinations still leaves much to be desired, causing substantial hardship and distress to benefit claimants and their families:

many clients report encountering rude or insensitive examining doctors

doctors frequently appear not to give sufficient consideration to mental health issues

bureaux continue to report that doctors produce inaccurate reports, giving an inaccurate assessment of the claimant’s abilities; reporting incorrectly what the claimant has said about their own conditions and taking answers out of context.”⁴⁷

70. CAB argued that the computer generated answers narrowed the scope of the WCA because “stock phrases” did not accurately reflect some conditions. The LiMA system used by Atos Healthcare allows the doctor conducting the assessment to “cut and paste” these stock phrases into the report. RSI Action claimed that Atos Healthcare professionals have often misrepresented claimants’ responses on the assessment document.⁴⁸

71. We also received evidence from a number of individual claimants, who reported poor experiences of the medical assessment process.

72. We received many complaints about the medical assessment process ranging from dissatisfaction from claimants who felt they were treated badly to criticisms of the computerised assessment process. We appreciate that DWP must strike a balance between providing a personalised service and ensuring a consistent approach to medical assessments but it is crucial that claimants’ responses are recorded accurately. We ask the Department to investigate the concerns raised to us with Atos Healthcare and inform the Committee of the outcome.

Claimants with terminal conditions

73. A report published by Citizens Advice and Macmillan Cancer Support in December 2009 found that terminally ill patients were not being fast tracked into the ESA support group and were being required to undergo the work capability assessment or attend work-focused interviews. The report also identified that cancer patients receiving chemotherapy were being asked to attend a work capability assessment or work-focused interviews.⁴⁹

74. Work Directions were concerned about the number of claimants that were being placed onto the Pathways to Work employment programme before a decision had been made on their entitlement to ESA. They noted that over 50% of their clients who had already been on Pathways for 14 weeks had not yet received the results of their Work

⁴⁷ Ev 141

⁴⁸ Ev 52

⁴⁹ Citizens Advice and Macmillan Cancer Support (2009), *Failed by the System*

Capability Assessment (WCA). They explained that “for some clients, who are later placed in the ESA Support Group as a result of the WCA, it can mean that they are expected to attend mandatory interviews despite the fact they may be undergoing treatment or be terminally ill.”⁵⁰

75. We were concerned to hear that 50% of one provider’s Pathways to Work caseload have been in the programme for 14 weeks, despite not yet having received the result of their WCA. It is unacceptable that terminally ill claimants or those undertaking treatment that affects their work capability should be expected to undertake mandatory work focused interviews. We call on the Department, as a matter of urgency, to ensure that arrangements are made to ensure that terminally ill claimants are fast-tracked to the Employment and Support Allowance support group.

Fluctuating conditions

76. In its written evidence, Mind echoed the concerns of other submissions that the medical assessment process was ineffective for many claimants with fluctuating conditions, stating that “the assessment does not take account of the fluctuating nature of people’s mental health conditions and the assessment remains biased towards physical functions.”⁵¹

77. However, the Minister argued that the Work Capability Assessment for the Employment and Support Allowance was far more responsive to fluctuating conditions than its predecessor, the Personal Capability Assessment:

“The previous personal capability assessment looked at four questions that could be described as considering an individual’s mental health/fluctuating condition. Within the new work capability assessment there are 10 questions, including consideration of how people function in different social settings and their interface with different people and situations. Indeed, in the initial questionnaire we ask people to talk about how their condition affects their ability to be able to function not just on one day but over a period of time. However, we introduced ESA only about a year ago and we need to look at it. We have had an internal review that we shall publish.”⁵²

Review of the Work Capability Assessment (WCA)

78. In December 2008, the Government published the White Paper *Raising expectations and increasing support: reforming welfare for the future*, which outlined its plans to undertake a review of the WCA. This is in addition to the statutory obligation on the Department, under section 10 of the Welfare Reform Act 2007, to produce an annual independent review of the WCA for each of the first five years of its operation.

79. RSI Action told us that it had been involved in the Department’s internal review of the WCA (as announced in the December 2008 White Paper), and expressed considerable concern at the process:

⁵⁰ Ev 59, para 18

⁵¹ Ev 109

⁵² Q 110

“The DWP invited a small panel of their expert advisers. DWP members and their advisers were provided with a number of specific cases to be considered, whereas charity representatives were denied access to such information. [...] RSI Action has written two letters to DWP raising its concerns on this process, and is concerned that the issues raised have not been adequately considered by DWP. Having seen the DWP proposed changes to the WCA that we understand will be presented to the Secretary of State for approval, we are very concerned that the WCA will migrate even further from the intent of primary legislation, to provide benefit for those who have limited capability for work.

“A particularly alarming change that we understand will be proposed to the Secretary of State, is to replace using a pen or pencil, with making a purposeful mark!” Such a descriptor takes no account of the ability of the claimant to use a pen or pencil for the purpose for which it was designed, to write legible text in a reasonable time so that others can understand what has been written.”⁵³

80. The Department recently completed this internal review of the WCA. The first of the statutory reviews will be published this year and we were told that the Government expected to make the findings of the internal review available “more quickly”.⁵⁴

81. We ask the Department to confirm when it intends to publish the findings of its internal review of the Work Capability Assessment (WCA). We note the concerns raised by some organisations that are contributing to the review. We urge our successor Committee in the next Parliament to examine carefully whether these concerns have been addressed and to maintain close scrutiny of the operation of the WCA.

82. Migration of existing claimants from Incapacity Benefit to Employment and Support Allowance, subject to a Work Capability Assessment, will be trialled from October 2010 with a view to being rolled out for all customers from February 2011. We recommend that this process should not commence before the review of the WCA has been completed and its recommendations considered.

Evaluating the evidence

Weight given to medical assessments

83. The Asbestos Victim Support Group’s Forum UK and Lancashire County Council Welfare Rights Service argued that DWP decision makers rely too heavily on the conclusions of the Atos healthcare medical assessment and claimed that not enough attention was given to claimants’ own statements and their medical history.⁵⁵

84. Welfare rights advisers, Patrick Hill and Daphne Hall, both agreed that there was an overreliance on the conclusions of DWP medical assessments. In some cases, they argued evidence should be sought from specialists, such as community psychiatric nurses, who

⁵³ Ev 53

⁵⁴ Department for Work and Pensions’ Annual Report 2009, Oral and written evidence, 14 October 2009, HC 977, Department’s supplementary evidence, paragraph 5.2.

⁵⁵ Ev 67, para 4 and Ev 119, para 2.2

might see a claimant on a regular basis and could provide an expert opinion about how that person functioned day-to-day.⁵⁶

85. We asked the Minister whether the advice of DWP contracted Atos healthcare professionals took precedence over other evidence claimants may provide and he agreed this was sometimes the case:

“[...] If the evidence provided by the Atos healthcare professional] is pretty overwhelming and the decision maker has other evidence, whether from a GP or welfare rights officer, it is unlikely that that evidence will be to the fore in arriving at a decision, because the medical assessment is one that has been developed in partnership with a number of different organisations, including those representing disabled people. But where perhaps the medical assessment provided to the decision maker follows more of a fine line the additional evidence may well be sufficient to push it over the line so that the person is eligible for Employment Support Allowance. It forms a very significant part of the decision making process.”⁵⁷

86. In Leeds, we met a claimant who had scored zero points in his Work Capability Assessment; his experience had been that the assessment did not properly take account of his condition. With the support of welfare rights advisers he challenged this decision and was eventually successful on appeal. A score of zero might appear to be a “pretty overwhelming” report, but in cases such as this, it would clearly have been preferable if other evidence, if available, had been considered by the decision maker.

87. We note widespread concerns that decision makers appear to give excessive weight to the conclusions of DWP medical assessments over other evidence claimants may provide. If a claimant is able to provide statements from specialists, who have regular contact with them, this evidence should be given due consideration. Furthermore, if a decision maker does not award a benefit based on the recommendation of a DWP medical assessment, despite the fact that this conflicts with the conclusions of expert evidence provided by the claimant, DWP should ensure that claimants are given a clear and full explanation of the basis for this decision.

Training for decision makers

88. DWP told us that all decision makers received training in relevant benefits and are able to access additional support from the Department’s DMA unit in Leeds, which provides support and guidance to DWP and local authority decision makers on certain common subjects. DWP told us that the unit responded to more than 3,300 guidance requests per year from decision makers on specific cases.⁵⁸

89. In addition to existing resources, we were told that Jobcentre Plus was reviewing all of its decision making training, with the aim of improving the quality of decisions. From April 2010, all new Jobcentre Plus decision makers will undergo Foundation Decision Making Training and more complex subject areas will be introduced, as and when staff

⁵⁶ Q14 and Q17

⁵⁷ Q108

⁵⁸ Ev 128, para 3.11

require it. In PDCS, decision makers currently undertake a Technical Evaluation Package (TEP) after being in post for 9 months. We were told that the overall programme of training offered in the agency was scheduled for a review by the DWP Standards Committee, as part of its 2009–10 work programme.⁵⁹

90. West Lothian Council Revenues and Benefits Unit emphasised that the complexity of benefit decisions, in particular housing benefits, made it essential that decision makers had access to sufficient training to deliver confidently accurate decisions to claimants. It argued that the Department was successfully providing this.⁶⁰

91. Some evidence we received suggested shortcomings in training for decision makers. PCS claimed that the quality of training was varied. It argued that classroom-based training, using live cases, was most valued by decision makers whilst the increase in web-based learning was “almost universally loathed” by PCS members, who found this method of training to be largely ineffective.⁶¹ CLIC Sargent reported a lack of understanding amongst decision makers about cancers that affect children and young people and argued that this could lead to “insensitivity and inappropriate questioning on the part of decision makers who are not given the education and guidance they need to understand this complex disease area.”⁶²

92. We welcome Jobcentre Plus’ decision to review its training provision for decision makers and the DWP Standards Committee’s commitment to examining the training available to decision makers in the Pensions Disability and Carers Service.

Professionalism in Decision Making and Accreditation (PiDMA)

93. A number of organisations commented on the introduction of accreditation for PDCS decision makers in 2006 called “Professionalism in Decision Making and Accreditation” (PiDMA). The diploma was developed in partnership with the University of Chester and consists of a modular work-based learning programme. We were told that the programme cost around £300,000 to deliver each year and over 200 decision makers had been accredited since 2006.⁶³ An internal evaluation report is currently being produced and is expected to be finalised in early January.

94. Although staff who gain accreditation do not receive any financial reward, Vivian Hopkins, Chief Operating Officer, PDCS explained that the diploma:⁶⁴

“[...] deals with the reality of decision making and does not take people off to a classroom. It also takes quite a long time to reach accreditation level. People are appraised all the way through. It gives staff more confidence because it provides

⁵⁹ Ev 128, paras 3.2–3.7

⁶⁰ Ev 66, para 12

⁶¹ Ev 76, para 10

⁶² Ev 47, para 2.1

⁶³ Ev 128, para 3.9 and Q120

⁶⁴ Q126

them with greater skill, particularly in interpreting the evidence that the customer produces.”⁶⁵

95. The National Deaf Children’s Society welcomed the accreditation, saying that it had been a positive introduction, which was improving the quality of decisions on DLA claims.⁶⁶ Likewise, the Administrative Justice and Tribunals Council 2008–09 annual report praised the PiDMA programme and encouraged DWP to “consider rolling out similar programmes across all its Agencies”.⁶⁷

96. We are encouraged by the positive responses to the introduction of the Professionalism in Decision Making Accreditation (PiDMA). However, with only 200 decision makers accredited at a cost of £300,000 per year, this is an expensive diploma to deliver. We ask DWP to publish the internal evaluation of PiDMA once the report is finalised.

Contact with claimants

97. A number of organisations suggested that claimants often failed to understand how the decision process worked and this was exacerbated by the fact that claimants were rarely given the opportunity to speak to the decision maker responsible for the outcome of their claim. The National Association of Welfare Rights Advisers (NAWRA) explained that:

“The main point of contact is through the telephony (letters often remained unanswered)—this is to a member of staff who is trained to read the computer screen but without full benefits knowledge.”⁶⁸

98. The Committee was told by welfare rights advisers, Daphne Hall and Patrick Hill, that claimants often struggled to understand the decision making process in Jobcentre Plus because they were unable to speak directly to the person responsible for deciding the outcome of their claim. Daphne Hall said:

“Within the Jobcentre it is virtually impossible to speak to somebody who knows about benefits because [...] jobcentre staff are not trained in benefits, they are trained to help people find work. [...] If you phone the benefit delivery centre, you have a telephony service first where people are trained to read the screens so they can give you certain information, for example what premiums you are getting, but they cannot tell you why decisions are made. The only way you can speak to somebody is to ask for call-back, which currently is coming within three days. If you are not in [...] they will leave a message to say they have called, but they are not allowed to leave a number you can call back on, so you have to start the whole process again.”⁶⁹

99. Recent research by the Pensions, Disability and Carers Service found that their local third sector and voluntary sector partners were similarly dissatisfied by a lack of face-to-

⁶⁵ Q119

⁶⁶ Ev 111, para 3.2

⁶⁷ Administrative Justice and Tribunals Council (2009), *Annual Report 2008–2009*

⁶⁸ NAWRA, para 6

⁶⁹ Q20

face contact and had a strong dislike of the telephone call centre contacts. Individual accountability in the decision making process was considered crucial to local partners, who often felt that their input disappeared into a “black hole”.⁷⁰

100. The latest report by the DWP Standards Committee (formerly the DWP Decision Making Standards Committee) highlighted the findings of the President of Appeals Report 2007–08, which reported that, of all the DLA/AA cases that are presented to appeals tribunals, 40% are overturned. In 73% of the overturned cases the tribunal accepted new evidence at the hearing from the claimant, sometimes in the form of medical evidence and other times it was the claimant’s verbal account of living with a disability. In order to try and reduce the number of cases going to appeal, the Standards Committee concluded that a better understanding of the claimant’s viewpoint could significantly impact upon the number of appeals that are processed and the number of appeals that are overturned in the claimant’s favour. It recommended that:

“In all cases that get to reconsideration/appeal the appeal writer/decision maker should ensure they [...] have made meaningful contact with the customer and/or carer before the issue is referred to appeal to ascertain how the customer experiences their disability.”⁷¹

101. Speaking to a claimant directly is an effective means of ensuring that decisions are based on accurate evidence. We ask the Department to explain what actions it has taken in response to the DWP Standards Committee’s conclusion that decision makers would benefit from a better understanding of claimants’ viewpoints.

102. We recommend that the Department should pilot a scheme whereby claimants who proceed to a reconsideration of their claim or appeal against a decision are allocated an individual decision maker and are given a direct telephone number on which to contact them. We recognise that this will place an additional burden on decision makers, but we believe that it is justified on the grounds of fairness to claimants. We believe that it could also reduce costs in the system by reducing the number of cases that go to appeal.

Notification Letters

103. DWP told us that claimants are informed of their appeal rights “in a clear and unambiguous way” in decision notices, which explain what further action can be taken if they are unhappy with a decision and the timeframe in which to take it.⁷²

104. The content and structure of decision notification letters have been subject to criticism in the past. The 2003 NAO report on decision making and appeals highlighted the problems that poor written communication from DWP can create for claimants. The NAO found that some decision letters may list the reasons for a decision but did not explain the decision in terms of claimants’ specific situations. It noted that, although DWP

⁷⁰ Department for Work and Pensions (2009) Research Report No 604 Pension, Disability and Carers Service partnerships Research, page 3

⁷¹ DWP Standards Committee Annual Report 2007–08 PDCS (DCS)—Recommendation 4, page 12

⁷² Ev 129, para 4.1

accepted the “unsatisfactory nature” of some decision letters it believed the required computer changes would be too costly to warrant significant changes.⁷³

105. We highlighted the problems unintelligible computer-generated letters can cause in our report on benefits simplification in 2007.⁷⁴ In response, the Department told us that Jobcentre Plus would review its correspondence and develop an action plan for improving its letters.⁷⁵

106. However, during this inquiry, we received evidence to suggest that notification letters remain of an unsatisfactory standard. Alan Barton from Citizen’s Advice and welfare rights adviser, Daphne Hall, were critical of the “very poor” decision letters some claimants received.⁷⁶ Lancashire County Council Welfare Rights Service argued that letters frequently failed to explain exactly how a decision has been arrived at; for example:

“DLA/Attendance Allowance decision notices [...] tend to make reference to the basic qualifying criteria, yet not explain why the decision maker thinks these are not met in the claimant’s case. For example, simply saying “you are not virtually unable to walk”, of itself, is of no real help to a claimant (or adviser) when deciding if they have legal grounds to challenge the decision. What would be more helpful would be a full explanation as to why a customer’s needs do not meet the relevant criteria. This information should be made available to the claimant at the time the decision is issued.”⁷⁷

107. Some of the welfare rights advisers we met in Leeds suggested to us that making the rationale behind decisions clearer to claimants, particularly the grounds for disallowance of ESA, would significantly reduce the number of appeals that were made.

108. The National Autistic Society highlighted the problem of unclear communications from Jobcentre Plus which confused claimants and could subsequently lead to significant delays in payment. It proposed that ESA letters, in particular, should be written in accessible format, or be accompanied by an easy-read version, to ensure that claimants understood the decision.⁷⁸

109. We are disappointed to hear that computer-generated notification letters continue to make it difficult for some claimants to understand how a decision on their benefit claim has been reached. Both this Committee and the National Audit Office have raised the issue of incomprehensible written communications from DWP in the past and yet this continues to be a problem. We ask the Department to outline what work it is undertaking to improve its notification letters and to ensure that decisions are properly explained and easily understood by claimants. We believe that better explanation of the

⁷³ NAO (2003) Getting It Right, Putting It Right: Improving Decision Making And Appeals In Social Security Benefits, page 32

⁷⁴ Seventh Report, Session 2006–07, HC 463.

⁷⁵ Third Special Report, Session 2006–07, HC 1054, Benefits Simplification: Government Response to the Committee’s Seventh Report of Session 2006–07.

⁷⁶ Q6

⁷⁷ Ev 121, para 4.3

⁷⁸ NAS, para 5

rationale behind decisions could reduce the number of appeals and requests for reconsideration that are brought forward, delivering savings elsewhere in the system.

4 Reviewing Decisions

110. The *Improving decision making and appeals in Social Security* Green Paper proposed the establishment of “informal reviews” which would allow claimants to have decisions looked at again by a DWP decision maker, rather than having to proceed straight to appeal. In July 1997, the Government published an analysis of the responses to the Green Paper, which demonstrated mixed views on the introduction of review arrangements (which already existed for DLA) for other benefits:

“There were several submissions which endorsed the formal review arrangements currently in place for Disability Living Allowance [...] In contrast to this positive view of the DLA model there were many submissions which argued against it. Opponents referred to DLA reviews as confusing and complicated and acting as a hurdle which claimants had to overcome in order to reach an independent tribunal hearing. Several respondents argued that imposing the model on other benefits would by definition add an additional tier to existing arrangements counter to the intention expressed by the Green Paper.”⁷⁹

111. Informal reviews were incorporated into the new DMA system following the introduction of the Social Security Act 1998 and in 2006 the Welfare Reform Green Paper committed DWP to incorporating a reconsideration process into the initial assessment of any appeal to reduce the number of appeals progressing to a tribunal. The Green Paper also promised clear feedback to appellants and an assurance that any new evidence would be included at the reconsideration stage, rather than at tribunal.⁸⁰

112. DWP told us that “the ability to revise decisions is key to the decision making system”.⁸¹ The National Association of Welfare Rights Advisers and the National Deaf Children’s Society felt that the reconsideration was a positive part of the decision making process because it allowed decisions to be rectified, without necessarily having to proceed to a lengthy appeal. However, both organisations also commented that decision makers needed to be more proactive in seeking new evidence from claimants during the reconsideration stage.⁸²

The dispute period

113. Under the existing rules, if a claimant is unhappy with a decision, there is a dispute period of one month in which they can either ask for their decision to be reconsidered or lodge an appeal. When the Committee met with Jobcentre Plus and PDCS officials in Leeds, we were told that decision makers did not have targets for case clearance at the reconsideration stage. The Committee also met with claimants and welfare rights advisers in Leeds who argued that, in particularly complex cases, it was unfair that claimants were

⁷⁹ Department for Social Security (1997), *Consultation on Improving Decision Making and Appeals in Social Security: Analysis of Responses*, para 5.6

⁸⁰ DWP,(2006) A new deal for welfare: Empowering people to work, Chapter 2, page 72

⁸¹ Ev 127

⁸² Ev 80 and Ev 111

expected to dispute a decision within a month when there was no obligation for decision makers to complete the reconsideration process expeditiously. In oral evidence, Jeremy Groombridge CB, Director of Transformation and Product Management at Jobcentre Plus, told us that, whilst there is no specific target for decision makers to complete reconsiderations, there is an “expectation” that this process should be completed within five days of registration.⁸³ We asked the Minister whether a target should be introduced. He replied:

“That is a very good point. Perhaps they should. Staff are given targets in many other areas but not in that one, so we need to reflect on whether we could introduce a target for them.”⁸⁴

114. We recommend that DWP formalise the expectation that reconsiderations should be completed in five days by introducing this as a target for decision makers against which performance is measured.

Reconsiderations for DLA and AA

115. Welfare rights advisers told us that the reconsideration process could be a “huge benefit” to claimants, providing decisions were genuinely looked at again and “not just rubber stamp[ed]”.⁸⁵ We were also told that, at a recent National Association of Welfare Rights Advisers meeting, there “was a general feeling that now the DLA reconsideration process is working well.”⁸⁶

116. We asked DWP to provide us with data on the reconsideration process to assess its usefulness for the claimant. PDCS holds information in relation to Disability Living Allowance (DLA) and Attendance Allowance (AA) only. The tables below show the number of DLA and AA reconsiderations that were registered in 2007–08 and 2008–09 and the number that were revised in the claimant’s favour:

Figure 7: Disability Living Allowance and Attendance Allowance reconsiderations registered by the Pensions, Disability and Carers Service⁸⁷

	2007–08	2008–09
DLA Reconsiderations registered	125,233	132,338
AA Reconsiderations registered	17,800	17,368

Figure 8: Number of DLA and AA reconsiderations that result in a decision revised in the customer’s favour⁸⁸

	2007–08	2008–09
DLA	55,416	67,668
AA	9,924	10,373

⁸³ Q104

⁸⁴ Q97

⁸⁵ Q21

⁸⁶ Q1

⁸⁷ Ev 136

⁸⁸ Ev 136

117. The tables show that 44% of DLA reconsiderations were found in favour of the claimants in 2007–08; this figure rose to 51% in 2008–09. 55% of AA reconsiderations were found in favour of the claimant in 2007–08, rising to 60% in 2008–09. Although a majority of reconsiderations of decisions on DLA and AA found in favour of the claimant in 2008–09, 43% of DLA cases reaching an appeal hearing and 31% of AA cases reaching appeal found in favour of the claimant, indicating that reconsideration is still failing to pick up a large proportion of claims that should be awarded.⁸⁹

118. Whilst welfare rights advisers have suggested that the reconsideration process is working well with respect to DLA and AA as a relatively high proportion of decisions are overturned at this stage, these statistics equally raise questions about the quality of the original decisions made in DLA and AA cases. If standards of decision making on initial claims were high then it is logical to expect a low rate of overturned decisions at the reconsideration stage.

119. The quality of decision making depends in large part on the quality of the information provided to the decision maker. DLA and AA claimants carry out what amounts to a self-assessment, with variable results. The claim forms for DLA and AA are notoriously complex and many claimants find them confusing. Vivian Hopkins, Chief Operating Officer, Pension, Disability and Carers Service, acknowledged that many claimants believed that eligibility to DLA related directly to the “nature of the disability diagnosis” rather than how it affected the claimant’s mobility (for DLA) or ability to carry out everyday tasks and care needs (for DLA and AA). She told us that PDCS had made great efforts to improve the way in which it worked with those who were elderly or disabled (or had disabled dependents) in dealing with very complex benefits. The claim packs for DLA were under constant review and PDCS was working with representative groups to improve them. She noted specific initiatives to make DLA claim packs more tailored for those claiming for disabled children:

“In relation to specific progress for children the whole DLA claim process was very generic. We knew that it was not serving well the families of disabled children. Therefore, in the new claim pack which we are testing instead of asking what the child cannot do it is a shorter, simpler form which asks what the child can do. [...] My intention is to specialise for various complex cases including children.”

She also noted the steps that had been taken to simplify the renewal application form “which is [now] four pages long instead of the 40-odd pages which comprised the original one”. She added that:

“I hope that we shall move away from entirely generic claim packs over time because it is very clear that in mental health cases, for example, there are specific questions that you may want to ask and others that you simply do not need to. It is under constant review.”⁹⁰

⁸⁹ Annex A

⁹⁰ Q114

120. We note in Chapter 5 the value of welfare rights advice for those navigating the appeals process. Welfare rights advice is also important for many claimants at the stage of the initial claim and can make a big difference to the chances of whether a claim will be successful. However, many claimants are unaware of the sources of advice that may be available in their areas.

121. We are not convinced by the evidence that the reconsideration process is working well in respect of claims for DLA and AA. We are more inclined to believe that the quality of the initial decision making in respect of these benefits is a cause for concern. This does not reflect a particular criticism of DLA and AA decision makers, but rather concern that the “self-assessment” claim forms are misunderstood by many claimants. We commend the Pension, Disability and Carers Service on its efforts to improve the claim forms for DLA and to make them more tailored towards the needs of specific groups. However, given the nature of our generic concerns, we recommend that the Standards Committee should examine decision making in respect of these benefits as a matter of urgency.

122. Many DLA and AA claimants are unaware of the welfare rights advice that is available. We recommend that the Pension, Disability and Carers Service should pilot a scheme whereby it works with welfare rights advisers and representative groups to prepare a leaflet detailing sources of local advice which should be included with the claim pack for these benefits.

Reconsideration for Incapacity Benefit (IB) and Employment and Support Allowance (ESA)

123. We also heard that the system was not working well for IB and ESA. Welfare rights adviser, Patrick Hill, told us that “a straw poll of many” of his colleagues in the North West suggested that decisions on ESA or IB were not being revised on reconsideration.⁹¹ Alan Barton from Citizens Advice agreed, saying:

“I think the feeling we get often, particularly with the Incapacity [Benefit] reconsiderations, is it is just viewed by the people concerned in Jobcentre Plus as an annoying step they have to go through before the case goes to appeal and their focus is on producing the appeal papers.”⁹²

124. Judge Martin argued if claimants chose to lodge an appeal, despite the fact that this should trigger a reconsideration, often at this point “the Department then opts out of the process”. We asked DWP for data on reconsiderations undertaken by Jobcentre Plus but were told that it “does not maintain detailed statistics on the reconsideration process.”⁹³

125. We were disappointed to learn that Jobcentre Plus could not provide us with detailed statistics on the reconsideration process. If Jobcentre Plus is not collecting this data it is impossible for either the Committee, or the agency itself, to assess performance in this area. We call on Jobcentre Plus to start collecting and publishing

⁹¹ Q12

⁹² Q26

⁹³ Ev 136

data on reconsiderations as a matter of urgency. We hope that, once these statistics are available, our successor Committee will be able to re-visit this issue and conduct the examination of the reconsideration process for Jobcentre Plus benefits that we were unable to complete.

126. A common criticism of the reconsideration process was that, if DWP are committed to reconsidering all decisions once an appeal has been lodged, there was no need to have a separate reconsideration stage. When we met with welfare rights advisers in Leeds, they told us that they would often advise their clients to bypass the reconsideration process and go straight to appeal. This approach, they argued, could significantly reduce the time it takes for a claimant to get a decision overturned because it effectively removed one tier of the decision making and appeals process.⁹⁴

127. The President of the Social Entitlement Chamber, Judge Robert Martin, believed that the option of a reconsideration for claimants was in reality a “false choice”. A reconsideration might seem to be a quicker and simpler option than a full appeal, but Judge Martin believed that a more accurate description of the choice between the two processes would be to ask

“Would you like us to look at your decision again superficially or would you like us to look at our decision again seriously?”⁹⁵

128. He went on to ask:

“What is the advantage for the claimant in asking for a reconsideration rather than lodging an appeal straightaway? Lodging an appeal is free, informal and involves scarcely more effort than writing in asking for a reconsideration.”⁹⁶

129. For some benefits, the reconsideration process appears to be ineffective. Anecdotal evidence suggests that disputed IB and ESA decisions are not being reviewed properly by decision makers and, as a result, some welfare rights advisers are advising claimants to bypass this stage and pursue an appeal. We believe that they may be right to advise their clients to pursue this course, although without more detailed statistics, this is impossible to prove.

130. Many claimants will be deterred from an appeal by an unsuccessful request for a reconsideration. Our greatest concern is that, if this reconsideration is not being conducted thoroughly, they may miss out on the benefits to which they should be entitled.

131. The reconsideration process should provide a quick and efficient way of reviewing decisions which provides a swift resolution for claimants and reduces the caseload of the tribunals. It is also intended to be a stage at which a decision maker has the opportunity to consider new evidence. However, the current operation of the reconsideration process is a missed opportunity. We do not believe that the

⁹⁴ Annex D

⁹⁵ Q72

⁹⁶ Ev 116, para 24

reconsideration process is currently operating in the best interests of the claimant. We urge the Department to examine the operation of this process as a matter of urgency, and we hope that our successor Committee in the next Parliament keeps the matter under close scrutiny.

5 The Appeals Process

Appeals guidance

132. Kevin Sadler, Chief Executive of the Tribunals Service, told us that, in November 2008, the tribunal service “comprehensively overhauled” the information pack for appellants. He commented that, whilst the information provided was detailed, it was easy to understand and useful, for example, it informed individuals that they were more likely to be successful if they opted for an oral hearing.⁹⁷ The President of the First tier of the Social Entitlement Chamber was also positive about the Tribunals Service’s information pack. However, he indicated that DWP had ignored suggestions from the Tribunals Service to signpost claimants to it:

“Tribunals Service has produced a 30 page step by step guide (available in hard copy and on the net), which provides this information but its distribution has proved a problem. The best time to read the guide is when you’ve received a letter from the department turning down your claim and notifying you that you have a right of appeal. However, the department has declined to add a strapline to its decision letters, giving a Freephone number where claimants can obtain a copy of the guide.”⁹⁸

133. DWP also provides information for claimants who wish to pursue an appeal. The “GL24” leaflet outlines the different options for individuals who disagree with a decision on their benefit—including the reconsideration and appeals processes. However, this leaflet does not advise claimants of their increased chances of success should they opt for an oral hearing.⁹⁹

134. We recommend that DWP and the Tribunals Service should improve co-ordination of their guidance documents. We agree with the President of the First tier of the Social Entitlement Chamber that DWP should signpost claimants to the Tribunals Service guidance in its decision letters. Decision letters should also advise claimants where they can go to obtain representation.

Welfare rights advice

135. Age Concern/Help the Aged emphasised the need for many of their service users to access support from local welfare rights advisers in order to take an appeal forward, due to a lack of understanding of benefit rules and the appeals process. However, even when claimants are able to access support from an adviser, Age Concern/Help the Aged reported that they can often not get through to a relevant person to discuss a claim in advance of an appeal and, even when they did get through, they regularly faced difficulties trying to convince DWP staff to discuss details of a client’s claim with them.¹⁰⁰

⁹⁷ Q138

⁹⁸ Ev 116, para 20

⁹⁹ DWP (2009) GL24—If you think our decision is wrong

¹⁰⁰ Age Concern/Help the Aged, paras 7.1–7.2

136. Judge Martin told us that advice and support from welfare rights professionals was of “immense benefit” to appellants, particularly in the run up to an appeal. He highlighted the fact that professional representation varies across the country—in Scotland, 64% of cases are presented with professional support compared to only 13% of cases in the south-east.¹⁰¹ NAWRA reported that there had been cuts in the availability of welfare rights representation in different parts of the country and they had “huge concern about the detrimental effect of this.”¹⁰²

137. RNID published research in October 2009 which considered the experiences of claimants with hearing impairments. It surveyed 1,315 people registered with RNID Tynetalk and found that 31% of all those who had made a claim for either DLA or AA had attended an appeal and 85% of those were successful. They found that 67% of deaf people surveyed had personal representation at the tribunal itself, usually from a welfare rights adviser or social worker. However, the levels of assistance provided from these sources has dropped since 2001, while the numbers of people relying on informal and inexperienced help from friends and families had more than doubled, from 7% to 18%.¹⁰³

138. Access to welfare rights advice can be a crucial resource for those who require expert guidance and support in preparation for an appeal. We note with concern reports that there have been cuts in welfare rights provision. We call on DWP to work with the Tribunals Service, local authorities and welfare rights organisations to try to identify solutions to regional gaps in service provision.

Time limits for submitting evidence

139. Judge Martin explained that the appeals process had been made more straightforward by the fact that claimants’ appeals are no longer struck out for failure to return the enquiry form sent by DWP once an appeal was requested (called the TAS1). Prior to a change in the rules in November 2008, every year 70,000 appeals would be struck out for non-return of the TAS1.¹⁰⁴ The NAWRA noted that this was a welcome development and their advisers had commented on the benefits of this administrative change for the appellant.¹⁰⁵

140. Prior to the introduction of the Social Security Act 1998, the time limit for appellants’ submissions had been three months. Commenting on the reduction, Judge Martin noted:

“Although the time limit may be extended by the tribunal, it places considerable responsibility upon claimants and is very tight in comparison to other court and tribunal jurisdictions. In 2008–09 the tribunal received some 15,000 applications for an extension of time, most of which were granted.”¹⁰⁶

¹⁰¹ Ev 118, para 45

¹⁰² Ev 80, para 11

¹⁰³ RNID (2009) Who benefits: The experiences of people who are deaf when claiming DLA and AA

¹⁰⁴ Ev 117, para 27

¹⁰⁵ Ev 81, para 19

¹⁰⁶ Ev 118, para 37

141. Whilst a time limit exists for claimants, there is no equivalent for DWP, which can mean that, despite the fact that the claimant submitted their appeal on time, the process is still subject to delay if DWP does not provide timely evidence to support its decision. Many organisations commented on the timescales and time limits within the appeals process. Age Concern/Help the Aged and NAWRA argued that it was unfair for appellants to be given one month to appeal, when DWP were not constrained by any time limits in which to submit its response.¹⁰⁷

142. The Action Group, which operates an advice service across Edinburgh, the Lothians and Falkirk, provided an example to demonstrate the impact on claimants of this discrepancy: a client submitted an appeal against a decision not to award him ESA, and it took DWP three months to send its appeal submission to the Tribunals Service.¹⁰⁸ Judge Martin told us that in 2007–08 the average time taken from the appeal being lodged with DWP to the Department submitting its response was 63 days.¹⁰⁹

143. The Tribunals Service told us that it had been collaborating with DWP and the Tribunal Procedure Committee to examine how they can reduce the time it takes for DWP to respond to claimants' appeals.¹¹⁰

144. We note that DWP and the Tribunals Service are looking at ways to reduce the time it takes DWP to submit its response to an appeal. It is unfair that claimants are expected to lodge an appeal within a month but may face a delay as they wait for DWP to prepare its papers. We recommend that DWP be subject to a one month time limit, with exceptions permitted only with the approval of the Tribunal Chair, for submitting its responses to the Tribunal Service.

Recording appeals as an end-to-end process

145. The Tribunals Service now publishes statistical data for tribunals within a unified system, measured against its key performance indicators. However, since appeals are first lodged with DWP, the Tribunals Service only becomes aware of an appeal when it receives the appeal submission from DWP, which, as detailed above, can be some considerable time after the appeal was originally lodged. The Administrative Justice and Appeals Council (AJTC) argued that this can cause problems, both in terms of the accuracy of records on appeals and leaving claimants in the dark about timescales for their appeal:

“The TS statistics concerning the time it takes for an appeal to get to a hearing only relate to the period from when the TS receives the notice of appeal along with the Agency’s submission, which can be many months after the original date of lodgement. This makes it difficult, if not impossible, to give tribunal users any meaningful indication of the overall time it takes for an appeal to get to a hearing as neither DWP nor TS measures this. This has created an unhelpful gap in the

¹⁰⁷ Ev 45 para 6.2– 6.3 and Ev 81, para 18

¹⁰⁸ Ev 90

¹⁰⁹ Ev 90, para 38

¹¹⁰ Ev 103, para 4.6

recording of information about appeal waiting times which needs to be resolved urgently.”¹¹¹

146. Chief Executive of the Tribunal Service, Kevin Sadler, agreed saying:

“From my perspective of looking at what customers experience they do not really distinguish between how long it takes in the Department of Work and Pensions and how long it takes in the Tribunals Service to deal with their appeals. I am quite keen that we articulate to them the whole length of the process rather than my saying that we aim to deal with 75% of cases within 14 weeks.”

147. We believe that appellants should be able to track the progress of their appeal from the time it is lodged to the point it is heard. We recommend that DWP and the Tribunals Service examine how they can improve data sharing to ensure that individuals can ascertain how long they can expect their appeal to take.

Oral hearings

148. The latest figures on appeals from the Tribunals Service show that, where an appeal involves an oral hearing, appellants are more likely to be successful. Between 1 April 2009 and 31 August 2009 39% of cases were cleared in favour of the appellant; where appellants opted for an oral hearing, this rose to 48%.¹¹²

149. Judge Robert Martin noted that oral evidence can be very valuable to the appeals process and often involved the disclosure of new information that subsequently led to a positive outcome for the appellant:

“In the majority of cases the critical additional evidence is the oral evidence of the claimant. It is not so much “given” to the tribunal as carefully and skilfully elicited by the tribunal through questions asked of the claimant. Similarly, the tribunal’s willingness to accept evidence or, indeed, form a different view of the same evidence is influenced by its opportunity to engage with the claimant face to face and use question and answer to test the evidence. Many appeals concerning disability or incapacity turn on the credibility of the claimant’s evidence. It is not surprising that the success rates of appeals where the claimant attends the hearing are more than double those where the claimant does not attend, leaving the tribunal to reach its decision on the basis of the appeal papers only.”¹¹³

150. We note with interest the increased probability of success for appellants who opt for an oral hearing on appeal. We agree with the President of the First tier of the Social Entitlement Chamber that, by engaging with the appellant face-to-face, the tribunal judge has more opportunity to test the evidence. We ask DWP to ensure claimants are made aware of the increased chances of success if they attend an oral hearing.

¹¹¹ Ev 151, para 37

¹¹² See appeals table in Annex A

¹¹³ Ev 115, para 11

Claimants' experience of the tribunal

151. On balance, the evidence we received remarked favourably on the tribunal itself. NAWRA told us that feedback from advice centres on tribunals was positive.¹¹⁴ Sally West, Policy Adviser at Age Concern, agreed saying that “most of the tribunal members treat people well and courteously and do their best to make the process as informal as possible”.¹¹⁵

152. However, a number of organisations and individual appellants claimed that the appeals process could be a stressful experience and emphasised the importance of ensuring reasonable adjustments are made for those appellants who required them. Action Group argued that some of their clients had found the tribunal “scary, confusing and distressing”, whilst The Parkinson’s Disease Society agreed that appellants often perceived the appeals process as a daunting hurdle to overcome.¹¹⁶ Judge Martin accepted that “trying to create a distinctive and welcoming image for something called ‘the Social Entitlement Chamber of the First-tier Tribunal’ is a marketing challenge that the Ministry of Justice has yet to take up”.¹¹⁷

153. Both T_hCell and the National AIDS Trust expressed concern that many of their clients with HIV and AIDS did not want family, friends and colleagues to know about their condition. They were therefore very reluctant to pursue an appeal because the decision would be made public.¹¹⁸

154. Kevin Sadler, Chief Executive of the Tribunals Service, told us that the Tribunals Service had surveyed its social security and child support customers and found that 68% were satisfied with the service and 90% believed the information provided was accurate. Of the 22% who were dissatisfied in the last quarter, the results showed that only 5% gave as the main reason that they found the process too daunting.¹¹⁹ In order to ensure that appellants’ experiences were systematically fed back, Mr Sadler told us that the Tribunals Service had established a national user group and held 50 local user group meetings twice a year.¹²⁰

155. RNID’s recent survey found that despite high levels of success at appeal, 24% of respondents were unhappy with the hearing (including 22% of those who were successful), for the following reasons:

- a) 78% said that the tribunal did not seem to understand deafness.
- b) 21% said that they had been unable to follow the proceedings.

¹¹⁴ Ev 81, para 18

¹¹⁵ Q65

¹¹⁶ Ev 89 and Ev 140

¹¹⁷ Ev 116, para 18

¹¹⁸ Ev 73

¹¹⁹ Q138

¹²⁰ Q138

c) 9% said that they needed communication support but did not get any.¹²¹

156. We asked the Chief Executive of the Tribunals Service to comment on RNID's findings. Mr Sadler said:

“On the RNID point I think we have something specific to take up with them and we ought to do that. Occasionally, we have situations where hearing loops are supposed to work and they do not. Clearly, that is a worry to us. It is an important point. There is a degree of breakdown in our customer survey that allows us to isolate particular groups that may be less happy than others; that is to say, we know about the people who are less successful and more successful, but there is a specific issue that we need to take forward.”¹²²

157. We welcome the efforts the Tribunals Service has made to ensure that user feedback is systematically obtained and used to improve appellants' experience of the tribunal.

158. However, there is evidence that some groups of claimants still feel that “reasonable adjustments” could be made to the appeals process which would help them to engage with tribunals. We call on the Office for Disability Issues to work with the Tribunals Service in this area.

Employment and Support Allowance appeals

159. During our visit to Leeds, the Tribunals Service told us that its appeals intake had risen significantly this year. In 2007–08 its total intake was 229,130 and in 2008–09, 242,830. The intake for 2009–10 was at 140,854 up to the end of September, and by the end of the year, it expects this figure to have risen to over 300,000.¹²³ We were told the bulk of the increase was a result of a rise in the number of appeals for ESA and IB. Whilst the Tribunals Service was working hard to keep on top of its workload, information provided to us on our visit to Leeds suggested that the increase in ESA appeals was creating a considerable strain on its resources.¹²⁴ In order to meet the costs of ESA appeals, DWP has transferred £8,600,000 of its budget to the Ministry of Justice.¹²⁵

160. The rise in the number of appeals coming before the Tribunals Service appeared to have had a direct impact on the First-tier tribunal's performance against its target to bring 75% of appeals to hearing within 14 weeks of receipt. In 2007–08 87% of appeals were brought to hearing in Social Security and Child Support (SSCS) First-tier tribunals before 14 weeks. In 2008–09 78% of appeals in SSCS tribunals were brought to hearing within 14 weeks. In 2009 to date the figure for SSCS tribunals stands at 66%.¹²⁶

¹²¹ Q138

¹²² Q139

¹²³ Annex D

¹²⁴ Annex D

¹²⁵ Official Report, 24 November 2009, c 76WS

¹²⁶ Ev 102, para 4.2

161. We asked Kevin Sadler to describe how the increase in ESA appeals has impacted upon tribunal activity. He told us:

“This year we expect a figure 30% above the volume for 2008–09, so that is a massive hit for us. Particularly in relation to Incapacity Benefit and ESA appeals, the number has increased this year by 86% compared with last year. We have 45% of our social security and child support receipts in September, so it is almost half the appeals. They are not the cheapest appeals to process because of the medical input of the Tribunal as well, so they cost us a bit more than some of them. There has been a big increase in what we have been asked to do over a very short time. We have responded by dramatically boosting our capacity. We shall be running 50% more sessions in the latter half of this year than in the latter half of 2008–09, but quite a lot of that workload has built up and it will be some time before we get back to 75%.”¹²⁷

162. The increase in Employment and Support Allowance (ESA) appeals has put a considerable strain on the Tribunals Service’s resources. We welcome the budget transfer of £8,600,000 from DWP but this is a short-term solution. We ask DWP to confirm what action it is undertaking in response to this increase.

Attendance of DWP presenting officers

163. A presenting officer (PO) is usually an experienced decision maker who acts as a representative for the Secretary of State by attending appeals on her behalf. DWP outlined its policy for the attendance of POs at tribunals:

- a) “where the facts and law are considered to be complex, for example where complex legal arguments have been raised or where contentious case law has been referred to;
- b) where the appeal involves new legislation which needs a ‘bedding in period’ (this period will be determined by the complexity of the legislation);
- c) at an Upper Tribunal rehearing (where that is to be an oral hearing); and
- d) where directed to do so by the Tribunal Judge.”¹²⁸

164. Judge Martin noted that only 16% of hearings are attended by a PO. He commented that the failure of DWP to attend tribunals had been raised in each of the President’s reports since 2000–01 (when the attendance rate was 40%). He explained that non-attendance by DWP meant that the tribunal judges were often left to explain the department’s case, which meant that the tribunal’s “integrity and neutrality is compromised.”¹²⁹ He also suggested that by not attending, DWP misses the opportunity to receive valuable feedback on the quality of its decision making.

“in terms of standards of decision making there is a crucial gulf because the Department does not know what goes on in the hearing and so is at a complete loss to understand where it may have gone wrong. All it will receive is a very brief

¹²⁷ Q127

¹²⁸ Ev 32, para 10.2

¹²⁹ Q84

decision from the Tribunal saying that the appeal has been allowed or dismissed and people are in the dark. It also has a bearing on the volume of appeals because the Department loses the "embarrassment" factor. If it turns up and the Tribunal takes the view that the appeal should never have been brought and the claim should have been allowed first time the Department is absolved from someone going back to the office and to say, "We made a mistake here. I felt very embarrassed trying to defend a hopeless decision." That is just lost."¹³⁰

165. We are concerned that tribunal judges believe their neutrality is often compromised because DWP is so rarely represented at oral hearings. We ask DWP to explain why there has been a significant reduction in the rate of attendance of Presenting Officers at tribunal hearings and how it intends to address the criticisms raised by the President of the First tier of the Social Entitlement Chamber.

Feedback to individual decision makers on appealed decisions

166. We received conflicting information about the amount of feedback decision makers receive from tribunals about the quality of their decision making. We met with Judges from the Upper tier of the Social Entitlement Chamber, who explained that the most obvious, and most valuable, form of feedback were the tribunal judgements themselves.¹³¹ In terms of specific feedback to individual decision makers, Vivian Hopkins, Chief Operating Officer, at the PDCS, explained that the agency operates local databases, which record all appeal outcomes and retrace the appeals back to the original decision maker. That information is then used to identify trends in decision making and possible training needs.¹³²

167. However, during our first evidence session, welfare rights advisers argued that this was not the case. Alan Barton from CAB said:

“One of the problems with DWP, and the fact that they keep losing at appeals, is they do not seem to have any process whereby as an organisation they then learn from that. The individual people who have had decisions overturned never know that this has happened, which seems extraordinary. If they were a learning organisation that would be quite an important part of their philosophy.”¹³³

168. Daphne Hall from Bristol County Council Welfare Rights Service agreed saying:

“We had a meeting with our disability and carers services. They asked if that could begin to happen and it is not happening. They do not get the feedback. [...]they are not learning.”¹³⁴

¹³⁰ Q84

¹³¹ Annex C

¹³² Q117

¹³³ Q34

¹³⁴ Q36

169. We call upon DWP to confirm what mechanisms are in place to ensure that individual decision makers in Jobcentre Plus and the Pension, Disability and Carers Service receive feedback on any decisions they make which progress to an appeal.

Reducing the number of appeals: the Alternative Resolution Pilot

170. Between August 2007 and September 2008, the Tribunal Service ran a pilot scheme, in conjunction with the Pension, Disability and Carers Service (PDCS), to test whether a form of alternative dispute resolution involving early neutral evaluation might work in Disability Living Allowance and Attendance Allowance appeals.

171. Under the scheme, a Tribunal Chairman reviewed the appeal papers, with the appellant's consent, to form a view of the likely outcome at a tribunal hearing. Where the appeal had convincing prospects of success, the Chairman contacted PDCS and invited reconsideration of its decision. Where the Chairman assessed the appeal as lacking prospects of success, that view is communicated to the appellant, who may choose to withdraw or continue to a tribunal hearing. The pilot aimed to reduce the number of hearings (and potential adjournments) required in DLA appeals, whilst at the same time offering appellants the opportunity to have their appeals resolved without the need for a full hearing.

172. Judge Martin told us that the final report of the pilot had not yet been published. However, the early evaluation suggested the results were mixed:

“The basis of the early neutral evaluation pilot was that in disability living allowance cases an appeal would be put before a full-time judge for a preliminary opinion on its merits. If it was concluded that it was a fairly hopeless case the judge would ring the claimant and explain; if on the other hand it was concluded that it was an extremely strong case and the Department was likely to lose the judge would ring up the Department and invite them to reconsider it. In the majority of cases the judge was unable to pick up that a particular case was a very strong or weak appeal and it just went forward to a hearing.”

173. We welcome the attempt made by DWP and the Tribunals Service to reduce the number of decisions reaching a tribunal through the development of the Alternative Resolution Pilot. We have heard that the early evaluation suggests the results of the pilot were mixed. We strongly believe that the best way to reduce the number of decisions being appealed is to improve the frontline decision making. We look forward to hearing DWP's response to our recommendations on how this might best be achieved.

6 Conclusion

174. The significant changes made to procedures for decision making and appeals (DMA) following the introduction of the Social Security Act 1998 set out to improve the effectiveness of the DMA system for both officials involved in delivery, and most importantly, for those individuals who claim benefits and those who want to challenge the Department's decisions. The vast majority of decisions the Department makes are accepted by claimants and lead to the right benefits being paid on time to those who are eligible. However, whilst the 1998 reforms can be measured as successful in as far as the Department has met all but one of its targets for payment accuracy and clearance rates, the level of official error in the benefits system has increased substantially since 2000–01. Although the Department has made great strides in reducing fraud, the increase in error should cause it concern.

175. The 1998 Act introduced monitoring arrangements to ensure that the DMA system operated effectively and the subsequent establishment of the Decision Making Standards Committee should have strengthened these arrangements. However, the Secretary of State has not produced an annual report on decision making since 2006 (contrary to undertakings given during the passage of the Act), the former President of the Appeal Tribunals felt his reports were effectively ignored by the Department and we were told that the Standards Committee lacked influence. We are concerned that DWP has failed to respond to concerns and recommendations made by those responsible for scrutinising the DMA system. Unless the Department takes scrutiny of the DMA system seriously, we do not believe that it will improve on its performance in respect of official error.

176. Furthermore, by not publishing data on claim clearance rates, payment accuracy and the reconsideration process for Jobcentre Plus benefits, the Department has made it impossible to measure that agency's decision making performance. The paucity of data leads us to conclude that the Department is not adequately assessing decision making in Jobcentre Plus and this will make it difficult for the Department to identify ways to improve the DMA system.

177. Poor decision making not only costs the Department in wasted over-payments, and costs claimants in under-payments, but also generates more costs further down the line in reconsiderations and appeals. An increased focus on the quality of decision making to match the Department's successful focus on fraud could have a very significant effect in reducing the cost to the Tribunals Service of hearings on benefit appeals.

178. One important element of the 1998 reforms that does not appear to be working as intended is the reconsideration process. We are concerned that a number of witnesses to the inquiry, including the President of the Social Entitlement Chamber and welfare rights advisers, questioned the rigour with which reconsiderations were conducted. This process should enable decision makers to take account of new evidence submitted by the claimant and should provide for a means of reviewing decisions to provide claimants with a quick resolution of their claim and relieving some of the burden on tribunals. We are concerned that the way the process is currently operating represents a missed opportunity.

179. The Department's Customer Charter tells claimants that they can expect "The right result. [...] If the outcome is not what you hoped for, we will explain why and tell you what will happen next."¹³⁵ Disappointingly, evidence we received in this inquiry suggested that DWP computer-generated letters do not clearly explain the specifics of decisions, which means that some claimants were unable to understand why their claim had been rejected. We also believe that greater efforts to explain the rationale behind decisions could reduce the numbers of appeals that are lodged.

180. We do not underestimate the difficulty of the task facing decision makers across DWP's businesses. The complex rules that govern the social security system increase the scope for both customer and official error and the challenge of decision making accuracy. We have previously recommended that the Department establish a body to examine complexity in the benefits system and this has been supported by a number of organisations, including Citizens Advice.¹³⁶

181. We reiterate a previous recommendation of this Committee, that the Government should establish a Welfare Commission to examine the existing benefits system and model possible alternative structures with the aim of creating a fair but simpler system that claimants and their representatives are able to understand more easily and DWP staff are able to administer more accurately.

¹³⁵ DWP (2009) Customer Charter

¹³⁶ Q20

Recommendations

The Decision Making Appeals (DMA) System: 1998 reforms to present

1. We note the concerns of some witnesses that the transfer of responsibility for decision making to the Secretary of State for Work and Pensions from the Chief Adjudication Officer has led to a reduction in the independence of decision making and even a deterioration in the quality of decision making. We ask DWP to set out how the existing system safeguards objectivity in the decision making process. (Paragraph 26)
2. We commend the Department's performance against its targets for payment accuracy and claim clearance rates for a number of benefits. However, we were surprised to learn that the equivalent data for Jobseeker's Allowance, Employment Support Allowance, Incapacity Benefit or Income Support is not validated and is therefore not suitable for publication. We ask the Department to explain why it does not publish data on payment accuracy and claim clearance rates for these major benefits and recommend that it begins to do so as soon as possible. (Paragraph 34)
3. We acknowledge the work the Department's agencies are undertaking to address error, including the appointment of "Error Champions" in Jobcentre Plus and pre- and post-payment accuracy checks in the Pension, Disability and Carers Service. We ask the Department to monitor the impact of these measures and to ensure that agencies share information about measures that are successful in reducing levels of official **error**. (Paragraph 35)
4. However, we believe that the cost of official error due to overpayments of benefits is still far too high at £800 million in 2008–09, and we are concerned that this figure has risen significantly since 2000–01. We are equally concerned by the increase in the total amount of underpayments resulting from official error since 2004–05. In light of the 1998 reforms of the decision making and appeals system, which were designed to improve decision making, we ask the Department to explain why levels of official error have risen since 2000–01. (Paragraph 36)
5. It is unacceptable that, despite the Government committing to publishing a report by the Secretary of State on the Department's decision making standards "annually or as near to each year as possible" the most recent report was published in 2006 and only covered the 2002–03 period. The failure of the Secretary of State to provide an assessment of decision making in the last six years means the Department is not fulfilling promises made by the Government during the passage of the Social Security Act 1998. We ask the Secretary of State to explain why the Government's commitment to publishing an annual report on decision making standards has not been fulfilled and to announce when reports will be published for the six years since 2003. (Paragraph 41)
6. We note with concern that the Comptroller and Auditor General was unable to confirm that a substantial part of the information set out in the last report by the Secretary of State was "fair and balanced". We are further dismayed by his

conclusion that the information within it would be of “limited utility as a measure of the Department’s success in improving the accuracy of decision making”. Reliable data are crucial to ensuring that decision making accuracy is measured effectively and the Department’s failure to collect this information reduces the likelihood of appropriate improvements being made to the system. We also ask the Secretary of State to provide evidence to demonstrate that data collection on decision making and appeals has improved since the last report was published. (Paragraph 42)

7. We are surprised and disappointed to learn that the President of the First-tier of the Social Entitlement Chamber had seen no evidence that the Department has listened to the feedback provided in the annual reports of the President of Appeal Tribunals. We recommend that the new Senior President of Tribunals should continue to produce an annual report on standards of decision making and that the Secretary of State should undertake to publish a response to it within two months of its publication. (Paragraph 47)
8. The Standards Committee was established to monitor decision making within the Department and we believe that this important role should be more formally recognised. We recommend that “Decision Making” should be reinstated in its title to ensure that its main purpose is clear, both to internal and external stakeholders. We also recommend that the Department publish a response to the Standards Committee’s recommendations within two months of the publication of a report of the Committee. (Paragraph 54)
9. The change in format of the Standards Committee’s annual report has resulted in an esoteric document, which we found less accessible than previous reports. It is important that the Standards Committee’s conclusions and recommendations are clear and readily understandable. We ask the Standards Committee to reintroduce a summary of how the Department has responded to the previous year’s recommendations. (Paragraph 55)

Collecting and Evaluating Evidence

10. Complexity in the benefits system remains a significant challenge for claimants, their representatives and the Department itself. We note the concerns raised to us in evidence that errors in decision making are inevitable if the social security system is too complex. We urge the Department to re-examine the conclusions of our report on Benefits Simplification with a view to simplification of the system. (Paragraph 61)
11. In order for decisions to be timely and accurate, decision makers must have access to as much information as possible, relevant to a person’s claim. If claim forms are long and complex, which would appear inevitable in an excessively complex benefit system, the likelihood increases that errors or omissions will occur in the initial application process which may, in turn, affect the quality of decisions. We welcome the work the Department is undertaking to improve benefit claim forms but we acknowledge the scale of this task given the complexity of the system. However, we believe more work is required to tackle this problem and to address the persistent concerns of claimants and their representative groups. (Paragraph 66)

12. We received many complaints about the medical assessment process ranging from dissatisfaction from claimants who felt they were treated badly to criticisms of the computerised assessment process. We appreciate that DWP must strike a balance between providing a personalised service and ensuring a consistent approach to medical assessments but it is crucial that claimants' responses are recorded accurately. We ask the Department to investigate the concerns raised to us with Atos Healthcare and inform the Committee of the outcome. (Paragraph 72)
13. We were concerned to hear that 50% of one provider's Pathways to Work caseload have been in the programme for 14 weeks, despite not yet having received the result of their WCA. It is unacceptable that terminally ill claimants or those undertaking treatment that affects their work capability should be expected to undertake mandatory work focused interviews. We call on the Department, as a matter of urgency, to ensure that arrangements are made to ensure that terminally ill claimants are fast-tracked to the Employment and Support Allowance support group. (Paragraph 75)
14. We ask the Department to confirm when it intends to publish the findings of its internal review of the Work Capability Assessment (WCA). We note the concerns raised by some organisations that are contributing to the review. We urge our successor Committee in the next Parliament to examine carefully whether these concerns have been addressed and to maintain close scrutiny of the operation of the WCA. (Paragraph 81)
15. Migration of existing claimants from Incapacity Benefit to Employment and Support Allowance, subject to a Work Capability Assessment, will be trialled from October 2010 with a view to being rolled out for all customers from February 2011. We recommend that this process should not commence before the review of the WCA has been completed and its recommendations considered. (Paragraph 82)
16. We note widespread concerns that decision makers appear to give excessive weight to the conclusions of DWP medical assessments over other evidence claimants may provide. If a claimant is able to provide statements from specialists, who have regular contact with them, this evidence should be given due consideration. Furthermore, if a decision maker does not award a benefit based on the recommendation of a DWP medical assessment, despite the fact that this conflicts with the conclusions of expert evidence provided by the claimant, DWP should ensure that claimants are given a clear and full explanation of the basis for this decision. (Paragraph 87)
17. We welcome Jobcentre Plus' decision to review its training provision for decision makers and the DWP Standards Committee's commitment to examining the training available to decision makers in the Pensions Disability and Carers Service. (Paragraph 92)
18. We are encouraged by the positive responses to the introduction of the Professionalism in Decision Making Accreditation (PiDMA). However, with only 200 decision makers accredited at a cost of £300,000 per year, this is an expensive

diploma to deliver. We ask DWP to publish the internal evaluation of PiDMA once the report is finalised. (Paragraph 96)

19. Speaking to a claimant directly is an effective means of ensuring that decisions are based on accurate evidence. We ask the Department to explain what actions it has taken in response to the DWP Standards Committee's conclusion that decision makers would benefit from a better understanding of claimants' viewpoints. (Paragraph 101)
20. We recommend that the Department should pilot a scheme whereby claimants who proceed to a reconsideration of their claim or appeal against a decision are allocated an individual decision maker and are given a direct telephone number on which to contact them. We recognise that this will place an additional burden on decision makers, but we believe that it is justified on the grounds of fairness to claimants. We believe that it could also reduce costs in the system by reducing the number of cases that go to appeal. (Paragraph 102)
21. We are disappointed to hear that computer-generated notification letters continue to make it difficult for some claimants to understand how a decision on their benefit claim has been reached. Both this Committee and the National Audit Office have raised the issue of incomprehensible written communications from DWP in the past and yet this continues to be a problem. We ask the Department to outline what work it is undertaking to improve its notification letters and to ensure that decisions are properly explained and easily understood by claimants. We believe that better explanation of the rationale behind decisions could reduce the number of appeals and requests for reconsideration that are brought forward, delivering savings elsewhere in the system. (Paragraph 109)

Reviewing Decisions

22. We recommend that DWP formalise the expectation that reconsiderations should be completed in five days by introducing this as a target for decision makers against which performance is measured. (Paragraph 114)
23. We are not convinced by the evidence that the reconsideration process is working well in respect of claims for DLA and AA. We are more inclined to believe that the quality of the initial decision making in respect of these benefits is a cause for concern. This does not reflect a particular criticism of DLA and AA decision makers, but rather concern that the "self-assessment" claim forms are misunderstood by many claimants. We commend the Pension, Disability and Carers Service on its efforts to improve the claim forms for DLA and to make them more tailored towards the needs of specific groups. However, given the nature of our generic concerns, we recommend that the Standards Committee should examine decision making in respect of these benefits as a matter of urgency. (Paragraph 121)
24. Many DLA and AA claimants are unaware of the welfare rights advice that is available. We recommend that the Pension, Disability and Carers Service should pilot a scheme whereby it works with welfare rights advisers and representative

groups to prepare a leaflet detailing sources of local advice which should be included with the claim pack for these benefits. (Paragraph 122)

25. We were disappointed to learn that Jobcentre Plus could not provide us with detailed statistics on the reconsideration process. If Jobcentre Plus is not collecting this data it is impossible for either the Committee, or the agency itself, to assess performance in this area. We call on Jobcentre Plus to start collecting and publishing data on reconsiderations as a matter of urgency. We hope that, once these statistics are available, our successor Committee will be able to re-visit this issue and conduct the examination of the reconsideration process for Jobcentre Plus benefits that we were unable to complete. (Paragraph 125)
26. For some benefits, the reconsideration process appears to be ineffective. Anecdotal evidence suggests that disputed IB and ESA decisions are not being reviewed properly by decision makers and, as a result, some welfare rights advisers are advising claimants to bypass this stage and pursue an appeal. We believe that they may be right to advise their clients to pursue this course, although without more detailed statistics, this is impossible to prove. (Paragraph 129)
27. Many claimants will be deterred from an appeal by an unsuccessful request for a reconsideration. Our greatest concern is that, if this reconsideration is not being conducted thoroughly, they may miss out on the benefits to which they should be entitled. (Paragraph 130)
28. The reconsideration process should provide a quick and efficient way of reviewing decisions which provides a swift resolution for claimants and reduces the caseload of the tribunals. It is also intended to be a stage at which a decision maker has the opportunity to consider new evidence. However, the current operation of the reconsideration process is a missed opportunity. We do not believe that the reconsideration process is currently operating in the best interests of the claimant. We urge the Department to examine the operation of this process as a matter of urgency, and we hope that our successor Committee in the next Parliament keeps the matter under close scrutiny. (Paragraph 131)

Appeals and Guidance

29. We recommend that DWP and the Tribunals Service should improve co-ordination of their guidance documents. We agree with the President of the First tier of the Social Entitlement Chamber that DWP should signpost claimants to the Tribunals Service guidance in its decision letters. Decision letters should also advise claimants where they can go to obtain representation. (Paragraph 134)
30. Access to welfare rights advice can be a crucial resource for those who require expert guidance and support in preparation for an appeal. We note with concern reports that there have been cuts in welfare rights provision. We call on DWP to work with the Tribunals Service, local authorities and welfare rights organisations to try to identify solutions to regional gaps in service provision. (Paragraph 138)
31. We note that DWP and the Tribunals Service are looking at ways to reduce the time it takes DWP to submit its response to an appeal. It is unfair that claimants are

expected to lodge an appeal within a month but may face a delay as they wait for DWP to prepare its papers. We recommend that DWP be subject to a one month time limit, with exceptions permitted only with the approval of the Tribunal Chair, for submitting its responses to the Tribunal Service. (Paragraph 144)

32. We believe that appellants should be able to track the progress of their appeal from the time it is lodged to the point it is heard. We recommend that DWP and the Tribunals Service examine how they can improve data sharing to ensure that individuals can ascertain how long they can expect their appeal to take. (Paragraph 147)
33. We note with interest the increased probability of success for appellants who opt for an oral hearing on appeal. We agree with the President of the First tier of the Social Entitlement Chamber that, by engaging with the appellant face-to-face, the tribunal judge has more opportunity to test the evidence. We ask DWP to ensure claimants are made aware of the increased chances of success if they attend an oral hearing. (Paragraph 150)
34. We welcome the efforts the Tribunals Service has made to ensure that user feedback is systematically obtained and used to improve appellants' experience of the tribunal. (Paragraph 157)
35. However, there is evidence that some groups of claimants still feel that "reasonable adjustments" could be made to the appeals process which would help them to engage with tribunals. We call on the Office for Disability Issues to work with the Tribunals Service in this area. (Paragraph 158)
36. The increase in Employment and Support Allowance (ESA) appeals has put a considerable strain on the Tribunals Service's resources. We welcome the budget transfer of £8,600,000 from DWP but this is a short-term solution. We ask DWP to confirm what action it is undertaking in response to this increase. (Paragraph 162)
37. We are concerned that tribunal judges believe their neutrality is often compromised because DWP is so rarely represented at oral hearings. We ask DWP to explain why there has been a significant reduction in the rate of attendance of Presenting Officers at tribunal hearings and how it intends to address the criticisms raised by the President of the First tier of the Social Entitlement Chamber. (Paragraph 165)
38. We call upon DWP to confirm what mechanisms are in place to ensure that individual decision makers in Jobcentre Plus and the Pension, Disability and Carers Service receive feedback on any decisions they make which progress to an appeal (Paragraph 169)
39. We welcome the attempt made by DWP and the Tribunals Service to reduce the number of decisions reaching a tribunal through the development of the Alternative Resolution Pilot. We have heard that the early evaluation suggests the results of the pilot were mixed. We strongly believe that the best way to reduce the number of decisions being appealed is to improve the frontline decision making. We look forward to hearing DWP's response to our recommendations on how this might best be achieved. (Paragraph 173)

Conclusion

40. We reiterate a previous recommendation of this Committee, that the Government should establish a Welfare Commission to examine the existing benefits system and model possible alternative structures with the aim of creating a fair but simpler system that claimants and their representatives are able to understand more easily and DWP staff are able to administer more accurately. (Paragraph 181)

Annex A : Appeals Statistics

1/4/07 to 31/3/08

Benefit	All Cases Cleared at Hearing	All Cases Cleared in Appellants Favour	All Cases Cleared in Appellants Favour (%)	Oral Cases Cleared at Hearing	Oral Cases Cleared in Appellants Favour	Oral Cases Cleared in Appellants Favour (%)
(HOUSING / COUNCIL TAX) BENEFIT COMBINED	3707	1125	30.35%	3078	1036	33.66%
SOCIAL FUND —FUNERAL	1688	255	15.11%	816	207	25.37%
SOCIAL FUND —MATERNITY	628	66	10.51%	194	47	24.23%
VACCINE DAMAGE APPEALS TRIBUNALS	10	2	20.00%	10	2	20.00%
WORKING TAX CREDIT	78	13	16.67%	50	12	24.00%
INCOME SUPPORT	13045	4532	34.74%	8767	4014	45.79%
INDUSTRIAL INJURIES DISABLEMENT BENEFIT	6200	2470	39.84%	4955	2270	45.81%
JOB SEEKERS ALLOWANCE	7558	2107	27.88%	3738	1531	40.96%
MATERNITY BENEFIT/ALLOWANCES	59	4	6.78%	25	3	12.00%
OTHERS (EXTINCT/RARE BENEFITS)	162	53	32.72%	143	49	34.27%
PENALTY PROCEEDINGS	8	1	12.50%	8	1	12.50%
PENSION CREDITS	1019	363	35.62%	709	316	44.57%
RETIREMENT PENSION	462	56	12.12%	316	53	16.77%
SEVERE DISABLEMENT BENEFIT/ALLOWANCE	109	47	43.12%	88	43	48.86%
COEG	3	0	0.00%	3	0	0.00%
COMPENSATION RECOVERY UNIT	281	163	58.01%	177	119	67.23%
COUNCIL TAX BENEFIT	852	215	25.23%	666	202	30.33%
DISABILITY LIVING ALLOWANCE	58843	26974	45.84%	45008	23976	53.27%
HOUSING BENEFIT	3309	1002	30.28%	2753	927	33.67%
HRP	13	2	15.38%	10	2	20.00%
INCAPACITY BENEFIT	57808	29637	51.27%	42832	26592	62.08%
ATTENDANCE ALLOWANCE	3400	1220	35.88%	2158	948	43.93%
BEREAVEMENT BENEFIT	312	45	14.42%	196	36	18.37%
CARER'S ALLOWANCE	1167	220	18.85%	583	191	32.76%
CHILD BENEFIT/CHILD BENEFIT(LONE PARENT)	842	127	15.08%	394	100	25.38%
CHILD SUPPORT ASSESSMENTS	1146	549	47.91%	919	482	52.45%
CHILD SUPPORT DEPARTURES	358	159	44.41%	325	151	46.46%
CHILD SUPPORT DEPARTURES REFERRAL	3	1	33.33%	3	1	33.33%
CHILD SUPPORT REFORMS	1739	822	47.27%	1478	764	51.69%
CHILD SUPPORT VARIATION REFERRAL	1	0	0.00%	1	0	0.00%
CHILD TAX CREDIT	453	47	10.38%	242	40	16.53%
EMPLOYMENT SUPPORT ALLOWANCE	0	0	0.00%	0	0	0.00%
TOTAL	165263	72277	43.73%	120645	64115	53.14%

1/4/08 to 31/3/09						
Benefit	All Cases Cleared at Hearing	All Cases Cleared in Appellants Favour	All Cases Cleared in Appellants Favour (%)	Oral Cases Cleared at Hearing	Oral Cases Cleared in Appellants Favour	Oral Cases Cleared in Appellants Favour (%)
(HOUSING / COUNCIL TAX) BENEFIT COMBINED	3408	1062	31.16%	2827	997	35.27%
SOCIAL FUND —FUNERAL	2106	318	15.10%	933	248	26.58%
SOCIAL FUND —MATERNITY	706	68	9.63%	261	53	20.31%
VACCINE DAMAGE APPEALS TRIBUNALS	7	0	0.00%	6	0	0.00%
WORKING TAX CREDIT	79	14	17.72%	43	13	30.23%
INCOME SUPPORT	12336	4043	32.77%	8196	3529	43.06%
INDUSTRIAL INJURIES DISABLEMENT BENEFIT	5425	2056	37.90%	4316	1861	43.12%
JOB SEEKERS ALLOWANCE	9278	2299	24.78%	4423	1589	35.93%
MATERNITY BENEFIT/ALLOWANCES	96	10	10.42%	41	6	14.63%
OTHERS (EXTINCT/RARE BENEFITS)	72	26	36.11%	67	26	38.81%
PENALTY PROCEEDINGS	2	1	50.00%	2	1	50.00%
PENSION CREDITS	914	270	29.54%	662	249	37.61%
RETIREMENT PENSION	437	45	10.30%	281	41	14.59%
SEVERE DISABLEMENT BENEFIT/ALLOWANCE	85	38	44.71%	67	34	50.75%
COEG	3	0	0.00%	2	0	0.00%
COMPENSATION RECOVERY UNIT	230	107	46.52%	137	77	56.20%
COUNCIL TAX BENEFIT	775	181	23.35%	617	166	26.90%
DISABILITY LIVING ALLOWANCE	54656	23600	43.18%	41996	21142	50.34%
HOUSING BENEFIT	2971	864	29.08%	2466	815	33.05%
HRP	11	1	9.09%	9	1	11.11%
INCAPACITY BENEFIT	63417	31964	50.40%	46284	28375	61.31%
ATTENDANCE ALLOWANCE	2805	857	30.55%	1751	681	38.89%
BEREAVEMENT BENEFIT	402	50	12.44%	241	47	19.50%
CARER'S ALLOWANCE	709	126	17.77%	376	108	28.72%
CHILD BENEFIT/CHILD BENEFIT(LONE PARENT)	918	121	13.18%	410	96	23.41%
CHILD SUPPORT ASSESSMENTS	1074	523	48.70%	910	487	53.52%
CHILD SUPPORT DEPARTURES	299	118	39.46%	268	113	42.16%
CHILD SUPPORT DEPARTURES REFERRAL	1	1	100.00%	1	1	100.00%
CHILD SUPPORT REFORMS	1978	911	46.06%	1660	847	51.02%
CHILD SUPPORT VARIATION REFERRAL	1	0	0.00%	1	0	0.00%
CHILD TAX CREDIT	637	97	15.23%	347	82	23.63%
EMPLOYMENT SUPPORT ALLOWANCE	27	1	3.70%	0	0	0.00%
TOTAL	165865	69772	42.07%	119601	61685	51.58%

1/4/09 to 31/8/09						
Benefit	All Cases Cleared at Hearing	All Cases Cleared in Appellants Favour	All Cases Cleared in Appellants Favour (%)	Oral Cases Cleared at Hearing	Oral Cases Cleared in Appellants Favour	Oral Cases Cleared in Appellants Favour (%)
(HOUSING / COUNCIL TAX) BENEFIT COMBINED	1764	483	27.38%	1396	463	33.17%
SOCIAL FUND—FUNERAL	1134	159	14.02%	600	141	23.50%
SOCIAL FUND—MATERNITY	540	53	9.81%	222	40	18.02%
VACCINE DAMAGE APPEALS TRIBUNALS	1	0	0.00%	1	0	0.00%
WORKING TAX CREDIT	34	3	8.82%	18	3	16.67%
INCOME SUPPORT	5772	1696	29.38%	3848	1539	39.99%
INDUSTRIAL INJURIES DISABLEMENT BENEFIT	2316	916	39.55%	1862	852	45.76%
JOB SEEKERS ALLOWANCE	7536	1415	18.78%	3321	1073	32.31%
MATERNITY BENEFIT/ALLOWANCES	53	8	15.09%	23	6	26.09%
OTHERS (EXTINCT/RARE BENEFITS)	26	12	46.15%	25	12	48.00%
PENALTY PROCEEDINGS	0	0	0.00%	0	0	0.00%
PENSION CREDITS	446	97	21.75%	307	82	26.71%
RETIREMENT PENSION	267	18	6.74%	182	16	8.79%
SEVERE DISABLEMENT BENEFIT/ALLOWANCE	60	25	41.67%	49	24	48.98%
COEG	0	0	0.00%	0	0	0.00%
COMPENSATION RECOVERY UNIT	94	43	45.74%	60	35	58.33%
COUNCIL TAX BENEFIT	376	77	20.48%	277	69	24.91%
DISABILITY LIVING ALLOWANCE	23789	10076	42.36%	19479	9339	47.94%
HOUSING BENEFIT	1574	370	23.51%	1234	349	28.28%
HRP	4	0	0.00%	2	0	0.00%
INCAPACITY BENEFIT	24899	12816	51.47%	19840	11791	59.43%
ATTENDANCE ALLOWANCE	1077	340	31.57%	752	275	36.57%
BEREAVEMENT BENEFIT	151	16	10.60%	102	16	15.69%
CARER'S ALLOWANCE	335	50	14.93%	197	48	24.37%
CHILD BENEFIT/CHILD BENEFIT(LONE PARENT)	503	65	12.92%	258	53	20.54%
CHILD SUPPORT ASSESSMENTS	432	179	41.44%	375	169	45.07%
CHILD SUPPORT DEPARTURES	118	42	35.59%	107	39	36.45%
CHILD SUPPORT DEPARTURES REFERRAL	2	2	100.00%	2	2	100.00%
CHILD SUPPORT REFORMS	929	401	43.16%	801	389	48.56%
CHILD SUPPORT VARIATION REFERRAL	0	0	0.00%	0	0	0.00%
CHILD TAX CREDIT	368	54	14.67%	198	49	24.75%
EMPLOYMENT SUPPORT ALLOWANCE	5215	1600	30.68%	2976	1370	46.03%
TOTAL	79815	31016	38.86%	58514	28244	48.27%

Annex B: Organogram of the decision making and appeals process

Annex C: Note of meeting with judges from the Administrative Appeals Chamber of the Upper Tribunal, 22 October 2009

Attending: Mr Justice Walker, Judge Mark Rowland, Judge Douglas May QC, and Judge David Williams; and Terry Rooney MP, Anne Begg MP, Oliver Heald MP and Tom Levitt MP.

The Administrative Appeals Chamber and how it works

1. The Tribunals Courts and Enforcement Act 2007 has strengthened the independence of judges in England, Wales and Scotland dealing with second-tier social security and child support (“SSCS”) appeals. Those judges were previously known as Social Security and Child Support Commissioners. They are now part of the Administrative Appeals Chamber (“AAC”) of the Upper Tribunal. The AAC seeks to achieve consistency in its decisions. There is a strong collegiate approach and close liaison among AAC Judges sitting in England, Wales and Scotland and their counterparts in Northern Ireland who for SSCS purposes continue to be “Commissioners”. There are training programmes in place to ensure that AAC Judges remain specialists in their area. All judges dealing with second-tier SSCS appeals are specialists in EU law, as this pervades every area they cover. A “right to reside” specialism is in development—a cadre of judges have responsibility for identifying the points of European and UK law arising and the extent to which particular cases need to be put on hold while we await decisions of higher courts on the relevant points.

2. Around 5000 SSCS cases last year reached second-tier level. Roughly half of these were full appeals for which permission was given either at first or second tier level. Almost all the remainder were cases where permission to appeal was refused because no arguable point of law arose. As a matter of impression around 10% of appeals raised points of law which may affect other cases and are accordingly published on the AAC Decisions web site pages. The remaining 90%, while raising points of law, merely require the application of established principles to individual cases.

3. Those seeking permission to appeal could ask for an oral hearing, but few did so. There was a 10 week target for deciding on permission, and in the vast majority of cases the decision was made well within that period. A large number of full appeals are dealt with purely on paper. A judge granting permission to appeal might provisionally conclude that the appellant was right, and explain this when setting out the reasons for granting permission. Very often this would be enough for the Department to decide to concede the case. As second-tier appeals were concerned with law rather than fact they were often well-suited to being dealt with on paper with no need for an oral hearing. This would save expense.

4. Once the papers were ready, most cases not requiring an oral hearing were turned round very quickly. The judge would examine the file and if all was in order would without

further delay determine whether the appeal should be allowed or dismissed. In order to get to that stage the procedure rules set time periods for various steps (for example, the submission of a response to the appeal). This inevitably resulted in some delay. If the case is complex, this will inevitably slow the process further. The Tribunal has a target of 20 weeks for determining a full appeal. One reason why this was sometimes not met was when an appeal might have to be put on hold because it turned on a point of law currently under consideration in one of the UK higher courts or in the ECJ. This was particularly a problem with cases about the right to reside under EU law. These cases currently represent about 5% of the SSCS second-tier case load. If delays of this kind do occur then the appellant and other parties are informed.

The approach of government departments

5. There was a consensus that DWP's process for managing decision-making in benefits was more sophisticated and accurate than that operated by HMRC for tax credits and child benefit.

6. The number of tax credit appeals that reached tribunals was tiny compared to the number of social security appeals. There was no suggestion that this was because the standard of decision-making was better with regard to tax credits; rather, it raised concerns that disputes were getting lost in the tax credit reconsideration process. The overall impression was that DWP's record in relation to benefit decisions was quite good in comparison with their record in child support cases. Similarly, the DWP's record in relation to benefit decisions was quite good in comparison to HMRC. Part of the problem with child support is probably the horrendous complexity of the legislation. It was felt that DWP read and took account of second-tier SSCS decisions—there was evidence that this process informed the drafting of proposed regulations. DWP was more openly responsive to AAC decisions than other Departments. However, it was felt that DWP could learn more from proceedings before the First-tier Tribunal to see where things were going wrong at local level.

Medical assessments and objectivity

7. The judges were asked about medical assessments for incapacity benefits. These were conducted on the basis of standardised scripts. If a more inquisitorial approach were taken fewer cases would proceed to appeal. However, there was a balance between the time that could be spent on the initial decision making process/assessment and an accurate reflection of an individual's circumstances. The function of the Tribunals is to correct decisions and it is not necessarily a reflection of failure in the system if initial decisions are overturned. For many claimants, the Tribunal was the first opportunity they had to put their case in person. Points raised concerning medical assessments in Tribunals may never have been raised with the examining doctor previously.

8. There were discussions around whether the elimination of subjectivity in the medical assessment process had led to decisions being made on limited and, sometimes vague, information. Whilst it was important that the questions in the assessment provided for a speedy and consistent outcome, it was equally necessary to take account of individual circumstances to obtain the full picture of someone's condition.

9. There was agreement that many conditions, such as attention deficit disorder and autism, did not readily fit with the legislative framework for Disability Living Allowance. These conditions are more fully understood now than when the legislation was drafted. The drafting of the criteria for the assessments for DLA was a matter for those responsible for legislation.

Presenting officers

10. The judges were asked about the role of the presenting officer. Once a case reached the AAC there will always be a representative of the relevant government agency at any oral hearing unless directed that they need not send one. The picture at First-tier level, however, was different. In many First-tier hearings, the presenting officer would contribute little (particularly on occasions where the claimant was supplying new evidence) and it might not be cost-effective for one to attend a hearing. Where appeals were successful in the First-tier this was often because of additional evidence provided by the claimant at the hearing. However, there were some cases where the Department did not concede an appeal, as it did not accept what the claimant said, but then did not send a presenting officer. This was undesirable, for there was then a danger that the First-tier judge could appear to come across as an interrogator and might appear to be acting as an advocate for the Department (which was definitely not the case).

Publicity

11. Tribunals had got much better at using the internet. Forms and guidance on the procedures for different jurisdictions were generally available to be downloaded. As to publicising decisions, the AAC's approach was to promptly identify important decisions which should be available on the internet.

Annex D: Note of Committee visit to Leeds, 2 November 2009

Attending: Terry Rooney MP, Oliver Heald MP, Greg Mulholland MP.
Meeting with officials, Quarry House, Leeds

Jobcentre Plus (JCP)

- In the last 18 months, work has been undertaken to expedite new claims which are not considered to be complex to non-specialist decision makers (DMs) to ensure that specialists are able to concentrate on more difficult decisions. Complex decisions are currently cleared in between 3 and 5 days.
- Most decision notification letters are automatically generated. JCP accepted that this can make decision letters difficult to understand and it is currently looking at ways to improve its correspondence.
- There are around 1600 (1100 Full Time Equivalents) specialist DMs, who concentrate on complex decisions.
- Once claimants have received their decision, they can either ring the Benefit Delivery Centre call centre and ask for an explanation or, if the decision is complex, they can ask a specialist decision maker for a “call back”.
- JCP acknowledged that there are concerns with the Work Capability Assessment (WCA), for example, claims that the assessment does not adequately capture pain. However, the Committee was told that this was a very difficult area to overcome. Decision makers can request further evidence beyond the WCA but often claimants do not have more information than that which was originally provided. If the customer can put forward alternative medical evidence, it is up to the DM to take this into account, and, if necessary, refer a claimant back for further medical assessment. It was acknowledged that it was not common for someone to be referred back for further medical assessment in this way.
- JCP is looking at ways to identify causes of official error and how to remove them. There is now a taskforce in JCP focusing on this, supported by “error reduction champions” on each JCP site.
- Quality assurance work is undertaken to review the work of DMs; efforts are also made to focus on areas where there are a high proportion of revisions or decisions overturned.
- The reconsideration process aims to make decision making swifter. If a claimant asks for a reconsideration, the decision will be looked at again by a different DM. Despite the fact that all decisions which go to appeal will be reconsidered anyway, JCP argue that there is value in retaining reconsideration as a separated tier in the decision making and appeals process.

- There are no official target times for processing a reconsideration. However, reconsideration requests are logged and tracked.

Pensions, Disability and Carers Service

- A perception still existed amongst claimants that the tribunal was an arm of the DWP; it was important to make clear that this was not the case. The tribunal was an opportunity for facts and evidence to be tested in an oral hearing; claimants could bring representation if they wished.
- The DWP does not present every case. The DWP presenting officer is an “amicus curiae”, not there to “win” the case for the Department, but to assist the tribunal by outlining the claim, the evidence and reasons for the decision. The presenting officer can not make a decision.
- After the hearing, the presenting officer reviews the decision; provides feedback to the DM; where necessary calls for a written statement of reasons; and deals with any queries from the appellant.
- There is a medically qualified member of the tribunal for DLA/AA, ESA and IB cases.
- The strengths of tribunals were identified as their clear independence and the opportunity for face to face discussion, submission of new evidence and challenges to evidence provided.
- The weaknesses identified were expense; stress for appellants; and the lack of incentive for new evidence to be provided by appellants before the hearing (which might aid the reconsideration process).
- The high levels of turnovers at appeal for DLA cases were not a reflection of poor decision making but were due to the discretion of the tribunal on meeting the appellant and making a face to face assessment of the evidence. DLA and ESA cases all required an exercise of judgment; the opportunity to question a claimant in person may lead to a different judgment.

Tribunals Service

- Tribunal benefit appeals were categorised as follows:

Appeal Type 1	Appeal Type 3	Appeal Type 4	Appeal Type 5
Income Support	Disability Living Allowance (DLA)	Incapacity Benefit	Industrial Injuries Disablement Benefit
Retirement Pension	Attendance Allowance	Employment Support Allowance	Vaccine Damage
Child Benefit			Road Traffic and Excess Allowances
Child Support			Compensation Recovery
Tax Credits			Severe Disablement Allowance
Statutory Sick Pay			
Statutory Maternity Pay			
Housing Benefit			
Council Tax Benefit			

- The tribunal composition for each type of appeal was as follows:
 - Appeal Type 1—1 lawyer, 1 financial member (in some Child Support cases).
 - Appeal Type 3—1 Judge, 1 doctor, 1 disability member.
 - Appeal Type 4—1 Judge, 1 medical member.
 - Appeal Type 5—1 Judge, 1 Senior medical member.
- Procedural changes, including removing the requirement that the TAS1 form sent to appellants be returned within 14 days, meant that fewer appeals were now being “struck out” on procedural grounds.
- There had been a very significant rise in the intake in 2009–10 to date; the increase was particularly large for Type 4 appeals (Incapacity Benefit and ESA). The Tribunals Service expects the number of appeals for 2009–10 to be in excess of 300,000. This was placing a strain on resources.

Intake of Cases

Appeal Type	2007–08	2008–09	2009–10 (to September)
1 and 2	76595	81931	40533
3	74482	73662	34445
4	70619	79571	62960
5, 6 and 7	7434	7666	2916

- Three-quarters of cases are seen within 14 weeks but there was evidence of real pressure of volume in the system having an impact on waiting times.
- Advice for appellants is available through the government website, Welfare Groups, Citizen Advice Bureaux etc. and appellants are provided with a leaflet on “How to Appeal”. The Tribunals Service held 50 local user forums in 2009. 69% of customers had responded positively when asked about the process.
- The Tribunals Service was engaging with DWP in a strategic review of processes, using LEAN techniques to remove waste and delays, to focus on improving the “end to end” service to appellants. It was also running strategic workshops with DWP (November 2009 to March 2010) to agree service improvements.

DMA Leeds

- The Decision Making and Appeals unit in Leeds comprised 77 staff (68 fte) working in 7 teams, dealing with guidance, appeals and support for decision makers.
- Teams specialise in particular benefits or subjects (such as overpayments); the authors team is responsible for writing and updating the Decision Makers Guide (which is also available to claimants and their advisers on the internet).
- The Appeals work involves writing submissions to the Upper Tribunal on claimant and Secretary of State appeals on benefits, child support and compensation recovery; supporting DWP lawyers on appeals to the higher courts; and deciding whether to take appeals to the Upper Tribunal and higher courts on behalf of the Secretary of State in consultation with policy and legal colleagues.
- In addition to work on the DMG, the unit is responsible for maintaining the Code of Appeals Procedures and the Suspension and Termination Guidance; maintaining parts of the Housing Benefit Guidance Manual which is used by Local Authorities; and maintaining DWP intranet/internet sites where these documents are published.
- The Guidance work comprises responding to specific case guidance queries sent by Decision Makers; maintaining and moderating a DWP intranet Discussion Group for Decision Makers; delivering seminars to Decision Makers to discuss specific issues. The team also comments on policy papers on proposed changes to the benefits system;

drafts instructions to lawyers to write new legislation; drafts legislation; and produces training material and procedural guidance.

- During 2008-09, DMA Leeds recorded the following activity statistics:

Written requests for guidance

Number of priority requests received:	1,821
Number of priority requests cleared:	1,827
Average number of working days to clear from date of receipt:	5
Number of non-priority requests received:	1,558
Number of non-priority requests cleared:	1,554
Average number of working days to clear from date of receipt:	8

Appeals to the Upper Tribunal

Number of appeals made by the claimant:	1529
Number of appeals made by the Secretary of State:	131

Decision Makers submitted 570 potential cases to DMA Leeds for consideration to appeal to the Upper Tribunal but many are thought unsuitable to pursue.

Supplementary information was also provided by the DWP and the Tribunals service in response to questions raised during the meetings. This is published in the Appendix at Ev 157.

Note of meetings with claimants and advisers, Chapeltown Citizens Advice Bureau, Leeds

- The WCA process was described as arbitrary, superficial and blunt and particularly unsuited for claimants with learning difficulties and mental illnesses. One adviser told us of clients who had found the process of examination by the Examining Medical Practitioner (EMP) traumatic, feeling that they were accused of being liars. At least one claimant had found the process so upsetting that she had decided to withdraw her appeal.
- It was reported that the WCA was often carried out with claimants with poor or no English with no interpretation.
- One claimant who had been receiving incapacity benefit as a result of depression felt that the evidence she gave to the EMP in her WCA had been “embellished”. She had been driven to the interview by her son, and this was recorded as “able to travel to interview independently”. The assessment had ignored the extent to which she had “good days” and “bad days”; it was a Catch 22 situation that she was only able to attend an assessment when she was having a “good” day. This individual had “failed” the WCA in July and was claiming JSA for the duration of her appeal, but had now been told that her appeal would not be before January. Her levels of debt were mounting. She had not known that her case had automatically gone for reconsideration (triggered by her appeal) until she was informed that her request had been turned down at reconsideration for lack of new evidence (which she had not been asked to supply).
- It was felt that decision makers needed more training in how to deal with cases of individuals with learning difficulties and mental health problems. The appeals process was stressful and potentially damaging for those with mental health problems or learning difficulties.
- It was reported that additional information was frequently lost by DWP; it was suggested that receipts for information should be provided.
- Cases were reported of front-line advisers giving incorrect information that pushed claimants into the appeals process
 - Lone parents from EU states being advised to claim income support but then failing the right to reside test (they would have been better advised to stay on JSA); and
 - The difference between claiming for income-based and contribution-based ESA was not being explained to claimants on the phone: customers did not understand what they were claiming, and one adviser had worked with a refugee who was appealing against being turned down for contribution-based ESA (when he should have applied for the income-based benefit). Some advisers found it easier to submit claim forms clerically (which were time consuming and clogged up DWP’s system) so that they could help claimants submit claims accurately.
- No list of descriptors for ESA is provided for claimants, so they are “working blind” when they submit an appeal. It was felt by one adviser that if decision makers’ letters

were clearer about the grounds on which someone had been turned down for ESA, it would be easier for claimants to accept and would prevent unnecessary appeals. Many claimants assumed that proof that they had a particular condition was sufficient; they did not realise that the condition in itself might not be enough to qualify for the benefit. The adviser was currently advising one in three claimants that she saw on this matter to withdraw their appeals.

- Advisers believed that very few decisions were overturned at reconsideration stage, even when substantial independent medical evidence was provided contradicting the WCA. It was suggested that c.25% of cases used to be overturned at reconsideration, but very few were now. Reconsideration was regarded as a missed opportunity for proper dispute resolution. It was suggested that the reconsideration process should be put on a two-tier basis, so that
 - Reconsideration waited for additional independent medical evidence (and took it properly into account); or
 - The case was fast-tracked to appeal if no additional medical evidence was to be submitted.

Case study A

- One claimant had been in receipt of Carers Allowance and DLA, paid at higher rate mobility and care, on behalf of her terminally ill daughter. Every three years, the daughter's right to reside had to be renewed. 12 months ago, the right to reside was again reviewed but payments of Carers Allowance and DLA were stopped for a period of eight months. During this period, with no income, the family accrued very substantial debt and rent arrears. Once the right to reside was again renewed, the DLA was reassessed (on the basis of no additional information) at lower rate care and mobility. This meant that the claimant lost her Carer's Allowance. She was told to claim Jobseekers' Allowance even though her daughter still had an incurable terminal disease. She reported that a number of items of independent medical evidence, including her own GP's report, had been ignored by the Examining Medical Practitioner (EMP).
- The claimant has appealed the decision to downgrade her DLA claim. She has been told that, unless her daughter is not expected to live beyond six months, she can not be classified as having a "terminal illness" (notwithstanding statements of medical professionals treating her). An individual who lived for longer than 6 months would be subject to reassessment.
- This individual had submitted her appeal form and had received a TAS1 form specifying that a reply was required within 14 days otherwise the appeal would lapse (the Committee had been informed in the morning by DWP officials that this was no longer the procedure). She had previously asked for the decision to be reconsidered but did not feel that there was any value to this process. She had never been asked to provide further information and the decision was upheld.
- As a JSA claimant, she is expected to look for work, which is difficult as her daughter requires full-time care. She has sought support from CAB to help her with her appeal

and feels that this support has been invaluable (for example, her adviser explained that her GP's letters must include certain "buzz words" if it is to be valuable in supporting her appeal). The claimant is very concerned about her worsening financial situation and explained that this had been exacerbated by the expense of phone calls to DWP – her bill for calls to DWP cost £40 last month alone.

Case study B

- Another claimant made a claim for ESA in October 2008, after he left work due to a mental health condition. His WCA lasted approximately 20 minutes and the majority of the questions focused on his physical capabilities; the WCA awarded him zero points and he was therefore not deemed eligible for ESA.
- The claimant asked for the decision to be reconsidered. A decision maker undertook a reconsideration but did not ask for any further evidence. The claimant's Welfare Rights Adviser commented that the reconsideration process simply "rubber stamped" the original decision. He argued that, even where people do provide extra information, very rarely are decisions changed at the reconsideration stage, despite the fact that many of these decisions are then overturned at appeal. It was common practice for DWP to provide a three-line letter to notify claimants that decisions have been upheld after reconsideration. He suggested that DWP should adopt a similar approach to local authorities, which provide far more information and are much more amenable to discussing the outcome of a reconsideration over the telephone.
- The claimant decided to appeal against the decision and opted for an oral hearing, which lasted approximately 30 minutes. He explained that the tribunal judge asked appropriate questions that specifically focused on his mental health condition and its impact on his ability to work. His sister attended with him and was also able to give evidence. The tribunal judge overturned the original decision and the claimant was awarded ESA on the support rate, 12 months after his first application.
- The claimant felt that his appeal could have been avoided had appropriate questions, relevant to his condition, been asked during the WCA. The process of reconsideration and appeal had placed a great amount of stress on him and had led him to accrue significant debt.

Formal Minutes

Wednesday 27 January 2010

Members present:

Mr Terry Rooney, in the Chair

Miss Anne Begg
Mr Oliver Heald
Mr John Howell
Mrs Joan Humble

Mr Tom Levitt
Mr Greg Mulholland
Jenny Willott

Draft Report, Decision making and appeals in the benefits system, proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 181 read and agreed to.

Annexes (Appeals statistics; Organogram of the decision making and appeals process; Note of meeting with judges from the Administrative Appeals Chamber of the Upper Tribunal, 22 October 2009; and Note of Committee visit to Leeds, 2 November 2009) agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 14 October 2009 and 21 October 2009.

[Adjourned till Wednesday 3 February at 9.15 a.m.]

Witnesses

Monday 26 October 2010

Page

Patrick Hill, Housing and Welfare Rights Officer, HARP—Manchester Assertive Outreach and member of the National Association of Welfare Rights Advisors, **Daphne Hall**, Welfare Rights Advisor, Bristol City Council Welfare Rights and Money Advice Service and member of the National Association of Welfare Rights Advisers and **Alan Barton**, Social Policy Officer, Citizens Advice.

Ev 1

Paul Farmer, Chief Executive, Mind, **Mark Barker**, Head of Social Research and Policy, Royal National Institute for Deaf People (RNID) and **Sally West**, Policy Adviser (Income), Age Concern and Help the Aged.

Ev 11

Monday 9 November 2010

HH Judge Robert Martin, President of the First-tier Social Entitlement Chamber.

Ev 18

Jonathan Shaw MP, Minister for Disabled People, Parliamentary Under-Secretary of State, Department for Work and Pensions, **Jeremy Groombridge CB**, Director of Transformation and Product Management, Jobcentre Plus, **Vivien Hopkins**, Chief Operating Officer, Pensions, Disability and Carers Services, **Kevin Sadler**, CEO, Tribunals Service.

Ev 22

List of written evidence

1	Neil Bateman (DM 01)	Ev 33
2	Brain Havard (DM 02)	Ev 38
3	Michael Bachrynowski (DM 03)	Ev 39
4	Age Concern and Help the Aged (DM 04)	Ev 43
5	CLIC Sargent (DM 06)	Ev 46
6	RSI Action (DM 07)	Ev 49
7	WorkDirections (DM 08)	Ev 58
8	VocaLink (DM 09)	Ev 61
9	Anonymous (DM 10)	Ev 62
10	West Lothian Council's Revenue and Benefits Unit (DM 12)	Ev 65
11	Asbestos Victims Support Groups' Forum UK (DM 13)	Ev 67
12	T _h Cell (DM 14)	Ev 70
13	Public and Commercial Services Union (PCS) (DM 15)	Ev 76
14	The National Association of Welfare Rights Advisors (DM 16)	Ev 77
15	Parliamentary and Health Service Ombudsman (DM 17)	Ev 81
16	Andrew Currie (DM 18)	Ev 82
17	National Aids Trust (NAT) (DM 19)	Ev 83

18	The Action Group (DM 20)	Ev 87
19	Centrepont (DM 21)	Ev 90
20	Tribunals Service (DM 22)	Ev 98;162
21	Royal National Institute of Blind People (RNIB) and Action for Blind People (DM 23)	Ev 104
22	Mind (DM 24)	Ev 108
23	The National Deaf Children's Society (DM 25)	Ev 110
24	The National Autistic Society (DM 26)	Ev 112
25	HH Judge Robert Martin (DM 27)	Ev 113
26	Lancashire County Council (DM 28)	Ev 119
27	Department for Work and Pensions (DM 29)	Ev 125;136;157;162;164
28	The Parkinson's Disease Society (DM 30)	Ev 137
29	Citizens Advice (DM 31)	Ev 140
30	The Administrative Justice and Tribunals Council (DM 32)	Ev 147
31	Royal National Institute for Deaf People (DM 33)	Ev 151
32	Peter John Farrington (DM 34)	Ev 154
33	Stewart and Elaine Downey (DM 35)	Ev 156
34	Rod Delmar-Sims (DM 36)	Ev 156
35	SAMH (DM 37)	Ev 164
36	Listener feedback received from: You and Yours—BBC Radio 4	Ev 165

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2009–10

First Report	Work of the Committee 2008–09	HC 92
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Session 2008–09

First Report	Work of the Committee 2007–08	HC 68
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Second Report	DWP's Commissioning Strategy and the Flexible New Deal	HC 59
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Third Report	The Equality Bill: how disability equality fits within a single Equality Act	HC 158
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Fourth Report	Workplace health and safety: follow-up report	HC 635
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Fifth Report	Tackling Pensioner Poverty	HC 411
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Session 2007–08

First Report	Work of the Committee in 2007	HC 317
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Second Report	The best start in life? Alleviating deprivation, improving social mobility, and eradicating child poverty	HC 42
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Third Report	The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety	HC 246
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Fourth Report	Valuing and Supporting Carers	HC 485
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Session 2006–07

First Report	Power to incur expenditure under Section 82 of the Welfare Reform and Pensions Act 1999: new Employment and Support Allowance IT System—Further Report	HC 86
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Second Report	The Work of the Committee in 2005–06	HC 215
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Third Report	The Government's Employment Strategy	HC 63
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Fourth Report	Child Support Reform	HC 219
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Fifth Report	Personal Accounts	HC 220
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Sixth Report	The Social Fund	HC 464
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Seventh Report	Benefits Simplification	HC 463
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Eighth Report	Full employment and world class skill: Responding to the challenges	HC 939
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Session 2005–06

First Joint Report	Home Affairs and Work and Pensions Committee: Draft Corporate Manslaughter Bill	HC 540
Second Report	The Efficiency Savings Programme in Jobcentre Plus	HC 834
Third Report	Incapacity Benefits and Pathways to Work	HC 616
Fourth Report	Pension Reform	HC 1068
Fifth Report	Power to incur expenditure under Section 82 of the Welfare Reform and Pensions Act 1999: new Employment and Support Allowance IT System	HC 1648

Oral evidence

Taken before the Work and Pensions Committee on Monday 26 October 2009

Members present

Mr Terry Rooney, in the Chair

Mr Oliver Heald
John Howell

Mrs Joan Humble
Tom Levitt

Witnesses: **Mr Patrick Hill**, Housing and Welfare Rights Officer, HARP—Manchester Assertive Outreach and member of the National Association of Welfare Rights Advisers, **Ms Daphne Hall**, Welfare Rights Adviser, Bristol City Council Welfare Rights and Money Advice Service and member of the National Association of Welfare Rights Advisers and **Mr Alan Barton**, Social Policy Officer, Citizens Advice, gave evidence.

Q1 Chairman: Good afternoon, everybody, and welcome to our first evidence session on our decision making and appeals inquiry. Welcome to our witnesses. It is very good to have you with us. It is a light, nice meeting. If I could kick off. What, if any, elements of the decision making process and the framework work well for claimants?

Mr Hill: We are all struggling with that one, I am afraid. We thought about this at length and DLA decisions are much improved. The reaction of the DWP is “Give us more evidence and we’ll look again at the case”, and that seems to be working fairly well. We had a national meeting some months ago and that was the general feeling, that now the DLA reconsideration process is working well.

Ms Hall: Better.

Mr Hill: Sorry, better.

Mr Barton: We would say that the process works reasonably well probably in income support, job seeker’s allowance, pension credit and state retirement pension providing you are a straightforward case. If it is all straightforward, the management of the agencies are heavily incentivised on their average processing times and generally they do meet their processing times on average. I think the letters people get giving them their award are a rather variable commodity because they are computer-generated and it is not always all that easy to understand what they are saying and why they are saying it. In particular, the new ESA letters seem to mix up the person’s entitlement to income-based and contribution-based ESA in a fairly unhelpful way.

Q2 Chairman: On the processing times, on a technicality, does the clock tick the minute the person makes the claim or the minute whoever decides they have all the evidence they need to make a decision?

Ms Hall: It is from when they contact the claims line, so the first point of contact is when the time should tick from.

Mr Barton: One area that was problematic has improved a lot. One of the reasons for delays on job seeker’s allowance used to be getting information

from the claimant or the claimant’s employer and now what money they have got coming from them is not really relevant any more, that is a big help.

Q3 Chairman: Does that create any overpayments?

Ms Hall: It is very unusual to get overpayments on a new claim. If they think they might not get it, they do not pay.

Q4 Chairman: Now they are no longer asking for the last wage slip, if the individual gets—I do not know—three months’ pay in lieu of notice but makes a claim at week four?

Ms Hall: I have not had people coming to me with overpayments.

Q5 Chairman: It is my overactive imagination, I am sorry.

Ms Hall: I would not say that it is not happening, but I have not seen it.

Q6 Chairman: Going the other way, what are the main shortfalls in the decision making process?

Ms Hall: I think some benefits stand out particularly, ESA is very poor. Alan has already said about very poor decision letters. It is very difficult to get through on the inquiry line to benefit delivery centres in our area. It is hard even to get through so you can get in a queue and then if you do manage to get in a queue, usually you have to wait a good 30 minutes and bearing in mind that is a call which is charged and most clients will be on a mobile phone, the costs are horrendous in trying to get through to sort out problems on your claim and there are very, very long delays on the ESA as well at the moment. There is a lot of confusion as well under which system people should be dealt with, under the old income support incapacity system or the new ESA system. Social Fund is the other area where I would say there is a real problem in accessing to make a claim, particularly crisis loans. Again, you cannot get through on a crisis loan claims line and when you do you are held in a queue. These are people who are in crisis with no available resources. They cannot use

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

a jobcentre phone because of the agreement with health and safety and they cannot get through on the line.

Q7 Chairman: We hear this a lot. This Committee has done a lot of reports about the telephone systems and I understand what you are saying, but last year the number of crisis loans doubled so an awful lot of people are getting through.

Ms Hall: Yes.

Q8 Chairman: Where does this blockage happen? Is it localised or a national problem?

Ms Hall: National, I believe. That is what I am picking up from people. It was a good move to make telephone claims, that is why the numbers increased.

Q9 Chairman: No. The telephone claims started eight years ago. From 2007–08 to 2008–09 the number of crisis loan applications accepted doubled.

Ms Hall: That was when they changed their philosophy on preferring a phone claim to a paper claim. Prior to that you could do a phone claim, but they preferred a paper claim. There was a move within the DWP to encourage phone claims and to open it out. Then they increased the numbers of staff on the phone line which enabled a lot more claims to be made. I think it was a really good thing to enable people to make phone claims and it has made it more accessible to lots of people, but the trouble is I do not think they realised how many people are out there needing crisis loans who perhaps were not accessing them on paper. It was a good accessibility thing to encourage the phone claims, but it is still not meeting the need. One of the problems is the number of people having to apply for crisis loans and what they call “the alignment cases” where they are waiting for a first payment of benefit—I know there are proposals in the Welfare Reform Bill to separate that bit out—but the system gets clogged up with people who have got a delay in having their first benefit payment made and then they are having to apply for a crisis loan rather than getting an interim payment from JSA, ESA, IS or whatever it is.

Mr Barton: I agree with most of what has been said. I think that the access to the benefit delivery centres by phone is probably a bit variable. As well as working for Citizens Advice, I work as an adviser in Hertfordshire and we do not wait as long as has been suggested when we contact the benefit delivery centre with queries for clients. Often there is a bit of a queue but less than ten minutes normally.

Ms Hall: It is only ESA; the other benefits are fine. Income support, JSA and IB are all fine.

Mr Barton: It would vary, I would imagine, from benefit delivery centre to benefit delivery centre. I have got other issues that are problematic for clients. As I said, anything that is complicated. We drew attention in our evidence to the problems that EU nationals can have in relation to their right to reside and their right to claim benefits. We see big delays on the decisions on right to reside because they are all referred to the Wick centre to do it. It seems to us that there are problems with the quality of information that is provided to Wick by the benefit

delivery centres. In a sense it is a good idea when something is complicated to have specialists who do it, but of course the information needs to be presented to them in the right way and I think there is some question as to whether that is happening. Of course, the other side of that is if people are turned down, the benefit delivery centres find it very difficult often to explain to them why they have been turned down on that. Another area we drew attention to in our evidence was the problems thrown up by the Camden CAB with parents of children at Great Ormond Street Hospital who do qualify for income support when one parent is staying at the hospital and the other parent is at home looking after the children, but the CMS system tells the claim line that they do not qualify for income support, so there is a problem there. It is not being made by a decision maker of course, it is being made by a computer system at the claim situation. Then the last one, I suppose, I will draw attention to because it is an area that has concerned us for a long time is the continuing concerns about the accuracy of decisions on incapacity benefits and DLA where we feel that there is a big problem with the quality of the assessments that are done by the doctors who are employed on behalf of DWP and this causes huge problems for the individuals involved.

Q10 Chairman: Is it that you see an increase in the number of people being disallowed or you do not think they should be?

Mr Barton: I do not know whether it is increasing, but we see an awful lot of people who are disallowed when we do not think they should be and, indeed, we help them to take the case for reconsideration and appeal, and they have quite a high success rate when they get there.

Ms Hall: Following on from that, and it is a significant minority of decisions, I have walked into the tribunal and just on the evidence in the papers they have accepted the case straightaway without even having to hear evidence from the claimant. Clearly, that is a decision that has been made very wrongly at the DWP because they had all that information before them, when the tribunal can see it so clearly how that should have been made correctly. Sometimes it is because the DWP have not had enough evidence, and I accept that, and the tribunal can hear more evidence and then that is why they come to a new decision, but it is not unusual to go and them to say, “Well, with all this evidence before us, we allow the appeal straightaway”.

Q11 Chairman: Whose fault is that? Is that the claimant’s fault, the decision maker or both?

Ms Hall: The decision maker because the evidence is before the decision maker.

Q12 Chairman: No, you are saying that at the tribunal this new evidence is what causes them to change it. Is it a fact that the decision maker does not seek enough evidence?

Ms Hall: Yes, sometimes or they seek it from inappropriate people or they prioritise the evidence from inappropriate people. Although it is moving

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

and changing, there is still a tendency to favour medical evidence over any other evidence. For a large number of cases the doctor, psychiatrist or GP is not necessarily the person who knows the client best as far as DLA law goes which is about day-to-day coping and daily living. People like support workers, housing support workers, mental health support workers, CPNs, physios and OTs know the client an awful lot better and know how they cope with day-to-day living. There is too much reliance still put on medical reports and still—not as much as it used to be—a problem on the EMP reports. The doctors commissioned by the DWP maybe only see the client for half an hour and, particularly with mental health problems, it is just not possible to assess somebody's mental health needs in half an hour. It is not realistic.

Mr Hill: Could I provide an example of that, please, Chairman. This is a case of mine that resolved itself a matter of weeks ago, I will try to explain this very briefly. On 11 March a claimant completed and returned the ESA50 to the DWP. On 5 May he was invited to attend a medical examination which lasted 28 minutes. This was a man with a severe and enduring mental health problem. On 13 May a decision was made to supersede the award with a finding of capable of work. On 13 May the decision was sent to the claimant by the DWP. On 22 May the claimant sought an appeal against the decision and through our office, provided supportive and substantive medical evidence from the mental health staff with whom I work. On 1 July there was a decision not to change the decision after reconsideration. That was substantive evidence that was in direct contradiction to a 28-minute medical performed by a registered nurse. This evidence came from community psychiatric nurses and a psychiatrist on our team. On 24 August I wrote to the Department for Work and Pensions saying, "There is additional information here from the care workers. Could you look at this again?" and they came back saying, "No, we agree with the decision of the registered nurse". Although they have the authority and they are invited to do a reconsideration, there seems to be a culture that says, "No, we are happy with the medical report, albeit brief". On 24 August I wrote a letter to the Tribunals Service asking that the matter be listed urgently as the claimant's condition was deteriorating massively. On 28 August, as is the norm, I got a copy of my letter from the Tribunals Service. On 23 September I telephoned the Tribunals Service in Liverpool asking what had happened with my request for expedition of the case. The person answering the telephone was a little embarrassed saying, "Oops, Sir, I haven't passed it to anyone yet". That was three weeks afterwards and it was put before a district judge on that day. The district judge listed it almost immediately to be heard on 12 October. Sadly, I was informed on 6 October that the claimant had been sent to prison for six months; he had been found guilty of assault. At least in part this was a direct result of him being found fit for work. That is the opinion of the trained medical staff on our team. I attended the appeal hearing in

Manchester on 12 October and this appeal was allowed, even in the absence of the claimant. As my colleagues have said, there was sufficient evidence in the bundle to suggest that exceptional circumstances should apply. That is five months from the return of the ESA50 to the appeal being heard and that was heard earlier because I asked for it to be expedited. Goodness knows how long it would have taken but for that. I telephoned the Tribunals Service in Liverpool last Wednesday and was told that currently there are 4,581 cases waiting for listing in the North West. I asked how long people would be expected to wait from the receipt of the bundle at their office. They said, "Well, we hope to do it in 14 weeks", I said, "Yes, but how long is it really taking?" "A minimum of 20 weeks". My client waited 20 weeks to get to an appeal, an appeal that should have been resolved by the decision maker on the evidence given. It seems to me that the only people who could make this decision to overturn the decision of the DWP was the independent Tribunals Service. I am wondering where there is clear evidence of contradiction, as in this case, a massive contradiction, whether it should be passed earlier to an independent body because it seems with the culture of decision makers, medical reports and medical examinations, they seem reluctant to disagree with each other. A straw poll of many of my colleagues in the North West would suggest that none of us is aware of any ESA or incapacity benefit decisions that have been changed or reversed on reconsideration. I do not know the figures and I can only speak from my own experience and colleagues close to me suggest that is, in fact, the case. They have only been reversed at appeal.

Mr Barton: I think our evidence would really tally with that. The evidence we get in from bureaux suggests that, particularly for incapacity benefit, invariably the decision makers follow what the ATOS doctor has recommended. They do not look critically at that. As Daphne said, there is often evidence that the examination has been carried out extremely quickly. The examination is carried out using the computerised decision aid system which seems to us to produce formulaic findings. It can block off areas that probably ought to be examined by the doctor. One we have noticed recently is they say, "Do you go to the supermarket?" and if you say, "Yes", you are immediately put down as being able to walk 200 yards, no matter how difficult it is for you to go. There is that sort of problem. The decision makers seem always to prefer that evidence to any medical evidence from claimants' doctors or from other professionals who are working with the claimant when they are doing a reconsideration, if you put that in, whereas when these cases go to appeal very often the tribunal gives much more weight to the evidence from the other professionals. Of course, they also have the advantage at the appeal that they can question the claimant if they are attending themselves. That is a similar sort of picture. We do think that we are beginning to see more decisions being reversed at reconsideration in relation to disability living allowance and it might be something that the Committee would want to

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

explore with the Department, whether there are things going on there that are making that happen which are not going on in Jobcentre Plus in relation to incapacity benefit and ESA.

Ms Hall: I would absolutely back that up. There is definitely a move in DLA. In fact, I had a case the other week with a man who has severe mental health problems who had all of his DLA taken away on renewal. He was on middle rate care, low mobility. We put in our revision initially for reconsideration and they rang the support worker and, having spoken to the support worker, the support worker was able to explain that she went to see him three times a week and had detailed knowledge and they gave the award back. It saved an enormous amount of stress for my client. It worked really effectively. When it works well it is really, really effective. It saves a lot of stress, it saves a lot of expense to the Department as well but a huge amount of stress to the claimant. I think there are lots of lessons that Jobcentre Plus could learn from what the Disability and Carers Service are now doing to begin to use the revision process because it is not being used at the moment, I do not think, in Jobcentre, not on the whole, whereas the Disability and Carers Service are moving towards using it more effectively and clearly it can work.

Mr Barton: Of course often these decisions are not initial award decisions but are decisions whether to renew the benefit. For example, if you have got somebody who has been getting DLA for years who has got a chronic condition that will not get any better, it looks a bit odd if suddenly the examining doctor says, "Well, they don't qualify any more". That is an example of where if the initial decision is to accept his or her findings if it is a reconsideration, then it would really be desirable within the organisation where the case is looked at by somebody else, possibly somebody with more skills in this particular area, and it is good to see this is beginning to happen in DLA.

Q13 Chairman: I understand what you are saying, but the issue there surely is that it sounds like inadequate training of decision makers because what is the point? If you are going to refer it to somebody else, then what is the point in having the first decision maker if they are not making the decision? The other side of that is, like us, you only see the people who get refused. None of us sees those 4.5 million who get the DLA awarded. What we are more particularly interested in is, what are the weaknesses? What you seem to be saying is the medical examination, but there are millions of people who go through that and get the benefit awarded. What is it particularly? Is it particular types of claimants? Is it severe mental illness? Is that a particular problem or is it more general than that? We have to remember that on DLA 4.5 million people are getting it, so they did not have a problem. Some of them might have had to appeal, but the vast majority did not have to appeal.

Ms Hall: Personally I work with people who get supporting people services, so by their very nature they tend to be some of the most vulnerable people

and I think it is people who have difficulty expressing themselves. Mental health is a classic example, obviously not everybody with mental health problems, but a large number with mental health problems will find it difficult to put down in words on a form how things affect them. The forms are not always the most accessible to write down what you want to say. They are not always the easiest to understand and what information is important. I know that a lot of effort is made to try and make them as comprehensible as possible, but for some people it just does not work. I think there are sometimes certain attitudes towards certain problems. I work a lot with people who are in drug and alcohol rehab and you definitely see an attitude sometimes where there are dependency issues that it is their own fault. I know that is generalising terribly, but you do feel that coming across and they are not looking at perhaps what the issues were that led them into the drug and alcohol dependency. If they have been through rehab, "Oh, they're all right now. They finished their rehab course four weeks ago so they haven't got any issues any more". Often it is when they come out of rehab they have to try and deal with all the issues that led to the dependency problem in the first place. That example I gave you earlier when they took away their things because they had just been through rehab, they thought, "Well, everything's all right now", forget the fact he has had quite severe mental health problems for many, many years and, in fact, the rehab failed but there are all sorts of issues once you have gone through rehab. It does not just mean you are better. Sometimes I think there is a lack of understanding of certain issues like that.

Q14 Mrs Humble: I want to ask you some questions about improving accuracy in decision making. I want to pick up on the answers you have just given to the Chairman because some of these submissions that we have had, in order to overcome the problems that you have all been outlining about lack of knowledge of decision makers of certain medical conditions and an over-reliance therefore on medical experts, are that some decision makers should develop particular skills and knowledge of certain illnesses or disabilities. Do you think that would help?

Mr Hill: I can only speak on mental health, that is my area of work. I think that decision makers benefit from better discussion and better liaison with mental health specialists. At this appeal of which I spoke there was a psychiatrist on the panel who immediately identified that there were problems there. I am not sure that decision makers have that knowledge, quite honestly, and I think there is far too much reliance on the ESA50 and the ESA85 medical report. Some years ago I asked the regional chairman whether it would be appropriate to have mental health experts on appeal tribunals because at the time it was just an ordinary GP; no disrespect to GPs but they had very little knowledge of mental health generally. The response was "if you want to do that, it will be experts for every illness under the sun. It is not practicable". I said, "Yes, but we are

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

talking about a large group of people who have mental health problems, I am asking for it in this instance". It was pooh-poohed, I am afraid, but that is by the by. I am struggling to understand what can be done with decision makers in such a big area of work such as mental health. I think it might be appropriate to have two types of experts: one set in physical health and one set in mental health diagnoses, that may go some way. If you get specialist training for mental health as opposed to physical health conditions, that may go some way to resolve some of the problems that we have indicated. I think because it is such a large proportion of people claiming benefit because of mental health issues, in those circumstances that should be left to experts. They should be particular decision makers with particular skills. If it is identified that the claim is because of mental health, it should be passed to a person with that expertise. I think they could be trained up to understand the intricacies of those problems.

Q15 Mrs Humble: Basically you are saying that you would not want to see certain decision makers trained to have their own personal knowledge of particular disabilities or health problems, but that they should be trained to a sufficient level to identify that their claimants might have in your case what you are outlining, mental health problems, and then go to a specialist other than the usual medical adviser?

Mr Hill: I think in this case you might find this interesting. In the completed ESA50 that was submitted by the claimant it made it clear that he was a client of Assertive Outreach. Assertive Outreach has quite a strict vetting process to take people on as clients. They have to be regarded as having severe and enduring mental health problems. That should have been enough to flag up to the medical examiner and, indeed, the decision maker that there were significant mental health problems. He was not taken on, I do not know why he was not taken on but he was not. Someone with local knowledge may have understood that Manchester Assertive Outreach deal with people with severe and enduring mental health problems; someone from outside the locality may not have known that. I asked the tribunal judge on the day whether she was familiar with the work of Assertive Outreach, she said, "Yes, I am, Mr Hill, and I understand the difficulties you have with your claimants. The lifestyle is often chaotic and it can be difficult", and they allowed the appeal really on those grounds. If a claimant points out the fact that these care workers are providing support and then if he gets no points and no thought to exceptional circumstances is given, then that is a serious shortfall in the decision making process.

Q16 Mrs Humble: Could I ask the other two, Daphne and Alan, what comments you have on special training for not all decision makers, because it is unrealistic to expect everybody to have as much knowledge as a GP or a specialist in different medical conditions, but maybe one or two in a team to have

specialist knowledge of one or two specific illnesses that are causing the most problems? What do you think about that?

Ms Hall: I think it would be valuable to have. It is always valuable to have someone who you can refer to and stuff like that, so I would certainly think it would be helpful but, alongside that, following on from what Paddy said, is the ability to see where evidence should be sought from, to say, "Oh, look, they go to Assertive Outreach or they have got a support worker, let's contact them". Training in how to seek where is the most appropriate source of evidence, when the evidence comes in how to evaluate it and how to relate it to the law, the DLA regulations if it is DLA or whatever it is. That is sometimes where any of those steps along the way, even if they are not experts themselves, if they can recognise that there is somebody who can give them evidence, to go to them, to seek out that evidence and then to evaluate it and apply it correctly, I think it is training in that as well that is needed. Like you say, they cannot be specialists so it is knowing when to refer to other people who are specialists who are involved with the claimants day to day.

Q17 Mrs Humble: Who would these other specialists be, because over the years decision makers in the DWP have always had problems getting information from various health experts because some of it was to do with payment, whether or not they were being paid? I have had instances as a constituency MP where GPs and hospital consultants have been unwilling to give information to decision makers. Who are these people and would they be willing to give the information?

Ms Hall: Generally it is not people like the hospital consultants or the GPs because they do not see the client day to day. It is more like the CPNs, the nurses, sometimes a member of the family, a carer or somebody who works at the day centre where they go. There are places certainly on the DLA form for putting down those people. The people who are put down on the form are still not used. The number of times I have filled in and put the counsellor at the drugs project, the supporter worker, somebody else and then the GP and they have written to the GP. If it is somebody with a drugs dependency issue often the GP is not seeing them at all and, in fact, they are getting their methadone script from the drugs counsellor at the drugs project. Why are they not writing to those people? Surely if it is a drug dependency issue, there should be something coming out at them that they are the more appropriate person to contact.

Q18 Mrs Humble: Could I widen the discussion and also it goes back, Patrick, to what you were saying about decision makers being unaware of a particular project in Manchester. That then links in to what all of you said earlier in reply to the Chairman, which was that you have got DWP officials working at a national level according to national legislation and national rules, but there are local circumstances that in turn they should be aware of or take into account. Was it you, Alan, who was talking about the

 26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

computer programme and asking the question, "Can you go to the supermarket?" If increasingly people are following a tightly defined script, how can we have the correct balance between people not being disadvantaged because of the area they live in, that they have a national entitlement which should be considered, whilst at the same time taking into account local issues and what local support services there are that perhaps the decision maker should be contacting?

Mr Barton: There is a real difficulty in the system at the moment in that, certainly for the incapacity benefits, there is a point system which is supported by a computer system that comes up with answers, which currently the decision makers feel they have to go along with. There is an issue about how the doctors or other health professionals who conduct the PCAs and WCAs do that. There is a wider issue of whether there are not other forms of evidence that are just as important or possibly more important in reaching a decision on the particular client's claim. I would support Daphne's suggestion that the decision makers do need to be encouraged to look more widely at the sources of information and give more weight to what the claimant, their family and the people who are working with them say about their capabilities.

Q19 Mrs Humble: Can I go back to the issue which underpins all of this debate and that is the complexity of the benefit system. How important is reducing that complexity to having more accuracy in the original decisions?

Mr Hill: Simplification of the benefit system has been long sought but failed. I have been involved in the benefit system since 1984 when supplementary benefit was around and was changed to income support in 1988 and things were simplified. Then everyone started looking for loopholes in the law, which they found readily, and I am sure you all remember those cases. To take us on a little aside, going back to the decision making, I sometimes think there is a fear of decision makers to change decisions and, indeed, the housing benefit guidance manual, which is the same decision making process, is sometimes taken as law by decision makers, particularly in local authorities. For example, a case a few weeks ago, the decision maker said, "It is evidence to a claim—ie proof of where you live, *et cetera*—that I think is reasonable because it says so in the housing benefit guidance manual" and I said, "Well, it does not say that in the law, it says evidence that is reasonable, not what you think is reasonable", which is misleading somewhat. There is a reluctance to accept evidence by people in positions below decision maker. For example, evidence was refused as being valid because it was not on headed paper, a ridiculous situation. There was a fear of making decisions in that local authority. Back to the national thing and I think I need to bring us back also to the locality issue. Some years ago it was thought—in fact, it probably still is—that tribunal people, lay members, should be from the locality. I think there is a need for people to be familiar with the area in which they work and I do

not think you can do that on a national level. I do not think it is possible either to simplify a system which would trawl everyone with the same rules, even though they have different circumstances. There is also a part of the question about reducing the need for appeal. There are so many people being found fit on the strength of the ESA50s now, *et cetera*. If there is a massive drop in income, people will appeal, whether they have got a good case or they have not got a good case. My client got a £30 a week plus drop in his income and that decision affected his DLA and his DLA was withdrawn as a consequence of an ESA decision. It is a little worrying. No wonder this man's condition deteriorated following the decision finding him fit for work.

Q20 Mrs Humble: As a postscript to these questions, can I go back to an earlier question the Chairman asked, which was about availability of telephones in Jobcentre Plus offices. Do you think claimants should have telephones they can use for free or do you think the system works well as it is now?

Mr Hill: I think a person should have access to a person across a desk: they should not have to make a phone call. The thought of walking into a jobcentre is bad enough, but not being able to speak to someone face to face who has made a decision about their living arrangements is unacceptable.

Ms Hall: Within the jobcentre it is virtually impossible to speak to somebody who knows about benefits because your only point of access for actual face to face is the jobcentre, jobcentre staff are not trained in benefits, they are trained to help people find work. The only thing they can do is ring the local benefit delivery centre. They do not have special access, they have to sit in the queues like we do. If you phone the benefit delivery centre, you have a telephony service first where people are trained to read the screens so they can give you certain information, for example what premiums you are getting, but they cannot tell you why decisions are made. The only way you can speak to somebody is to ask for call-back, which currently is coming within three days. If you are not in or you have just gone to get a cup of tea or whatever when the phone rings and you miss it, they will leave a message to say they have called, but they are not allowed to leave a number you can call back on, so you have to start the whole process again, sit in a queue, go through, ask for the call-back and it is another three days, even if you do get to talk to them, they cannot always give you the answer. It is really, really hard to speak to somebody who knows about benefits. It is not the same in the Disability and Carers Service, you can get to speak to a decision maker much more easily there and they will ring back and will leave a number for you to contact. That makes it very hard for people to deal with their claims. If you send letters, sometimes it feels like they go into outer space. I know that is unfair and I know lots of letters do get through, but sometimes it is so frustrating and that is what it feels like. I am sure it is not the case obviously.

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

Mr Hill: The problem is no-one takes ownership of the case. You speak to several different people about one issue and will be told different things. It is very difficult. A local office had a case of a claimant who was in hospital and wrongly had his benefits stopped. It took them six months to pay the benefits which had been stopped incorrectly because everyone was passing it around to each other.

Mr Barton: On your telephone point, I think it would be highly desirable for better phone access for clients from the jobcentre because a very high proportion of people who are on very low incomes, living on benefits have a “pay as you go” mobile as their only telephone and it is very expensive to use the 0800 numbers if you have that, so I would be in favour of that. On the simplification point, it is a really difficult question because all of us and the CAB service have spent huge amounts of time dealing with cases which have got problems in them because the system is so complicated. I do not think there are a lot of easy answers to simplification. For example, the Great Ormond Street parents’ eligibility for IS is a rather exceptional situation, but if you had a really simplified system, the answer might be, well, you do not get anything. As an organisation we have favoured a commission to look at welfare benefits and tax credits because we do not think it is a simple thing. There are a couple of things I would suggest to give better decisions for the clients. One would be for the DWP agencies to treat their customers as customers of the whole organisation, rather than as claimants for a single benefit, which they tend to do at the moment. This causes huge problems. If you are on JSA and you get ill, you have got to claim ESA, it is a great performance. I saw a client recently who was on ESA but he was appealing losing his income support and they decided, yes, he should be getting his income support. They closed down his ESA claim and it was about two weeks before they got around to paying the income support to him. It is all down to the poor old claimant to sort these problems out. We have heard quite a lot of how the people concerned find it quite difficult to do that. We think a different approach would be desirable. It is not as if it does not happen always. In the situation where DWP policies are causing these sorts of potential discontinuities for people, they help them through it. The recent situation where the age at which lone parents can claim income support for their children has been coming down, there is a whole lot of help offered to them in transferring to being JSA claimants, in many cases having to claim tax credits. It can be done but, I repeat, it is an area which DWP could do a lot better in. The other one, which ties in with this, is the lack of notice people get when a decision is made to stop their benefits. The norm is you get told after they have stopped your benefit that they have stopped it, whereas what people ought to get, if they have been getting these for a long time, is some notice of what is happening and help to work their way through the situation.

Ms Hall: I have got a couple of points on complexity as well. One of the problems it leads to is under-claiming, people miss out all the time because of the

linking of benefits and that, going on from what Alan said, should be the same. For example, if you get DLA, you should get extra premiums in your other benefits. That does not necessarily happen, particularly if it is housing benefit or tax credits, so it is managed by a different organisation or it might bring in entitlement. Claimants are not told if they get DLA, “You should now think about putting in a claim for income support, housing benefit, tax credits” or notifying them, they are not told that. It leads to a huge amount of under-claiming. The other one, the complexity, which I think is one of the worst, is when particularly pensioners have to claim carers allowance, to get a letter to say, “You can’t have carers allowance”. However much you say to them, “You’re going to get this letter saying you can’t have it”, they come back and say, “I never got that benefit you told me to claim”. What a waste of people’s time and confusion is caused by having to claim a benefit, to be told you cannot have it, to then send the letter to somewhere else to give you something else. It is mind-boggling really.

Mrs Humble: I refer you to an earlier report we did on this very issue. Thank you very much.

Q21 Mr Heald: I wanted to ask you about the reconsideration process. Judge Robert Martin from the Social Entitlement Chamber has posed the question, what is the advantage to the claimant of asking for a reconsideration rather than simply appealing. A lot of people wonder if this process of reconsideration has any benefit to it. What is your thought on that?

Ms Hall: If it works, yes, great, it is brilliant, if they do a reconsideration and look at it afresh and not just rubber stamp it. The examples we gave before where it is beginning to work in DLA, it is of huge benefit to the client. They get their money quicker and they do not have the stress of going to a tribunal. It is hugely beneficial if it is done properly. There are examples of it working very well and there are also examples of it not happening, it is just they say they have done it and you feel they have not looked at it at all.

Q22 Mr Heald: Patrick, what about you, do you think it is worth having a reconsideration process?

Mr Hill: I think it is. Also, there was the recent pilot about dispute resolution where the bundle will go before a judge and he or she could make some determination to say to DWP, for example, “Have a look at this to see if it works”. I think that should be extended, it is a good thing. It would have worked in this case and, in fact, I did write to the judge asking whether he or she could intervene with this and ask them to look again, but sadly that was beyond the power of the judge. It does not work at the moment for easy cases.

Mr Barton: I would agree with what my colleagues have said. The only other comment I would make is, I think it is quite difficult for the person who gets the letter where it says you can ask for a reconsideration or you can ask for an appeal. It is not very easy for

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

them to know what the best thing to do is. Also, I think it would be desirable if the letters gave some indication of what the person needs to do in order to have any prospect of success. For example, if they have been turned down for IB or ESA, it would really be helpful if it was explained to people that if they are going to put in extra evidence, it needs to address the descriptors they have not been scoring on. If they just get a much more generalised statement from their health professionals or social care professionals who are looking after them, it is not likely to cut very much ice in the process and, also, DWP should give some indication of the sort of timescales that information needs to be submitted in.

Q23 Mr Heald: This brings me neatly on to my next question. The criticism has been there is not enough advice and support for people coming from the DWP as to the sorts of things they need to be putting forward in order to make the consideration effective. Obviously you agree with that in terms of what is said in the form, but is there more which could be done to improve the communication with the decision makers so that the reconsideration process works in the way it did in the example you gave, Daphne? What is the best way forward?

Ms Hall: When you get your standard DLA letter it will say, the evidence we used to make this decision, a report from your doctor, your claim form, or something like that, it does not say, "If you would like to see copies of what it is, ask for the copies and then if you disagree with anything, you can let us know". If it said something like, "You're entitled to copies of everything, would you like us to send them? You can then have a look and see if you disagree with anything that is said". As Alan said, the fact that in incapacity and in ESA they are never told about descriptors, I think that is one of the most shocking things in the system. They do not even know the descriptors they are being assessed on. No claimant is told, "You're going to be scored points on these". How are they expected to give the relevant information if they are not told how it is being assessed? The ESA 50 they have to fill in, although it is sort of linked to the descriptors, it does not match up properly. For example, it says, "Can you walk 200 metres?" and you tick yes or no, whereas the descriptors or points depend on whether you can walk 50 metres, 100 metres or 200 metres. The information you are asked to give does not distinguish whether you should get nine or six points. How is the claimant meant to know what information is important, they are not told. If they had a little booklet with the descriptors in saying, "This is the information that is important". That is what we do for clients when they come to us, we say, "This is how you are assessed", but clients should not have to come to us to be told that because very few of them do. We only see a minority of the population. Why is that information not routinely given to claimants? They are put at such a disadvantage at knowing what is important to say, particularly in the incapacity system.

Mr Hill: I have very little to add to that, just to say I am unhappy with the phrase—and this is where the information pack comes in—limited incapacity for work. My clients who have got that decision think they have just been found fit for work. It sounds like that to me as well or am I being naive, it does not say much at all. Maybe that should be changed to, "We have found that you are not fit for work and you should continue to get benefits" because people do not understand the decisions very often.

Q24 Mr Heald: It is true, there are a lot of cases which go on appeal and are successful. I think 55% is the figure for DLA on appeal where the main reason why the appeals are succeeding is new evidence which is being brought up. That seems to suggest there is something which could be improved on reconsideration, but that does not seem to be happening. What are the things which need to be done to improve the reconsideration process?

Mr Hill: We talked about referring it at the very least to organisations which are mentioned in the ESA50, that is the very least which should be done, particularly in the case that I have mentioned. What Daphne said about what a client should and should not know, simplifying the phraseology and telling people where they can go for help. It talks about you can appeal and when it was launched, the decision, they used to list the appeal agencies, I am not sure that still happens, but if I am mistaken about that then I apologise. There are so many things to consider with this and I think it is wrong for us to take an overview of it when it needs to look at particular individuals and claims to benefits. I have to be honest, there is very little way of simplifying this. What we have got, if it works properly, might be okay. You have agreed that the reconsideration process is not working very well, particularly for ESA. If I go back to assessments in poverty and bring up the locality issue rather than the national issue—

Q25 Mr Heald: Unfortunately we cannot do that on my questions because I am only asking you about the reconsideration process.

Mr Hill: It may point you to this: the local Chorlton Jobcentre Plus social fund office telephoned me to say, "We have awarded this gas cooker, Mr Hill, but you failed to put in the connection charges. It's okay, we've done that for you". That was because it was local.

Q26 Mr Heald: In a way that is another example, similar to Daphne's, of the person making the decision speaking to the person who is making the claim or their witness and trying to find out exactly what the claimant's situation really is.

Mr Hill: Yes and, indeed, they knew what we did, and they knew the organisation with which they were dealing.

Ms Hall: The tribunals take an inquisitorial role, do they not, that is why they get the information. They are proactive, they seek out the information. It feels like the decision maker waits for it to fall in their lap and if it falls in their lap, hopefully they will look at

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

it, but they do not seek it out, they are not inquisitorial. Maybe that is what they need to be, like a tribunal is, in order that they will make a better decision.

Mr Barton: I think the feeling we get often, particularly with the incapacity reconsiderations, is it is just viewed by the people concerned in Jobcentre Plus as an annoying step they have to go through before the case goes to appeal and their focus is on producing the appeal papers.

Q27 Mr Heald: They always back the doctor.

Mr Barton: Yes.

Q28 John Howell: Can I move on to the appeals process now. The evidence we have accumulated so far has identified two problems to do with timescales. One is the amount of time it takes to do an appeal, but the second one is what one might call the “asymmetry of timescales” which are involved to submit these, that the emphasis on the amount of time to submit things is on the part of the claimant and not on the part of the DWP. Daphne, you are nodding there violently in agreement with that. Is that your assessment of both the length of time it takes and the asymmetry point? Also, thinking ahead, what could be done to improve that?

Ms Hall: I think we could bring the time limit back in. When the tribunal rules were first in draft, there was a time limit on the DWP and it was only at the very final stage that they took it out. It was very upsetting to us all because it was there right up to the last minute and then they took it out. It seems completely unjust that the DWP have no time limit on them and the client is supposed to get their submission in within four weeks and they have got nothing. The DWP sometimes take months and months to produce anything, particularly in over-payment cases, I have to say. It is good that you can now ask for directions from the judge, I think Paddy brought that up earlier, so you can now say to the judge, “Please will you make a direction and put a time limit on them”, but that is all very well for us as advisers. A claimant out there without an adviser is not going to know about that, they are not going to know that they can write to the Tribunal Service and ask a judge to make a direction, there is no information about that. In reality, it is not there for the majority of people at appeal, only for ones who have managed to get hold of representation. Of course, the representation services are being rapidly eroded, but I will not go into that now. Without a doubt, the DWP should have a time limit put on them and they should be expected to produce the information. They are the professionals with all the information, the clients are struggling and not really knowing what is going on. More information needs to be given to the client about what happens, what they can do and what support there is for them.

Mr Barton: The last time I chased up a case, where we helped a person go to appeal, the response was, “We work to a target of 50 working days to produce the appeal papers, we certainly won’t do it in less than that. It might be more because at the moment your client is number 14 in the decision makers’ list”.

There is a question for DWP, are they resourcing their appeals sections properly and should they not be giving shorter internal targets for producing the papers.

Mr Hill: There is a question about reasonableness, is there not, about what is a reasonable length of time? Reasonableness goes down the toilet when we are talking about people’s illnesses. We need to be alert to the fact that in this case, as an example, this man found himself with six months in Strangeways, at least partly because of that delay, so we need to chase things along. Sadly. The cases currently waiting for listing stands at 4,581. That is going to increase and increase because people are being tested on ESA and more and more people are failing. Where that figure will be next month or in three months’ time, I do not know. There exists a demand in the European Convention of Human Rights where Article 6.1 guarantees: “[. . .] the right to a fair hearing within a reasonable time [. . .]”, whether that can be challenged, this 20 weeks as being reasonable, I do not know, I do not think it is reasonable. That is a Tribunal Service issue; the preparation for the appeal is a DWP issue.

Q29 John Howell: The appeal system has always had a reputation for being very bureaucratic. Do you think that has changed? Is there a move towards it being generally more user-friendly or the same or less user-friendly?

Mr Hill: It depends on the nature of the tribunal members. Are you talking about the judiciary or the admin?

Q30 John Howell: About the process itself, the appeals process.

Mr Hill: The process itself from start to finish, it is dependent on the DWP to send in the bundle, then the administration is fine but, as I said, the demands on the appeal system at the moment are incredible and are perhaps difficult to overcome in the likelihood of current happenings. The appeal itself does vary a bit. It is very daunting for a lot of people, not for me personally or my colleagues, no doubt, but with some of the members, I am not sure their attitude is friendly and informal.

Q31 John Howell: Ms Hall, would you share that view?

Ms Hall: It varies. It is an intimidating process. Sometimes the language used is a bit too “long-words”, I struggle to know what the words meant that they are using. There is a bit of a tendency to use English which is less accessible. On the whole, they do really make an effort to make the client feel as at ease as they can; you always get the odd one.

Q32 John Howell: There is inconsistency in the user-friendliness depending on where you end up.

Ms Hall: Yes, there can be. I will always look at who is going to be on the panel and I will think “Oh great, we’ve got a good panel” and sometimes, “Oh, no”.

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

Mr Hill: Can I say something before I give you the wrong impression, the vast majority of appeal tribunal members are really good, but you do get the odd one.

Ms Hall: I would agree with that.

Mr Barton: I think we would agree with that as well, but it does need to be stressed that the actual process for a lot of the claimants involved is a very stressful one. Certainly we see quite a bit of evidence of claimants, particularly people with mental health problems, not being prepared to go to appeal on cases because they find it too stressful.

Ms Hall: My colleague's client this week made a suicide attempt two days before the tribunal and it was directly related to the stress of it all, which is quite harrowing. On the administrative note, I have to say, and I do not know whether it is to do with the new tribunal rules or just to do with them moving things around, we were in Cardiff, and I know they have to cover a much larger area now, but the listing has become an absolute nightmare. As reps we send in details of when we have got our availability. We have always had an understanding before that they will look at the reps' availability, they see that I am down as a rep and they will check my availability. It is not happening any more. We keep getting them listed for days we cannot do, which we had told them we could not do in advance. Then they are refusing to postpone and are saying, "Well, somebody else in your organisation could represent them, you are a big organisation". That is not fair to the client, the client knows me and trusts me. It is not that my colleagues are not just as good, but it is about feeling safe.

Q33 John Howell: Can I look at that from the other side as well. The DWP presenting officers are not there a lot of the time, they are only there 16% of the time. From the claimant's point of view, what difference does it make whether they are there or not?

Mr Hill: The quality of the presenting officers can be sometimes quite unpleasant, quite frankly.

Q34 John Howell: Do they generally take a role of providing information or being adversarial?

Mr Hill: I think the latter in some cases, not in all cases, some are very helpful, I have to say. It is wrong to tar everyone with the same brush, but there have been instances in my many years of experience where perhaps less than the truth has been told by presenting officers, but it is very few and far between.

Mr Barton: My view is they do not add much to the proceedings really. One of the problems with DWP, and the fact that they keep losing at appeals, is they do not seem to have any process whereby as an organisation they then learn from that. The individual people who have had decisions overturned never know that this has happened, which seems extraordinary. If they were a learning organisation that would be quite an important part of their philosophy.

Q35 John Howell: If you are there and you have got a client there do you breathe a sigh of relief or does it send shivers through you if a DWP presenting officer is there?

Ms Hall: I must say, I had my first presenting officer last week for I cannot tell you how long, so it is difficult to say because we do not get them very often. I was more shocked than anything—a presenting officer? And, of course, I had not bothered to brief my client on the possible presence of a presenting officer because they never turn up, so my first thought was, "I have got to explain now that someone from the DWP is here and reassure them that they are not against them". It certainly does not fill me with dread. In fact, that presenting officer was fine and probably helped the tribunal to come to a decision more quickly because it was one of those cases when the evidence that was before them was enough for them to turn it round. To be fair when some issue was explained the presenting officer said "Yes I am quite happy with you going with that" to the tribunal, so it stopped them having to debate it for ages because the presenting officer said, "Yes, from the Department's point of view I now concede that and I am quite happy with that". My experience is not that they are particularly adversarial, but I have to say I have not got a huge experience of them in the hundreds of tribunals I have ever done. We used to get them a bit more but in the last ten years I cannot think that I have had more than five. I know it would probably be that they were payment cases where they are much more likely to come and argue things out, but for DLA, and, as I say, this was a DLA one, I was very shocked to see one.

Mr Hill: It is good to have them on board for the legal argument, the debate on the legality of the decision. That is very helpful.

Q36 Mr Heald: Alan, are you saying that the DWP officials who have made the decisions incorrectly are not told that their decision has been appealed successfully and that they made a mistake?

Mr Hill: That is correct.

Mr Barton: That is my understanding.

Ms Hall: We had a meeting with our disability and carers services. They asked if that could begin to happen and it is not happening. They do not get the feedback. As Alan said, they are not learning.

Q37 Chairman: Can I just stop you? The tribunal reverses the decision. Where does that paperwork then go to?

Ms Hall: It goes to the Department which pays it, not back to the decision maker.

Q38 Chairman: No; which part of the Department? Does it go straight to the BDC?

Ms Hall: It was an incapacity one; yes, it would go to BDC. It will go to the processing department to say, "That decision has now been made; start payability". It will not go back to the appeals section. It goes to the people who are responsible for payment. The appeals section is a separate one; it

26 October 2009 Mr Patrick Hill, Ms Daphne Hall and Mr Alan Barton

does not go back to them. It is just an administrative thing, "This decision has been made. You now need to set in place payment", or whatever.

Q39 Mr Heald: Some official who did not understand the law properly or whatever would just keep on making the same mistake time after time and nothing would ever be done about it?

Ms Hall: No, and we have raised that with them. We have certainly raised it with our local carers service.

Mr Barton: We recommended it in the report we did on medical examinations for benefits. We recommended that about three years ago now, that there should be this feedback both to the decision makers and to the ATOS staff who are making the recommendations.

Chairman: Thank you. That was very helpful.

Witnesses: **Mr Paul Farmer**, Chief Executive, Mind, **Dr Mark Barker**, Head of Social Research and Policy, Royal National Institute for Deaf People (RNID) and **Ms Sally West**, Policy Adviser (Income), Age Concern and Help the Aged, gave evidence.

Chairman: Good afternoon and welcome. Sally, you are almost an honorary member of this Committee.

Q40 Tom Levitt: Do clients generally understand the difference between asking for a reconsideration and asking for an appeal?

Dr Baker: Not at first, no. Generally, when clients come to us they just want the decision changed and we would always recommend asking for a reconsideration before going to appeal. There is not much understanding of the entire process once a claim has been refused.

Q41 Tom Levitt: What could the DWP do to improve the decision making process to make sure that claimants do understand their rights and what is expected of them, how to go about the reconsideration or appeal process with confidence?

Mr Farmer: I would like to start by broadening that out to how can the DWP help people to understand the process, full stop, from beginning to end. The broader context is that many people that we work with who have experienced mental health problems find it extremely difficult to understand some of the complexities of the process. The journey that people are on is often one of considerable confusion. When you get to that particular stage you are hopefully supported by people who have got the expertise and the knowledge to be able to guide you through that system but, as you have already heard in the previous session, that is a relatively small minority of people. The vast majority of people do not have that support and I think that, partially at least, probably explains why a relatively small number of people go on to seek reconsideration or appeal, particularly in the context of job-related benefits.

Q42 Tom Levitt: Are you familiar with the DWP's Customer Charter?

Mr Farmer: Yes.

Q43 Tom Levitt: Do you think that was a step in the right direction? Do you believe it?

Ms West: I think the things set out in the charter are not really things that you would disagree with about making the right decision, treating people well and making decisions in a timely way, so certainly we would support the principles of what the charter is there to achieve. The point for an individual is do

they know about the charter and, if they do, what difference does it make to the service they get and what would they do if they were not receiving the service as it should be as set out in the charter? In principle, particularly if it is helping the DWP think about what is important to their customers and how to deal with them, then fine. There have been charters in the past, though, and I am not sure there has been any dramatic improvement in performance because of them. Possibly it would help in some ways but I do not think people really realise that things like the charter exist.

Q44 Tom Levitt: The charter says, "We will make sure you can contact us in ways that are simple and easy to understand. We will tell you about other services that may help you". Obviously, if that does not happen, people are not going to have much faith in the charter, are they?

Mr Farmer: Indeed. You have to have a charter which is doable, and I think the basic concepts of the charter are extremely achievable if it is aligned to appropriate management action. I suppose to some extent the danger is that the charter becomes a piece of paper that you simply give to claimants without backing it up with a full set of support, and if this is a customer/business relationship or, in our world, the world of the voluntary sector where we work with people all the time, it is really important that when you say to people you are going to do something you are then able to follow it up. The charter needs to be clear about what is achievable for an individual and for the DWP, but it also needs to make sure that it is backed up by appropriate training, particularly training for staff, and also that there is a clear monitoring of the process. We would be very keen to see the extent to which complaints about non-adherence to the charter are pursued, some kind of accountability around that. Some kind of independent monitoring around it would also help, but the core to it is around being honest about your offer and then being able to deliver on that offer.

Dr Baker: I quite agree. It is all about deliverability and policing. How is the charter going to be policed? How is it going to drip down through DWP to the decision making level? That has always been part of the issue with the whole decision making process, that there is a charter, there is

26 October 2009 Mr Paul Farmer, Dr Mark Barker and Ms Sally West

guidance, but that it does not actually get into the mindset at ground level quite often. For an example, the one you gave about being able to contact in an easy and simple way is one that has certainly vexed our client group over the years with the increasing advent of telephone-only services which are inaccessible to deaf people. What we are seeing is communication with DWP getting harder. It is a very general charter. We want to see how it is going to affect people on the ground with specific needs and how those needs are going to be met. It is a good start but let us see some action.

Q45 Tom Levitt: You anticipated my next question completely. I speak as a former trustee of RNID, so that is possibly why. On a different issue, I had a blind person come to my surgery this week who was having a problem with digital switchover, and the person on the other end of the telephone said to him, "Why do you need a television if you are blind?". It is not just civil servants that can put their foot in it like that. You made the point about telephone services. What about face-to-face services? Are DWP staff sufficiently deaf-aware to give a proper hearing to hearing impaired customers?

Dr Baker: No.

Q46 Tom Levitt: That answers that one!

Dr Baker: We are beginning to try and work the thing to offer more deaf-awareness training in Jobcentres but, as I say, that is more to do with job-seeking, not to do with benefits expertise. Our understanding of deaf awareness amongst decision makers is very little. I will just give you a quick example of a form that a claimant for DLA had asked for a copy of after a refusal and the decision maker had written that the person did not qualify for the mobility component of DLA because they could see.

Q47 Tom Levitt: I am afraid it rings a bell. When I was elected in 1997 one of the first meetings I had was with Jobcentre people in Sheffield to talk about exactly these issues, and it obviously did not work. Paul, you have been criticising the medical assessments and decision making processes, quite understandably, for their failure to properly deal with fluctuating conditions. Clearly it is a very difficult one to have a hard and fast rule about but how should DWP adjust its approach to make sure that claimants with fluctuating conditions get a fair crack of the whip?

Mr Farmer: You are right: we have really highlighted this issue because we know from a lot of the evidence we get from people with mental health problems that the decision making process then falls down on the wrong side. It is important to stress first of all that it is not always the wrong side; it is not always the decision for somebody to be taken, in the context of the WCA, from ESA to JSA. Sometimes it is the other way round. We had an example of somebody who told us that their assessment was a relatively short process. They were quite keen to work but the

assessor took a couple of looks at the file and said, "You are on lithium. Therefore, you clearly cannot work. Next patient please".

Q48 Chairman: What he should have said was, "You are not required to work". The language is important.

Mr Farmer: It is, I agree, but in this case he was genuinely hoping to get some support, so the decision making processes do not necessarily work entirely in the case of somebody finding that their benefits will be cut; it can work the other way round. It is difficult and I suppose there are a number of ways where the process can be sharpened up to support people. The first one is that the descriptor process currently asks people to describe exactly how they are at this particular point. They do not really allow people to explain what it is like when they are well or not well. Fluctuating conditions, of course, particularly affect people with mental health problems but not exclusively, so conditions like multiple sclerosis are in a similar position to this. An ability to articulate how you are when you are not as well as or perhaps better than you are at the point of interview might make a difference. Secondly, as I think you heard from your earlier witnesses, there seems to be quite a heavy reliance on the individual assessment process with relatively limited efforts being made to receive more information from people who are closer to the individual concerned. I think an approach which would increase the understanding and knowledge that the final decision maker has around some of the broader issues that an individual might be facing would help. You heard from an earlier witness a couple of examples of people with mental health problems and it will not surprise you that we have got a couple on a similar basis where individuals are scoring zero points when they either happen to be in in-patient units inside psychiatric hospitals or only very recently discharged from psychiatric units. Our psychiatric services do a pretty good job with lots of people but I cannot really imagine a situation where somebody will come out and score zero on the work capability assessment having only relatively recently been in hospital. I think there is an opportunity there, and perhaps if the assessor had found out what the particular state of health of that individual was, how recently maybe they had spent time in hospital, I think that broader perspective would really help. I appreciate that that might sound like you are increasing the bureaucracy or the amount of time that that takes but it is important to recognise in the broad context that people with mental health problems form a very considerable proportion of people on incapacity benefits. Just over 40% of people on incapacity benefit currently are people who experience mental health problems, so there is quite a considerable incentive for the DWP to get this process right.

Q49 Tom Levitt: Sally, if I can turn to you, you told us that some service users had reported concerns with benefit decisions following the European Court

26 October 2009 Mr Paul Farmer, Dr Mark Barker and Ms Sally West

of Justice ruling on attendance allowance, DLA and carer's allowance. What sorts of problems are they facing?

Ms West: We have had quite a lot of people contacting us and I suppose by definition most of the people affected are abroad or considering going abroad. For people who are abroad it is particularly difficult dealing with the DWP. Clearly, you cannot ask to see somebody in a local Pension Service. People are first trying to work out what the decision means and quite often with European decisions it answers one question but perhaps raises a number of others, and I think there is still some discussion on and consideration of what the legal judgment is going to mean. It seemed to take a bit of a while to get detailed guidance out from the DWP interpreting the decision, and I suppose that is understandable because the lawyers have to look at that and I think decision making guidance is now quite detailed, but, from the point of view of individuals, they will contact the DWP trying to ask about what the situation is in their own particular case and there are delays in people getting back to them. Also, there is an address and an email contact but it is very hard to speak to somebody on the phone, and I think when you have got quite a complicated case you really need to talk through it and explain your situation and try and find out what the latest view is in terms of how it affects individuals. The case is still going on. There are various issues that are being appealed; there are a number of appeals waiting to be heard, so I think it will continue to be an area of concern for people who are living abroad or want to move abroad and take their disability benefits with them.

Q50 Tom Levitt: Do you think decision makers are generally up to date with the rule changes on this, and indeed on other aspects of rule changes as well?

Ms West: I think it is difficult. Certainly to begin with it felt like people were not getting full information but whether that was because DWP was still working out what the decisions meant I do not know. Also, it can be quite difficult because, where there are perhaps appeals pending, if somebody went to an advice agency which was very versed in the decision in the case they would be able to say, "You need to put in an appeal and wait until this case is heard", whereas perhaps a decision maker would just make the decision on the basis of the information they had but they would not tell them that this was still being challenged and there is a possibility that they need to put in an appeal now; otherwise they will miss out. That is perhaps the different service you get from an advice agency as opposed to talking to the DWP.

Q51 John Howell: I rather gather from your earlier answers to Tom Levitt's original questions that you probably think that the DWP is not very effective at the moment at making sure that claimants fully understand the decision making and appeals process. Is that a fair view that I am expressing there and, if so, what do they do right in your view?

Mr Farmer: As you have already heard, there are huge complexities in the system and so this is not an easy system to communicate effectively to people. In terms of what has been done right, and Mark will be able to talk more about DLA, I think some aspects of DLA have improved for some people, but in the area which we have main concern about, which is the work capability assessment, it is quite difficult to find much of a positive nature. I think though there have been attempts to try to involve wider stakeholders in getting the work capability assessment right, and particularly in the context of ensuring that the descriptors around various conditions are correct. Unfortunately, in terms of our experience, the relative weighting that was given to stakeholder views really was not appropriate and I think the consequence of that is something that we are now seeing in the application of the WCA. However, to be fair to the DWP, I think there has been a significant effort in the last few years to seek to engage stakeholders much more positively and to try to work more across the board with stakeholders; there is certainly a recognition of that. However, in terms of the key products that are being delivered for people, that is still not sufficiently reflecting some of the issues that we raised two or three years ago around this area. I think we may well have given evidence to this Committee when you were considering it at that time.

Dr Baker: We share those concerns on WCA. I was part of the review panel for that and I agree entirely about the relative weighting of stakeholder views. Looking at disability living allowance, the first point of contact between the DWP and the claimant is sometimes the form. That is, if you like, the first part of the journey and it is utterly mystifying for a lot of people. With the guidance to filling it in it is about 56 pages long, which is quite a task. If you are pre-lingually deaf and do not have English as a first language it is very difficult to fill in. You do not know what to put in the box under "Communication" that says, "Why do you need DLA? What kind of support needs do you have related to hearing?". There is no tick box. It is really just a blank thing to write in, again, not in your first language. That is the first point of the journey. From then on it just gets more mystifying still. You send off the form, you get a decision. You do not know necessarily why that decision was made, you can appeal it, you can have it reconsidered, and then you may get an award for three years, five years. As I think evidence was given on earlier, time-limited awards for people with conditions that are not going to change do seem a little bit like a waste of time and money and over-bureaucratic. We are now working with a man for the second time. He was refused DLA three and a half years ago. We took it to an appeal tribunal, won the case. Three years later his condition has not changed. He is pre-lingually deaf; he is not going to become hearing, and the claim has been stopped on renewal, so we are having to work with him again and go through the entire appeals process again. Even to experts like us it is mystifying; for the claimant doubly so.

26 October 2009 Mr Paul Farmer, Dr Mark Barker and Ms Sally West

Q52 John Howell: You and we might see this as a journey. Do you get any indication that the individual forms, the individual steps in the process are seen by the DWP as a journey and are expressed as such?

Dr Baker: I doubt it, to be honest. We would like it not to be a journey. Too many people are taking too many long journeys here because a decision was not right in the first place, so maybe “journey” is not an appropriate term of mine to use. No, I do not believe that it is seen as one process and, as we heard earlier, it is not a learning process for DWP either. If it were, the result at the end of that journey would be fed back into the beginning and it currently is not.

Q53 John Howell: Sally, feel free to pick up on those points but I want to ask you also whether you felt that there was any greater attempt to understand the claimant’s position by the decision maker. If you were in business you would want to understand the customer’s position in order to know how best to serve them along the way. Do you see any move towards that on the DWP side?

Ms West: I think there is quite a lot of work going on within the DWP and, as you said earlier, organisations see the cases that go wrong, whereas from our perspective, dealing with older people, mainly pension credit, attendance allowance claims, the majority do go through smoothly. The problems come from our perspective with the more complicated cases and, the point that Alan made at the beginning of your session from Citizens Advice, for example, pension credit. Most pension credit cases are fairly straightforward. People have a good experience dealing with staff. People are polite and courteous. It is more where there are complexities in the case, complex additions, mortgages, the issue of state pension that is paid gross but it should be taken into account net, that there are difficulties. You asked earlier about whether there should be specialist staff dealing with different conditions within the DCS side of things. Again, with pension credit we would like to see that if somebody is picking up something quite complex on the phone or when they are dealing with a decision they can identify that as an area where it needs perhaps more experienced staff with very good training who can take that up. I am coming off your question a little bit but within the DWP there is certainly a customer insight team and I think there is a lot of work to try to improve experience and recognising that there are concerns and trying to make the system better for the claimants, but, as you have heard, there is still a long way to go.

Mr Farmer: There is a broader context to this, is there not, which it would be crazy not to refer to at this point, which is a highly overstretched system with high volumes of benefit claimants, probably not necessarily projected, and a really difficult job to get payments delivered to people? That is quite a major challenge at the moment and I think it is important to recognise that, but it is also important to recognise that, with what are relatively speaking some quite significant changes, making these systems work does take some time to bed in and that is why it is really important that there is a learning cycle because, to take your analogy around the customer relationship,

most organisations will listen to their customers, understand what it is that has been positive about that customer journey in this context and then look to see how to adjust that. I think that is incredibly important when in this context you are talking about the impact of decisions on people’s lives which are pretty profound.

Q54 John Howell: So what would you like to see replaced by the DWP to make the contact between the claimant and the DWP staff more meaningful?

Mr Farmer: I think the starting point is an approach which is a genuinely customer-centred approach, something which does join up the different components, recognises that often people are not only necessarily on one individual benefit, and I know some progress has been made around that, but also recognises—and I am at the risk of disagreeing with Dr Baker—that often people with mental health problems in particular really are on a journey in this context. People will find themselves in and out of a variety of benefits at different times in their lives, particularly people who experience severe and enduring mental health problems. There is a group of people, as you heard from your earlier witness from HARP, who would really benefit from quite a tailored approach, recognising that although it is not a very large group in numbers it is probably a group of customers who do require special treatment. I think there is a good case for that. There are people who have more so-called mild to moderate mental health problems for whom it is a rather more straightforward journey, and I think that would probably be the same with many disabled groups, that that slightly more tailored response to meet the customer need could make life a lot easier.

Dr Baker: Things are improving. It is not a bleak picture; the DWP has definitely improved its communication with deaf people over the last ten or so years. We would just like to see perhaps more flexibility, more availability, particularly for people who use British sign language, of interpreters, and also a much more customer-focused approach rather than what is sometimes a claimant-focused approach.

Q55 John Howell: If we could look at one aspect of that in particular, the ability of claimants to challenge DWP decisions, how would you rate the quality and the content of what is available to them now?

Dr Baker: It is mostly reliant on the voluntary sector to support people, and in more straitened economic times, although the quality remains high, the quantity tends to dip, so I would say there is increasing pressure on the advice sector now, especially as there are many more claimants going through the system.

Q56 John Howell: And there is a role that you see that DWP could do more of or better to add to those sorts of advice?

Dr Baker: I think it comes back to the very basis of the inquiry, and that is: make better decisions.

Ms West: One of the problems that our local advisers have told me is about the difficulty in talking to the decision maker. I have been talking to

26 October 2009 Mr Paul Farmer, Dr Mark Barker and Ms Sally West

people about some of their complex pension credit cases and an adviser recently told me of a case where it took 11 months for him to get the DWP to change their decision and agree with the interpretation. He was explaining the rules to them and it took a long time, and I think it is a difficulty that advisers trying to get through, who understand the rules and are trying to explain the situation, cannot get to talk to the decision maker and once they can get through they can usually explain and the situation can be sorted out. I think that is difficult for an individual because in order to do that you must understand the legislation as well as the process of asking for reconsideration and appeal, and certainly for a lot of the older people that we deal with it has perhaps been quite a big step to make a claim for benefit in the first place. You will be aware of the number of people that do not claim benefits, for a whole variety of reasons, and then, having finally got round to making a claim, when you get a letter that says you are not entitled to this benefit, often, even if there is the information on how you appeal or ask for the decision to be looked at again, they will say, "Perhaps I should not have bothered at all", and feel a bit embarrassed and not want to take it forward. As Mark says, it really relies a lot on the voluntary sector and advice agencies to help people and to explain whether a decision is perhaps a correct one or whether there is a way of appealing and then support them in terms of taking forward a reconsideration or an appeal.

Q57 John Howell: Let me take you on to my last area. There is some evidence that has already been given to us that one of the causes of confusion for claimants which sometimes leads to incorrect payments is the lack of communication between DWP's debt management service and Jobcentre Plus. Is this something that you have come across and do you have a magic bullet for sorting it out?

Mr Farmer: That is not something that we have particularly come up against. People are very rarely finding themselves overpaid. For people who experience mental health problems that is not the main issue that people are highlighting.

Ms West: I have had some issues where people have had, for example, pension credit overpaid and it has taken quite a long time for the debt management service to come back, and when they do they have not got all the information about exactly what was paid when, and sometimes advisers have said that when they talk them through it and give them their evidence they will drop the case, but I think an overpayment is a very worrying thing for anybody, for older people but also younger claimants, especially when they do not realise why that has happened, but we have got no particular information about Jobcentre Plus.

Q58 Tom Levitt: The first question I have got for this section says, "Is the reconsideration process a valuable part of the decision making process for claimants?", but I think you have agreed that it is, on the grounds that it is quicker, it can take new information and can simply be corrected, but not all

of the witnesses who submitted said that it was a valuable part. One group, the Asbestos Victims Support Groups' Forum, told us that decision makers "are reluctant to assert their right and responsibility to make decisions; they defer to the medical advisers, who effectively make all medical decisions". Is that a fair criticism?

Mr Farmer: In the context of reconsideration or in the context of the broad issue?

Q59 Tom Levitt: Of reconsideration.

Mr Farmer: Our experience of reconsideration is relatively limited, but in the broader context taking the decisions of the medical advisers certainly seems to be the pre-eminent line to take. If the medical advisers are determining that somebody is fit for work, for example, that is normally the overriding factor. Nonetheless, I think the structure of the reconsideration system, which I think we have agreed there is some real benefit to, particularly because of it being a much less stressful process for claimants and also potentially at least, a speedier process, is such that it is still looking at the evidence and the approach that has been taken. If worked right, that is the potential area where the broader evidence could be gathered from either other medical experts, or indeed, as you heard from the earlier witnesses, people who are in much closer contact—families, housing staff, people who are working in other aspects of somebody's life. I certainly think that in the whole prism of this approach the overwhelming view of the medical decision maker holds a disproportionate amount of weight in the overall decision making process. I am not really sure that that particularly wavers right the way through the reconsideration and appeal process. I think that is still the case and it feels for many people who experience mental health problems that they are struggling to articulate issues around some of evidencing areas, the descriptors, and in those cases that is leading the assessors, who are not always well trained on mental health, to make some recommendations which then lead to decisions which are not necessarily appropriate. Somebody who gave some evidence to us prior to us giving evidence to you told us about the conversation they had with their assessor where the assessor said to them, "I am terribly sorry. I do not really know very much about mental health. I am an ear, nose and throat specialist", and it would appear he was an ear, nose and throat specialist who had not had very much training. He had been trained in how to do the assessment but he did not come with any particular background knowledge. That creates some real challenges in terms of the accuracy and effectiveness of that recommendation, so when that recommendation is given even greater weight in the process that seems to imbalance the approach for people. It makes it even harder for the appeal system to work for you.

Dr Baker: As I said earlier, we do encourage people to ask for reconsideration but it is very rare that a decision will be overturned at that stage and, whilst I cannot speculate on the internal dynamics of the Department, it does look as though the medical

decision holds sway. There is one other thing that is quite interesting about reconsideration that we have found and that is that when, on those occasions that a decision is changed, we are seeing an award—and we are talking here about DLA—that is lower than we would expect at tribunal, so, whereas (and DWP’s guidance pretty much says this) a profoundly pre-lingually deaf person could expect to receive middle rate care and lower rate mobility on DLA, we will quite often find a reconsideration decision will be lower rate care on its own or with lower rate mobility. Again, I cannot really speculate as to why that is happening but that does appear to be a growing trend.

Q60 Tom Levitt: It would be interesting to know what figures we have got on decisions going the wrong way at reconsideration. In 2004–05 the DWP’s own Decision Making Standards Committee claimed the reconsideration process was not working effectively. Pretty well the reason they were saying that was that their decisions were not being explained to the client properly. Has there been an improvement since that criticism was made five years ago?

Dr Baker: We have not noticed one.

Q61 Tom Levitt: Do you mean they are still not explaining their decisions effectively?

Dr Baker: Yes.

Q62 Mrs Humble: Finally, I want to turn to the area of the claimants’ experience of the tribunal. What changes do you think could be made to the tribunal system to improve the claimants’ experience of it?

Dr Baker: I think there is an issue with formality. It could be a less formalised atmosphere, though again our evidence is that things are improving there as well. Generally speaking, people who go to appeals tribunals who are deaf seem to be quite happy with them. Research we have done shows that three-quarters of people were satisfied with the way that their appeal was dealt with in the tribunal. There are issues to do with accessibility—loop systems in court rooms not working, people not understanding deafness, and occasionally people say that the tribunal is supposed to book interpretation and interpretation does not turn up, but generally we find that tribunal panel chairs are very understanding, very helpful and very professional at the same time.

Q63 Mrs Humble: Do you think that some people are put off going to tribunal because they think it is going to be a very formal process, you know, like a court? Well, it is.

Mr Farmer: Yes, it is.

Q64 Mrs Humble: I ask that question because if appellants attend oral hearings they are much more likely to get a decision in their favour, so clearly we need to look at whether or not more appellants should attend and what is putting them off, because if it is in their best interests to attend we need to know why they are not attending.

Mr Farmer: Our evidence on this suggests first of all that people often do not know that they are able to attend, so that is an information provision issue.

Q65 Mrs Humble: Do you mean they are not told in the letter? If they appeal are they not sent information about whether or not they can attend?

Mr Farmer: Whether it is in the information or not, what people are telling us is that they are not clear that that is what they are able to do. As you say, the nature of the establishment is that it is a quasi-legal structure and I suppose it allows me to make a really key point about training right the way through the system around mental health awareness. It feels to us that, right the way through this journey that people go on, the mental awareness levels of staff in DWP, and also from providers, particularly Pathways providers, and through the tribunal system are such that they do not necessarily recognise some of the very good practice that can be applied to ease people’s stress levels. The first part, to encourage people to come, is important, but it is also important to recognise that these are very stressful circumstances for people and if somebody does experience a mental health problem that can exacerbate it. Yet we know from the work we do in other quasi-judicial and judicial areas that some good practice models can really help to reduce the stress levels. To be fair, tribunals are probably better than a lot of other quasi-judicial environments, but being able to minimise people’s stress levels I think will lead to more people coming to them, and I think things like a supporter, an advocate of some description, who can help guide you through the process, approaches that enable somebody to come along feeling that they are an equal part of the process rather than a rather junior player in this, are really key. Often for people who experience mental health problems, whose self-esteem will be quite low anyway, it is not necessarily easy to make that happen. There is some good practice that can be drawn on from work we have been doing with a number of agencies around this, clearly the CPS, to improve the mental health awareness of everybody who is involved in that process.

Ms West: I do not have a huge amount of feedback from appeals, but from the advisers in our local organisations I have spoken to the views are very much the same as from your previous witnesses, that where people do go to tribunals most of the tribunal members treat people well and courteously and do their best to make the process as informal as possible. There is the occasional bad experience but generally speaking people are treated well. I think it is just the thought, as you say, of going to something called a tribunal where somebody is going to question you about your position. For many people, however good the process is, it is just the idea of having to go along and put your case, and I think older people, in a sense, feeling that you are begging or asking for money, they often think, “I would rather just get by”. The point about having somebody that can go with you is really important and there is a problem in some areas with having sufficient local information and advice services and

26 October 2009 Mr Paul Farmer, Dr Mark Barker and Ms Sally West

the fact that organisations often are struggling to get funding one year to another. They get a one- or two-year grant for funding and then have to spend the second half of the year applying for the next amount of funding because, certainly for something like somebody being turned down for attendance allowance or even for making an application for attendance allowance in the first place, we would normally say that it is a good idea to get somebody to help you who understands what information needs to go in the form. Certainly we would advise people to get help if they want to ask for a decision to be looked at again on appeal. In some areas it is difficult to get in that support from an independent local advice agency because the capacity just is not there.

Dr Baker: I want to second what Sally was saying about the importance of having somebody with you, a trained advocate or adviser. It makes a lot of difference to the outcome of the appeal as well. People with advisers are much more likely to be successful in getting decisions overturned. Interestingly, we are noting in our service with deaf people that we are getting more decisions overturned on paper than we used to. Putting in a strong case with hard evidence to a tribunal in a paper hearing, as it is called, is much more likely to result in a change of decision than it was.

Q66 Mrs Humble: Is there an obstacle with location of tribunals? Do people have to travel distances? No? Yes? Does that put them off?

Dr Baker: It is not a factor that I recognise but I am sure that for some, probably with physical barriers to overcome, that will be more likely to be an issue, and some court rooms are not entirely accessible.

Q67 Mrs Humble: You did earlier all say that DWP is much better at involving stakeholders now. What an all-encompassing word! I do not know what it means. Are you asked your opinions about the operation of the tribunal service? Should you be

asked your opinions? Should stakeholders get involved with making sure that the experience of the appellant before the tribunal is improved?

Dr Baker: We have worked with both the Tribunal Service and HMCS and continue to work with HMCS to improve accessibility of court rooms and the legal system, so, yes, we are involved.

Mr Farmer: We are involved in a limited way, but, if we were to take the customer experience analogy a little bit further, I do think we should not just be talking about stakeholder involvement in this. I think we should be talking about customer involvement, and I think there is a relatively limited loop, if you like, around asking people what their experience of the tribunal was like and how they felt it could be improved. I do not think you should do that with everybody but, again, if you take that principle, that is the approach that should be taken. I think you could take that by asking people what were the things that would make a difference. Again, I think within the whole process, although things are beginning to change, the general involvement of people with direct experience is still a journey that is a relatively challenging one for some of these processes. Progress made, but a long way to go still.

Chairman: Just some observations before we close. If the glorious day ever arrived where DWP got everything right there would be a lot of redundancies in your organisations, would there not, as a result? Apart from incapacity benefit and now ESA, it is still the case that the percentage of refusals appealed is extremely small, and I think that perhaps begs the question how many people just give up without even getting into the process and maybe lack of access to advice services, but generally around 3 or 4% of refusals get appealed, which seems ridiculously low. The great unknown, of course, is how many of these decision makers make the wrong decision that is in the client's favour because, of course, that never gets appealed and we do not really know that. It is back to that original question: the quality of the decision making, the training those individuals get and the evidence that they accumulate and take into account. Thank you very much for today. You have been very helpful.

Monday 9 November 2009

Members present

Mr Terry Rooney, in the Chair

Miss Anne Begg
Mr Oliver Heald
John Howell

Mrs Joan Humble
Tom Levitt

Witness: **HH Judge Robert Martin**, President of the First-tier Social Entitlement Chamber, gave evidence.

Q68 Chairman: I welcome everybody to the final evidence session of our inquiry into decision making and appeals. I extend a special welcome to Judge Martin. We are grateful to you for spending time with us and look forward to your expertise. If I may kick off, the Social Security Act 1998 made major changes to decision makers including the Chief Adjudication Officer. What impact do you think that has had on the standard of decision making in DWP?

Judge Martin: I think the major impact on standards is to do with the internal reorganisation of the Department for Work and Pensions. The aims of the changes that took place in 1998–99 were in a slightly different direction and appeared to suggest that the aim of the reforms was to make the appeals system more streamlined and straightforward and to have an effect on the level of appeals against the background of a dramatic increase in their volume leading up to those changes which peaked in 1997–98 with an intake of 355,000 appeals. That had begun to fall away before the appeal reforms took effect. I think there were changes already in place due simply to a reduction by reason of socio-economic and other factors in the volume of appeals untouched by the reforms. Similarly, the time taken up by the processing of appeals had also begun to fall as a function of the volume of appeals, so there was no direct impact on the quality of decision making by the content of those reforms; it was more a matter of what happened behind the scenes in terms of the shift from adjudication of claims towards a more data-processing approach.

Q69 Chairman: As a result of that the post of Chief Adjudication Officer was abolished and the Standards Committee monitored decision making. Do you believe that has been an improvement, made things worse or it is still the same?

Judge Martin: The Chief Adjudication Officer was the head of the structure of decision making vested in adjudication officers. They were a group of independent officers who I think regarded themselves almost as a separate body within the overall Department and took pride in the professional independence of their decision making and were free from the organisational and operational pressures that came from focus on throughputs of benefit decisions. It was a system that operated within the Department with a premium on professional independent decision making. After the change which vested decision making in the Secretary of State and officers under the Minister

there was a loss of that independence and operational pressures focusing on targets, which essentially were about the throughput of claims, took pride of place. I believe there was a deterioration in the quality of decision making through that internal reorganisation.

Q70 Chairman: Have you ever been asked for your views by the Standards Committee?

Judge Martin: I see that in one or two of their reports I am quoted because of the President's report on standards. We have been asked to attend one or two meetings of the Standards Committee when they have looked at appeals. We have sent along a judicial representative to contribute to that. They seem to me to focus on advising the chief executive officers of the various agencies rather than have a public face and that is a further distinction between the role and responsibility of the Chief Adjudication Officer and the Standards Committee.

Q71 Chairman: Do you feel that you have been listened to?

Judge Martin: By no one, conspicuously. For the past decade the President of Appeal Tribunals has produced a report on the standards of decision making and the message that has been put in it by me and my predecessor has been largely consistent. To my mind, I can see no real evidence of improvements in the quality of decision making if you take as a measure—it must be treated with some circumspection—the percentage of decisions taken by the Department overturned on appeal. When drafting the current report on the standards of decision making I contacted the Department and said there was a cost to that report in terms of judicial time. The cost of judges' time is at a premium at the moment and subject to a degree of scrutiny. If I make reference in the report to the judicial cost of producing it can I offset it by giving some examples of benefits from its production? I asked if they could produce one or two examples where the approach to decision making had changed or been influenced by the content of the report and did not really receive any.

Q72 Chairman: We have had some concerns about the reconsideration stage in the process. Given that somebody who appeals automatically gets their case reconsidered, is this just an unnecessary interim stage and the case might as well go straight to appeal and get the reconsideration thrown in?

9 November 2009 HH Judge Robert Martin

Judge Martin: I think it is presented as a false choice to claimants who have received a refusal of their claim. It is presented in terms of, “Would you like us to look at our decision again or would you like to appeal?” Presented with that choice, most people unsurprisingly—I would probably do the same—opt for reconsideration. Would you look at it again? It seems to be quicker, and if you do appeal there is no suggestion that the Department will also look at the decision again. For me, it might be better presented if it was expressed in terms of, “Would you like us to look at our decision again superficially or would you like us to look at our decision again seriously?” To my mind, if someone applies for an appeal it should trigger a serious reconsideration because the person who reconsiders it should then move simply from asking, “Is there anything new about this decision that might incline me to come to a different outcome?” Should we adopt a more stringent, higher standard, namely to say, “Would I be able to defend this decision before a Tribunal if called upon to do so?” If people are presented with the choice of reconsideration or appeal it would imply that if they took the appeal route at some point they might find themselves before a Tribunal, which to many people is quite daunting, whereas if during the appeal process the Department reconsidered and revised its decision in favour of the claimant the appeal would automatically come to an end. At any point in the appeal process the claimant has the privilege of withdrawing the appeal. What is surprising to me is that if an appeal is lodged it is as though the Department then opts out of the process. To my mind, if any business or other organisation were on the receiving end of judicial proceedings they would take dramatic action and apply a great deal of energy to avoid that case reaching a Tribunal or court. I imagine that is the approach the Department would take if faced with civil litigation, but with an appeal something seems to come over the Department in that they take the approach that it is now for the Tribunal to deal with it; it is in their hands and they will play a minimal role in those proceedings. When talking to representatives of claimants they tell me they find it extremely difficult to engage with the Department once an appeal has been lodged. One would think that in any other form of litigation both parties would be at great pains to avoid the matter going to court or the Tribunal; they would endeavour to settle; they would negotiate with and talk to each other energetically. That does not seem to happen once an appeal has been lodged against a departmental decision.

Q73 Mr Heald: Do you think their attitude ought to be coloured by how many appeals they lose so they should be thinking that on oral appeals they lose about half and on written ones it is about a quarter, so when an appeal comes up the attitude should be, “Oh, gosh! This may well be one we have got wrong”? Is that the attitude you observe?

Judge Martin: No. I am looking from the outside and do not have a perfect understanding of what goes on within the Department. It is as though once the appeal has been lodged and the Department has

produced its response it goes into a loop and disappears. At the end of that process a decision will be made by the Tribunal which basically says that the person is or is not entitled to benefit. It may well end up on someone else’s desk and there is an instruction either to pay or not to pay. It seems to be disconnected from the experience of making further decisions. A subject that we may come to is that the rare attendance of presenting officers at Tribunals means there is no direct engagement and opportunity for feedback to the decision maker whose decision may well be proved wrong by the Tribunal. It seems that they are at liberty to repeat that mistake endlessly.

Q74 Tom Levitt: I want to look at how we might make the process better. What do you think would be the impact on the process if the appellant was given more than the current one month to submit evidence?

Judge Martin: Negligible. The timescale for the lodging of an appeal is among the most stringent of any Tribunal or court proceedings. I understand the argument that if the appellant is required to lodge the appeal quickly matters will be fresh in the minds of everyone concerned and it will be easier for the Tribunal ultimately to deal with evidence because it will not be stale. The fault of that argument is that with the claimant being prompted to act very quickly within that month the corollary would be that the Department would be equally exercised to respond within that period, but then things can go dreadfully quiet for long periods. The appeal is in existence but is languishing somewhere while the Department produces its response. I believe that from the Tribunal’s perspective the difference between the one-month time limit imposed by the DMA reforms and the previous three months is neither here nor there. There will be slightly more in the way of appeals but the Tribunal has always been at pains to exercise its discretion to extend the time limit. It may be there are a few more cases that come in at the margins but it will not have a dramatic effect in terms of numbers. However, it will send out a very clear signal that there is more even-handedness in the procedure.

Q75 Tom Levitt: You say that in 2008–09 15,000 applications were granted an extension of time.

Judge Martin: Most of those 15,000 applications were granted, so there might have been 10,000. Interestingly, since the introduction last November of the new procedure which relaxed the rules on extending time we now receive probably only 4,000 applications a year for extension. I think the difference is a reflection of the understanding on the part of the Department that the Tribunal will generally exercise its discretion in favour of letting in a late appeal.

Q76 Tom Levitt: I understand that as far as concerns the submission of the DWP there is no similar target. There is a service level agreement which suggests 90 days and in practice the average is 63 days, so it is about twice the time available to the appellant.

 9 November 2009 HH Judge Robert Martin

However, that average hides very big variations. What do you think would be the impact of setting a limit on the time by which the DWP must respond?

Judge Martin: It would be a great step forward in terms of the legitimacy of the proceedings because it would be much fairer if the time limits were even-handed, so it would make the procedure seem more just. It would assist the Tribunal because it would avoid cases becoming stale and evidence being in the more distant past. But it seems to me that all that is happening is that the time taken by the Department to produce its response is accelerated. I do not believe there is extra work involved; it does not add to the volume and it is just a matter of catching up with any backlog and then adhering to new targets.

Q77 Tom Levitt: Am I right in thinking that there is no issue about the DWP waiting to see the appellant's evidence because in both cases that evidence goes to the Tribunal, does it not? Does not the delay to the DWP process arise because they are waiting for the appellant to submit evidence?

Judge Martin: Exactly. What triggers the production of the Department's response is a notice of appeal which in many cases is little more than, "I want to appeal."

Q78 Tom Levitt: My colleague Mr Heald referred to oral hearings being more likely to achieve a positive result for the appellant. Other than anyone who goes to a Tribunal without being represented orally is not being well advised, what other lessons do you draw from that?

Judge Martin: From the fact that even if you are unrepresented attendance virtually doubles your prospects of success?

Q79 Tom Levitt: Yes.

Judge Martin: In my view it emphasises that the crucial difference between a decision taken by the Department and one taken by the Tribunal is the sufficiency of evidence. If someone turns up the Tribunal has the opportunity to engage, ask questions, allow a person to present their case at length, to home in on issues that may be unclear from the paper evidence and give the claimant the equivalent of a day in court to argue his or her case. The Tribunal has much richer material on which to make its findings of fact. Therefore, I think that Tribunals' decisions follow a much firmer basis of findings of fact than the Department is able to achieve. In saying that I am very conscious of the different conditions under which Tribunals work from those to which the decision maker in the Department is subject. That is why in my written evidence I say that in a way we feel privileged because we can have the kind of engagement that you and I are having now in which if you are puzzled by what I say you can ask me a supplementary question. You just do not get that from a written claim form.

Q80 Tom Levitt: Apart from the difference in success between oral and other types of representation there is also an interesting distinction between different

benefits. For example, it appears that in the case of DLA and incapacity benefit about half of all appeals succeed. Even more interestingly, an identical pattern is repeated year to year, so always half of DLA appeals succeed. What lessons can we draw from that, or what lessons are people not learning from it?

Judge Martin: I do not think it is surprising that there are differences according to benefit in the percentage overturned because the issues in some kinds of benefits are often very narrowly drawn. For example, on the state pension most of the discussion will be about numbers and the amount of payment and there is little scope for the exercise of judgment. In the case of Incapacity Benefit, Employment Support Allowance and Disability Living Allowance there is a bare set of statutory rules and conditions for entitlement and imbedded in them are enormous amounts of discretion and understanding. Those are the cases which turn critically on the credibility of evidence given by the claimant. In many cases it could be deciding whether someone says, "I am unable to do this because I am in pain." Delving into that and trying to weigh up the credibility of that evidence hinges upon that face-to-face encounter. That is where there is the greatest scope for discretion.

Q81 Tom Levitt: Can you tell us a little about the Alternative Dispute Resolution pilot and what lessons we can learn from that?

Judge Martin: The final report on it has not yet been published. The early evaluation is fairly mixed. The basis of the early neutral evaluation pilot was that in disability living allowance cases an appeal would be put before a full-time judge for a preliminary opinion on its merits. If it was concluded that it was a fairly hopeless case the judge would ring the claimant and explain; if on the other hand it was concluded that it was an extremely strong case and the Department was likely to lose the judge would ring up the Department and invite them to reconsider it. In the majority of cases the judge was unable to pick up that a particular case was a very strong or weak appeal and it just went forward to a hearing. If the individual said, "Thank you for that opinion but I still want to go on to a hearing", the claimant did so. Therefore, in those cases there was not really any saving. There was an additional cost because of that judicial intervention. If the Department was advised that it would be likely to lose the case it might revise its decision but would not necessarily offer the claimant everything to which he or she felt entitled; it might be a lower award. The dilemma for the claimant would then be whether to accept it or continue with the appeal. Because of all those uncertainties it was an equivocal result.

Q82 Tom Levitt: We look forward with interest at what the report finally says and how the Department responds. PDCS told us that more needed to be done to tackle the regional differences in the overturn rates in appeals. We have not yet seen any figures for that, but are you aware of a regional difference; if so, what can we do to address it?

9 November 2009 HH Judge Robert Martin

Judge Martin: I am aware of many differences. The Tribunal is divided into six regions of England and Wales and Scotland. The division historically goes back to civil defence. The regional boundaries do not say much in themselves. For example, the eastern region covers vast tracts of Lincolnshire, East Anglia and north and east London; it is a very mixed area, so it is not surprising that there are different rates of success because the mix of appeals and levels of representation vary between the regions. Within the regions there are greater variations between the different hearing centres than there are across the piece. It is meaningless because the region is just an artificial gathering of statistics.

Q83 John Howell: Over the past nine years we have seen quite a spectacular decline in the percentage of presenting officers attending. Why?

Judge Martin: It may be I am not the best person to answer that because I think it is down to resources. I receive letters from presenting officers and appeal writers asking for extra time to do it because they have been diverted to other things. Presenting officers and appeal writers are often the more experienced members of staff and if there is a crisis in a particular office their skills are thought to be more suitable to meeting something for which the Secretary of State has set targets, like the time to deal with claims. I do not believe the Secretary of State sets any targets for turning up at Tribunals. I stress that there are honourable exceptions. CMEC—the Child Support Agency—is very good at turning up as are many local authorities. Even individual officers within Jobcentre Plus are good at turning up because it seems that managers have a discretion: either they use their limited resources more efficiently or have spare people to send along. There is great inconsistency. The conclusion I draw from it is that turning up at appeals is given a comparatively low priority.

Q84 John Howell: What value is there in turning up?

Judge Martin: Selfishly, I think it makes a great deal of difference to the Tribunal. If there is no presenting officer the Tribunal's integrity and neutrality is compromised. If you as a claimant turn up unrepresented and no one from the Department attends because we regard ourselves as an enabling Tribunal we will explain to you what the Department's decision is. We will indicate what case has been presented. Almost invariably, in your mind you may be thinking why the Tribunal which is supposed to be impartial is explaining the case of the Department. We feel we are almost sucked into the arena rather than have the ability to say that we are neutral and impartial and that the Department will explain its case, we will look at the claimant's case and then we will deal with it. Therefore, from the Tribunal's point of view it puts us in a very invidious position. Many claimants turn up and say, "Where's the representative of the Department? We want to ask questions." There is no one there and so the Tribunal is put in the position of having to guess

what the explanation is and deal with it. But in terms of standards of decision making there is a crucial gulf because the Department does not know what goes on in the hearing and so is at a complete loss to understand where it may have gone wrong. All it will receive is a very brief decision from the Tribunal saying that the appeal has been allowed or dismissed and people are in the dark. It also has a bearing on the volume of appeals because the Department loses the "embarrassment" factor. If it turns up and the Tribunal takes the view that the appeal should never have been brought and the claim should have been allowed first time the Department is absolved from someone going back to the office and to say, "We made a mistake here. I felt very embarrassed trying to defend a hopeless decision." That is just lost.

Q85 John Howell: What do you expect to see as the outcome of hearings if more presenting officers turn up?

Judge Martin: The evidence on this is mixed. It may be the Department sees fewer cases being overturned, but I do not think that is the real issue. As the Department begins to engage with the Tribunal I think we will see fewer appeals because more cases will be revised without having to come to the Tribunal hearing. Connections will be made not only with decision makers within the Department but also I imagine with healthcare professionals who are involved in the process and who from my perspective seem entirely disconnected from what goes on in the Tribunal. There are medically qualified members of the Tribunal who express quite trenchant criticism of medical reports but there is no one there to hear it.

Q86 John Howell: Your predecessors had the opportunity in the president's report to provide that sort of feedback. You do not have the same ability, do you?

Judge Martin: The report limps on. In the recent changes responsibility moved from the President of Appeal Tribunals to the Senior President of Tribunals who has passed it back to me, so it comes out in the same vein. I am not a fan of the annual report. If I was a decision maker in a jobcentre and had an opportunity to read the president's report on decision making frankly I would not gain any benefit from it whatsoever because it is a big picture. For example, it says that in relation to Jobcentre Plus in 70% of cases that were overturned the reason was that the Tribunal had additional evidence. What does that mean to me as a decision maker? It does not allow me perhaps to change my approach because it is at too abstract a level.

Q87 John Howell: What would you like to see as the means of feedback and its content?

Judge Martin: With the extra judicial resources freed up by abandoning this worthless report I would like to engage with the Department in a different way. We are speaking to the Department to see what else we

9 November 2009 HH Judge Robert Martin

can do. One of the things I have suggested is that we come up with something called benchmark decisions. Just as you may have a lead case on a point of law which goes to the court and the court lays down the interpretation of the law from now on, I would like to see our Tribunal, which essentially is fact-finding, in conjunction with the Department saying, "Which cases cause you problems?" They may say that in Disability Living Allowance it is chronic fatigue syndrome; it may be epilepsy or fibromyalgia. One may set up a series of lead cases in which the Tribunal will go into great detail on how to approach deciding a case like that and produce a model approach as much for the benefit of decision makers which says that when you are weighing it up there are certain kinds of questions you should be asking a claimant with a particular medical condition and you might interpret his or her response in a certain way. That will become almost a guide from the Tribunal on how to approach decision making. That might be worthwhile, but the present report which says that $x\%$ of cases were rejected for y reason just does not give you any useful information to allow you to reflect upon doing your job as a decision maker.

Q88 John Howell: Obviously, one must balance the desire for consistency with the need for flexibility?

Judge Martin: Yes.

Q89 John Howell: Do you think you can achieve it by that sort of approach?

Judge Martin: One of the considerations would be consistency on the part of the Tribunal, so if the decision maker adopted that approach he could be pretty confident a Tribunal would accept that down the line. We would have to make sure that all of our Tribunal judges and members were aware of that approach, but it would not fetter the exercise of discretion; it would give signposts, for example that one should explore with the claimant a certain avenue of questioning and try to get that information. Why not look for supporting medical evidence from a particular person rather than a medical practitioner with the Department? It would be almost like an instruction manual. It would not

tell you what the result should be but say that if you follow it you might come out with a fair, justifiable result underpinned by good evidence.

Q90 Chairman: I understand what you say about the value of the report, but that is for the Department. There is also the community out there, in particular perhaps the field of welfare rights advice. At least with the published report there is something for CAB and so on to look at. If this moves so that you just have a conversation with DWP what about the wider community interest? How would you address that?

Judge Martin: We have to balance that. Although we have conversations with the Department we also have them with Tribunal representatives' user groups. We have forums that comprise representatives from both the rights associations, the principal voluntary organisations and organisations for those with disabilities and we can have a similar kind of conversation there. We are quite happy to participate in and set up local user groups that involve members from both the Department and representatives who talk about issues involved in rule changes or the way in which the Tribunal operates. It may be that rather than simply commissioning these kinds of cases from the Department we also engage with the wider community and elicit in which kinds of cases they may have difficulty dealing with the Department first hand. One example of this may be that in the past we are aware of difficulties with claimants who are visually impaired obtaining Disability Living Allowance. It has almost evolved through many different Tribunal hearings. There is now almost an acceptance on the part of the Department that the starting point for a claim by someone who is visually impaired may be the middle rate care components of DLA and the lower rate of Mobility Allowance, so we can work with both Tribunal users from both sides, the Department and claimant and their representatives, to try to lay down these model approaches to decision making. I do not see it as the Department having a monopoly on laying down guidelines.

Chairman: We will follow that with interest. In the meantime, thank you very much for your evidence.

*The Committee suspended from
4.50pm until 5.04pm for a division in the House.*

Witnesses: Jonathan Shaw MP, Minister for Disabled People, Parliamentary Under-Secretary of State, Department for Work and Pensions, Mr Jeremy Groombridge CB, Director of Transformation and Product Management, Jobcentre Plus, Ms Vivien Hopkins, Chief Operating Officer, Pensions, Disability and Carers Services, and Mr Kevin Sadler, CEO, Tribunals Service, gave evidence.

Q91 Chairman: Minister, is this your first time before the Committee?

Jonathan Shaw: Sadly, yes.

Q92 Chairman: In that case, welcome and congratulations on your appointment, even if it took place months ago. We try to be gentle on first appearances but we may not succeed today. How do

you think decision making has improved since the changes in the Social Security Act 1998 which brought in decision makers?

Jonathan Shaw: I would look at decision making in the context of all of the services that have changed considerably and also some of the most recent pressures. Most recently we have seen Jobcentre Plus meeting its Jobseekers' Allowance targets; it has achieved five out of six of its national targets at a

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

time when there has been a 50% increase in the number of people who apply for that benefit. Just on that alone it measures well against any organisation, whether it is the public, private or voluntary sector. In relation to decision making in the Pension, Disability and Carers Service you will also have received a memorandum in terms of the accuracy of DLA and also clearance. Some of those targets we are just missing; some we are exceeding, but overall given the millions of transactions that take place every day the service has developed well. We certainly see areas for improvement as does this Committee because it is holding this inquiry.

Q93 Chairman: You are such a smoothie! Figures published last week showed that fraud and errors had increased by £300 million compared with the estimate given in May. Within that there is an overpayment of £800 million and a £500 million underpayment. That calls into question the quality of the regional decision making. How does the Department react to that?

Jonathan Shaw: In your first question you asked how the service had improved since 1998. If we can look at it over a period of time, certainly since 2001 fraud is down by half. Last year about 3,000 people investigated these cases and we prosecuted 58,000 individuals who were defrauding the benefits system. Certainly there has been an overall increase in the number of people who make claims because of the recession. I invite my colleagues perhaps to say something about their respective responsibilities in terms of the operation.

Mr Groombridge: As one of the directors of Jobcentre Plus my specific responsibilities are in connection with the change programme and also to ensure that all of our products and services are of good quality. The figures announced last week remind us that we cannot afford to be complacent about error in the system. We tackle that in a number of ways. It is very important in the design of processes to ensure that scope for error is designed out of the system as far as it is possible to do so. It is also important that we correct the stock of errors, if you like, and ensure that there is effective compliance with the benefit rules. In Jobcentre Plus we have done a number of things to tackle that. Very recently we have taken steps to appoint what we call error reduction champions in each part of our business in our contact centres, benefit processing areas and the customer service directorate. We support them with error reduction teams and generate important new products and checks to ensure that particularly our newer staff—we have recruited very large numbers of staff to cope with the recent downturn and consequent rise in volumes—are both checked and trained effectively. I am sure there is a similar story in the Pension, Disability and Carers Service.

Ms Hopkins: I am the chief operating officer of the PDCS and so I am directly accountable for the quality of decision making and payments in the agency. Like Jobcentre Plus, currently we use a number of strategies to reduce error. I take some

heart from the statistics published last week which showed that the level of official error in the caseload is reducing.

Q94 Chairman: Is that just in your directorate?

Ms Hopkins: In the Pension, Disability and Carers Service. If I remember the statistics correctly, I believe that also in Jobcentre Plus there was a .6% reduction. Our strategy is not unlike that of Jobcentre Plus in that we tackle accuracy on many different fronts. We have a whole programme of activities to deal with new and repeat claims which include extra training for decision making, pre-payment accuracy checks and some sophisticated checking afterwards, highlighting the more complex cases or those where it is easiest for the customer or us to get it wrong, or where people are most likely to try to get it wrong, if I may put it that way. In addition, we have separate programmes dealing with error that we know exists in the caseload. I have teams of specialist staff in different places in the country who review cases where the benefit has been in payment for a while and check and correct it where it is appropriate to do so.

Q95 Chairman: Minister, it is one thing to have timescales and targets for decision making; getting those decisions right is another. Is there any question that competence is being compromised in order to meet target times for decision making? I come back to the figures: as a result of official error there are overpayments of £800 million and underpayments of £500 million.

Jonathan Shaw: In decision making obviously competence is central to driving down those two headings. In order to improve decision making and the capacity within the two parts of the operation training has taken place. First, you will be aware that the pension service has developed what is called PiDMA which is a system of professional development accredited by the University of Chester. We are investing some £300,000 in developing staff so they can make more accurate, better decisions. That is an accredited qualification process. By the same token, within Jobcentre Plus from January a new modular foundation process will go forward. Jobcentre Plus and professional accrediting organisations are looking at whether accreditation will be possible on that front. Again, that is about investing in our staff. You will also be aware there has been a huge development in terms of telephone contact where people want to make applications for benefits. We have invested a lot of money in ensuring that staff have the ability to make the right decisions. You have highlighted those figures and we are determined to see downward pressure on them, so that is why we need to invest in staff.

Q96 Chairman: In recent years there has been spectacular success in reducing fraud. What particular lessons can you learn from what was done to tackle fraud to deal with overpayments and underpayments? You may or may not be aware that when he appeared before this Committee in October

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

of last year the Permanent Secretary said that it was his ambition to have the accounts signed off before he retired. At the moment given the way things are going he will have to wait until he is about 108. If we can do it on fraud what focus can be brought to bear on overpayments and underpayments to deliver the same success?

Jonathan Shaw: I am sure that the Permanent Secretary will be celebrating that before his 108th birthday wherever he chooses to retire. I would subscribe to investment in staff. I said earlier that we have some 3,000 fraud investigators. We have ensured that they have good professional development and can identify particular places and people where they believe fraud might be most prevalent. You have alluded to the success of those staff. You are aware of PiDMA. The early signs are that that is beginning to bear fruit. Jobcentre Plus is looking to develop its own professional development which will go live in January. Therefore, it is on those fronts that we need to see further progress. But that is the strand that needs to be given focus. I think we are delivering on customer care far better than we were in 1998. You talked about fraud. We have also done well in terms of processing.

Q97 Miss Begg: I have got some questions on reviewing decisions. Why are decision makers not given targets within which to complete the reconsideration process?

Jonathan Shaw: That is a very good point. Perhaps they should. Staff are given targets in many other areas but not in that one, so we need to reflect on whether we could introduce a target for them.

Q98 Miss Begg: Obviously, the claimants have a target inasmuch as they have limited time.

Jonathan Shaw: They have a month.

Q99 Miss Begg: The decision makers do not. I suppose that leads on to my next question. Welfare rights workers tell us that nowadays they do not bother to go for reconsideration; they go straight for appeal. Reconsideration as a step is a waste of time and it just causes delay. What do you believe are the advantages and disadvantages of this approach?

Jonathan Shaw: Reading the evidence from some of the welfare rights advisers and senior people in the charities from whom you have taken evidence it is clear that many organisations find benefit in reconsideration of benefit decisions by decision makers. There are tens of thousands of such cases. Colleagues will be able to provide me with the accurate figures. For example, on DLA 132,338 cases were reconsidered and it resulted in 67,000 people having awards. In a number of benefit areas it makes the process less lengthy and thus less stressful. I have people in my own surgery talking about appeals and so on. It is an important part of the process. You have asked me about timescales. I agree with you that it is important. The fact is that we would reconsider it anyway if there was an appeal. If reconsideration meant that the person did get the benefit the appeal would not go ahead. Therefore, it is an important part of the process.

Q100 Miss Begg: We have the figures from the Department, but it is not clear from them whether the 67,000 in DLA that you said were revised in favour of the claimant included those who went on to appeal or whether they relate purely to the reconsideration process.

Ms Hopkins: That was at the reconsideration stage.

Q101 Miss Begg: That is 51%?

Ms Hopkins: Yes.

Q102 Miss Begg: For Attendance Allowance 59% of case were decided in the claimants' favour at the reconsideration stage?

Ms Hopkins: That is right.

Q103 Miss Begg: The Department has failed to say how many then go on to appeal. It appears that there is no data. The question asked was: "How many decisions are sustained at the reconsideration stage and then progress to the appeals process?" There is no information. "How many decisions are sustained at the reconsideration stage and do not progress to the appeals stage, as the claimant decides not to proceed with his claim?" There is no information. As to the first question the PDCS management information systems do not have the facility to track these kinds of cases from one stage to the other. We also asked, "How many claimants that reach the reconsideration stage are assisted by welfare rights advisers?" You do not keep that data. "How many of the decisions that are appealed are found in favour of the claimant when they are reconsidered by the DWP in preparation for the appeal?" Again, there is no information. There is a whole raft of areas where, surely, it is important to have data but such data either does not exist or you do not have the mechanism to collect it?

Jonathan Shaw: You will be aware that the Department collects a huge amount of data. In order to do that someone must input it. If we are not able to provide it we do not collect it, but we shall certainly reflect on whether we can efficiently collect more data to produce a better service in terms of what we want to deliver. The collection of data and what it does will always be a judgment call. We must always ask the question: will it help the process? I cannot answer that question immediately but I shall certainly reflect upon it.

Q104 Miss Begg: If welfare rights workers are right that the very process which was designed to speed things up and reach a decision acts as an extra barrier to people going straight for an appeal you do not know that according to this?

Jonathan Shaw: Looking at the transcripts of previous evidence sessions, the anecdotal evidence of witnesses was that they regarded the reconsideration process as helpful. It is perhaps a mixed picture.

Ms Hopkins: In relation to DLA in 2008–09 we registered nearly 96,000 appeals and of those reconsidered 70,000. That is a small part of the data you are looking for. But even with those appeals we have a very high rate of reconsideration for these very complex disability benefits.

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

Jonathan Shaw: In the case of DLA it is a judgment-based rather than rules-based decision and so it is more complex. We believe that the reconsideration process reduces the amount of time within which a person makes a decision on whether or not he or she will get a benefit and obviously that is a very anxious time for the claimant.

Mr Groombridge: Although Jobcentre Plus does not set it as a specific target in the decision making and appeal strategy document that our decision makers receive we have set an expectation that they will turn round those reconsiderations within five days.

Q105 Miss Begg: In terms of reconsiderations and appeals decided in the claimant's favour it appears from the figures you have quoted that the percentage is going up. Surely, if so many are found in favour of the claimant at reconsideration stage that reflects very badly on the original decision making, does it not?

Jonathan Shaw: In making a reconsideration very often the decision maker will be provided with additional evidence which obviously weighs upon whether or not the person receives the benefit. That is again the case at Tribunals. You are aware that the President of the Tribunals has said that very often within a number of benefit areas evidence in both written and oral form is presented which has an impact on the decision making process.

Q106 Miss Begg: Do you think, therefore, that the reconsideration process was worth putting in and is working, or do you believe that you still need to review how well it is doing?

Jonathan Shaw: Anything that speeds up the process and accurately provides a benefit or not to a customer is worth having because it reduces costs and importantly anxiety in terms of the wait by the customer. As we develop our staff and decision making this needs to be an important part of the process. What can we learn from when new evidence is submitted? How can we have those conversations with people who make claims to ensure they have submitted absolutely everything they possibly can in order for the decision maker to arrive at a decision? I believe that will be an important, core part of professional development for staff at both Jobcentre Plus and within the Pensions Agency.

Q107 John Howell: I want to ask about the evidence base. On the one hand we have heard quite a lot of criticism of the medical assessment process and how effective it is. We have also heard that decision makers rely heavily on the evidence provided by Atos Origin medical assessors. There has been quite a lot of criticism that they rely too heavily on that. Therefore, the question is really about the way in which the department appraises the methods of collecting and evaluating it to make sure the decision is based on the most reliable evidence.

Jonathan Shaw: Are you talking about any specific benefits here?

Q108 John Howell: I am referring to those that require medical evidence to be provided.

Jonathan Shaw: Let me start with a topical example: the Employment Support Allowance which is about a year old so it is still early days for that benefit. Within the contracting arrangements with Atos prescribed professional training and standards must be met. The Department's medical officers regularly review the training and standards of the Atos medical staff. If we have high levels of concern in particular areas obviously there are discussions and systems are put in place to ensure that people have the right skills and training to be able to provide decision makers with accurate assessments. On EAS the concern has been expressed that too much reliance is placed upon the medical evidence. If we just step back and look at that for a moment, of course that will fulfil the dominant part of the evidence before the decision maker. If that is pretty overwhelming and the decision maker has other evidence, whether from a GP or welfare rights officer, it is unlikely that that evidence will be to the fore in arriving at a decision, because the medical assessment is one that has been developed in partnership with a number of different organisations, including those representing disabled people. But where perhaps the medical assessment provided to the decision maker follows more of a fine line the additional evidence may well be sufficient to push it over the line so that the person is eligible for Employment Support Allowance. It forms a very significant part of the decision making process.

Q109 John Howell: The collective evidence from Citizens' Advice Bureaux around the country produced three things. I draw your attention to their memorandum. One was that many clients "report encountering rude or insensitive examining doctors"; second, they said that "doctors frequently appear not to give sufficient consideration to mental health issues"; and, third, that Citizens' Advice Bureaux "continue to report that doctors produce inaccurate reports giving an inaccurate assessment of the claimant's abilities; reporting incorrectly what the claimant has said about their own conditions and taking answers out of context."

Jonathan Shaw: If people are being rude that is completely unacceptable. We expect high standards of customer care for those who apply for particular benefits. In terms of not taking account of evidence, I link that with a point raised earlier by the Chairman. Although ESA is only about a year old around 70% of the decisions appealed are found in the Department's favour as against the ratio of 50:40 for Incapacity Benefit and the personal capability assessment that preceded it. That is quite a significant change.

Q110 John Howell: One of the issues brought out by the Citizens' Advice Bureaux was the consideration in terms of mental health. One of the difficulties raised by Mind in relation to the work capability assessment is that it is not particularly well suited to those conditions that might fluctuate and many mental conditions fall into that category.

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

Jonathan Shaw: This is a really important matter. The Committee may well be aware that in designing the work capability assessment we worked in partnership with a number of organisations including Mind. The previous personal capability assessment looked at four questions that could be described as considering an individual's mental health/fluctuating condition. Within the new work capability assessment there are 10 questions, including consideration of how people function in different social settings and their interface with different people and situations. Indeed, in the initial questionnaire we ask people to talk about how their condition affects their ability to be able to function not just on one day but over a period of time. However, we introduced ESA only about a year ago and we need to look at it. We have had an internal review that we shall publish. We shall have an annual review. We are absolutely determined that we have the right assessment because overwhelmingly people with mental health conditions tell us that they want to work. There has been a higher than expected disallowance and I want to look at that particular group. The Committee will be aware that we shall publish a White Paper about getting people back to work. There may well be those who have not been assessed to receive ESA and who therefore will not get the support of the Pathways programme in which we are investing about £1 billion. Therefore, they may well need more immediate support rather than waiting as people do on Jobseekers' Allowance. I am alert to that and there is an opportunity to make some changes to address some of those points.

Q111 John Howell: You said you would not take a snapshot but would look at it over a period, but you did not say what you had in mind in terms of time. What sort of period would you be looking at in order to make that assessment valid for somebody with a fluctuating mental disorder? Is it a year or six months?

Jonathan Shaw: That is what the assessment does now. It does not look at how somebody is on the particular day; it talks about how he or she functions over a period of time. Someone with a fluctuating mental health condition may be able to function perfectly well for long periods of time but then find themselves in a state of health that makes it very difficult for them to be in the company of other people. Those types of condition should most certainly be taken into account when someone is being assessed for Employment Support Allowance under the Work Capability Assessment.

Q112 John Howell: The criticism made by Mind is that it is not sufficiently effective.

Jonathan Shaw: Mind was one of a number of organisations that helped us with the design of that programme. That does not mean they do not now raise issues; of course it is absolutely right that they should do so, and we are determined to work with them and a range of other different organisations so we get it right. That is not to say we have got it wrong at the moment. Obviously, we will publish our internal review of this new system next month.

Q113 John Howell: We have had evidence that claimants struggle to understand the process because of the absence of any face-to-face contact with the person who makes the decision. I think that ties in with the PDCS research carried out with your partners; that also shows they were dissatisfied with the lack of face-to-face contact and they hated telephone call centres, as I imagine many people do. Does the Department accept that decision making would be improved if there was face-to-face contact or engagement in more direct customer contact rather than just by telephone?

Jonathan Shaw: We do have face-to-face contact with customers who we regard as vulnerable certainly when assessing them for pensioner credit, for example. It may be the pension service has determined that someone is so frail that he or she is not able to understand the process or questions being asked and so we have visits.

Ms Hopkins: There are about 700,000 visits a year.

Jonathan Shaw: I am aware that for Jobcentre Plus there are also visits, but there is a limit to how many people we can visit. Many people are satisfied with the telephone service we operate within the budgets we have. I do not know whether there have been any customer satisfaction surveys on telephone contact.

Ms Hopkins: We complete quarterly customer surveys and have just received the first results which are not yet published. I am sure there is some rule which says I should not disclose it.

Jonathan Shaw: Go on, I give you permission.

Ms Hopkins: The overall satisfaction rate was an astonishing 92%. Among the questions, which are taken in real time—we do not wait months and months as we used to—we ask people whether they are satisfied with the telephone service. It is too easy to ask that sort of question and so we go down more deeply because we want to understand the causes of the satisfaction or dissatisfaction. The fact is that both our disabled and pensioner customers have told us they are happy to deal directly with us on the phone, which is the most frequently used way to access our services these days, as long as we answer the phones immediately, as we do, and as long as they speak to someone who is knowledgeable and can give accurate information all in one go. I believe we do that. We have made strenuous efforts to improve how we deal with people, particularly given that we deal with people who are elderly or disabled or both and who may have special needs and the complexity of some of the benefits with which we deal. Insofar as we are able given the construction of these things we have also made an investment in simplifying the claim forms and the letters we send people to supplement that. I believe we have some success in that area.

Jonathan Shaw: Another important area is people's concern about cost, particularly if someone rings from a mobile and must wait a long time. That is something about which we are concerned and are trying to improve. Perhaps Mr Groombridge can tell the Committee what is being done to reduce costs in that area.

Mr Groombridge: We provide a telephone service for initial access to the benefits system using an 0800 line which is intended to be free, and for all other calls,

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

which are generally of shorter duration and are general inquiry-type calls, we use 0845 numbers. Concern has been expressed about the fact that people who use mobile services do not benefit from the free phone number. What we have done specifically to address that is that, while we continue to have discussions with service providers, we instruct our agents proactively to make call backs on 0800 and 0845 numbers so we can ensure people are not saddled with a large and unexpected cost at the end of that. Ideally, it would be good if these numbers were included in call packages, but right now that is the instruction we have given to our agents.

Q114 Mrs Humble: Minister, in relation to claim forms you will be aware that Warbreck House, the national headquarters of DLA and AA, is in my constituency. Ms Hopkins also knows that very well. When I have spoken to decision makers and looked at the claim forms individuals send in I see first hand how difficult their job is. Referring specifically to DLA sometimes the people who make the claims do not understand what the benefit is for and so they make the claim and in some instances give the wrong information. My first question is: are you happy with the information that is given to claimants about the nature of the benefit? Second, does the claim form ask the right questions in order to enable the decision maker to reach the right conclusion? Minister, as you have said DLA is subject to the judgment by the decision maker on whether or not the individual has the care needs to satisfy the entitlement to benefit. I still meet people who believe that because they have an illness, injury or disability that is sufficient; they do not realise what the benefit is about. To what extent are you looking at the information that is given out to claimants and also the nature of the claim form to do what the Chairman said earlier, that is, reduce the number of errors? If it can be done simply by asking the right questions let us do it.

Jonathan Shaw: More people claim DLA and that is reflective of an ageing population of which the Committee will be only too well aware. An area on which we have done some recent work where there has been a particular concern is disabled children. The service has worked in partnership with a number of disabled children's organisations to improve the form and make it easier. I have had some positive feedback about that. Perhaps Ms Hopkins can say something about it and whether there are plans to take that process through to adults.

Ms Hopkins: First, the claim packs are under constant review. You are quite right that there are segments of our customer base which struggle more than others with the claim packs. We work with their representatives to try to improve them. You are also absolutely right when you say it is still a common belief that DLA relates directly to the nature of the disability diagnosis rather than the impact. They are under constant review. The current version which is still a lengthy and unwieldy process if one is completing it is much improved and has received a

lot of acclaim from customer groups. In relation to specific progress for children the whole DLA claim process was very generic. We knew that it was not serving well the families of disabled children. Therefore, in the new claim pack which we are testing instead of asking what the child cannot do it is a shorter, simpler form which asks what the child can do. It is very early days yet. We have coupled it with new guidance and training for decision makers and have expanded the PiDMA approach. I now have a specialist team testing the whole thing. My intention is to specialise for various complex cases including children. Referring to Warbreck House, we have expiring awards and then people make a renewal claim. We have introduced a new renewal claim form which is four pages long instead of the 40-odd pages which comprised the original one. We are testing it and looking for customer and customer representatives' responses to it. I believe that as we learn from them those two things may well give us something we can introduce into the adult claim pack. I hope that we shall move away from entirely generic claim packs over time because it is very clear that in mental health cases, for example, there are specific questions that you may want to ask and others that you simply do not need to. It is under constant review.

Q115 Mrs Humble: It might be useful if the Department could share with us some of the variations on the claim forms that it is looking at.

Jonathan Shaw: We shall provide that to the Committee.¹

Q116 Tom Levitt: Perhaps I may turn to the quality of decision making. Minister, you were quite right to point out that a lot of the reconsiderations or appeal decisions result in a reverse based on new evidence. That leaves quite a lot that are not based on new evidence. What is the mechanism for the DWP picking up the patterns of those cases and learning from them in order to improve the quality of decision making?

Jonathan Shaw: There are processes in place whereby if we see a regular amount of error within decision making that is picked up. Staff are then offered training, whether it is rudimentary or more complex, in order to ensure that does not happen with particular individuals. Overall, I have described what we are doing and what we intend to do within the two parts of the organisation in terms of staff development. I think that is key to improving existing performance. Perhaps Ms Hopkins would like to talk more about PiDMA in order to provide you with the answer you are looking for in terms of improving performance because that is the crux of it.

Q117 Tom Levitt: That is to be my next question. Citizens' Advice Bureaux tell us, "They do not seem to have any process whereby as an organisation they then learn [. . .] The individual people who have had

¹ Not printed.

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

decisions overturned never know that this has happened, which seems extraordinary.” Therefore, has the CAB got hold of the wrong end of the stick?

Jonathan Shaw: I do not believe that is a fair reflection of how we seek to improve performance. That rather suggests we are not interested, which is far from the case. We want to make accurate assessments as spelt out in the Department’s charter. We would not be making the type of investments in our staff that we have been making—£300,000-odd—for professional development. I do not believe that that is a fair accusation in the blanket way it is charged, but if we drilled down into some specifics I am sure we could find systems that at the moment did not provide the necessary feedback that would be of benefit to the organisation and improve decision making and accuracy. Perhaps Ms Hopkins can provide further details on how we are getting better feedback and what we are doing in the field of staff development.

Ms Hopkins: In relation to the disability benefits at local level we have local databases that record all the appeal outcomes and they track back into the reconsideration and then to the initial decision by the individual decision maker. We use that information to look for trends in decision making so we can identify whether they have training needs or some other needs and whether they are complying with the guidance. We have invested a good deal in customer case management guidance. That is up-to-date medical guidance on the interpretation of evidence. We also have things like training evaluation packages that deal particularly with non-medical conditions, so we train someone and test them; we let them consolidate for a little while and retest them to check whether that training has been imbedded. We have local and national checking regimes so that cases are picked by line managers for accuracy. There are also one can argue more objective teams whose role it is to go out and provide us with the assurance that the standards are being met without going into PiDMA.

Q118 Tom Levitt: So, one would expect to see the number of successful appeals in relation to a particular benefit which do not involve new information being reduced year by year?

Jonathan Shaw: We are. In relation to the Employment Support Allowance, when one compares the work capability assessment with its forerunner, the personal capability assessment, it is very different. 76% of appeals are upheld in the Department’s favour. It is early days as far as that particular benefit is concerned, but the comparison is based on one year for the personal capability assessment and one year for the work capability assessment.

Q119 Tom Levitt: I feel there now ought to be a fanfare because I am going to ask about PiDMA. Professionalism in Decision Making and Appeals (PiDMA) initially came in for DLA and Attendance Allowance. When you described it earlier you said there were plans to bring it in for Jobcentre Plus from January. First, what assessment have you made of

the effectiveness of PiDMA? Presumably, it is positive. Second, how will you spread that philosophy throughout the Department?

Jonathan Shaw: I did not say that we would introduce it for Jobcentre Plus; I said that from January there would be a new arrangement for accredited staff training, but Mr Groombridge will give you the detail of that after Ms Hopkins deals with your first point.

Ms Hopkins: PiDMA is itself still used only in DLA and AA decision making. The evaluation shows many things. The two outstanding matters are: first, it works really well for the decision makers because it is work-based learning. It deals with the reality of decision making and does not take people off to a classroom. It also takes quite a long time to reach accreditation level. People are appraised all the way through. It gives staff more confidence because it provides them with greater skill particularly in interpreting the evidence that the customer produces. For DLA and AA the primary source of evidence is the customer rather than doctor. We may use a healthcare professional somewhere else in the process, but to begin with we rely heavily on what the customer tells us. Second, given that it is quite an expensive programme we have found it particularly useful in relation to more complex cases. Our strategy is to make sure we get the greatest effect first by investing in those decision makers who deal with the more complex cases involving children and mental health issues and some of the multiple disability groups. The other thing that is in it for the decision maker is that it is a recognised external qualification at graduate level which makes it a very attractive proposition for them and is highly motivating in getting people to want to do it. In PDCS what we want to do is have accreditation programmes for everybody. We are now working on that. Obviously, there are issues to do with affordability. It does not need to be as complex as PiDMA because many of the benefits that we deal with are rules-based, but the approach is well proven and the PiDMA evaluation shows that.

Q120 Tom Levitt: When you talk about the cost of it presumably you make an assessment of how many years it will be before it pays for itself?

Ms Hopkins: Yes. I am afraid I cannot remember that at the moment. It costs us about £300,000 a year at the moment to run PiDMA. In terms of accuracy I suppose that it pays for itself. We are confident that those complex decisions are being made having taken full account of all the available evidence. There is always an issue with DLA about further evidence turning up later. That is the nature of the beast. At each stage full weight is given to all of the available evidence however complex that may be.

Q121 Tom Levitt: Mr Groombridge, would you like to expand on how this principle is being adopted in Jobcentre Plus?

Mr Groombridge: We in Jobcentre Plus have watched the development of PiDMA with a lot of interest. We will need to scale it up dramatically. We have approximately 1,600 decision makers in

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

Jobcentre Plus. As Ms Hopkins rightly said, not all the elements of PiDMA necessarily reach through to the decision making processes in Jobcentre Plus. Having said that, we have looked not only at PiDMA but at what other organisations, such as the Northern Ireland Social Security Agency, have built into their decision making processes. What we shall do in the new year is introduce a revised foundation learning programme for all of our new decision makers. The important characteristic of that is that it covers a basic level of understanding of how to make decisions and the decision making process. It also adds a modular approach which will be able to adapt and develop in future. For example, the first set of modules covered decision making on living together, self employment cases and issues like that. We shall be able to expand that. As we get deeper into experience and knowledge of how to make Employment Support Allowance decisions and their medical aspects I can well imagine that we shall build that kind of modular approach into all our future training. Those modules are applicable to existing staff, so we shall be relying on that quite extensively over the coming year. We intend to develop an NVQ accreditation in Jobcentre Plus. At the moment we are working with the Council for Administration who are reviewing the standards for national vocational qualifications, but it is certainly our intention to go down that route. As Ms Hopkins pointed out, our staff welcome that. Only a couple of weeks ago I spoke to a group of decision makers in Bromley. They welcomed the idea of increasing their professionalism in this area, so it is certainly something for which we have a lot of support. We are doing a piece of work in the South East to build a quality assurance framework to improve the way our decision makers and appeal writers gather, weigh and present the evidence—it is very much in line with the kinds of messages that we have been reading in the president's reports—to ensure that our responses to lodged appeals are more coherent, better written and explain our decisions better than we have done. We are trialling that in four of our benefit delivery centres with effect from the end of this month. We are more than happy to share the results of that piece of work with the Committee as it develops.

Q122 Tom Levitt: We were told that standards of decision making by both DWP and local authorities in respect of benefit overpayments in fraud cases were poor and could lead to people wrongly receiving custodial sentences. It was also drawn to our attention that this problem was noted in the final report of the Benefits Agency's standards committee in 2004 but it still appears to exist. If DWP recognises this problem how can we address the standard of data for fraud cases?

Jonathan Shaw: On Housing Benefit obviously more than 300 authorities are involved in processing such claims and we have a relationship with them. Local authorities also have their own inspection regimes about which they will from time to time speak good or ill depending on whether they have received no stars or lots of stars.

Mr Groombridge: We are not aware of the specific examples to which you are referring, but what I can say is that when we set up the debt management service in the Department we did so to improve the focus on the management and accuracy of overpayment calculations. Accuracy is certainly well into the 90% range at the moment. One sets that against the number of cases that we prosecute. In 2008–09 we prosecuted just under 9,000 claimants, of whom 90% entered a guilty plea and only about 5% received custodial sentences. If any of those had gone to trial there would have been a trial and guilt would have been determined on the basis of reasonable doubt. Therefore, it is a little difficult to see how this circumstance has arisen. I am certainly willing to hear more about the kinds of cases where that has happened, but ensuring that we get decisions right and calculate payments correctly has improved as a result of specific work we have done in Jobcentre Plus to centralise the work in those kinds of cases in areas of specialist excellence. We are doing that in Merthyr and Sterling at the moment. If there is a problem in this area we can certainly tackle it if we can understand exactly what the difficulty is.

Q123 Tom Levitt: We were given one example—admittedly this also includes local authority evidence—where a woman was assessed as having received a £47,000 overpayment and as a result of recalculations by the welfare rights service as well as an offset against benefits that she could have claimed and did not claim she ended up with a conditional discharge and so was saved from going to prison.

Jonathan Shaw: Was that the welfare rights services of the same authority?

Q124 Tom Levitt: Presumably.

Jonathan Shaw: There is some joining up, is there not?

Q125 Tom Levitt: She was saved from going to prison for an offence which merited only a conditional discharge because of sloppy assessments.

Mr Groombridge: I am aware that notional entitlement to other benefits is sometimes calculated at that point. I am not sufficiently expert to know whether that is the right or wrong thing to do, but when a case reaches the point of prosecution there will be reliance on statements and overpayments that have been made. It seems to me that if there is then a question of notionally offsetting against that something that was not claimed that must be determined by the court.

Tom Levitt: For the record, if that was a two-tier authority it would not necessarily be the same local authority.

Q126 Chairman: In relation to PiDMA do the staff who gain that accreditation get any financial reward?

Ms Hopkins: They do not.

Q127 Mr Heald: Mr Sadler, the aim is to deal with 75% of cases that reach appeal within 14 weeks of receipt. It used to be a very happy picture. In

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

2007–08 the figure was 86 or 87%; it went down a bit in 2008–09 to about 78%, but we are told that this year it is running at a rather unsatisfactory rate: 66.4%. It may be that this is simply because you have a big bulge in the work and there are lots of ESA appeals coming through, but can you tell us what you believe is happening at the moment, what is likely to happen and, if you have the resource, what you need to get on top of it?

Mr Sadler: There is a big bulge in the work. In 2008–09 we had a workload 10% above the forecasts we got from the Department of Work and Pensions. Most of that increase was in the latter half of 2008–09 as the recession hit. This year we expect a figure 30% above the volume for 2008–09, so that is a massive hit for us, particularly in relation to Incapacity Benefit and ESA appeals. The full year forecast for this year has increased by 86% compared with last year. 45% of our social security and child support receipts related to ESA in the financial year to September, so it is almost half the appeals. They are not the cheapest appeals to process because of the medical input of the Tribunal as well, so they cost us a bit more than some of them. There has been a big increase in what we have been asked to do over a very short time. We have responded by dramatically boosting our capacity. We shall be running 50% more sessions in the latter half of this year than in the latter half of 2008–09, but quite a lot of that workload has built up and it will be some time before we get back to 75%. We have put more resources into social security and child support. The Tribunals Service is also responsible for Employment Tribunals which have seen similar massive increases in workload, and the number of asylum and immigration cases and non-recession related issues have been above forecast as well, so we have been hit on a number of fronts at the same time. I would be keen to see even more resources. I do not yet have a budget allocation for next year. We are in active dialogue with the Department of Work and Pensions about Employment Support Allowance cases because when that benefit was introduced we made arrangements so that the funding was related to our volume of work which does not happen in other areas. Therefore, we are in active dialogue with them about how much more resources should be allocated to that. To a certain extent when we get back to that performance will depend on the length and depth of the recession. If I was able to forecast that I would probably be somewhere else and counting my money, but I hope to get back to that level of performance next year.

Q128 Mr Heald: How have you been able to expand the number of hearings?

Mr Sadler: Every judge we can possibly get is working at the moment. We have the advantage of having both salaried and fee-paid judges, so we have a large amount of capacity that we can turn on as we get the money to do so. We have also taken on more staff to deal with social security and child support appeals. In some areas we are also taking on more estates because some of the issues are related to the

capacity of our venues. We have taken on some temporary space to make sure we can hear those appeals.

Q129 Mr Heald: Obviously, negotiation is needed for next year?

Mr Sadler: Yes.

Q130 Mr Heald: One matter that is put to us is that there is a delay not just between receipt at the Tribunals Service and the appeal being dealt with but between lodgement and receipt. Do you have any perspective on what sort of delays we are experiencing there? Are they getting better or worse? Are they measured by anybody?

Mr Sadler: There are two aspects to that. I do not have access to the data about how long it takes in the Department of Work and Pensions to deal with that element, so perhaps my colleagues can help with that. From my perspective of looking at what customers experience they do not really distinguish between how long it takes in the Department of Work and Pensions and how long it takes in the Tribunals Service to deal with their appeals. I am quite keen that we articulate to them the whole length of the process rather than my saying that we aim to deal with 75% of cases within 14 weeks.

Q131 Mr Heald: How would we capture that? As I understand it, there is no record of lodgement to receipt at the Tribunal.

Mr Sadler: I do not know anything about the appeal until it arrives from the Department of Work and Pensions.

Jonathan Shaw: For customers understandably very often they will go back to the point they made their applications. They must then be advised. They have waited a while to get through and then they are told, "It is not here, so you must go to the Tribunals Service because that is where the appeal has been sent." If it is the first time someone has claimed he or she would not necessarily appreciate that despite our best endeavours.

Q132 Mr Heald: How is the Department getting on with the period between the lodgement of the appeal with you and it reaching the Tribunal? Obviously, you have to prepare the Department's submission. There is a big increase in cases. What is happening on the ground? Do you monitor it at all?

Jonathan Shaw: We do and we collect data, but we do not publish it. I think we need to reflect on the fact that we do not publish it and perhaps we should do so. It is a reasonable thing to put in the public domain how long people have to wait and what we are doing to reduce the amount of waiting. This is another manifestation of the recession in terms of the number of people who apply for benefits. It is important both to policymakers and decision makers where public money is spent to ensure we have the best possible service we can afford and that this information is out there so we are held accountable.

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

Q133 Mr Heald: Can you give any sort of impression of the effect of the bulge caused by extra cases during the recession and the ESA cases where inevitably there will be more appeals in the first year? What is happening? What was your average time before this period and what is it now for the preparation of your submission and getting the case off to the Tribunal?
Mr Groombridge: Working from memory, if you look back to the late 1990s we are probably talking of periods of the order of 26 to 28 weeks. I think that has been reduced to about 20 weeks.

Q134 Mr Heald: You are looking at a period that is different from the one I am asking about. I am asking about the period since 2007–08 when everything was going quite well. What impact has the recession and the extra ESA cases had on you, Mr Groombridge?
Jonathan Shaw: If we do not have that to hand perhaps we can provide a note to the Committee. I concede that this is an important point.

Q135 Mr Heald: The question is: are claimants waiting longer?
Jonathan Shaw: You have heard from Mr Sadler that there is a bulge. I think it would be a reasonable assumption that if more people apply more people appeal and the system will have some delays in it.

Q136 Mr Heald: At your end as well?
Jonathan Shaw: I did say at the outset that despite an increase of 50% in the number of people who apply, for example for benefits like Jobseekers' Allowance, we are hitting targets. I think it is reasonable to say that we should look at the operation overall. We are conscious of this particular area. That is why I think publication of the data is important so it is out there, we are more conscious of it and people are more readily able to hold us to account.

Q137 Mr Heald: Obviously, the actual publication of the data would be the first choice, but it would be useful to have an overall impression of how it is going at your end. We know that the Tribunals Service is under pressure because of it and we want to know how it is going at the DWP end.
Jonathan Shaw: We shall certainly provide that information.

Mr Groombridge: There is certainly one area where we are concerned about the fact that even within our 50-day benchmark we do not manage to get appeals sent off: Income Support. That has been an area of concern for a while. I referred earlier to centralising some of the work particularly around fraud, overpayment and recovery-type decisions. The work in Merthyr and Sterling will help with that as indeed will the reduction in arrears in debt management. Therefore, we are taking a number of steps. We are also introducing in a number of areas of the country lean tools and techniques to try to speed up the processes. At the moment a lot of work is being done in Wrexham to speed up the hand-off between Jobcentre Plus and the debt management service in order to reduce the amount of time it takes before the

appeal is sent off to the Tribunals Service. We are doing a number of things in that area particularly in relation to Income Support.

Q138 Mrs Humble: I want to ask a final question about the experience of the claimant at Tribunals. We have received lots of evidence about how stressful it can be for claimants. Even those who are successful do not find it a pleasant experience. To what extent do you liaise with claimants before and after to reassure them about what is going to happen and what the Tribunal is about and then get feedback from them to try to make it a better experience?

Mr Sadler: We did quite a lot of work in terms of both looking at the communications material we send out and asking our customers what they think. As to what we do, last November we comprehensively overhauled the communications pack that we send out to customers when we first hear about their appeal. That material is detailed but I believe it is reasonably easy to understand what to expect in relation to an appeal. For example, one thing it tells claimants is that they are more likely to be successful if they turn up at the hearing than if they allow it to happen in their absence. Given the operational challenges at the moment, we have just added a separate page which tells people what waiting time to expect so they understand to what timescales we are working. A further leaflet which is an easy read is available or there is a more normal approach they can ask for which goes into the appeal process in even more detail, if people would like it. If we do not hear from them once we have sent off the original pack we send a further letter to remind them and ask them if they want to contact us by phone if they find it difficult to deal with the papers. The evidence suggests that more customers are happy rather than not with the process. We have a satisfaction rate of 68% with our social security and child support customers, which is slightly higher than for the Tribunals Service overall. The satisfaction rate is highly affected by whether or not you are successful at the Tribunal. You are twice as likely to say you are satisfied if you have won than if you have lost. We try to get people to distinguish between the decision and the administration but sometimes understandably people find it a bit of a challenge. Of those who are dissatisfied, which was only 22% in the past quarter, only 5% gave as the main reason that they found the process too daunting. One gets down to quite small numbers by that stage. 68% said it was easy to find out about the appeals process; about 90% said that the information provided was accurate, so we are getting some positive feedback from them. It does not mean we cannot do any more. We have a number of national user group meetings and 50 local user groups meetings twice a year. We have just introduced into the Tribunals Service a new comments card which invites people to respond when they are in our buildings and give comments about what we can improve locally.

9 November 2009 Jonathan Shaw MP, Mr Jeremy Groombridge CB, Ms Vivien Hopkins and Mr Kevin Sadler

Q139 Mrs Humble: You made a point about a person being accompanied. The information we had was that the level of assistance provided by professional representatives and charities had gone down whilst the number of people relying on informal and inexperienced help from friends and families had more than doubled from seven to 18%. That does not always give them the advice they need. However, one submission that was perhaps a little more worrying was from the RNID who had done a survey to show that 78% said the Tribunal did not seem to understand deafness; 21% said they had been unable to follow the proceedings; and 9% said they needed communication support but did not get any. When you are doing your surveys do you look at whether or not a particular group of people feels less happy than the general group? For example, I would welcome your comments on what the RNID has said.

Mr Sadler: On the RNID point I think we have something specific to take up with them and we ought to do that. Occasionally, we have situations where hearing loops are supposed to work and they do not. Clearly, that is a worry to us. It is an important point. There is a degree of breakdown in our customer survey that allows us to isolate particular groups that may be less happy than others; that is to say, we know about the people who are less successful and more successful, but there is a specific issue that we need to take forward. On the issue of representation, it is just as important that if people want to bring along somebody just to give them moral support they should feel able to do so. I am less anxious about people having non-professionals present with them if that is the right thing. Obviously, I do not have a responsibility for the funding of welfare rights organisations. Before the hearing I re-read the president's report last year. One of the things he said was that advice before the hearing could be more important than at the hearing in that the Tribunal can take on the responsibility for being inquisitorial, so sometimes it is more important to get the advice before the hearing than to have a representative at the hearing. There is

recent research to suggest that there is not much of what is called a representation premium for people being represented at the hearing because of the way the Tribunal conducts itself and its inquisitorial approach to get evidence out of the customers.

Q140 Chairman: The ideal scenario would be no appeal at all and then everybody would be happy. Irrespective of the customer experience it is a huge deadweight cost to the Department and the Tribunals Service. We hope that out of this inquiry we can make some suggestions to curtail that. I suppose to be fair—it is the only time I will be—nobody ever comes to his Member of Parliament or welfare rights organisation to say they applied for something and got it. The only ones who come to us are those who did not. Nevertheless, 6% of DLA decisions and 4% of IB decisions are appealed. It does not sound much but given the caseload it affects the lives of hundreds of thousands of people. On DLA would it be appropriate to put on the form, either at the beginning or probably at the end, a checklist to say that evidence from such and such a source—a carer, GP, consultant or somebody like that—may assist in reaching a decision to get round the problem of evidence coming in later that reflects on the decision? I just leave that with you without asking you to make an instant decision.

Jonathan Shaw: Chairman, you are always fair. In the same way that we replied to your inquiry about carers where we sent round a letter asking for Members' feedback to ensure it was more easily understandable, anything that comes from the Committee is greatly appreciated and we shall certainly reflect on your comments on advice to assist people making accurate claims for DLA.

Q141 Tom Levitt: Mr Sadler, does that include restating what you said a moment ago about "ought to talk to the RNID" meaning "will talk to the RNID"?

Mr Sadler: Yes.

Jonathan Shaw: "May" and "shall"!

Chairman: Thank you very much.

Written evidence

Memorandum submitted by Neil Bateman (DM 01)

SUMMARY

- Standards of decision making by both the DWP and local authorities about benefit overpayments in benefit fraud prosecutions are poor, leading to inflated amounts being adduced in evidence before the criminal Courts.
- These in turn lead to people receiving higher sentences, including custodial sentences which they should not have received.
- There are additional barriers to having reconsiderations and appeals dealt with in a timely manner in such cases.

1. I am a freelance welfare author, trainer and consultant in welfare rights and social policy issues with over 30 years experience. I undertake work for many different organisations and their service users and I have built up considerable experience of undertaking expert witness investigations for the criminal Courts in benefit fraud prosecutions. Since 2006 I have completed assignments in 66 such cases and I continue to receive instructions, including approaches by defence solicitors who have been given my name by DWP lawyers.

2. This Memorandum of Evidence focuses on the poor standards of decision making concerning benefit overpayments in cases where people are prosecuted for benefit fraud offences. It is based upon my experiences over the last two years as an expert witness in benefit fraud prosecutions.

3. The DWP's own evidence shows that in 2003 (the latest published date that I am aware of) just 67% of benefit overpayment decisions were correct.¹ This reflects the average success rate of appeals against overpayments before social security Tribunals of 32%, increasing to 63% when someone is represented.² These figures alone should sound alarm bells in cases where an overpayment is alleged to have a fraudulent element. In the 12 months ended March 2009, in England and Wales, there were 8,701 prosecutions, 14,320 cautions and 7,160 Administrative Penalties. 463 people received custodial sentences and there were additional confiscation orders made in 135 cases.³

4. Of the 66 cases which I have investigated, I have found just five where the overpayment amount was accurate and two where it was understated. In all other cases the overpayments have been inflated—usually significantly so and errors in the amounts of a factor of twenty are not uncommon.

5. I am usually instructed in cases where there is a risk of custody (ie where the amount is more than £20,000) and to date, just two clients have received custodial sentences following my reports.

6. Furthermore, as a result of my reports, a number of cases have resulted in prosecution action being discontinued or clients receiving very light sentences because I have demonstrated that the alleged overpayments were wildly exaggerated.

7. Normally, the Prosecution agrees my reports. This suggests a tacit admission that the amounts were wrong to begin with. There are very few other welfare rights experts people who undertake similar work in prosecutions and very few cases before the Courts are independently scrutinised by a benefits expert.

8. I have become increasingly concerned about the evidence of routinely poor quality decision making in benefit overpayments. Because the amount of a fraudulent benefit overpayment is crucial to sentencing, It is my view that the majority of the 463 people who received custodial sentences for benefit fraud in England and Wales in the year ended 31 March 2009 should not have been sent to prison and they are in jail primarily because of poor quality decisions about overpayments which lead to significantly inflated amounts.

9. Exaggerated amounts of fraudulent overpayments also affect DWP and local authority performance figures, show as debt on official balance sheets, affect the amount of housing benefit subsidy which can be reclaimed by local authorities and they add to the public misconception that benefit fraud is wide scale and involves great sums. They also suggest to Ministers and DWP officials that greater amounts may be saved by bearing down on benefit fraud than is actually the case.

10. Inflated fraudulent overpayments above £20,000 also frighten some defendants into entering inappropriate not guilty pleas, resulting in a heavier sentence when convicted and considerable extra legal costs for the public purse, which are rarely recouped. They also take up considerable Court time, thus delaying other cases.

¹ *Secretary of State's report on the standards of decision making in Jobcentre Plus, the Pension Service, Disability and Carer Service and the Child Support Agency in 2002 and 2003*. London, The Stationery Office 4 July 2006.

² Information covering years 1999–2007 provided personally by Ministry of Justice following a Freedom of Information request.

³ Freedom of Information Act disclosure from DWP July 2009.

11. I have previously raised my concerns with a number of senior DWP officials and directly with the Secretary of State, the Chairman of this Committee and the Chairman of the Public Accounts Committee. I have offered to meet DWP officials Ministers (including the current Secretary of State) and officials to discuss my concerns, but as at the date of writing, no invitation to a meeting has been forthcoming.

12. I believe that the Secretary of State for Work and Pensions and the Secretary of State for Justice need to take urgent and meaningful action to address the concerns I raise in this Memorandum because the evidence from my investigations shows that the Courts are being routinely provided with severely inaccurate evidence concerning the amounts of an overpayment and people's alleged non-entitlement to benefit.

The effectiveness of the decision-making process

13. There appears to be a pattern of poor quality decision making concerning both the amounts and recoverability of benefit overpayments as well as poor quality control and scrutiny of these decisions.

14. The errors I frequently come across include:

- A failure to apply the “underlying entitlement” rule in Housing Benefit and Council Tax Benefit overpayments (ie the amount which would be properly payable had the person's circumstances been known to the local authority). This reduces the actual overpayment.
- An elementary error is for local authorities to often decide that no Housing Benefit/Council Tax Benefit is payable when it has been decided that someone is retrospectively not entitled to Income Support or Income Based Jobseeker's Allowance. There is also a failure to use evidence within the Court bundle and elsewhere concerning the claimant's circumstances which show that there was at least some entitlement to HB/CTB thus producing a much lower overpayment.
- A similar rule to consider any Income Support, income based Jobseekers Allowance or guarantee credit of Pension Credit also applies to DWP benefits and is also frequently overlooked.

Miss Z pleaded guilty to offences connected with not declaring that she was living as husband and wife with her partner. It was alleged that she had been overpaid £18,903.25 Housing and Council Tax Benefits and £28,135.28 Income Support, making a total of £47,038.53 which would lead to a significant custodial sentence.

I showed that the local authority had incorrectly assumed nil entitlement when her Income Support was stopped and had failed to even use evidence of income before them. The correct HB/CTB overpayments should have been £702.78. I also showed that the Income Support overpayment was inflated by £3,666.78 because the DWP had also failed to offset entitlement to Jobseekers Allowance for periods when her partner had been unemployed. In addition, there was notional underlying entitlement to tax credits which produced a net saving to public funds for sentencing purposes.

The DWP Solicitors agreed my report and Miss Z received a conditional discharge and the Crown Court Judge only awarded half the Magistrates Court fixed costs because the matter should have been dealt with in that Court if the Prosecution had “done their job properly”.

I have had numerous similar cases.

- Failing to apply the diminution of capital calculation which is required for both local authority and DWP benefit overpayment calculations when someone has had undeclared capital. I have seen statements of decision makers to the effect that there is “no point” applying the calculation and it has been apparent in other cases that some decision makers simply do not understand how to do these calculations. The law gives the decision maker no choice but to perform such a calculation even though at first sight it may appear that there is little advantage. The calculation can produce dramatic reductions in the amount of an overpayment.

Mrs Y was convicted of benefit fraud offences including ones about undeclared capital leading to an alleged overpayment of more than £10,000 HB/CTB. The local authority failed to undertake a diminution of capital calculation, then after seeing my report, performed one and did it incorrectly by failing to “bring forward” diminished sums within the calculations. If it had been done correctly, it would have reduced the overpayment by more than half.

Ms X was overpaid more than £30,000 Income Support because of undeclared capital. The decision maker recorded that there was “no point” in carrying out a diminution of capital calculation despite the legal requirement to do so. The prosecution was discontinued because of missing evidence unconnected with this. Ms X's solicitor's records show that he did not query the amount of the overpayment and did not refer her to an expert advice agency, this irregularity only coming to light outside the 13 month appeal time limit.

Elementary errors in calculations. I have investigated several cases where both DWP and the local authority have made elementary mistakes in the decisions concerning non-entitlement which inflate the amount of an overpayment. These include, failure to use net earnings when people have been in work and use of gross earnings instead, assumptions being made about

earnings if evidence is unclear, a failure to apply the correct earnings disregards, failing to include appropriate premiums and personal allowances in the applicable amount calculations. Ms W was prosecuted for offences in connection with working while claiming Incapacity Benefit and Income Support. The alleged associated fraudulent overpayments were £4,216.80. From the papers, it was clear that Ms W had actually been underpaid Income Support and Child Tax Credit both before, during and after the alleged offence and that appropriate (and easily identifiable) premiums had not been included in the calculation of her Income Support entitlement.

The DWP conceded that the amount was incorrect and reduced it to £2,482.00 to take account of their errors.

Mr V was charged with offences concerning working while claiming various benefits. It was alleged that the overpayments included £23,045.76 Income Support, £1,750.88 Housing Benefit and £405.90 Council Tax Benefit. Both DWP and the council had used his gross earnings to calculate the overpayments. When his net earnings were used (as should have happened from the start), the overpayments reduced to £18,028.39 (Income Support, £491.33 Housing Benefit and £152.54 Council Tax Benefit). There was also notional underlying entitlement to tax credits for sentencing purposes which had not been mentioned by the prosecutor and which significantly reduced the loss to public funds. There was local publicity about the case, but no mention of the errors made by DWP and the local authority. Mr V was sentenced to a conditional discharge and the Judge in the case expressed concerns that unless Mr V's defence team had not done such diligent work on the case, there would have been a very different outcome.

- Errors in dates. I have had numerous cases where the alleged overpayment dates between different benefits differ, by weeks and even months. Another very common error is for the DWP to assert that a benefit overpayment after the date that they were aware of the correct circumstances is recoverable from the claimant. This is contrary to case law and is normally rectified when my report has been served on the Prosecution. In other cases, I have found simple errors in dates and including dates of overpayments when there is no evidence to support such a date.

Mr U was convicted of offences connected with failing to declare an occupational pension on his HB/CTB claim forms over several years. I was instructed to prepare an expert report on the case and I asked for a breakdown of how the alleged £36,958 overpayment had been calculated. This was initially resisted by the prosecuting solicitor but then provided. At which point the overpayment was reduced to £23,656. The decision maker who made the first decision had wrongly assumed that Mr U had been receiving a far higher amount of HB CTB that was the case. As Mr U was in his seventies and in poor health, this reduction alone was sufficient to make the difference between a custodial and non-custodial sentence.

- Another common error arises in cases when people who are incapable of work for Income Support purposes or where it has been decided that someone has been living together as husband and wife/civil partner/married couple. Even though someone who is incapable of work has been working for more than 16 hours a week, they may still qualify for Income Support on the grounds of being a “disabled worker”. According to caselaw, decision makers should automatically consider this, and if necessary make further enquiries, but they appear to routinely fail to do so. Similarly, the fact that someone is living together as husband and wife does not mean that they no longer necessarily qualify for Income Support. For example, one of the couple may be a carer or be incapable of work. Decision makers appear to overlook this on a regular basis.
- In decisions about “living together” cases, DWP decision makers often place too much emphasis on someone's presence in a household and fail to examine all the aspects of someone's relationship before reaching the conclusion they are living together as husband and wife. Again, case law holds that decision makers should go on to consider the other elements in the case of unmarried couples but they appear to fail to do so. This practice particularly discriminates against women in dysfunctional relationships.
- I have had cases where decision makers have also misunderstood rules about capital—for example taking moneys into account as capital which should indisputably be ignored, do not appreciate the basics of money held on trust for other people (which should therefore be ignored as belonging to the benefit claimant) and an over simplistic approach to cases where people have disposed of capital, with decisions being drawn that people did so deliberately in order to claim benefit.
- Failing to offset payments made to the Child Support Agency by ex-partners. In cases where someone has been overpaid a means tested DWP benefit, such as Income Support, if an ex-partner has been making payments direct to the Child Support Agency these should be offset against the gross overpayment in order to avoid double counting. If payments had gone to the benefit claimant rather than the CSA, less benefit would have been paid in the first place, thus

reducing the subsequent overpayment. Information about such payments is readily available to DWP staff if they investigate. I have had cases where it significantly reduces the alleged fraudulent overpayment.

Ms T was convicted of offences connected with running a business while claiming Income Support and Incapacity Benefit. The total alleged criminal overpayment was more than £32,000. After receiving my report, the decision maker conceded that more than £15,000 in payments of child maintenance direct to the Child Support Agency by Ms T's ex-husband should be waived from recovery of the overpayment of Income Support in order to avoid double re-payments to DWP. However, the DWP took ten months to make this decision after I first raised it with them and about 18 months after Ms T had raised it with them and it was made after Ms T was both convicted and sentenced. Fortunately she did not receive a custodial sentence.

- Failure to change the original entitlement to benefit. It is a clear requirement that unless the benefit claimant's entitlement to benefit is altered by a specific decision, using the correct grounds and unless that decision is notified to them in accordance with the law, there is no overpayment as matter of law and no power to recover any overpayment. A frequent failure by decision makers is to fail to change the original entitlement and/or to notify the benefit claimant. These arise in over 80% of the cases I examine, with several where Appeal Tribunals have held that there is no power to recover any overpayment, after someone has been convicted and sentenced.
- It is not uncommon to find HB/CTB overpayment notices which are defective and fail to comply with the law, sometimes these fail to mention rights of appeal and I have even seen cases where no overpayment notice has been issued and invoices have been issued instead. Again as a matter of law, there is no power to recover any overpayment and indeed, no overpayment exists, until it has been properly notified in accordance with the law.
- Allowing an overpayment to continue after the material fact is known: this is another very common error which inflates benefit overpayments and also increases the loss to public funds. It is settled law that when the "paying office" of the DWP are aware of material fact which causes an overpayment, no overpayment after that date is recoverable from the benefit claimant. It is common to see cases where investigators or other staff acting on behalf of the paying office were aware of the correct facts of case and, for good or bad reason, they failed to take timely action to stop payments. In the case of HB/CTB such overpayments should be classed as official error overpayments (and thus not part of the defendant's criminal liability), but may still be recoverable at civil law. The facts in many fraud cases are known significantly before the overpayment ends.

Mrs S was convicted of offences in relation to claiming benefit with a stolen identity. The person whose identity had been used had reported this by visiting her local DWP office in February 2003. She then reported it again in June 2005. Even though these facts were known and not in dispute, the DWP decision maker counted the recoverable overpayment as continuing until June 2005. This wrongly added over £24,000 to the fraudulent benefit overpayments of over £100,000 and was removed for sentencing purposes. There were various other errors in the amounts.

Are there sufficient decision makers and is the training they receive adequate?

15. The poor quality of decision making I have come across suggests that the training is inadequate as is the supervision and line management of decision makers. There appear to be insufficient numbers of experienced decision makers and too many cases where decision makers have an incomplete grasp of law.

Is the decision making process clear to claimants?

16. I would suggest that the decision making process is unclear. In the case of overpayments, the process is complicated by:

- The use of a postal address in Gloucestershire by DWP's Debt Management Service.
- The operational split between staff handling calls from advisers and the public and those making decisions.
- The flouting of DWP's policy of working with Customer Representatives by staff who refuse to talk to advice workers and other professionals. This has been raised repeatedly at national level with DWP officials but persists as a barrier to resolving disputes.
- The need for people to appeal against an overpayment by contacting DWP Debt Management Service who then pass the matter to a Benefit Delivery Centre. Such hand-offs of work result in delay and lack of clarity about who is responsible. They also increase the likelihood of error.

Delays in decision making

17. I am extremely concerned that in the cases where I have prepared reports, there appear to be extraordinary delays before a DWP decision maker reconsiders the case. In one case, the decision maker made a statement that there is no process for prioritising decision making in cases being prosecuted (I have since had this confirmed in writing from the head of DWP Debt Management). Not only can this cause delays in the Criminal Courts, but it can mean that cases are proceeding in the Criminal Courts under the auspices of DWP solicitors, while another part of the DWP is stalling a decision on changing entitlement and/or amount or recoverability of an overpayment. It surely cannot be beyond the wit of the DWP to arrange to fast track reconsiderations of decisions when the case is being prosecuted. It is in no-one's interests for there to be such delay and there is a major risk that inflated amounts are in evidence before the Courts.

18. I have also experienced several situations where even though my report has been served on the DWP's Solicitor with a request that it be referred to a decision maker to reconsider the overpayment, this does not appear to have occurred, even in cases where my report is agreed for criminal proceedings. My concern is that defendants are left to repay amounts they are not legally liable for. Above all, because the overpayment decision is used as one of the building blocks for a prosecution, it is wholly wrong for it not to be formally corrected when it is clear that it is incorrect.

Amount of loss to public funds

19. While it may be beyond the remit of this Inquiry, I am very concerned that DWP and local authority prosecutors routinely fail to alert Courts or the defence to the possibility of "notional underlying entitlement". This is where, for example, someone who had been working while claiming or otherwise not entitled would have been otherwise entitled to benefits and tax credits. The Court of Appeal has held that such notional underlying entitlement is a relevant matter for sentencing (*R v Parmer*). Very often, by the time notional underlying entitlement calculations are done, the actual loss to public funds (though not the actual overpayment of benefit) can be very small or even nil even in cases where people are alleged to have been overpaid more than £20,000.

20. Notional underlying entitlement, on its own, can make the difference between a custodial and non-custodial sentence.

21. Of course, in order to accurately calculate notional underlying entitlement and the true loss to public funds it is necessary for the decisions concerning both non-entitlement and the overpayment to be accurate in the first place.

Why does this happen?

22. I believe that the DWP's longstanding problems with human resource management are a major reason why standards of decision making are inadequate. Systems for rigorous quality control in such cases (which are an absolute must given the consequences for the defendant) appear to be weak and both DWP prosecution lawyers and fraud investigators often have limited understanding of social security law—I have had several openly state this to me.

23. The culture of politicians wanting to be seen to be tough on benefit fraud means that ensuring that the overpaid amounts are accurate has received less priority than detection, prosecution and publicity. And larger amounts do make for bigger headlines.

24. Both the Courts, the Prosecutor and the Defender are completely reliant on the competence of benefit decision makers.

25. The situation is compounded by the fact that criminal defence solicitors rarely have the skill and knowledge necessary to effectively query the amount of the alleged fraudulent overpayment and/or non-entitlement and because of changes to legal aid funding over the years, they would not usually have the resources to do this work themselves even if they have the ability and knowledge and the fixed fees regime which has recently been introduced in legal aid mitigates against defence lawyers going the extra mile for their clients. Very few cases are referred to experts and criminal law solicitors routinely fail to get their clients to appeal against alleged fraudulent overpayments. (Something I wrote to the President of the Law Society about in January 2009, but to date have not had a response).

26. Furthermore, most independent advice agencies feel overwhelmed with other work and have difficulty finding the time to devote to rigorously examine benefit overpayments. This is also a specialist area where many welfare rights advisers would readily admit they did not have sufficient knowledge themselves.

APPEALS

27. I am concerned that in prosecution cases I have examined, where clients have appealed, there is no process for fast tracking such appeals and indeed, sometimes an unlawful approach is taken by DWP and local authorities to deliberately delay progress on a benefit appeal until a criminal matter has been dealt with.

28. As part of the appeals process cases should be reconsidered by decision makers. In the fraud cases I have done where matters have been referred to decision makers, there are extraordinary delays and poor quality revision decisions made by DWP staff who clearly have a weak grasp of the law and in some cases, whose statements even contain elementary grammatical errors.

29. The Court of Appeal has held that cases should not be delayed, DWP policy is also that cases should not be delayed and it is in the interests of the Criminal Courts that benefit overpayment appeals are disposed of before the criminal matter in order to narrow the issues for the Criminal Courts.

30. The DWP needs to issue much firmer operational guidance and to monitor its implementation.

31. Another issue of concern is the very tight timescale of one month in which to submit an appeal. By the time a decision has been received through the post and an unhappy benefit claimant has found competent independent advice, the initial one month may well be nearly up. The deadline used to be three months until it was changed following the Social Security Act 1998.

32. It appears to be appropriate for the DWP to have statutory deadlines for passing appeals to the Tribunals Service, or for the law to be changed so that all appeals were submitted to the Tribunals Service in order to ensure that the DWP and local authority deal with appeals in a timely manner.

33. I hope that this memorandum of evidence is helpful for the Committee. I would be happy to give oral evidence on this subject matter and I believe that I have highlighted serious failings in the benefit decision making process which is resulting in many people being the victims of an injustice in the criminal justice system.

34. Finally, even in cases where an elementary error was made in the amount of an overpayment and it is corrected, it is rare for a decision maker to offer an apology to the Court, the defendant and their legal advisers.

July 2009

Memorandum submitted by Brian Havard (DM 02)

1. *Is DWP effectively addressing official error?*

1.1 No. The policy discriminating against half the expatriate pensioners is in error. The English courts at all levels rejected an application for judicial review of the policy which denies pensions uprating to half the expatriates (save for Lord Carswell), insisting that Parliament must resolve the problem it had itself created. A first hearing in Strasbourg accepted the UK Government reliance on tortuous legislation of doubtful provenance (while yet again there was a dissenting judgment from the Court's President who strongly favoured the pensioner cause) but it has now been agreed that the case shall be heard again in the Grand Chamber.

1.2 All these legal efforts have focused on how the policy breaches the European Convention on Human Rights which is largely based on incisive moral precepts. My concern now is the parliamentary mechanism whereby the DWP policy of denying state pension uprating to half the expatriate pensioners is perpetuated annually by the Social Security Benefit Uprating Regulations in association with the Persons Abroad Regulations. Though the policy has been in application for three decades, as you see from the first attachment, it has taken a distinguished judge to identify what Parliamentarians have missed (or perhaps ignored), that the Regulations—as I have long insisted—are not “within the scope of the enabling power in the parent Act”.

1.3 This breach could perhaps have been mitigated if standard procedure had required the Department of Work and Pensions to submit the Regulations with a full regulatory impact assessment to the Social Security Advisory Committee; their claim that “no impact on the private or voluntary sectors is foreseen” would have at once been exposed as absurd. The second and third attachments, being my FOI exchange with DWP, establish that no impact assessment has ever been produced, and the Department has no definition for “private and voluntary sectors”. The DWP has no obligation to submit for scrutiny Regulations which involve uprating; they go through on the nod, despite discrimination adversely affecting half a million expatriate pensioners, and for those victims in their 80s and 90s, freezing what in any case is a shamefully meagre pension, the residual purchasing power becoming nugatory.

1.4 Legislative power is delegated inappropriately while its exercise is subjected to an inappropriate, inadequate degree of parliamentary scrutiny—in fact to virtually none at all. There is quite clearly a loophole in parliamentary legislative procedures when—as Lord Justice Cornwath scathingly observed—a Department can produce Regulations which involve in effect tearing up the section [of the parent legislation] and starting again with a different scheme. It seems surprising, and possibly objectionable in principle, that

such a radical change of approach should have been effected without direct Parliamentary sanction, a typically mild observation from a judge who has discovered serious maladministration but would not condemn it outright because that issue was not before him.

1.5 The objective must be to have the present Regulations declared *ultra vires*. If DWP then wishes to re-establish its discrimination, it must do so only if the House approves and after the Department has produced an impact assessment including an explanation of why it foresees no impact on the private or voluntary sectors when it knows full well that, with each passing year, many elderly frozen pensioners are one step nearer penury.

1.6 I hope your Committee will recommend a revised system where any legislation—primary or secondary—which adversely affects so large a number of people must undergo the closest scrutiny, first by the House as to its acceptability in principle, and then each subsequent year by the Social Security Advisory Committee, or preferably some other agency entirely separated from the parent Department, as to implementation.

2. *How effective are the Upper Tribunal Judges (formerly Social Security Commissioners)?*

2.1 Grossly ineffective. In my appeal dated 9.11.2000 NI No BB573422A, the Commissioner was only interested in applying the law, not at all in examining whether the law was in conflict with the Human Rights Act.

July 2009

Memorandum submitted by Michael Bachrynowski (DM 03)

SUMMARY

1. The DWP needs to provide a service that is cognisant of the expected increased levels of sickness proportional to the actual increased levels of cancer, strokes, obesity, stress, anxiety and other ailments.

2. The DWP, by distancing itself from service delivery by outsourcing to companies such as Atos Origin, risks losing control of the quality of service delivery.

3. The DWP “*de facto*” targets set for the outsourced company appear to be only related to cost reduction. The DWP is not competent to set health related targets.

4. The outsourced company’s primary objective is to maximise profits for share holders.

5. It appears to be not in the interest of the outsourced company to pre-screen patients as they would lose the opportunity to make a profit on each appointment.

6. It appears to be in the interest of the outsourced company to make the process as complex as possible with multiple phone calls and multiple letters involving multiple locations. It is not clear how these charges are recovered. This approach appears to have a further benefit in that it is likely to discourage claimants and thus reduce expenditure.

7. It appears to be in the interest of the outsourced company to require patients to travel long distances for appointments. If a patient can travel these long distances it does not mean they are able to work. Long distances means an increased likelihood of delays which means a patient is more likely to fail to meet the rigid fifteen minutes late time rule which in turn means a new appointment has to be made. Charges for two appointments should mean twice the profit.

8. It appears to be in the interest of the outsourced company to delay payments for travelling expenses. Commercial companies are very careful with outgoing cash flow.

9. The DWP needs to be more transparent and publish meaningful statistics.

10. The DWP is likely to seriously underestimate the cost of setting up a parallel health service which conforms to best practice of the NHS.

11. The DWP needs to consider whether it would be better to use the services of the NHS and in particular the Primary Care Trusts and their Psychological Therapy and Physical Therapy departments which currently have an obligation to promote excellence in the provision of work rehabilitation therapies. PCTs have direct access to full medical records. PCTs have well established infrastructure subject to continual scrutiny and audit.

12. Funds currently allocated to the DWP to set up and run a parallel health service should be transferred to the NHS PCTs.

13. The Health Service should be the single government department responsible for the health of a patient.

14. The Health Service should provide the DWP with authoritative comprehensive medical statements on the progress and needs of the patient and associated carers. The existing Doctor’s Statement can be extended if necessary. The DWP should make payments that are in line with set rates that are appropriate for the items listed in the medical statements.

15. The DWP can draw the attention of the appropriate medical review body if statistics suggest medical statements from particular individuals or centres are out of step with the average. This should not be a patient issue.

16. If there are DWP budget constraints then published rates can be cut openly and fairly without adversely impacting a group of disadvantaged patients such as the feeble or those who are unable to deal with complex forms. Currently disadvantaged patient groups are more likely to take on the burden of cuts than others. This appears to be discriminatory.

17. When the Health Service has fully discharged the patient as fit for work the DWP can takeover the case and apply appropriate procedures such as help with employment and or training.

18. By removing the health requirement, the DWP can focus on employment and pensions.

19. There are major economies of scale to be achieved by using the established infrastructure of the Health Service to deliver “fit for work” related health assessments and treatments.

20. Consider the contrarian view, if it is a good idea for the DWP to set up a parallel health service why not other departments. The Home Office could have their doctors decide on whether a criminal is fit for trial. The MOD could have their doctors decide on whether a soldier is fit for front line duty. The NHS puts patients first. Other “quasi” health services may be more influenced by their management to keep their department or company objectives at the fore front of their thinking.

21. The following “summary items” assume that the DWP continues to operate a parallel health service.

22. A person, subject to a current Doctor’s Statement, should be regarded as and treated as a patient at all times. The welfare of the patient should be paramount. A patient should be treated with dignity, respect and consideration. Reference to a patient as a “Customer” is not helpful to the patient or the culture of the DWP organisation responsible for decision making.

23. A doctor, who is appointed to undertake a medical assessment, should review the medical circumstances, travel and waiting times at least five working days prior to the appointment and, if necessary, cancel the appointment where in the opinion of the doctor, the appointment is likely to be detrimental to the health of the patient.

24. The DWP should not compel doctors to undertake procedures that are likely to be detrimental to the health of a patient.

25. Doctors should be reminded that they have a duty of care to report incidents, where they are put under pressure to operate in breach of medical ethics such as undertaking procedures detrimental to the health of a patient, to the appropriate authority such as the BMA.

26. The doctors appointed by the DWP should have specialist expertise, over and above that which can be expected in a GP, in the area of evaluating fitness for work and recommending courses of treatment that can speed the recovery of a patient to be fit to return to employment.

27. The DWP should only undertake a medical assessment in cases where they have access to the patients’ medical history or where this is not readily available a brief from the GP and or consultants involved in the case. The DWP should not expect a patient to recall the details of their medical history which may cover many years.

28. The DWP should obtain from the competent medical authority a list of medical conditions and treatments which are regarded as so serious that a medical assessment is not necessary. If the circumstances of a patient changes these would be reflected in a Doctor’s Statement.

29. The DWP should maintain and publish statistics on medical conditions and treatments and their impact on ability to work. The objective is to identify patients where a medical assessment is not necessary. For example, it may be that, in all cases, a patient is not able to work if a patient is prescribed anti-convulsion medicine and or has been obliged to surrender a driving licence and or is exempt from prescription charges and or has multiple doctors and consultants involved in the case. This would allow the DWP to focus and target resources on those patients who need help most.

30. The DWP should maintain and publish statistics on journey time from home to the appointment centre, waiting time, actual appointment time (normally two hours), journey time to return home and whether public transport was used. The competent medical authority should be asked to review and set acceptable times. It is suggested that a maximum of 30 minutes outgoing travel time, a maximum of 30 minutes waiting time and a maximum of 30 minutes return time is reasonable. If public transport must be used, the appointment should be scheduled outside peak travel periods. In rural areas the time could be extended to allow a journey to the next nearest doctors’ surgery.

31. The DWP should provide for each appointment a suggested journey plan for both the outgoing and return journey.

32. Where possible the medical assessment should be located in the Parliamentary constituency of the patient. The DWP should maintain and publish statistics for those appointments where the DWP has required patients to travel outside their constituencies and or outside their counties or metropolitan areas and or further afield.

33. The DWP should maintain and publish statistics on the reasons for failure to make a medical assessment appointment and the number of patients who they contacted to agree an appointment for a medical assessment and for whom an appointment could not be made.

34. The DWP should maintain and publish statistics on the reasons for failure to attend a medical assessment appointment and the number of patients who failed to attend an agreed appointment for a medical assessment.

35. The DWP should maintain and publish statistics on the reasons the DWP has cancelled a previously agreed appointment, the periods of notice given to the patient and the number of patients involved.

36. The DWP should maintain and publish statistics on incidents impacting patients which, in the opinion of the patients' medical team are due to the appointment. Of particular interest are statistics relating to self-harm and suicides following withdrawal of or changes to benefits.

37. The DWP should maintain and publish statistics on their performance in responding to correspondence from patients and doctors. It is suggested that the DWP should respond within a maximum of 10 working days.

38. The DWP should maintain and publish statistics on their performance in paying travel expenses. It is suggested that the DWP should make a payment or respond within a maximum of 10 working days.

39. For offices, which the DWP use for medical assessment appointments and which are not medical facilities such as doctors' surgeries, clinics or hospitals, the DWP should maintain and publish statistics on the state of offices for dealing with patients. They should include scope and frequency of cleaning, provision of cleaning gels, provision of reading materials, access to television, food and drink etc.

40. The DWP should review the approach of locating medical assessment offices in high crime areas especially as they mandate the patient to attend with passport and banking information. The guidance booklet should be reviewed and amended to state that a NHS prescription exception card is an acceptable form of identification.

41. After a medical assessment has been carried out, the DWP should provide a report to the patient and to the patient's GP within a prescribed number of days. It is suggested 10 days is a reasonable amount of time.

42. The DWP should maintain and publish statistics on their performance in providing post assessment reports.

43. The DWP should develop a contingency plan to be invoked in case of a nationally declared emergency such as the Swine Flu Pandemic declaration. The DWP should consider whether it is wise to insist that patients travel on crowded public transport in such circumstances.

INTRODUCTION

44. I am 52, a graduate of Imperial College, London and have been a senior IT Manager for many years in leading companies. I managed teams that built major IT applications. I have expert knowledge of business processes and customer systems in particular.

45. I have direct first hand experience of the DWP decision making process as it relates to ESA.

46. On 15 April 2009 at 05.30, I experienced the latest occurrence of an extremely painful fit. It was worse than before and so painful that I became unconscious. I was revived by the excellent ambulance service and emergency admitted to hospital. I spent the next 10 days in hospital. I received excellent care. After xrays, CT Scans and MRI scans, I was diagnosed with a primary brain tumour. As the hospital does not have neuro-surgery capabilities, I was referred to a consultant at another hospital. I was prescribed anti-convulsion medicine. As I was fine, except for periods of being extremely weak, and as nothing could be done for me, I was discharged.

47. I saw my GP, who provided a Doctor's Statement which I sent to the DWP. I was given exemption from prescription charges due to cancer. I surrendered my driving licence. My pharmacist had never had a case like mine. My GP said in her working life, she expected to deal with two or three similar cases at most.

48. Eventually I saw a Neuro-Surgeon consultant who recommended monitoring the situation and reviewing after a few months. It is likely the tumour will get worse and at some point may need to be removed by surgery and or radio therapy.

49. The doctors I saw recommended avoiding situations which could trigger further fits such as working with IT or watching television for long periods. My next consultation is scheduled for 10 September 2009 recently rescheduled due to the train strike from the 20 August 2009.

50. In a recent (2 April 2008) written answer to a Parliamentary question, the survival rate for an adult patient diagnosed with a Primary Brain Tumour was stated by the Secretary of State for Health as 12.3% survive five years.

51. After a few weeks, I experienced a set of serious symptoms which meant I had to undergo a second urgent MRI scan as soon as possible. With the help of my excellent GP, I avoided being admitted to hospital as the GP and I knew it was pointless to occupy a bed when nothing could be done. As it turned out, the tumour appears to be unchanged and the symptoms may be related to the combination of medicines I am taking.

52. Currently I am without pain and have periods of sufficient strength to write this memorandum. I am awaiting an appointment with a neurologist to review my prescriptions and the impact on my health of working for extended periods with VDUs.

53. I have found some of the elements of the process that I have experienced worthy of Kafka's novel "*The Castle*". Each "aparachuk" (bureaucrat) tries their best but are constrained to comply with a set of rules that appear to be as rigid as a railway track. The prime objective appears to be maximising the profits of the company that the DWP has chosen to outsource to.

DECISION MAKING

54. My first involvement in this process was that I received a long multiple page form. I was far too weak to complete it. Any strength I did muster I wanted to use to try and settle my affairs.

55. I believed at that time the form was sent by the DWP as a mistake. The DWP had received my Doctor's Statement. I had received the prescription charges exemption. I had told the DWP of my condition and that I had surrendered my driving licence. The DWP could contact my GP for more information who could give them the details of all the other doctors and consultants involved in the case and details of the medicines I have been prescribed and their side effects.

56. I received the same form again which though very tired I completed. I am right handed and the tumour adversely impacts my right side. My handwriting was poor. The form went on and on. I listed my GP, all the doctors, consultants, medicines etc. I thought that would be the end of the matter. Every time a Doctor's Statement expired I obtained another and sent it to the DWP.

57. I received a letter on a Friday instructing me to ring "within two days of receiving this letter" ie Saturday or Sunday to agree an appointment. I had never heard of a government procedure working at the weekend and on a Sunday. I suspected a scam. I was very weak at the time but I struggled to phone the number.

58. An appointments clerk would not listen to what I thought was common sense and retreated to the "all I do is make the appointments" line. I was upset and too tired to think straight. I misunderstood the threat he made, which was to cut some benefit if I did not agree an appointment, to mean wrongly, that I would be immediately denied treatment. I told him I did not care what they did. I wanted nothing from him except a cyanide pill and if he did not send me that I would top myself as I could no longer do anything and I did not want to be a burden. I am ashamed that I lost control.

59. I took a risk and decided on my own to lower my dose of anti-convulsion medicine. I needed to do something to get some strength.

60. It was impressed upon me that it was not wise to change the dose without checking with my GP. Eventually I saw my GP who agreed the change. I felt stronger and sorry for the appointments clerk just obeying orders. I asked about the appointment and was told the GP could write an additional note to say I could not travel but if I felt fit enough I could go. It would be a useful test. I could relate it to how I felt when I used to commute.

61. Mistakenly I thought I would meet a medical expert who could advise me on how soon after the tumour had been dealt with I could be back at work. In addition I wanted to know what I could do to improve strength and stamina.

62. I phoned and made an appointment. I could not believe the nearest location was so far away in Highgate. I live in Broxbourne, Hertfordshire. I told him I was not allowed to drive and was told there was public transport. I said I took medicine that required frequent access to toilet facilities and that I was concerned about my tiredness. The appointment clerk was not interested. The target was to make an appointment within a target time for a conversation.

63. I received the appointment letter and the recommended journey plan. I could not believe the plan had an outgoing duration of 108 minutes and involved seven changes involving walking and buses. No return journey plan was provided.

64. I wrote a letter dated 28 June to which I still have not had a reply. This asked a number of questions and pointed out that the maximum time of the journey was supposed to be 90 minutes.

65. I was anxious about the appointment. Two days before the appointment I received a letter rescheduling the appointment. The replacement appointment had a journey time of 74 minutes involving walking, train and tube and a waiting time of an hour. It should be noted due to weakness since April I had made only two journeys by public transport; my son's wedding and the trip to the consultant. Due to weakness I am confined to walking locally near my house. I have made two other visits to my local hospital for a heart test and for the emergency MRI scan (which I had to wait 10 days for).

66. I attended the appointment at Highgate on Friday 24 July 2009 at 15.30. I was seen at 16.10 40 minutes late. No excuse was made for the lateness except that a doctor was not available! The appointment lasted until 17.50.

67. The doctor spent all but 10 minutes filling in an online form and asking me about my medical history as she had no access to my medical file. The 10 minutes of medical tests involved an eye test, blood pressure measurement (high) and superficial muscle strength checks. The doctor was not a specialist. She agreed that the procedure was not beneficial to my health. She was just following orders. I informed her I would be writing a letter of complaint and would be taking this up with those in a position of authority who might be able to get things changed. I left home at 13.25 and returned home at 19.50. The office had no cleaning gels. It had drinking water and nothing else. It was bleak and oppressive. I had to stand on the Tube and train due to peak time travelling. I was too tired to do anything when I got home except to go to bed.

68. While I was waiting, a young lady, a sick looking, pallow skinned, tired patient, turned up 20 minutes after the set time for her appointment. She was turned away and told to ring the appointment centre for a new appointment. I was seen 40 minutes after the set time for my appointment. I could not see any operational reason why the patient was turned away. I could only justify this in commercial terms as two appointments should mean double the profits. The patient had difficulties standing; an easy mark! It felt Dickensian. I was ashamed that my country could treat sick people this way.

69. It took me four days to recover my strength to write a letter of complaint. This was dated 29 July. This letter in addition contained my travelling expenses claim form. I have not had a reply to either my letter of 28 June or that of 29 July. My travelling expenses have still not been paid. I have not received a report of the assessment findings.

70. I am outraged at the treatment I have received through the services provided by Atos Origin. I hope my experience is atypical. Without transparency it is a matter of speculation.

RECOMMENDATIONS

71. My main recommendation is that patients should be treated with compassion, dignity and respect.

72. I further recommend that when next an MP or someone known to the Committee becomes sick, they go through the standard procedure eg informing the DWP. They can, at first hand, see if my experience is typical of the treatment the DWP applies to patients.

73. My other recommendations are in the summary above.

August 2009

Memorandum submitted by Age Concern and Help the Aged (DM 04)

KEY POINTS AND RECOMMENDATIONS

- Decision making for Pension Credit appears satisfactory in the majority of straightforward cases but we sometimes come across problems with more complicated cases.
- There needs to be a clear process whereby more difficult Pension Credit cases are identified and referred to experienced staff at an early stage.
- When overpayments occur this can take time to sort out and can cause worry to those affected who are often unclear why the overpayment has arisen and what their obligations are in terms of repayment.
- Generally speaking the decision making process for AA appears to be working effectively although where people claim without support they often do not understand the process and may not include all the relevant information.
- Following the court case on exporting AA, DLA and Carer's Allowance we have been hearing from older people living abroad who are experiencing problems with benefit decisions.
- The time limit for challenging a decision and submitting an appeal should be extended to at least two months.
- The appeals process can be daunting for individuals and care needs to be taken to deal with people sympathetically.
- Many older people find it difficult to understand the benefit systems and decision making processes so it is important that advisers are able to speak to relevant benefit staff and act on their client's behalf.

1. INTRODUCTION

1.1 Age Concern and Help the Aged welcomes the opportunity to respond to the Committee's request for evidence to its inquiry into decision making and appeals in the benefits system. This response is based on the comments we have received from older people contacting our national information line and from feedback from staff and volunteers providing information and advice in local Age Concerns. Although our services provide help with a range of benefits we most frequently deal with Pension Credit and Attendance Allowance (AA) so experiences around these benefits are the main focus of this response. Many Age Concerns provide information, advice and support around benefits. Where a home visiting service is provided this often concentrates on helping people claim AA and linked benefits. Some Age Concerns provide in depth case work and help with appeals while others will refer people on to other organisations.

2. DECISION MAKING AND PENSION CREDIT

Decision making for Pension Credit appears satisfactory in the majority of straightforward cases but we sometimes come across problems with more complicated cases.

There needs to be a clear process whereby more difficult Pension Credit cases are identified and referred to experienced staff at an early stage.

2.1 Generally speaking the decision making process seems to go smoothly for the majority of straightforward Pension Credit cases. However one local adviser had noticed a decline in the quality of decisions and delays which she put down to the closure of their pension centre and staff being transferred to Jobcentre Plus to deal with increased unemployment.

2.2 There are sometimes difficulties with more complicated cases for example those involving additions (which are sometimes missed off), mortgage interest, overpayments (see below) or fluctuating earnings. Often when an adviser reports that an additional payment such as the carer addition has not been awarded this will be rectified. However sometimes it appears that a request for a decision to be reviewed or appealed is not registered as a formal challenge. One adviser said "Pension Credit appeals are often just ignored in my experience!"

2.3 We also hear of cases where individuals or advisers have to press hard for a decision to be rectified. For example we heard from one man whose claim had been refused who had contacted the Pension, Disability and Carers Service (PDCS) on "umpteenth" occasions and been given contradictory information and promises to call back which were never kept. Finally after over seven months and a letter to the Chief Executive at PDCS he received confirmation of his award, a 14 months backpayment and an apology.

3. OVERPAYMENT AND OFFICIAL ERRORS

When overpayments occur this can take time to sort out and can cause worry to those affected who are often unclear why the overpayment has arisen and what their obligations are in terms of repayment.

3.1 Although not a common area of complaint for us, when overpayments do occur there can be lengthy delays and contradictory information. It can be hard for people to understand the reason for overpayments and whether an overpayment is recoverable or whether because it was due to an official error they do not need to repay the money. Advisers tell us they can have difficulties getting responses once the case has been handed over to Debt Management (the organisation which deals with the management and recovery of debts on behalf of the DWP) and sometimes when they challenge a decision no justification is given.

3.2 Many older people are very worried to learn that they have been paid too much benefit. For example an adviser told us about a case where an older couple realised they had been incorrectly awarded an additional £200 winter fuel payment and wanted to know how to repay this. The adviser talked to the winter fuel payment helpline and was told this was their error so they did not need to pay the money. Some time later the couple were concerned to receive a letter asking for the money to be repaid.

3.3 We are pleased that the DWP are now looking at debt management and have been reviewing letters sent to individuals about overpayments.

4. DECISION MAKING AND DISABILITY BENEFITS

Generally speaking the decision making process for AA appears to be working effectively although where people claim without support they often do not understand the process and may not include all the relevant information.

4.1 Feedback from Age Concerns who help people claim AA indicates that in general most are satisfied with the decision making process and claims are normally successful when the adviser expects them to be. There was however some mention of inconsistency and the odd unexpected decision and concern that if a claim was turned down some people were not keen to ask for a revision or appeal. We also had some feedback that decision making was more likely to be inconsistent when people have particular conditions such as mental illness.

4.2 When local organisations do encounter problems it is often because someone has claimed without support and has been turned down or had help from friends and family who do not have knowledge of benefits. Older people without support often do not know what information is required and do not understand how a particular decision was arrived at. This makes it very difficult to know whether they can challenge a decision.

4.3 We recognise that ringing claimants can be an easy and quick way to obtain additional information to help decision makers. However a number of our local advisers remarked that older people are often reluctant to admit they cannot manage so when a phone call comes out of the blue they may underplay their needs. There will also be times when a call is inappropriate. For example one local adviser told us about a man with dementia who received a call about his claim for DLA. The claim was refused and although the adviser recommended challenging the decision the claimant's wife, who was very upset by the process, did not wish to pursue the claim.

4.4 Although most people who seek support from local Age Concerns are over state pension some organisations are seeing an increasing number of younger people. One adviser who told us that he came across very few problems with AA or DLA decisions but was concerned that he had recently seen four people whose claims for Employment and Support Allowance had been turned down where he felt there was a case to challenge the decision.

5. EXPORTING AA, DLA AND CARER'S ALLOWANCE

Following the court case on exporting AA, DLA and Carer's Allowance we have been hearing from older people living abroad who are experiencing problems with benefit decisions.

5.1 Age Concern and Help the Aged's Older People Residing Abroad programme looks at the experiences of people who have retired abroad and works to raise awareness of their needs and improve the support and services available. We regularly hear from older British people who live in another European country and feel it is unfair that they cannot receive certain benefits abroad. Since the European court case on exporting AA, DLA and Carer's Allowance many people have contacted us with about delays or problems with the claims or appeals process. For example:

- Clients waiting a very long time for the exportability team to respond to initial enquiries.
- The exportability team sending out "holding letter" to clients, citing "complex issues" as an explanation for the delay in respond to enquiries.
- Very few clients receiving dates for their tribunal hearing, despite numerous requests.
- Those who do receive a tribunal date but need to change the venue can experience long delays.
- The application of the past-present test to claims disallowed in error by the DWP in the run up to the ECJ decision being made. Claimants affected by this error must now submit a new claim or request a reconsideration.
- Requests for new claims since moving abroad.

5.2 The process has resulted in confusion for clients, many feeling overwhelmed by the process and amount of paper work received. For people living abroad it can be particularly difficult to deal with problems because of the costs of international telephone calls and the lack of access to local advice agencies for support.

6. APPEALS

The time limit for challenging a decision and submitting an appeal should be extended to at least two months.

The appeals process can be daunting for individuals and care needs to be taken to deal with people sympathetically,

6.1 Some of local Age Concerns help people with appeals although others will refer to other agencies. We have had feedback on three specific issues.

Time scale for making appeals

6.2 The one month time limit for challenging a decision and submitting an appeal does not give people sufficient time. Many people need information about appeals and help with the process. They will often delay taking action until they have sought advice from friends or family or a local advice agency. However agencies are under particular pressure at present and may have a waiting list for appointments so there is a danger that if the client does not emphasise their need for urgent help it may be too late for an appeal.

6.3 The short one month time limit also makes it difficult to obtain evidence, such as a copy of the original claim form (if the client applied on their own) in order to help advisers decide whether to recommend that an appeal is made. As a consequence appeals may have to be made without fully considering all the issues or people may be reluctant to pursue their case if an adviser cannot explain, for example, how additional evidence could change the decision.

Delays

6.4 A number of local organisations commented on the time appeals take to be heard—with one saying this could be several months another saying it could take up to a year.

Experiences of appeals

6.5 Although the procedures are intended to be informal all staff involved in tribunals need to treat people sympathetically and be aware that the experience can be daunting for individuals. Some people find the procedures formal and legalistic and one Age Concern noted that some tribunal Chairs were much better than others at putting people at ease. One adviser said that in their area tribunals used to be held in a portacabin but were then moved to the local law courts which was more intimidating for people.

7. THE NEED FOR SUPPORT

Many older people find it difficult to understand the benefit systems and decision making processes so it is important that advisers are able to speak to relevant benefit staff and act on their client's behalf.

7.1 Because of the difficulties understanding both the benefit rules and the system of claiming benefits and challenging decisions older people often need support from local advice agencies.

7.2 However advisers tell us that they can have difficulty getting through to the appropriate member of staff dealing with a claim and persuading them they are authorised to act on their client's behalf. This is despite all staff having guidance about dealing with third parties. One adviser said it had taken 20 minutes to persuade the member of staff who answered the telephone to let her speak to someone dealing with her client's case even though the Age Concern acts as an Alternative Office. Concerns about third party authorisation have been raised with the DWP and we understand PDCS staff have been reminded about the guidance.

7.3 The main problems appear to be with the pension side of the PDCS. We welcome the idea of an "adviser hot line" referred to in the Committee's recent Report *Tackling Pensioner Poverty* which could operate in a similar way to the service currently provided for advisers wanting to discuss AA and DLA claims.

August 2009

Memorandum submitted by CLIC Sargent (DM 06)

1. SUMMARY

CLIC Sargent is the UK's leading children's cancer charity, providing care and support services to children and young people with cancer across the UK.

Happily, for children with cancer treatment tends to begin straight away, but this also means that the impact on families of extra costs associated with a cancer diagnosis also start immediately. This includes travel to specialist centres which can be far from home; accommodation; childcare for other children; clothing as patients' bodies change; and food. On top of this, one or more parents might have to give up work or change their hours to care for their child with cancer.

At this time of extreme financial and emotional stress, benefits can be essential to making ends meet. Amongst the families that CLIC Sargent works with, there is a great deal of inconsistency in the experiences which they have in applying for, and receiving, benefits to support them.

All too often, families find that the application process is so cumbersome as to be prohibitive. The decision making process can also be insensitive to individual needs and appears to have little understanding of the wide range of different cancers and how these might affect children and young people. When it comes to appeals, patients and their families can find that the process is unclear and inconsistent, and it is too long a process.

CLIC Sargent knows of two main benefits where children and young people with cancer can experience difficulties with the application process (DLA and ESA), and our comments on these are detailed separately below.

It is also important to note that there are young people who have had good experiences with ESA and DLA; having been immediately referred to the correct part of the benefit, and who have received their benefit payment swiftly. It is the inconsistency in these experiences and the inflexibility of the service which need addressing.

2. DECISION MAKING AND APPLICATIONS

2.1 *Disability Living Allowance*

Many of the families that CLIC Sargent works with receive Disability Living Allowance (DLA) to give them financial support at the time in their lives when they need it most. The families we work with tell us that there are several difficulties in both the application process and the decision making process when it comes to receiving this key benefit. There are three key issues about which CLIC Sargent is concerned.

Firstly, DLA needs to be simplified so that the application process is not so complex. The form, in particular, can be so daunting as to prohibit parents from applying for this important benefit. The content of application form can also be confusing and is sometimes not relevant.

Secondly, there is a lack of understanding amongst decision makers of the wide range of cancers which can affect children and young people, and the impact of these diseases on children and young people's lives. This can mean that families experience insensitivity and inappropriate questioning on the part of decision makers who are not given the education and guidance they need to understand this complex disease area.

Thirdly, CLIC Sargent is concerned that the twelve week waiting period before a benefit can be paid out is inappropriate for families affected by childhood cancer. For these families, the financial impact of cancer is immediate and may not last as long as other disabilities and illnesses. The first few months after a child's diagnosis are crucial and this is when families most need the support of benefits like DLA.

CLIC Sargent is delighted that the Department for Work and Pensions (DWP) is currently working to revise the DLA application form for children, to make it less cumbersome and more responsive. Their work towards improved, comprehensive guidance for decision makers on the range of diseases affecting children and young people will also help to ensure better consistency and consideration in the decision making process. CLIC Sargent is pleased to be supporting the DWP in these areas of work.

2.2 *Employment and Support Allowance (ESA)*

The teenagers and young adults that we work with have encountered several difficulties in the application and decision making processes for ESA, and these are outlined in further detail below. These include:

- Being incorrectly advised to apply for the work component.
- The lengthy telephone interviewing system.
- Waiting to receive benefits.

2.2.1 Work component

It is not uncommon for young people with cancer to be advised to apply for the work component of the benefit. This component is of course not applicable for people who are undergoing chemotherapy or whose diagnosis is terminal.

For example, one young woman applied for ESA with the help of her CLIC Sargent Social Worker, and clearly stated on the form that she had terminal cervical cancer and that she could provide a DS1500 form which she had used for DLA applications to clarify her position.

She started being paid ESA and didn't hear any more until she was sent an appointment for an interview to help her get a job. At this point, it became clear that this young person hadn't been put straight into the support group as should be the case with terminally ill people, but instead was due to have a full assessment over the coming 11 weeks. She had been told that she had a month to live at that point.

The ESA advisers explained to the young woman that they were not in a position to cancel the workplace interview, but that they would postpone it for three months and then review it again at this time. This was clearly not an appropriate decision for someone who was not expected to live for these three months, and caused her family a great deal of unnecessary anxiety.

Another young person was incorrectly told to apply for the work part of the benefit, which subsequently took four months to be processed. After four months he was told he needed to begin another application because he had applied for the work part and shouldn't have done so. This was particularly hard for him as he was unable to receive any housing benefit while he was not in receipt of other benefits. This situation has caused this young man a great deal of financial and emotional stress as he is without an income until he receives ESA.

2.2.2 Telephone enquiries

There is a major issue with the application process for ESA, where young people are required to go through a 45 minute phone interview before an application can begin. This is particularly challenging for those young people who have a terminal diagnosis.

We know of several young people with cancer who do not have landline telephones and who find themselves stuck in long phone queues during the daytime, which builds up big mobile phone bills—one young woman reports using £10 credit before getting cut off. This comes at a time of increased financial costs for these young people and their families. In addition, some young people find that the line goes dead while they are waiting in a queue.

There doesn't currently appear to be any alternative to this system which might offer a quicker, more appropriate route to applying for ESA. A downloadable form would offer an alternative—perhaps something similar to the DS1500 which is used for DLA applications.

2.2.3 Young people in education

CLIC Sargent knows of patients who are taking time out from their university courses but who are denied ESA because the legislation says they must have abandoned their course altogether. This presents already demoralised young people with having to choose between the prospect of a relatively easy return to education after treatment and a period of recovery and having something to live on.

2.2.4 Benefits staff

The young people that CLIC Sargent works with can encounter confusion and a lack of understanding amongst Jobcentre Plus staff, and ESA doesn't seem to be explained very well. Trying to get information from the Benefits Agency regarding the progress of applications has been similarly difficult.

There is often conflicting advice, and there appears to be inadequate knowledge of what impact a cancer diagnosis can have on a person's ability to work. Staff might benefit from greater training and awareness of cancer and of ESA.

2.2.5 Application process and waiting times

Many young people become very anxious and angry when they are asked to complete an additional, bigger questionnaire after they have already gone through the application process and begun receiving payments. This is often information which has already been given, so this can be confusing.

There appears to be a good deal of variation between different Jobcentre Plus branches as to how long it takes to get through the system.

We know of one young man who has been waiting since March to receive his benefit. He has made several phone calls to chase his applications but has not received the information and advice he needed, and has in fact received different advice from different advisors when calling.

2.2.6 Parent carers

When a child is diagnosed with cancer, their treatment tends to begin immediately, and is likely to take place in a specialist treatment centre, away from home. Parents of a child with cancer therefore often have to change their working hours or give up work to be with their sick child.

Benefits like ESA can make a real difference to parents caring for a child with cancer. However, currently parent carers only qualify for the work component of ESA which does not suit their needs as they are not always in a position to continue to work.

The parents we work with can experience real challenges in applying for ESA, and there are large disparities between different families' experiences. For example, we know of two sets of parents whose children had the same diagnosis, but whose experiences were very different. The first attended an interview and were told at that time that they would be getting the benefit and wouldn't have to attend a review meeting. The second attended an interview and although the interviewer appeared sympathetic, they were later informed they had 0 points on their application.

3. APPEALS

3.1 *How does the appeals system work from the claimant's perspective?*

- The process itself is unclear and inconsistent. Parents can make several calls to the DLA regarding the process before they begin to understand where to start and what steps to take.
- Communication from the DLA service is inconsistent and the customer service representatives can lack empathy with families.
- The length of time of review is extremely long (11 weeks) and lacks progress updates.
- Some of the families that CLIC Sargent works with opt not to go through the appeal process due to the length of time and hassle it can cause.

- If families decide to go through with the appeal process, they may be required to duplicate the application that was completed originally, which is a long and difficult process to repeat. However, there are inconsistencies within this as some families will not need to recomplete the form and some will.

3.2 *How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon claimants' experience of the appeals process?*

CLIC Sargent's social workers, who work closely with families in applying for relevant benefits, were not all aware of this council being in place or what its function is.

3.3 *Is the timeframe of appeals reasonable?*

Parents have been informed that they will wait up to 11 weeks to receive a response regarding their appeal and can find it extremely difficult to track the process of the appeal.

Considering that families will have already waited 30 working days for their original application to be processed, and then another few weeks to decide on whether or not they wish to appeal, and then another few weeks for the appropriate paperwork to be sent out to the family, waiting a further 11 weeks for an appeal to be processed is an extremely long and difficult time for our parents who are caring for a child or young person who has a cancer diagnosis (and significant health, care and mobility needs).

The impact of families affected by childhood cancer of having to wait a considerable time for their appeal to be processed is huge. A long wait for a benefits decision is particularly hard if one or both parents has had to give up work or change their working patterns to care for their sick child, for example.

3.4 *Is sufficient support available to appellants during the appeals process?*

As mentioned above, the families that CLIC Sargent works with can face significant difficulties with tracking down the progress of their appeal and actually speaking to someone within the DLA service about how their case is progressing. There is little or no information made available before or during the appeal.

Families can feel that any follow up calls they make regarding their appeal are unimportant and the standard response that they receive tends to be that "things are in process" with no further information given on estimated timelines, outcome, or further communication.

In addition, when families receive the "appeal bundle" this can cause further distress as they can see medial reports and the comments of the decision makers.

September 2009

Memorandum submitted by RSI Action (DM 07)

BRIEF INTRODUCTION TO RSI ACTION

RSI Action was formed in February 2006, and is the only charity focused on RSI (repetitive strain injury) conditions in the UK. Repetitive strain injury conditions (also called upper limb disorders) result in approximately 10% of lost working days in the UK due to ill-health (HSE figures).

In the experience of RSI Action and local RSI support groups, well over 90% of RSI conditions are caused by intense computer use at work. The incidence of RSI disability is increasing with the increased level of computer use both at work and at home, however HSE figures show that the DSE regulations which came into force in January 1993 have never been used by the HSE to prosecute noncompliant employers. Consequently compliance with these health and safety regulations is patchy and often inadequate or non-existent. Furthermore the Department of Health and the NHS provide no effective treatment for these conditions.

RSI Action is engaging with government, parliament, and with the medical profession to establish more research on the effective treatment of RSI conditions, and effective methods of prevention of RSI injuries.

RSI Action participated in the International Commission Occupational Health PREMUS 2007 Conference (prevention of musculoskeletal disorders) in Boston, and is planning to contribute to the next PREMUS Conference in France in August 2010.

RSI Action has also forged strong links with other RSI charities in Australia, the Netherlands, India and the United States. There are also strong links with the two worldwide centres of excellence on RSI treatment, in Allentown, USA, and Bangalore, India.

RSI Action also provides individual help and support to individuals with RSI throughout the UK.

Stephen Fisher was a founder trustee of RSI Action, and has been the chairman of trustees since its formation in 2006. Stephen was a professional aerospace engineer, and responsible for the development flight trials of the new generation Meteor air to air missile system being developed for the Eurofighter, Rafale

and Grippen, until his RSI injury in 2002 resulted in his early retirement. Since that time Stephen has used both his professional experience and the experience of his RSI injury to help others, and to campaign for better prevention treatment and support of RSI conditions.

RSI Action has organised three major RSI Conferences in London, and is planning a fourth conference in March 2010.

1. SUMMARY

Decision making

The decision making process has poor compliance with the primary legislation.

The DWP have no model of what work consists of in the 21st century.

The descriptors do not consider the real working environment.

The process takes no account of the impact of work on vulnerable medical conditions and disabilities.

The ESA50 form relates to everyday domestic situations not to work.

The ESA50 does not provide guidance on taking account of reliably, repeatedly and safely.

The ESA50 questions are not directly linked to the WCA descriptors as published in the Regulations.

The ESA85 medical report form compiled by the HCP is withheld.

There is evidence that subcontractors of WFIs harassing vulnerable ESA claimants.

The recent DWP review of WCA descriptors appears to be recommending descriptors changes to the Secretary of State, to reduce the number of benefit claimants.

Concern at poor training for decision makers and health care professionals.

DWP have only provided copies of 42 out of their 252 evidence-based protocols for the disability analyst.

There is no evidence that these DWP protocols have been assessed and agreed by relevant disability charities and medical experts.

No action on training needs recognized by the Minister in March 2009.

There is no evidence that DWP have addressed this significant and increasing benefit losses (1.5% and doubling year-on-year) due to official error.

Small and decreasing benefit fraud (0.63%) attracts significant ministerial and departmental focus, resulting in victimisation of genuine and vulnerable claimants.

Appeals

DWP do not appear to have any system to review the decision making process when there is significant number of appeals which are upheld.

RECOMMENDATIONS THAT RSI ACTION WOULD LIKE THE COMMITTEE TO CONSIDER

- That the WCA should reflect the intent of the primary legislation, and focus on work-based activities.
- That DWP should seriously consider developing a model to provide objective links between 21st-century working activities and the WCA.
- Improved guidance for the claimant should be developed, identifying the work-based nature of the WCA and the need to consider reliability repeatability and safety.
- The medical report form (ESA85) should be provided to the claimant as a matter of course at the assessment, to ensure that the claimant's information has not been misrepresented.
- Health care professionals and decision makers should be trained and provided with suitable information on all relevant medical conditions. The training material and information should be publicly available, and DWP should seek agreement with relevant charities and relevant medical experts.
- Healthcare professionals in decision makers should recognize the expertise that disabled claimants have in their own medical conditions, when considering the impact of the claimants disability.
- The DWP and ministers should focus on reducing departmental error rather than fraud.
- The intense focus on benefit fraud should be reduced as it is causing victimisation of the most vulnerable in society.

2. DECISION MAKING

2.1 *How effective is the decision making process? Could it be improved, if so how?*

2.1.1 Poor compliance of the ESA WCA process with primary legislation

2.1.1.1 The basis of ESA decision making is the work capability assessment (WCA), which is set out in secondary regulations. The WCA consists of a number of activity descriptors which are intended to assess the ability of the claimant to work. The descriptors are intended to assess a range of physical and mental functions, and their impact on the ability to work. RSI Action is concerned that the WCA descriptors do not adequately relate to work activities and difficulties that those with medical conditions and disabilities will encounter if required to undertake “work”.

2.1.1.2 The primary legislation is:

Welfare Reform Act 2007

1 Employment and support allowance

- (4) *For the purposes of this Part, a person has **limited capability for work** if—*
- (a) *his capability for work is limited by his physical or mental condition,*
and
 - (b) *the limitation is such that it is not reasonable to require him to work.*

2.1.1.3 The secondary legislation is:

STATUTORY INSTRUMENTS 2008 No. 794
SOCIAL SECURITY

The Employment and Support Allowance Regulations 2008

PART 5—LIMITED CAPABILITY FOR WORK

19. Determination of limited capability for work

- (1) *For the purposes of Part 1 of the Act, whether a claimant’s **capability for work is limited** by the claimant’s physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require the claimant to work is to be determined on the basis of a limited capability for work assessment of the claimant in accordance with this Part.*
- (2) *The **limited capability for work assessment** is an assessment of the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.*

SCHEDULE 2 Regulation 19(2) and (3)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK
(this is the schedule of WCA descriptors)

2.1.1.4 The DWP have no model of what work is in the 21st century, and what activities workers are expected to carry out, or how frequently these work activities would be repeated. Consequently there is no traceability between the WCA descriptors and work in the 21st century.

2.1.1.5 It appears that the WCA descriptors have been compiled on the basis of assessing physical and mental functional capability, without any consideration of the relevance to workplace environment or workplace activity, and without any consideration of the rate at which work activities are expected to be undertaken and the ability to carry out activities in a reasonable time scale. The WCA also does not consider that workers are required to repeat activities during the working day and working week, in many cases repetition rates are high. For example most jobs require significant handwriting and or computer use, or other manual dexterity operations. However the WCA only considers a single isolated activities.

2.1.1.6 Sufferers of disabling conditions such as diffuse Repetitive Strain Injury (RSI) can attempt most activities once, repeated activities may quickly result in significant pain and increased disability. Carrying out activities repeatedly as required in a job could result in increased injury and further chronic disabilities. The WCA does not consider the real working environment. The DWP advice and guidance to the ESA claimant does not consider the real working environment.

2.1.1.7 Some of the WCA descriptors have no relevance to the workplace. For example descriptor 5C (cannot pick up and move light bulky objects such as a cardboard box, requiring the use of both hands together) is not relevant to the workplace. During the DWP review of the WCA in March this year, a medical adviser to the DWP claimed that this descriptor described the requirements for a shelf stacker in Sainsbury’s, moving goods from a trolley onto the shelf. However the descriptor is for moving from one side to another a large but light object, such as an empty cardboard box. Such a claim is unsupportable: supermarkets do not sell empty cardboard boxes, most goods are of a significant weight (single jars or cans 400g upwards, bottle of coke 2kg, bottle of wine 1.3kg, can of beer 475g) with multiple packs of 4x 6x or 24x multiplying the individual weight of such a retail item to between 4 to 10 kg. Even in an office environment objects have

real weight (the Government's Green Paper on *Shaping the Future of Care Together* weighs 485g, a ream of office paper weighs 2.3kg), and office workers (particularly low paid workers) are often expected to move multiple items as part of their normal work.

2.1.1.8 The WCA descriptors and the process to evaluate an ESA claim should:

- Be directly linked and accountable to the components of work in the UK in the 21st century.
- Take account of the repeated nature of work activities required of workers by employers in 21st-century.
- Take account of the vulnerable medical conditions and disabilities of claimants, and the risk of further injury and disability if they are required to engage in the workplace.

2.1.2 ESA50—Limited capability for work questionnaire

2.1.2.1 The ESA50 is the DWP application form for the ESA benefit, and is called “Limited capability for work questionnaire”. The limited guidance on the form, talks about the day-to-day activities, and does not discuss the context of work. The first seven pages are entitled “about you”, and ask for information about illness, disability, care, treatment etc. Part 1 asks questions related to the physical descriptors of the WCA, and part 2 asks questions related to the mental descriptors of the WCA. Again these sections make no reference to a working environment, and ask questions relating to every day domestic situations.

2.1.2.2 The ESA50 gives no guidance to the benefit applicant that the WCA assessment is to consider activities in a work setting, where activities would be expected to be undertaken reliably, repeatedly and safely. That is to say to be undertaken on a bad day as well as a good day, to be repeated a number of times as part of the working day, and to be undertaken safely without injury, pain or further injury. For example, the fact that an applicant can fill in a form over a number of hours or days, does not constitute an ability to write within working environment.

2.1.2.3 Furthermore, the ESA50 in parts 1 and 2 are not directly related to the WCA descriptors as set out in regulations. This is particularly the case in section 6 (manual dexterity). In this section the WCA has 9 descriptors with points ranging from 6 to 15, however section 6 of ESA50 Part 1 condenses these descriptors into a choice of one of three tick boxes against a single statement referring to seven activities, with the question “Can you use your hands to do things like?”. This form of questioning is very unhelpful to the claimant, and it is likely that he will not properly consider each descriptors, and increases the likelihood of the claimant and his disability being misunderstood. It increases the reliance on the claimant to enter text on the form, and the reliance of the medical adviser and decision making to understand and take account of the text. In our experience of Incapacity Benefit decision making, the decision maker and the medical adviser do not appear to take any notice of text on the IB50 (further details provided in section 2.2.3).

2.1.2.4 The ESA50 should be redrafted, it should include guidance to the claimant that the physical and mental assessment is based on a work setting and not a domestic setting, and that the ability to undertake the descriptors should take into account reliability repeatability and safety, and are not intended to be simply a measure of being able to undertake the activity once in isolation.

2.1.2.5 The ESA50 should also be redrafted to ensure that its questions are compliant with the descriptors set out in the relevant regulations.

2.1.3 ESA85 Medical Report Form

2.1.3.1 The ESA85 is the form used by ATOS Medical Services to report to the decision maker his assessment of the claimants suitability for work. It has sections addressing the history of the case and background, medication, and also assesses the WCA physical and mental descriptors (as set out in regulations, rather than as set out in the ESA50).

2.1.3.2 In most cases was the ATOS Health Care Professional (HCP) will use the ATOS LIMA software application to generate the ESA85, there is also provision for a paper-based ESA85. In both cases the report is compiled by the HCP during the assessment, the claimant is not provided with sight of the content of the report, and any requests by the applicant for a copy of the report at the assessment are refused.

2.1.3.3 We have requested further information from DWP on LIMA, but these requests have been refused. From the Training and Development ESA Handbook (MED-ESAHB-001) we understand that the LIMA application includes preset text that the HCP can select and drop in to the ESA85 report at the click of a button, rather than specifically compile an appropriate set of comments for each claimant.

2.1.3.4 From our experience of the IB85 (for incapacity benefit) which also used LIMA, claimants have found that the IB85 has often misrepresented what they have told the HCP.

2.1.3.5 The claimant is refused requests for sight of, or a copy of the ESA85 (or IB85) at the assessment. A copy is only provided after several weeks or months if it is requested. In the case of an ESA claimant I accompanied to the Ealing Broadway JCP Medical Centre in mid July for ESA assessment, the HCP refused to provide a copy of the ESA85 at the time. The claimant subsequently made multiple telephone and written requests to the JCP for a copy of the report, and had not been provided with a copy by the WFHRA in mid

August, which I again attended. In fact the JCP had advised the claimant that JCP had not received the report from ATOS. This was clearly not the case since the decision maker had provided the claimant with his decision.

2.1.3.6 This lack of transparency and accountability is not helpful, and is not acceptable. It adds significantly to the frustration and lack of confidence in the benefit claiming system for a vulnerable claimant. The ESA85 should always be provided to the claimant at the assessment, and an opportunity should be provided for the claimant to raise concerns over the accuracy of the information that the HCP has reported that the claimant has provided.

2.1.4 Work Focused Interviews (WFI)

2.1.4.1 We understand that the JCP subcontract to suppliers of work focused interviews services who are paid by results, dependant on the number of claimants they place into work.

2.1.4.2 In the case of an ESA claimant that I have recently helped, the JCP advisers have agreed that she is in no condition to consider going back into the working environment at the moment due to her multiple medical conditions. In fact she was asked to take early retirement by the government department that she worked for earlier this year due to her incapacity caused by her medical conditions.

2.1.4.3 However the private provider has been “chasing” this vulnerable claimant, and telling her that she must attend the interviews. This is causing significant distress to the claimant.

2.1.4.4 We understand that the incentive for the private providers is approximately £4,000 per claimant that they place into work.

2.1.4.5 Surely parliament did not intend private providers to make profit out of harassing vulnerable and disabled citizens?

2.1.5 DWP review of WCA descriptors

2.1.5.1 Earlier this year RSI Action and other charities were invited to attend internal DWP review meetings to consider the newly implemented WCA descriptors. The charities were concerned at the limited time over which the WCA had been operating, and the limited opportunity to see how the new system affected claimants. However several charities including ourselves agreed to take part.

2.1.5.2 The DWP invited a small panel of their expert advisers. DWP members and their advisers were provided with a number of specific cases to be considered, whereas charity representatives were denied access to such information. RSI Action and other charities have been concerned at the limited experience within the DWP representatives and experts on the workplace and social impact of disabilities, that should be taken into account in assessing the ability of a disabled person to work. RSI Action has written two letters to DWP raising its concerns on this process, and is concerned that the issues raised have not been adequately considered by DWP. Having seen the DWP proposed changes to the WCA that we understand will be presented to the Secretary of State for approval, we are very concerned that the WCA will migrate even further from the intent of primary legislation, to provide benefit for those who have limited capability for work.

2.1.5.3 A particularly alarming change that we understand will be proposed to the Secretary of State, is to replace using a pen or pencil, with “making a purposeful mark”! Such a descriptor takes no account of the ability of the claimant to use a pen or pencil for the purpose for which it was designed, to write legible text in a reasonable time so that others can understand what has been written. This is just one example of where the DWP appear to be changing the WCA to reduce the number of ESA claimants, rather than to ensure that the vulnerable in society who parliament intended to provide benefit for, receive that benefit.

2.1.5.4 In the case of RSI sufferers, the Department of Health and DWP appear to be doing very little to prevent healthy workers getting RSI conditions, they are not providing the necessary treatment to enable recovery from RSI conditions, and are not providing any effective assistance to find work which will does not cause further deterioration of their conditions.

2.2 *Are there sufficient numbers of decision makers and is the training they receive adequate?*

2.2.1 Concern at poor training for DMs and HCPs

2.2.1.1 RSI Action is very concerned at the inadequate training of medical advisers to the decision makers and decision makers. RSI Action is not alone in this concern, discussions with other disability charities, and the delegates of workshop 8 at the DWP Welfare Reform Bill Consultation in London on 15 September 2008, show that many charities share our concern.

2.2.2 Absence of formal training for HCPs on disability conditions

2.2.2.1 The Training and Development ESA Handbook (MED-ESAHB-001) has been published to provide HCPs (health care professionals) who undertake the ESA medical assessments with information on how the assessments should be undertaken. In section 3.5 the manual provide guidance on specific physical conditions, and refers to a CD-ROM (evidence-based protocols for the disability analyst) which the HCP is advised to obtain from their local unit. RSI Action requested a copy of the CD from the DWP Deputy

Chief Medical Adviser. DWP provided us with the CD entitled “252 Evidence Based Protocols for the Disability Analyst V1”. The CD included four sections each containing a number of protocols (Cardiorespiratory—14 protocols; Mental Health—12 protocols; Musculoskeletal—10 protocols, and; Neurological & Infections—6 protocols). In total there were 42 protocols rather than the 252 in the title of the CD. Requests for clarity from DWP and ATOS on this issue have failed to identify how many protocols they should be, and whether we have been provided with all of them. However what is very clear is that we have not been provided with any protocol relating to RSI conditions.

2.2.2.2 This underlines and supports the concern of RSI Action that HCPs and DMs are not adequately trained in RSI conditions to undertake assessments as to whether individual RSI sufferers have limited capability for work due to their physical condition.

2.2.2.3 Similarly there may be other disability conditions for which decision makers and their advisers are not adequately trained.

2.2.2.4 DWP have advised that HCPs do not need to be trained in specific disability conditions, however this is not substantiated by the frequent references to specific conditions in the ESA Handbook, including detailed information on Tinnitus and Meniere’s disease on page 76 of the Handbook. Without specific information on different disability conditions, it is very likely that HCPs and DMs will be unable to make the right decision for vulnerable disabled claimants, resulting in refusal of benefit, and risking further injury and disability.

2.2.2.5 Information and training on disability conditions for decision makers and their advisers should be placed in the public domain, to ensure that charities and other experts on these conditions have an opportunity to review such information and training, and ensure that DWP staff, their advisers and subcontractors are adequately trained to meet the requirements of primary legislation.

2.2.3 Training problem for DMs and HCPs identified in IB appeal cases

2.2.3.1 On 9 March 2009, RSI Action had a meeting with the Minister for Welfare Reform (Tony McNulty) at Caxton House. One of the concerns that we raised with the Minister was the failure of the ATOS Health Care Professional (HCP) and the JCP Decision Maker (DM) to recognize the limited capacity for work due to RSI conditions. We provided four cases in which RSI sufferers had claimed incapacity benefit (IB), and in all cases the claimant scores on the IB50 were in region of 60–90 points, whereas the HCP scored only 0 or 1 point on the medical report (IB85), which was apparently rubberstamped by the DM. In each case the claimant appealed and went to tribunal, which RSI Action attended. In each case the tribunal quickly came to the view that at least 15 points should be awarded, and in each case the appeal was allowed. In two cases there were medical reports from the previous employer or the insurance company that clearly stated that the claimant was unfit for work which involves repetitive use of the upper limbs to any extent.

2.2.3.2 RSI Action provided written details on these cases to the Minister, details have also been provided to the DWP Deputy Chief Medical Adviser. RSI Action is not aware of any action taken by DWP following provision of this data.

2.2.3.3 The Minister agreed that it was clear that there was a significant training problem that should be addressed.

2.2.3.4 Copies of the information provided to DWP on these cases is attached to this submission (see annex).

2.3 *Is the decision making process clear to claimants?*

2.3.1.1 No comment.

2.4 *How effective is the review stage of the decision making process?*

2.4.1.1 No comment.

2.5 *Is DWP effectively addressing official error?*

2.5.1 Benefit fraud and official error

2.5.1.1 *The Guardian* reported on 8 July 2008, that the DWP Permanent Secretary (Sir Leigh Lewis) reported to the Commons Public Accounts Committee a loss of £1.9 billion (1.51%) from errors and £800 million (0.63%) loss due to fraud in the previous year. The report further identified that whilst the amount of benefit fraud was falling, the loss due to error had almost doubled year on year.

2.5.1.2 Despite the official recognition by DWP and the Public Accounts Committee, of the low and falling level of benefit fraud, and the ever increasing level of official error, government ministers, DWP information and press reports continue to focus on benefit fraud, to the extent that bone fide and vulnerable benefit claimants are being persecuted and are living in fear of being branded a benefit fraud. Whilst RSI Action certainly does not condone any form of benefit fraud, it is very concerned that the constant focus on benefit fraud is disproportionate to the very small levels of actual fraud, and is resulting in victimisation of the most vulnerable in society.

2.5.1.3 Over the last year or so there have been a number of high-profile Green Papers and White Papers and other DWP publications, that make frequent reference to benefit fraud, and no mention of any provisions to address official error. As the evidence shows above, the losses due to internal errors are increasing significantly year on year, and in 2008 were two and half times losses due to benefit fraud. If the trends identified in July 2008 continued, benefit lost due to error will now be over five times that due to benefit fraud.

2.5.1.4 DWP should be more concerned about giving the right to benefits to vulnerable claimants, rather than focusing so intently on benefit fraud, and in the process denying genuine vulnerable claimants from the benefit intended by Parliament.

2.6 *How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)?*

2.6.1.1 No comment.

2.7 *How effective has DWP's Decision Making Standards Committee been in monitoring front-line decision making?*

2.7.1.1 No comment.

2.8 *Is decision making taking account of the October 2007 European Court of Justice ruling on exporting DLA, AA and carer's allowance?*

2.8.1.1 No comment.

3. APPEALS

3.1 *How does the appeals system work from the claimant's perspective?*

3.1.1 Appeal process from the claimant's perspective

3.1.1.1 The appeal process is very important, as it does provide an independent to challenge a DWP decision. However the appeal process is very daunting, challenging and stressful for a genuine claimant.

3.1.1.2 The latest report (2007–08) by the President of Appeal Tribunal's, states that 54% of incapacity benefit claims that had been turned down by DWP have gone to appeal, and have been overturned by tribunal's. Rather than DWP reviewing its decision making process, DWP has advised that it would make the new ESA process more robust. Does this mean that the ESA process is designed to remove any potential basis for legitimate benefit claims to be successful at tribunal?

3.1.1.3 The conclusions of the above report, highlight the same problems with the DWP decision making process that have been experienced by RSI Action and those disabled with RSI conditions, ie:

- Underestimating the severity of appellant's disability reliant on the ATOS healthcare reports to the exclusion of other evidence.
- Quality and use of medical evidence.
- Absence of contact by the decision maker with the appellant to seek additional evidence, to discuss the grounds of appeal, or to seek resolution prior to a tribunal hearing.
- Decision maker "trumping" the appellant's account by a medical report, without any reasoned attempt to weigh or reconcile what is variously said.

3.1.1.4 The reports later shows that incapacity benefit tribunal's concluded that in 30% of cases the medical report underestimated the severity of disability, and in 44% of cases the tribunal formed a different view of the same evidence.

3.1.1.5 From the claimant's perspective much more should be done to provide the right decision in the first place without the need to go to appeal. As tribunals are overturning a significant number of DWP decisions, DWP should review their decision making process to identify why the decision-makers have failed to identify genuine claims.

3.2 *How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon claimants' experience of the appeals process?*

3.2.1.1 No comment.

3.3 *Is the timeframe of appeals reasonable?*

3.3.1.1 No comment.

3.4 *Is sufficient support available to appellants during the appeals process?*

3.4.1.1 No comment.

September 2009

Annex

ATTACHMENT 1 TO RSI ACTION SUBMISSION (DATED 7.9.09) TO THE SELECT COMMITTEE INQUIRY INTO “DECISION MAKING AND APPEALS IN THE BENEFITS SYSTEM”

This information is referred to in Section 2.2.3 of the above submission.

Case 1—Ms B. DWP/ATOS failed to recognise limited capacity for work due to RSI condition.

Ms B was a computer user for a US computer company until 2003. She was a hard worker, worked long hours as required by the company, but the company was not compliant with DSE regulations.

In 2003 she had an RSI injury, saw a rheumatologist. She had to leave her job because of her disability.

Ms B applied for IB in May 2005, which resulted in a PCA score of 90. Medical services assessed her in August 2005, with a PCA score of 0. The decision maker followed the advice from medical services and refused IB.

An appeal in September 2005 upheld the decision maker.

Despite the appeal decision maker stating that [. . .]

“I have reconsidered the decision, taking account of all the evidence and information available”, [. . .] it is clear that the decision makers did not taken into account the GP and consultant medical information, and decided to completely disregard evidence from the claimant.

Following the appeal decision to refuse IB, Ms B had no alternative than to seek work. She took a job, and after less than three days, found that RSI condition was worse than it had ever been. She could not complete the first week’s work, and her job was lost. She took the case to a tribunal in February 2006. Stephen Fisher (RSI Action chairman) accompanied her to the tribunal, and also took advice from Dr Moira Henderson (who was responsible for the PCA within DWP’s Corporate Medical Group). Moira had explained that examining doctors should take into account repeatability, reliability and safety in making assessments.

The tribunal very quickly came to a conclusion that Ms B could not use a pen or pencil, and therefore qualified for at least 15 points, and was granted IB.

I have been in contact with Ms B since February 2006, and have also accompanied her to see specialists at University College Hospital, London. Her condition is still extremely vulnerable, she is unable to use public transport, and reliant upon others for basic support of living. She is undoubtedly suffered further injury and disability following the incorrect decisions of DWP in 2005.

	<i>physical descriptors</i>	<i>mental descriptors</i>	<i>total</i>
IB50 (claimant)	90 points	0 points	90
IB85 (ATOS)	0 points	0 points	0
decision maker	0 points	0 points	0
tribunal (Feb 06)	≥15 points	not considered	≥15 points

Case 2—Mr P. DWP/ATOS failed to recognize limited capacity for work due to RSI condition.

Mr P was employed as a billing officer for his local council from 1988 to 2006 when he was dismissed on the grounds of incapacity due to his work-related upper limb disorder.

As his computer work became more intense and involved more mouse work, Mr P’s condition developed to the extent that he had a shoulder operation and a carpal tunnel release operation. However the operations were not successful and his condition became more disabling.

In April 2006, a specialist registrar in occupational medicine was asked by his employer to report on Mr P’s condition, his capability and future employment prospects.

The employers consultant stated:

“In the circumstances it seems clear that Mr P is currently unfit for work which involves repetitive use of his upper limbs to any extent.”

There was a significant amount of medical evidence from Mr P’s GP, consultants, his employers occupational health advisers, and their specialists. It was clear that Mr P was no longer able to undertake his work (which was computer-based), and his condition was unlikely improve in the foreseeable future.

Mr P's application for incapacity benefit in August 2006 was refused, in November 2006, giving a PCA score of 0. He appealed and attended a tribunal in April 2007. Stephen Fisher (chairman of RSI Action) accompanied Mr P.

The tribunal upheld the appeal, and found that the appellant satisfied the personal capability test in that he cannot reliably and repeatedly undertake a range of tasks involving use of his hands and forearms.

	<i>physical descriptors</i>	<i>mental descriptors</i>	<i>total</i>
IB50 (claimant)	TBA points	0 points	TBA
IB85 (ATOS)	0 points	0 points	0
decision maker	0 points	0 points	0
tribunal (April 07)	≥15 points	not considered	≥15 points

Case 3—Mr N. DWP/ATOS failed to recognize limited capacity for work due to RSI condition.

Mr N suffered significant RSI disabilities, resulting in being unable to use a computer or write, and resulted in him losing his job. He also had complications with stomach pains, and the loss of 10 kg in weight. He was undergoing investigations at leading London hospitals for nerve injuries.

Mr N applied for incapacity benefit, his IB50 form PCA points were 59. He was assessed by medical services in July 2007 and was awarded zero points. The decision maker followed the advice of medical services, awarded zero points and refused incapacity benefit. Mr N appealed and in August 2007 the appeal upheld the decision makers decision.

Mr N appealed for a tribunal which were as heard in November 2007.

The DWP decision maker submitted an 8 page submission to the tribunal, with 19 references to commissioner decisions, and 26 references to Acts and Statutory Regulations. The submission appears to have lost any rational consideration of the facts that would be expected of a government department. The submission was wholly inappropriate, and clearly intended to intimidate a vulnerable and disabled claimant.

This commitment and blind faith in ATOS medical advisers is astonishing. How can the opinion of a doctor who has never seen before, and has no specialism or understanding of the medical condition of the claimant, be considered over and above medical opinion of the claimant's GP and specialists?

The tribunal decision considered two of the prescriptions within the PCA could not be undertaken by Mr N, and consequently awarded 16 points, and overturned the decision makers decision. Stephen Fisher (chairman of RSI Action) accompanied Mr N to this tribunal.

	<i>physical descriptors</i>	<i>mental descriptors</i>	<i>total</i>
IB50 (claimant)	59 points	0 points	59
IB85 (ATOS)	0 points	0 points	0
decision maker	0 points	0 points	0
tribunal (Nov 07)	≥16 points	not considered	≥16 points

Case 4—Ms M. DWP/ATOS failed to recognize limited capacity for work due to RSI condition.

Ms M had worked for 12 years as a tax manager in her last employment, which involved significant computer work.

The financial systems in the office were changed to a paperless system resulting in a higher intensity of computer work. Shortly after this change in the summer of 2003 Ms M encountered pain and discomfort in her hand and arms which were then diagnosed as diffuse RSI. This resulted in increasing disability, and loss of her job on 31 March 2006.

Ms M had an employment insurance policy that would make a payment to her in the event of a health problem preventing her from working. Her insurers arranged an independent medical examination to establish her eligibility for payment under the policy.

Ms M was examined for 1½ hours in August 2007, and the consultant occupational physician wrote his report. He stated in his opinion Ms M had seen the right kind of specialists and received very good advice. He could not suggest any further effective treatment. He stated it was his opinion that "Ms M is totally and permanently disabled from following any occupation".

He stated "The reason for this is that she has been suffering from these complaints since 2003 and treatment has not really make any difference. Only refraining from activity has made a difference. Whilst some people might argue that the recovery is not impossible, I would say that, four years after the initial and onset of the problems in her hands, and after extensive treatments including refraining from work, little

progress has been made. It therefore appears unlikely that a significant recovery can be achieved so that Ms M could return to work on a regular and effective manner, as virtually any form of work needs the use of hands, even with significant adjustments to the job.”

Ms M completed the IB50 on 17 January 2008. The IB50 response resulted in a PCA score of 66 points. On 21 April 2008 medical services undertook a medical examination and awarded one single point. Despite medical evidence provided by the claimant, in particular the letter from the independent consultant occupational physician, the examining doctor considered that the claimant had no physical limitations that would prevent any of the PCA activities being carried out reliably, repeatedly and safely. In June 2008 the decision maker accepted all recommendations from medical services and consequently decided not to provide IB. The decision was appealed, still resulting in no IB.

The decision was taken to a tribunal in February 2009, and the tribunal fully accepted the genuine nature of the claimants disabilities, and the independent nature of the medical report provided to the insurance company. The tribunal upheld the appeal, and awarded 15 points for being unable to write. (The tribunal do not judge all of the descriptors, they only judge sufficient descriptors to decide if incapacity benefit should be awarded). Stephen Fisher (RSI Action chairman) accompanied Ms M to the tribunal.

Scrutiny of the IB85 shows that the medical assessor had failed to understand the disabilities associated with RSI, had made many unfounded statements, and had not taken reliability, repeatability and safety to consideration. It appears to be a matter of policy within DWP and ATOS not to show the claimant AB85 form at the time of the assessment. This is only made available some months later if specifically requested by the claimant. The claimant has no opportunity to question or challenge any statement made by the medical examiner, or any option selected by the medical examiner.

	<i>physical descriptors</i>	<i>mental descriptors</i>	<i>total</i>
IB50 (claimant)	66 points	0 points	66
IB85 (ATOS)	0 points	1 point	1
decision maker	0 points	1 point	1
tribunal (Feb 06)	≥15 points	not considered	≥15 points

Memorandum submitted by WorkDirections (DM 08)

1. WorkDirections, as part of the international Ingeus group of companies, delivers welfare-to-work services in the UK, France, Sweden and Germany. Since 2002 we have helped individuals into employment through our Private Sector Led New Deal, Employment Zone, and New Deal for Disabled People (NDDP), London Development Agency, European Social Fund and Pathways to Work programmes. We have been awarded two Flexible New Deal contracts for Leicestershire, Northamptonshire and Nottinghamshire and also for Edinburgh, Lothian and Borders, Lanarkshire and East Dunbartonshire, Ayrshire, Dumfries, Galloway and Inverclyde.

2. In terms of this inquiry, WorkDirections’ primary concern is how the benefit decision making and appeals process interacts with welfare-to-work provision and the support we provide in helping people into sustainable employment.

3. In this context, we believe that an effective decision making and appeals process is timely, consistent and transparent. It should promote an understanding of the rights and responsibilities of claimants and ensure that they are able to access support to help them move back to work.

4. For those who are receiving conditional benefits, the decision making regime should act to link the cause of the sanction (non-attendance or non-compliance) with the effect (benefit reduction). The process must be timely, consistent and fair in order to support changes in the behaviour and attitude of clients. It is imperative that sanctions are not applied as a result of lack of understanding or poor communication.

5. Since the last reform of decision making and appeals the role of the private and voluntary sector in DWP delivery has grown. However, changes to programme delivery, benefits and conditionality have not been matched by investment in the systems and processes that support timely, consistent and transparent decision making.

6. Currently across all the programmes we deliver there is a time-lag between the act of non-compliance and the implementation of a sanction which can undermine efforts to engage clients and change attitudes and behaviours.

7. The interaction with the decision making and appeals system is part of the administrative cost of delivering DWP programmes for providers. When the system is operating inefficiently it takes away resources from engaging clients and helping them into work. With a high rate of clients appealing decisions and being successful in their appeals, there is a need to review the system to increase efficiency.

8. With contracted provision for Jobseeker's Allowance (JSA) claimants currently in transition to Flexible New Deal, our submission will predominantly focus on decision making and appeals in relation to clients claiming health-related benefits and engaging on the Pathways to Work programme.

9. There are significant ongoing challenges with decision making in relation to eligibility for Employment and Support Allowance (ESA) and the Work Capability Assessment (WCA). Delays in the assessment phase and a lack of coordinated communication with clients and providers is leading to inefficient resource use on Pathways to Work and confusion and distress for claimants.

10. The introduction of the Flexible New Deal offers an opportunity to improve upon the decision making and appeals procedure for JSA claimants and learn lessons from previous provision. Processes need to support transparent, clear and consistent decision making and all stakeholders (decision makers, providers, clients) need to have a shared understanding of what the rules mean and how they will be applied. The role of the decision making and appeals system must be part of the planning for transition in employment programmes. Decision makers and provider staff must have received sufficient training to ensure that the new programme will interact with the system in an efficient way.

DECISION MAKING AND APPEALS ON PATHWAYS TO WORK

11. WorkDirections highlighted challenges with decision making and conditionality in a paper which fed into the Gregg Review in November 2008.⁴

12. There are two main areas of concern in relation to the decision making and appeals process for people claiming health-related benefits. These are decisions about eligibility for ESA and decisions about compliance with the requirements of an ESA claim. There are considerable concerns about the effectiveness and efficiency of the decision making system in both of these situations.

Decision making based on the Work Capability Assessment

13. The Work Capability Assessment (WCA) is critical to decision making in relation to ESA. The WCA identifies how a client's health condition or disability affects their ability to work and plays an important role in determining their entitlement to benefit.

14. When individuals initiate a claim for ESA the first 14 weeks are an assessment period when they are placed on the basic rate of the benefit which is equivalent to JSA rates. The intention was that claimants' WCA would be completed within those 14 weeks and then once a decision had been made that they were eligible for ESA and had been placed in the Work-Related Activity Group (WRAG) they would be referred to the Pathways to Work programme.

15. ESA claimants are being referred to Pathways to Work after 14 weeks of initiating a claim but for the majority of clients this means they are being referred before they have had their WCA. Providers begin the cycle of mandatory monthly Work Focused Interviews at the point of referral despite the fact that the WCA (which is the basis of the decision making about eligibility for ESA) has not taken place.

16. The consequences of this delay in decision making about eligibility for ESA as a result of delayed WCAs are significant—both for individuals claiming the benefit and for Pathways to Work providers.

17. At the time of writing, over 50% of the WorkDirections caseload at week 14 of the Pathways to Work programme (28 weeks after their original claim) have not received notification of the WCA results (and thereby benefit eligibility). By this point they are potentially over half way through the mandatory cycle of Work Focused Interviews.

18. For some clients, who are later placed in the ESA Support Group as a result of the WCA, it can mean that they are expected to attend mandatory interviews despite the fact they may be undergoing treatment or be terminally ill. This causes great distress to the individuals concerned and their families. These clients' participation can be deferred until after their WCA but by this point they will normally have had to attend at least two interviews (one with Jobcentre Plus and one with the Pathways to Work provider).

19. Currently the majority of clients are having their claim for ESA refused following their WCA.⁵ The information available to clients about why their claim for ESA has failed is patchy and a high number of clients appeal. Whilst clients are awaiting the results of their appeal, it can be difficult to motivate them to engage with work-related activity.

20. For the clients who "fail" the WCA, this can lead to a sense that they have been "penalised for trying". As a result of engaging with the programme, improving their ability to manage their health condition, and by considering moving into work their claim for ESA is refused and their access to support through Pathways to Work is denied.

21. For providers, the impact is significant. In one of our offices, 50% of all clients who started the programme over a six-month period failed their WCA and left the programme. These clients will have been attending the monthly Work Focused Interviews as a minimum and may have also been engaging in

⁴ Jordan, Hannah (2009) Conditionality and Pathways to Work, WorkDirections November 2009 <http://www.workdirections.co.uk/>

⁵ Barker, Alex (2009) Sickness benefit threatens political side effects *Financial Times* 12 July 2009.

voluntary elements of the programme including accessing condition management services. In some instances clients have actually completed the five monthly interviews (the mandatory element of the programme) before it is decided they are ineligible.

22. It is costly for providers to invest in support for clients who have joined the programme and engaged with it before their eligibility for the benefit and the programme has been determined. These costs were not included in financial modelling undertaken by providers for Pathways to Work. This is because the decision about eligibility for the programme and ESA was due to take place during the assessment phase (before clients were referred to providers).

23. The administrative burden of the decision making and appeals process has reduced resources available for engaging clients and helping them into work (the Pathways to Work programme's objective). Providers cannot recoup the investment in clients who move off the programme. They have only six weeks to work with a client after their claim for ESA is closed (the tracking period). Some clients do move into work during this period but it is a small percentage of those clients who "fail" the WCA. 70% of funding for Pathways to Work is linked to a client moving into work.⁶

24. In addition, in terms of performance measurement, the people that exit the programme are still included in start figures. This means that the conversion ratios measuring mandatory starts to job starts are distorted. If, for example, 50% of clients leave the programme due to a decision being made against their eligibility for a benefit, performance figures will be significantly affected. To achieve the performance offer with this measurement, with 50% of clients leaving the programme, a provider will have to achieve double the number of job outcomes that were originally offered.

25. Ofsted and DWP's Star Ratings use the conversion of programme starts to job outcomes to measure performance and assess quality of provision. For Pathways to Work programmes, given the high levels of clients who leave when a benefit decision is made, this will not fairly reflect provider performance or the quality of their service. In addition, if delays in decision making and rates of failure of WCA vary between different areas, comparative provider performance data and wider comparisons with Jobcentre Plus-led Pathways to Work will also be unfair.

Decision making on benefit sanctions

26. Mandatory Pathways to Work clients must attend a minimum of five monthly Work Focused Interviews with a Pathways to Work provider, as well as the initial Work Focused Interview with Jobcentre Plus.

27. The decision making on benefit sanctions has multiple hand-offs included in the process. This includes several different departments within Jobcentre Plus (frontline delivery offices, Benefit Delivery Centres, payment teams). At any point information can be lost or not delivered to providers and clients. Data is stored on several different and incompatible systems and often it relies on paperwork being passed back and forth.

28. On Pathways to Work once a referral for a sanction has occurred providers are not allowed to contact a client or engage with them on the programme until they have been notified of the decision. It can take several months for a notification to be received and with some regularity they are not received at all. This is disruptive to the process of engagement and activation which is critical in the process of supporting people into work.

29. It has not been possible to track each individual referral and decision to analyse the outcomes (sanction applied, sanction not applied) and whether providers and clients are notified in a timely fashion. However, the data that WorkDirections has collected for May, June and July 2009 highlights considerable areas of inefficiency and concern. In this period 1919 clients were referred for a sanctions decision and we received notification of 603 decisions. Of those 45% resulted in a benefit sanction being applied. From this information it seems reasonable to conclude that providers are not always receiving notification of decisions and that Jobcentre Plus decides that sanctions will not be applied in the majority of cases.

DECISION MAKING AND APPEALS AND FLEXIBLE NEW DEAL

30. The introduction of the Flexible New Deal offers an opportunity to monitor the effectiveness of decision making for JSA claims and make improvements where necessary.

31. As on all programmes, the efficiency of the decision making and appeals process will partially be determined by whether those referring clients for a decision and those making the decision have a shared understanding of the process and reasons for referral. The technical language involved in decision making and appeals can often be difficult for those making referrals to understand. If the right language or forms have not been used referrals may be returned to the provider or the referral can be rejected and sanctions are not applied to the client's benefit.

⁶ 30% of contact value is paid as service fee, 50% is paid when a client enters work and 20% is paid when a client remains in work after 26 weeks.

32. The proposed system for Flexible New Deal has eight different forms for referral for sanction or raising a doubt on someone's claim. It will be difficult for advisors to differentiate between the reasons for referral as the definitions are overlapping and confusing for five of the forms (see below). Using the wrong form will constitute a deficient referral and therefore it will be sent back to the provider. The use of both prime and sub-contractors to deliver services may add layers of complexity and confusion.

33. Proposed Flexible New Deal referral forms:

Form 3	Customer was notified of a suitable opportunity but failed to apply for it or failed to accept it.
Form 4	Customer neglected to avail themselves of a suitable opportunity.
Form 5	Customer gave up a suitable opportunity.
Form 6	The customer failed to or refused to apply for or to accept suitable employment.
Form 7	The customer neglected to avail themselves of a reasonable opportunity of employment.

34. The speed of decision making will be critical. Whilst decisions are being made or clients are appealing it is difficult to engage clients. The quicker the decision is made the easier it is to maintain clients' momentum on a programme. In many instances, time lags in decision making can mean that the sanction on the client's benefit happens after the client has re-engaged with programme. This undermines the client's faith in the decision making and appeals system and can lead to significant challenges for providers in terms of keeping clients engaged and active.

CONCLUSION

35. WorkDirections welcomes the Committee's inquiry into "decision making and appeals". The quality of the interaction between the benefit decision making and appeals process and welfare-to-work provision must be improved. Confidence in the system is being undermined by the way it operates. Client experience and employment programme performance are being affected.

36. The current decision making and appeals process does not recognise the increased role of the private and voluntary sector in delivering DWP programmes. Processes must be reviewed to maximise efficiency and effectiveness when there are changes in provision or in benefits or conditionality. The introduction of Pathways to Work and ESA has highlighted the need to ensure that the system can respond to the roll-out of Flexible New Deal and lone parent conditionality and benefit changes.

37. There is significant potential to improve client experience and the performance of employment programmes through addressing issues raised in this submission.

September 2009

Memorandum submitted by VocaLink (DM 09)

SUMMARY

- VocaLink processes all automated payments in the UK, including 98% of state benefits.
- It is therefore in a unique position to identify accounts which have a high potential to be fraudulent, by highlighting unusual patterns of activity.
- VocaLink has already demonstrated to HMRC that a system of this kind can help to reduce fraud and error in relation to the payment of tax credits.
- Readily-available data could be accessed by front-line DWP staff in order to reduce fraudulent and erroneous payments before they are made.

1. VocaLink welcomes the opportunity to contribute a submission to the Work and Pensions Committee's inquiry into Decision Making and Appeals in the Benefits System. This submission deals with how decisions are made and how effectively to address official error.

2. VocaLink is a specialist provider of transaction services. We process all automated payments in the UK including Bacs Direct Debits and Direct Credits, the method by which 90% of salaries and 98% of state benefits in the UK are paid. This means that VocaLink is in a unique position to identify accounts which have a high potential to be fraudulent, by highlighting unusual patterns of activity. Once identified, details of these high risk accounts can be sent to government fraud teams for full investigation. VocaLink has already demonstrated to HMRC that a system of this kind can help to reduce fraud and error in relation to the payment of tax credits. We are currently seeking to persuade DWP to run a similar Proof of Concept exercise in respect of benefit payments.

3. The specific purpose of this submission is to demonstrate that readily-available data, which can be accessed without the need to develop a radically different IT solution, could be accessed by front-line DWP staff in order to reduce fraudulent and erroneous payments before they are made.

4. There is widespread agreement that the amount of money handed over either in error or to fraudsters is far too large, that the true scale of the losses attributable to these causes is unknown but could be many times greater than official figures suggest, and that if anything this problem will become worse as the temptation to cheat the system and the sheer number of claimants increase during the economic downturn. For all these reasons, together with the acknowledged inefficiency of measures to combat fraud and error, which it has been argued cost more than the sums recovered (Public Accounts Committee, Thirty-First Report, 2007–08), it is vital that serious efforts should be made to prevent fraudulent and mistaken payments at source—rather than having to claw back payments, where possible, months or even years later—or not at all.

5. VocaLink believes therefore that the question that should be asked is, “Do DWP officials, when scoring claims, have the information they need at that time?” It is important to note that the information does not need to be available in real time, since the payments method used—Bacs, operated by VocaLink—is a three-day payment system. Effectively, therefore, there is a 24-hour window in which checks can be made which could identify a high proportion of suspicious claims which would merit further investigation, and which would accordingly justify putting payment to the claimant on hold pending further inquiries.

6. What are these checks? Examples include:

- Has the account into which payment is being made been used previously for payment to another claimant? (ie are multiple claims being fed into one account?)
- If, for example, the claim is for Jobseeker’s Allowance, does the account into which benefit payment is being made also have a payroll payment associated with it? (ie is the claimant in fact employed?)
- Is someone claiming as a partner but living alone or receiving other benefits (HMRC or DWP) that are inconsistent with the claim being considered?

It is important to note that it is not necessary to make detailed inquiries about specific payments made into or out of an account, thereby protecting the privacy of claimants, merely whether particular types of payment (eg payroll) are associated with it; whether other benefit payments are also paid into the same account; or whether the account is linked to other suspicious activity, such as regular overseas ATM withdrawals or third-party accounts into which other accounts also feed. VocaLink, through the systems it runs, has access to this kind of qualitative transactional data against which accounts can be tested without divulging private financial information to the DWP front-line officer.

7. Although generally regarded as quite distinct, in terms of avoiding unwarranted payments fraud and error are indistinguishable. The key differentiator is intent (an honest mistake as opposed to an intent to deceive), but from the point of view of running checks against claims the same types of queries will establish whether there are any indicators in the payee’s account which would render a claim invalid.

8. Once suspicions are aroused about an account into which benefit is to be paid, there needs to be flexibility to allow payments to continue in order to track the fraud through the system. For example, VocaLink managed data would enable fraud to be tracked across different accounts in different banks, ultimately for example revealing where money is being withdrawn from ATMs and enabling law enforcement agencies to make arrests of others involved in the fraud in addition to the false claimants.

9. In summary, in order truly to tackle fraud and error, it is vital that DWP moves away from a mindset that makes the default position to “pay first and investigate later”. Obviously it is important to alleviate suffering if a claimant is genuinely in need, but in fact genuine need can be met in a timely fashion and fraudulent or invalid claims identified (or at least those which have a high probability to prove so) by utilising the time delay in payment reaching the claimant’s account. The alternative is to allow the continued leakage of scarce public resources to the undeserving, thereby increasing pressure on the public funding which can be used to help those genuinely in need.

September 2009

Anonymous (DM 10)

1. SUMMARY

- I have suffered from Multiple Chemical Sensitivity (MCS) since the early 1990s.⁷ MCS is not well understood by the NHS and appears to be even more poorly understood by the DWP.
- I was able to work until September 2004. My employer’s sick leave covered me for six months and then I went on to Incapacity Benefit. After a medical assessment in September 2005 my Incapacity Benefit was refused.

⁷ A medical condition manifested by recurrent symptomatic responses to chemical exposures at levels lower than previously or commonly tolerated. Symptoms occur at levels of exposure below those generally known to cause adverse human effects. This means that individuals with MCS have an acute hypersensitivity to the chemicals in everyday substances, including household cleaning agents, pesticides, fresh paint, new carpeting, building materials, newsprint, perfume, and numerous other petrochemical-based products. Individuals with MCS may experience headaches, burning eyes, asthma symptoms, stomach distress/nausea, lethargy, dizziness, loss of mental concentration, and muscle pain. Some individuals also suffer fever or even loss of consciousness.

- I appealed and advised the appeals service that they needed to accommodate my disability. Despite my efforts to cooperate with the appeals service they would not accommodate my disability and they went ahead with the appeal without me.
- I appealed again on the grounds that I had not been able to attend the appeal hearing and was granted another appeal, however by this time, due to a treatment that I was taking, I was having a lot of problems with side effects and so I was not able to pursue the appeal.
- I assume that the appeals service have once again held a hearing without me and rejected my appeal. As I am able to manage without the Incapacity Benefit, at the moment it is far better for me to concentrate on getting better and returning to work rather than battling with a system that seems intent on making my life as hard as possible.
- On the basis of my experience the decision making process is flawed as it failed to properly consider all the factors that affect my ability to work. The appeals system is also flawed since in my experience it actively worked to stop me from putting my case at the appeals hearing. I have included some recommendations on how to improve these problems.

Introduction

1.1 I have suffered from Multiple Chemical Sensitivity (MCS) since the early 1990s. For a number of years, thanks to the efforts of my private doctors, I was able to manage my condition using a number of vitamin, mineral and amino acid supplements. These worked by helping me to cope with the compounds that my body couldn't breakdown without assistance. However, my condition gradually worsened and in September 2004 I had to stop working. This was partially because it was impossible for me to function in a work environment due to all the fragrances and other chemicals (eg the chemicals released from carpets, paints, furniture and electrical equipment) that are present in a modern office environment, but in hindsight, mostly because the underlying cause of my MCS was overwhelming my body's natural processes.

1.2 In 2004 it was still unclear what was actually causing my problems. However, since then, thanks to some innovative medical testing that I have been able to do privately, it appears that my problems were due to cadmium and nickel poisoning. In my case, the cadmium and nickel appear to have been stored in the bones in my legs, and this has caused my body to produce toxins which have overwhelmed my natural ability to breakdown the chemicals that are now common in the environment. I say "it appears" because, due to my limited resources, I have focused on testing enough to convince me and my doctor of a course of action, rather than testing sufficiently to confirm the actual problem. As I have been unable to get any support from the NHS, this seems to be the best approach, and since the treatments that we have pursued have produced good results, I am satisfied with this as my main aim is to be able to start working again. However, it does have the downside that it will be difficult to convince anyone who is sceptical about my problems that I was actually suffering from a serious problem.

1.3 I can understand that in a situation like this, where there is no clear diagnosis and hence no clear prognosis, I might be subject to some extra scrutiny from the DWP. However, I don't believe that it should have been too difficult to assess my case and reach the conclusion that I was not able to work. Given that this wasn't the case, it looks like, since I didn't fit into any of the DWP's or the appeals services "boxes", that they just decided that it was easiest to deny my claim.

2. DECISION MAKING

2.1 The decision making process didn't work at all effectively in my case.

2.2 In the first instance, this is because the Incapacity Benefit application forms and the standard Incapacity Benefit assessment process were not designed to properly assess MCS and similar problems. As a result, I provided a lot of additional information about how MCS affected me plus the reports from my NHS GP and the contact details for my private doctor, but it is not clear to me that this was accepted as relevant to my claim.

2.3 I also believe that there were problems with the medical assessment carried out by Atos Origin in September 2005. In the first instance I was required to attend an assessment centre in Cambridge rather than in my home town. I agree to this because I had to attend an appointment at Addenbrookes Hospital, and so had to go to Cambridge anyway, but later found out from my GP that there was an assessment centre in my home town. It would have been much easier for me if I had had the assessment there. I now suspect that I was sent to medical examination in Cambridge rather than in my home town, in some sort of implicit test of my ability to work.

2.4 The medical assessment itself was a bit of a joke. Once again I provided additional information on how MCS affected me but this did not seem to be taken into account by the doctor when making his report. I also advised the doctor that I was undertaking a treatment at that time and suggested that I should be allowed to complete the treatment before any final decision was made. Also, the assessment centre had been recently refurbished and so was not a safe environment for me to be in. As a result my ability to respond to the doctor's questions deteriorated during the interview, though it appears that the doctor did not notice this, or if he did, he didn't take it into account in his assessment of my condition. As a result, I don't think that the doctor carrying out the medical assessment was appropriately trained to assess someone with MCS

and that therefore the report that he prepared was flawed. Due to the effort of attending the examination and my Addenbrookes appointment in Cambridge I was extremely ill for over a week afterwards, though I acknowledge that attending the appointment at Addenbrookes on its own would have had the a similar effect.

2.5 I think that I asked for a review of my case when my claim was rejected but from memory there was some complication here and I had to appeal against the decision to get a review. It is not clear to me how the review was carried out and whether the people doing the review had any knowledge of MCS and so were qualified to make a decision in my case.

2.6 I thought that my case was, although complicated, relatively clear cut given my medical history and the support that I had from my doctors and as a result I did not get any professional advice when making my claim. I now think that this was a mistake, though I think that it is entirely inappropriate for a welfare system to be set up so that the only way to get treated properly is to apply with the professional assistance.

2.7 The overall impression that I got from the DWP was that they were treating me as a cheat and a liar who was running some sort of scam. However, I think that even a moment's consideration would show how ridiculous this was. If I was trying to cheat the system:

- would I have spent as much money as I had on private medical treatment in an attempt to keep on working; and
- would I have come up with a condition that was so likely to fail the DWP's assessment process?

2.8 Further, would I be likely to be willing to give up a good income in favour of the very basic income that Incapacity Benefit provides?

2.9 The fact that these questions don't seem to have occurred to the DWP assessors seems to show how they prefer to blindly apply a set of rules rather than properly assess each case on its merits.

3. APPEALS PROCESS

3.1 The appeals system did not work at all in my case and it appears that the service was actively working to try and exclude me from the process.

3.2 When I applied for an appeal I advised the appeals service that I needed the appeal to be held in a location where I would not be affected by my MCS. Despite this I was given an appeal date and location and there was no reference to accommodating my MCS. The appeal date was in January or February 2006.

3.3 As a result, I contacted the appeals service to ask what they had done to make sure that the location was suitable. As they hadn't done anything, I agreed that I would check the location myself and advise them whether it was suitable. Unfortunately, the location made me ill and so I advised that it was not appropriate as I would not be able to represent myself properly. Despite doing this well before the appeal date, the appeals service decided to go ahead with the appeal and consequently I was unable to attend. I believe that this was an active decision by the head of the service, rather than something that happened by default, and given that the appeal service wasn't even prepared to accommodate my MCS, I have to question whether my appeal actually had any chance.

3.4 As the appeal went ahead without me being able to put my case it was rejected. When I was informed of this I appealed on the grounds that I had been prevented from attending the appeal hearing by the appeals service and was granted a second appeal. I informed them that this would have to be at a suitable location. However, at about this time I was undertaking another treatment that was giving me a lot of side effects and despite explaining this to the appeals service, I believe that they eventually went ahead and held another appeal without me being able to attend, this time because I was too ill to do so. At this stage I decided that it was not worth pursuing the appeal until I was well enough to do so and that it was far better for me to concentrate on getting better so that I could start working again. I have made significant progress in this area, but have still not been able to start working again. When I am able to work again, due to the long term damage that the cadmium and nickel poisoning has done to my body I will, however, have to work from home, so that I can have full control over my working environment.

3.5 Based on my experience I think that the appeals system is not something that can be negotiated without getting professional advice. I think that this is inappropriate.

4. RECOMMENDATIONS

4.1 The DWP needs to be better at dealing with people whose problems are difficult to diagnose and focus on the implications of a person's problems rather than the diagnosis (or lack thereof).

4.2 While a welfare system needs to be able to deal with a large number of people, it also needs to be able to deal with those people as individuals, rather than by trying to fit them into a predefined box.

4.3 Any system should be designed so that it can be negotiated by an ordinary individual without the need for professional advice.

4.4 The doctors who do the medical assessments for the DWP should be required to have a significant level of experience in the applicant's condition.

4.5 The appeals service should be required to accommodate conditions like MCS by holding hearings in environments that are safe for the appellant.

4.6 The medical advisor to an appeal hearing should be required to have a significant level of experience in the applicant's condition.

4.7 The NHS should be required to work actively on helping people get healthy enough to return to work. At the moment the NHS seems to see people on disability benefits as unworthy of any significant attention.

September 2009

Memorandum submitted by West Lothian Council's Revenues and Benefits Unit (DM 12)

HOUSING BENEFIT AND COUNCIL TAX BENEFIT—DECISION MAKING AND APPEALS

As professionals in the field of Housing Benefit and Council Tax Benefit Decision Making and Appeals, we wish to respond to the Committee's recent press release inviting submissions to the inquiry.

We feel that evidence from front-line benefit practitioners may be of some interest.

In our submission we focus on the first four questions in the Committee's press notice of 2 July 2009:

- How effective is the decision making process? Could it be improved, if so how?
- Are there sufficient numbers of decision makers and is the training they receive adequate?
- Is the decision making process clear to claimants?

In summary, our submission is as follows:

- It is recognised that Local Authority performance in administering HB/CTB has improved greatly over the last few years.
- In addition, reductions have been achieved in HB/CTB overpayments due to fraud and error. Official error is now at an all time low.
- It is generally recognised amongst practitioners that a catalyst for this was the DWP's Performance Standards Fund. Many Local Authorities benefited from this funding.
- A key part of this fund was devoted to the recruitment and training of new benefit decision makers.
- Housing Benefit is complex and difficult to administer. Part of the reason for this is the constant legislative changes.
- For a variety of reasons staff turnover in benefit administration remains an issue.
- The DWP recognise that staff new to benefits require comprehensive training delivered over a 13-week period. The DWP also recognised that such staff would not be fully productive for at least six months and funded the salary element for this period.
- We recognise that similar funding which included salary cost is unlikely to be available. However we feel that the training issue is of such importance that resources should be made available to support this.
- Pressures on Local Authority funds are extreme and are exacerbated by the reductions in HB/CTB Administration subsidy that impact upon funds that are available for training.
- Cutbacks on training amount to a short term solution to funding issues that cause medium and long term problems in benefit administration and service to the public. In addition the savings achieved nationally from a reduction in fraud and error overpayments may be at risk.
- We may have reached a watershed. The choice at its starkest is between funding the current system which is complex to administer and difficult for claimants to understand or simplify.

Improved Performance

1. It is generally recognised that Local Authority performance in administering Housing Benefit and Council Tax Benefit has improved markedly over the last decade. Performance measures such as the average time taken to process new claims show a dramatic improvement over the period from 2001–02 to 2007–08. At the start of the period the figure stood at 62 days. By 2008 this had reduced to 26 days on average. The latest figure for our own authority is less than 22 days. Clearly this is an important advance in helping our customers at a difficult time in their lives.

2. Similar improvements have been recorded in the time taken to process changes in a customer's circumstances. At the start of the period the figure stood at 17 days. By 2008 this had reduced to 11 days on average. The latest figure for our own authority is less than nine days. This is an important improvement,

not just for the customer but also for the accuracy of the benefit award. “Keeping it Right” timeously, throughout the life of a claim, as a customer’s income or household circumstances change, also reduces the likelihood of overpayments, fraud and error.

3. The most recent DWP National Statistics report shows that overpayments due to fraud and error have reduced by 10% since 2003. In addition official error is at “an all time low”

Performance Standards Fund

4. There may be a number of factors that contributed to this improved performance, but undoubtedly one significant factor was the existence of the DWP Performance Standards Fund. This fund provided for local authorities to put forward a series of local, joint, or national initiatives and bid for support from the DWP.

5. A whole host of initiatives were begun in such categories as Improving IT, including the widespread adoption of DIP and Workflow electronic advances; Engaging with Customers, through local travelling benefit buses or video links; and major redesigns of correspondence and customer guidance and claim forms.

Training needs

6. One of the most widespread and significant initiatives, however, was proposed by the DWP itself. Recognising that any staff turnover in Local Authority Benefit Sections would have a detrimental effect on processing times and could lead to serious backlogs of claims, and consequent delay and even hardship for customers, the DWP proposed, through the fund, to pay for the minimum required 13 week training programme for HB/CTB benefit decision makers.

7. Further recognising that these newly recruited and newly trained staff would not be fully productive for at least six months, the DWP proposed to fund their salaries for six months.

8. These measures were aimed, successfully, at increasing the pool of well-trained benefit decision makers—and avoiding the previous position where neighbouring local authorities would attempt to “poach” experienced staff from another authority to fill a hole in their own establishment. A strategy that, perhaps, temporarily assisted an individual authority but did nothing to counter the general problem.

Complexity and Simplification

9. The main reason that these initiatives were proposed and eagerly taken up, to good effect, by many, many authorities, was because it was widely recognised that such is the complexity of the Housing Benefit scheme that, however literate, numerate, and intelligent the pool of available labour to fill vacancies was, a lengthy period of training and familiarisation was absolutely necessary.

10. This remains the case. Indeed in a recent case before the Court of Appeal, Lord Justice Wall, in his concurring opinion, commented on the difficulties and complexities of the Housing Benefit scheme as follows:

“[. . .] it seems to me, the appellant cannot be criticised for either ignorance or incomprehension of the statutory regime. In my view it remains an apparently non-eradicable blemish on our operation of the rule of law that the poorest and most disadvantaged in our society remain subject to regulations which are complex, obscure and, to many, simply incomprehensible”.

Gargett v LB Lambeth EWCA Civ 1450

11. It remains vital to our customers, and to the public purse, that despite the complexities of the scheme, local authorities must continue to process Housing Benefit claims promptly and accurately.

12. It is recognised that, in the current economic climate, funding is not likely to be found to assist in the recruitment of staff new to benefits and to pay their salary costs until they are able to accurately perform a productive role as benefit decision makers.

13. Supporting the undoubted training needs that exist, however, is a different matter. Indeed not to resource this pressing need, a need recognised by the DWP for three years, may turn out to be a false economy.

14. In the absence of support for much-needed training, a radical approach to simplifying the scheme will be required.

September 2009

Memorandum submitted by Asbestos Victims Support Groups' Forum UK⁸ (DM 13)

INTRODUCTION

This submission is limited to decision making and appeals on Industrial Injuries Disablement Benefit for people with asbestos-related diseases.

SUMMARY*Decision Making*

1. Decision making is generally effective for occupational prescription, but some IIDB centres decisions are inconsistent within the centre and across centres. Decision making is far less effective for medical prescription.

2. A lack of training results in some inconsistent occupational prescription decision making and unacceptable deference to Medical Advisers' advice on medical prescription, resulting, in some cases, in an abdication of Decision Makers' responsibility to make decisions.

3. There is no transparency in criteria for assessment by Medical Advisers. The criteria should be freely available and the criteria should be incorporated into Decision Makers' training.

4. The review process should be made clearer to claimants.

5. The review process is often rendered useless in cases of medical questions due to lack of training.

6. The DWP fail to monitor medical services and there is no transparency in the outcome of complaints about medical services.

7. The fast-track system for fatal prescribed diseases is undermined by slow responses from other benefits sections.

APPEALS

— Appeals generally work well for asbestos disease appellants.

— Time frame is too long.

— Failure to respond to unavailability dates leads to cancellation and delay.

DECISION MAKING*A. Effectiveness*

1. Decision making is generally effective for occupational prescription, but some IIDB centres' decisions are inconsistent within the centre and across centres. Decision making is far less effective for medical prescription.

B. Numbers of Decision Makers (DMs) and their training

1. Decisions on employment prescription in different job centres are sometimes inconsistent. They are also sometimes inconsistent within those centres. The inconsistency within centres suggests lack of training for some staff or a need for further training. Adverse decisions, which are clearly inconsistent with decisions in identical cases, are usually corrected, but the time and cost and distress to claimants could easily be avoided.

At Appendix A we have provided case studies to amplify our concerns.

2. DMs are, however, prepared to accept further evidence of occupational prescription, but time and money could be saved by a more consistent approach.

3. The reduction of IIDB centres offers the opportunity for more consistent decision making and this is facilitated by meetings between DWP staff and claimants' representative groups. Meetings between Forum members and DWP staff have, we think, been instrumental in reducing inconsistencies. We think such meetings should continue.

4. Medical prescription is far more problematic. DMs appear to be unfamiliar with medical terminology. DMs are reluctant to question Medical Advisers' decisions because they are not confident, or knowledgeable, about medical prescription. For example, in one case, the Medical Adviser rejected a claim for diffuse pleural thickening (PD D9) because the costophrenic angles were not obliterated bilaterally. In this case the right costophrenic angle was obliterated. Despite the fact that prescription is for unilateral and

⁸ Asbestos Support Groups' Forum UK

Asbestos Action Tayside; Asbestos Support West Midlands; Barrow Asbestos Related Disease Support; Bradford Asbestos Victim Support Group; Cheshire Asbestos Victims Support Group; Derbyshire Asbestos Support Team; Greater Manchester Asbestos Victims Support Group; Hampshire Asbestos Support & Awareness Group; Merseyside Asbestos Victims Support Group; North-West Wales Asbestos Victims Support Group; North East Asbestos Support & Awareness Group, Ridings Asbestos Support & Awareness Group, Sheffield And Rotherham Asbestos Group.

bilateral obliteration of the costophrenic angle(s), the DM accepted the Medical Adviser's advice without question. The reason for the rejection lies in an established culture of deference to Medical Advisers. This deference is partly attributable to a lack of training.

5. Assessments of levels of disablement by Medical Advisers are generally very low and we think they are often not consistent with recommended assessment criteria in the Medical Adviser's training manual. We think that DMs should have training on the criteria for medical assessments.

6. We think that there should be transparency in decision making and that the criteria for medical prescription, as laid out in the training manual for Medical Advisers, should be freely and easily available to claimants, their representatives and support groups, and, most importantly, to DMs.

C. Clarity of decision making process

1. It is not made clear to claimants that when an appeal is lodged the decision is always looked at again, ie reviewed, prior to the appeal being sent to the appeal tribunal.

D. Effectiveness of the review stage of decision making

1. As far as medical prescription is concerned, the review process is often undermined because DMs are reluctant to assert their right and responsibility to make decisions; they defer to the Medical Advisers, who effectively make all medical decisions.

2. Review of occupational prescription in certain IIDB centres where initial decisions are clearly perverse are not corrected at review.

Case Study at Appendix A.

E. Addressing official error

1. We believe that errors made by Medical Advisers are not addressed because there is lack of DM training, as evidenced above, and because the DWP does not properly monitor Atos Origin, the company which provides medical services to the Department.

2. We would like to cite an example of the difficulties in changing and improving the practice of Atos Healthcare. A problem emerged following the change to the medical prescription for diffuse pleural thickening: "Unilateral or bilateral pleural thickening with obliteration of the costophrenic angle". Consultants and radiologists use the terms "blunting" of the costophrenic angle and "obliteration" of the costophrenic angle interchangeably. Unfortunately, many Medical Advisers rejected claims wherever reference was made to "blunting" in radiology reports and/or hospital letters, irrespective of the evidence on X ray of "obliteration". In some cases, Medical Advisers were rejecting claims simply because radiology reports did not mention the costophrenic angle. As a result we appealed several decisions which were changed on review when Medical Advisers were required to look at X rays and when consultants wrote further letters.

3. Locally, we wrote to consultants and radiologists asking them to use the term "obliteration" where appropriate. We also asked the DWP policy section to review cases we were concerned about which showed a generalised problem, and to raise this matter formally with Atos Healthcare. The response we received from the DWP included the following:

"[. . .] As I cannot be seen to be interfering in the decision making process I will only be able to use the date (which I will anonymise) as a training tool for Medical Services if there appears to be any issues arising from their advice. For the same reason, I will not be able to feedback the results to you."

We think this response to be totally inadequate. Where concerns are raised about the performance of Medical Advisers we should be able to expect a review of practice in light of data and we should also expect feedback on any outcomes.

4. Official error in respect of medical services will not be adequately addressed while DMs are poorly trained in medical prescription and where responses to concerns about Medical Advisers practice are not acted upon in a transparent manner.

5. It is now our policy to ask the claimant's consultant for advice in every case where a claim for PD D9 is rejected.

F. Operation of the decision making process for different benefits

1. We would like to comment on the operation between different benefits. The DWP has an effective fast-track system for mesothelioma, a fatal cancer with very poor life expectancy. The IIDB centres are extremely effective in assessing mesothelioma claims. However, in cases where the claimant is also in receipt of means tested benefits payment is delayed because there is no reciprocal fast-track system for providing information on these payments to the IIDB centre.

2. We should point out that IIDB is paid for loss of faculty leading to disablement, ie for loss of health or loss of life, not as income replacement so IIDB should not adversely affect means tested in any case. But it does, and delays are caused in reconciling IIDB and means tested benefits.

G. *Effectiveness of DWP's Decision Making Standards Committee*

1. We have never heard of this committee.

H. *Ruling of ECJ October 2007*

1. We have not come across cases so cannot respond.

APPEALS

A. *Claimant's perspective*

1. Generally appeals work well for appellants suffering asbestos diseases. However, there is evidence of lack of knowledge about prescription in the appeals service and IIDB centres. Please see Appendix A case study.

B. *Impact of AJTC*

1. We have seen no change.

C. *Timeframe*

1. The time frame is too long as on average it takes six months for an appeal to be heard. One main reason for this is because the service has to wait until there are sufficient cases to be heard to justify the presence of a chest physician.

2. Further delay is caused because sometimes the appeals service fails to take account of dates provided where the appellant or their representative are unable to appear, resulting in a lengthy adjournment.

APPENDIX A

1. *Derbyshire Asbestos Support Team*

Deals mainly with Sutton-in-Ashfield IIDB Centre. The decision making is inconsistent and unpredictable. Some advisors are very helpful and some decisions have been made quickly and efficiently.

2. *Insistence on provision of more information*

In many cases victims diagnosed with pleural thickening or asbestosis are asked to provide additional evidence confirming their employment and working conditions, or in fact turned down because they did not work "in a job that the law says is likely to cause the disease". Employment prescription for these diseases is:

Any occupation involving—

- (a) the working or handling of asbestos or any admixture of asbestos;
- (b) the manufacture or repair of asbestos textiles or other articles containing or composed of asbestos;
- (c) the cleaning of any machinery or plant used in any foregoing operations and of any chambers, fixtures and appliances for the collection of asbestos dust; and
- (d) substantial exposure to the dust arising from any of the foregoing operations.

3. *Case Study 1*

Mr F has been diagnosed with pleural thickening; he works as a joiner and shopfitter and has done so all of his working life. He remembers being exposed to asbestos in particular at two building firms during the late 1950s and early 1960s. He has been sent a letter from DWP (Sutton) asking him to provide full details of names and addresses of any work colleagues who can confirm his employment as the firms are no longer in existence. He has also been asked to provide supporting evidence concerning his work conditions eg Training records/contacts of employment and risk assessments. Mr F has worked around the country and moved house, he is not contact with anyone he previously worked with or kept any documentation from his work in the 1960s.

4. *Case Study 2*

Mr D was diagnosed with Asbestosis. He worked at Darlington insulation for one year as a lagger. He was sent an identical letter (described above). DAST sent a letter explaining that Darlington Insulation was well known for its activities and exposing employees to asbestos and provided information of this. This was accepted but surely this was unnecessary. Mr D was later awarded 60% for asbestosis.

5. *Review Stage*

Mr W has been diagnosed with Mesothelioma. He was turned down because the DWP state that he was not an employed earner. The Inland Revenue Schedule proves that he was in fact an employed earner and this was provided as additional evidence. The DWP have refused to accept it. We must proceed to tribunal with a victim diagnosed with terminal cancer, when payment should be automatic.

6. *Appeal*

In the majority of cases appeals work correctly. However, delays can be problematic and knowledge of the prescription is essential.

7. *Case Study 3*

Mrs P's husband had died of lung cancer; there was also evidence of asbestosis. Mrs P had already claimed Industrial Injuries before approaching DAST. Her claim for benefit had been turned down for asbestosis after the review of medical evidence (no mention was made of lung cancer). The tribunal accepted asbestosis but would not consider lung cancer, as they would need to refer it back to DWP to check prescription and ensure he had worked the required number of years. This was unnecessary as they had accepted a diagnosis of asbestosis. Before agreeing with the evidence on the death certificate and post mortem that Mr P had died of lung cancer the DWP still referred to medical services. Mrs P was very upset at the delay caused before and after the tribunal.

8. *Hampshire Asbestos Support & Awareness Group*

Commonly deals with Hartlepool and Castleford IIDB Centres. Decision making is sometimes inconsistent and unpredictable. In cases dealt with by other advisors decisions are made efficiently and consistently.

9. *Hartlepool IIDB Centre*

Extra evidence is sometimes requested for asbestosis and pleural thickening claimants. For example a questionnaire may be sent out asking for information that is already on the original IIDB form (BI100PD), eg name of employer, occupation, period of work and description of duties. All of this information has been clearly stated in the original form, therefore causing extra, unnecessary work and delay in processing. The questionnaires that are sent are not always in the same format and sometimes not sent at all. Therefore there is a huge inconsistency in the processing of claims.

10. *Castleford*

Castleford also send out questionnaires, but in addition they ask for names of work colleagues and statement of exposure. It is incredibly difficult for someone the there 70's and 80's to provide this information. Again these questionnaires are not always sent to clients with PD1 and PD9. This causes unnecessary distress to some clients.

September 2009

Memorandum submitted by T_h Cell (DM 14)

T_h CELL

We are a voluntary group run by and for people living with HIV/AIDS in the United Kingdom who are affected by or rely on state assistance and benefit payments.

We operate an online website, www.tcell.org.uk, to share information and facilitate our peers ability to contribute with there experience and stories.

This group started in January 2008 given a review of the Disability Living Allowance and has grown to cover all benefits available.

Our submission is based on the experience of our users and our own exposure to the welfare system.

PREAMBLE

Whereas medical advances have afforded a better long-term prognosis for many. Several, especially those who progressed to AIDS, live with additional medical conditions just as "complex" in terms of life impact.

Enough independent data and study exists in the public arena that demonstrates continuing HIV/Aid's stigma as well as the performance of the Department for Work & Pensions and the level of challenged decisions.

HIV/AIDS remains a very small minority within not only the disabled but also the wider community. To fully understand HIV/AIDS within the decision making process involves a high resource spend for a small amount of sufferers. Clearly any organisation will make a business decision on the return on investment on training. Targeting resources to give the best return on any investment. This can mean the people living with HIV/AIDS do not have an equitable assessment of any application made, as the Decision Maker will not have undertaken adequate training.

The time spent to consider and make a decision also doesn't allow for thorough and complete assessment of submissions. The forms for many benefits do not completely allow applicants to complete data that would be key to a decision but is not collected. This incomplete initial data collection leads to incomplete or poor decision making. Submissions often, complex in detail, with additional information submitted can also suffer from a lack of decision making time and understanding.

Processes and system attempt to "filter" applications by the matching of criterion on application to a standard model. However the nature of HIV is such that as a DNA based illness it is different for every individual.

We have seen many applications subject to an adverse initial decision that have subsequently succeeded, where the applicant has felt "brave" enough to challenge.

We have also seen situations where multiple illnesses have been assessed in the isolation of each other whereas a complete and inclusive view of all the medical issues would have, and on appeal has, demonstrated poor initial decision making and a more rounded impact assessment made.

Stigmatisation remains the greatest barrier to successful appeal and challenge. Often the fear of challenging or the intimidation felt leaves many the subject of unfair decision making. Many feel an adverse decision is merely a demonstration of prejudice towards them. Illness and current medical health also often mean many become unable to challenge given the stresses involved. The publication of any successful challenge into the public domain also deters people for fear of recrimination because their HIV is widely disclosed.

One also has to accept that any benefit claimant also faces the current stigma of being "a scrounger" as oft appears in the media generally. Coupled with possible racism, sexism etc [. . .]

The protracted nature of challenging any decision at any stage impacts on physical and mental health and the financial hardship can lead to debt and/or the ability to pay for a healthy diet or even heat during winter. Leading to higher NHS costs for the subsequent health care then required for opportunistic infections. Depression and stress can lead to people "giving up" and adhering to the treatment and drug regimes can fail.

The nature of HIV is such that it fluctuates, changing daily, weekly or monthly. You can have a good day followed by weeks of bad days. For some informing on changes to a claim could mean notifying of a medical change every few weeks, with the resulting decision making process.

The decision making process is very poor at dealing with Mental Health Issues.

Decision making needs to factor in the nature of the illness, the change, resistance issues, and damage to immune system, mental impact and stigma.

How effective is the decision making process? Could it be improved, if so how?

In terms of HIV and any complex medical issue that forms the basis for a claim. Decision making can only be based on the information the applicant has provided. Often the generic nature of the forms, complexity and length do not cover specific matters of essential detail. Whereas claimants can submit additional information. This can be daunting given the form filling just completed.

Decisions made on the basis of this information are open to be flawed. Once an adverse decision is made and the reasons given only then can it become apparent that specific detail missing would have made the difference in the substance of the decision thus leaving claimants to enter into a more protracted response and appeal process.

In terms of HIV/AIDS we know from Freedom of Information requests that training is not undertaken on a regular (annual) basis. The nature and advances of the illness are therefore lost.

We know from publicly available data analysis that the number of appeals is relatively high.

Some claims will be more straightforward than others. Where complexity enters the process suitably trained "specialists" should take over the claim. Given sufficient and more time to deal with initial claims.

There is an argument that a state gem is followed. That for any number of reasons a Decision Maker errs on the side of caution and makes an adverse decision. Where this involved disabled people the hassle and stress of a protracted and highly intrusive appeal process often leads to people "giving" up as health issues overtake financial issues. Of course the DWP makes a saving where this happens and the assumption is that the original decision was correct whereas it is merely circumstances for the claimant may have changed to their detriment.

In a few cases we have seen. The claimant has appealed to the final stage, and also submitted a “fresh” claim. Twice the fresh claim has been accepted at the expected decision of the claimant. The appeals also found in favour of the claimant. Subsequently payments were backdated on the original claim and continue to be paid with the “fresh” claim then cancelled. In one case the decision and early appeals didn’t consider the health impact of reported illnesses as a whole rather they separated and tested each one against a standard.

This in itself indicates that training and decision making are not to a unified standard.

One also has to look at the final appeals process and the errors in law made as an indicator of poor decision making as a result of poor up-to-date training in the various legal positions.

Are there sufficient numbers of decision makers and is the training they receive adequate?

In terms of HIV/Aids we know from Freedom of Information requests that training is not undertaken on a regular (annual) basis. The nature and advances of the illness are therefore lost.

Stigmatisation for people living with HIV/AIDS remains the major societal barrier to equity. Though the DWP has “equality” policy. I would like to see an independent review of applications to ensure that proper process has been followed.

We know that those who receive the Higher Rate of Disability Living Allowance are exempt from review of Incapacity Benefit. Yet we have seen a great number of people worried that they have been given a “review”.

Many quoted the law information we provided. However in many more cases Decision Makers continued the review of Incapacity Benefit although this exemption was in place. This lack of “legal” and DWP process not being applied if an adverse decision was made was overturned on appeal once the claimant has sought further advice and appealed on the basis that the review wasn’t legal.

This clearly identifying core process training needs.

Looking at the staff survey data published from the DWP the lack of job satisfaction and poor morale impacts on the quality of decision making. Properly motivated and “happy” employees lead to not only better productivity but also improved business standards.

The level of appeal decisions and subsequent effects of those decisions do not factor or filter to decision makers and internal processes in a timely manner.

Is the decision making process clear to claimants?

In a word “No”. We exist as an organisation to spread the work with regard to “clarifying” engagement with the DWP.

The DWP for example will accept an alternative submission to the forms for some benefits in the form of a fully written submission. This leading to a more accurate initial decision. In fact most people that have made an application in this manner seem to have tended not to instigate an appeal.

Yet this information is not readily available or clear in the information packs provided with application forms.

Neither is the extension to submission deadlines should a claim be for people for whom illness interferes sufficiently with daily life to reduce the time they having to complete the forms. Again not clear.

If you want to find out how to appeal you need to ask and seek out the information. I would suggest that with every application pack given to a claimant the appeal process is also given.

How effective is the review stage of the decision making process?

We know with the recent review of Disability Living Allowance. The review stage in many cases has exceeded three months or more. A wall of silence from the DWP simply feeds stress. Where the DWP is to take a protracted time for any benefit claim it should regularly inform on process and provide an estimated timeframe for a decision to be made.

In complex health related claims. The DWP will often have many sources of medical information to draw on. In many cases the claimant will have given the names of medical specialist consultants as well as the GP.

However it is often the case that where a medical report is required this is only requested from the GP who may not be up to date with the claimants’ full health picture.

Any report is then assessed by the DWP’s own medical team. A team with no speciality or direct working experience of patients, in practice, for many years.

Is DWP effectively addressing official error?

As in the case described above concerning the exemption for Incapacity Benefit. The DWP still continues to review claimants though they are legally exempt for the reasons mentioned.

There is a complaint process that does seem to work well. Though again if you disagree with a response you also enter into a protracted appeals process.

Where a claimant makes an error they lose benefit. I suggest that where the DWP makes an error it should have to compensate claimants for it. This would certainly ensure better attention to detail when handling a claim.

There is no “stick” for the DWP merely the claimant.

How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)?

The area in which we work is those with HIV/AIDS. Many are claiming DLA and subsequently claim Incapacity Benefit. The primary issue with Incapacity Benefit has been detailed already.

The impact of decision making for ESA will not be felt until the migration from Incapacity Benefit to ESA happens in a few years time.

However the exemption as it exists for Higher Rate Care DLA recipients doesn't exist for the Support Allowance component of ESA.

The WCA and its basis on “what can you do?” is likely to be at odds with those who have already met the Higher rates of DLA. Whereas the argument is that people have to be assessed in this manner for ESA. The assessment is open to appeal where a DWP (ATOS) WCA assessment contradicts a DLA claim and subsequent medical decision taken by the DWP for the DLA claim. This could lead to the loss of DLA & Support Allowance and protracted appeals. Clearly the DWP will have made a decision in one section on one benefit and the confusion will factor if an ESA claim doesn't support this already established view. Which decision is incorrect?

How effective has DWP's Decision Making Standards Committee been in monitoring front-line decision making?

Poor when it comes to heavily stigmatising medical issues such as HIV/AIDS. Both in terms of internal staff prejudices and the monitoring as well as the “fitness” of purpose of the application packs, identifying training needs and ensuring continual staff training.

Is decision making taking account of the October 2007 European Court of Justice ruling on exporting DLA, AA and career's allowance?

Our organisation has received no issues concerning this judgement.

APPEALS

How does the appeals system work from the claimant's perspective?

Our organisation has no reported experience of the appeals system as it exists today.

However the existing and old appeals system have one major flaw that acts as a barrier to those with stigmatising conditions such as HIV/AIDS from accessing and using it. The “public” nature of some of the decision of the tribunal and the fear of those exposed to stigma from family, peers etc [. . .] is greater than pursuing justice.

This has and remains the core issue reported to us as the primary and often only reason why people are not appealing an adverse decision.

For those few who have accessed the appeals process they have found it impacts on health given the stressors involved. Is protracted time wise. Doesn't consider that in some benefit claims the financial hardship faced whilst pursuing an appeal can cause physical and mental detriment.

How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon claimants' experience of the appeals process?

As a grassroots' organization involved in and affected primarily by Disability Living Allowance, as it was reviewed last year. We await the impact of the ESA migration of Incapacity Benefit from 2010. Presently we have no reported issues.

Is the timeframe of appeals reasonable?

Any timeframe for an appeal where it involved an individual with a disability and/or complex health needs as the basis for claiming a particular benefit. Needs to be flexible in its timeframe to account for time the claimant loses through dealing with the impact of said disability/illness. This may mean allowing extensions for some.

Is sufficient support available to appellants during the appeals process?

Support is often provided either online by ourselves, by Terrance Higgins Trust or the Citizens Advice Bureau. Again the fear of public exposure for people with HIV/AIDS tends to lend to support being accessed through a third party rather than directly.

Some recorded experience, anonymous

1. "I deal with people via email quiet often and over many months. I am grateful to them for sharing their experience with me as it builds the picture.

I would like to relate to you the following; the person has allowed me to add this to the blog.

It demonstrates how with determination you can succeed. This is about a completely new claim and not one subject to review.

A friend of mine related to me that they had submitted a first application for DLA. Knowing the medical issues even an objective comparison to the DWP's guidelines would have given this person an entitlement. But no. They declined his application. This is a trend. The DWP seem to do this on new applications. I also have noticed these are usually successful on an appeal.

So he submitted an appeal. He asked for written. He kept every document, letter and fax he had sent. It was during the time he was waiting for the decision that he shared his experience with me. From the advice gleaned from others I was able to suggest an oral appeal would have been a better route and to bear it in mind moving forward.

The appeal decision upheld the original decision. Going through it. It was clear this was flawed. On the basis of no full medical evidence requested by the DWP. But also they had looked at each condition in isolation and not the full impact of all the conditions daily.

Fortunately this person, knowing he was being treated unfairly channelled his anger in to action. Found himself a HIV welfare rights worker. Then began the process of challenging this decision to the Commissioners.

At the same time he filled in a new claim for the DLA.

A letter came back informing him that the written appeal was incorrect and he was scheduled to have an oral appeal in August.

Then this week he received a decision on his new second claim. He was awarded Higher Rate Care & Higher Rate Mobility—which is what he was entitled to given the DWP guidelines.

All this over about nine months."

2. "I've put in for a revision, along with numerous supporting letters from the consultant, GP etc and the Citizen's Advice legal people have also written in detail to DWP supporting my request. It is just a case of waiting on that now.

Meanwhile in consequence of being no longer disabled!!! (Have DWP found a miracle cure for HIV?) and losing my entire income support; although I am now entitled to Council Tax benefit, the local authority want £770 from me that Income Support were going to pay upto next April.

And [. .]

[. .] the DWP fraud department has now written to me saying I was overpaid income support between 2002–07 because my circumstances changed. (They haven't from 1994 until now when DLA was removed), and want me to pay this money back. Just a mere £20,294.44, they reckon!? It's going to take them a mighty long time to extract all that from the £62.50 Severe Disablement Allowance I'm now left with. It is so ludicrous it is laughable.

All this as a result of losing DLA." Since re-instated.

3. "I was talking with a Benefits Advisor this morning at my local HIV support service and mentioned to her that I had received an IB50 Incapacity for Work Questionnaire.

She queried the fact that as I was on the Highest Rate of Care Component on DLA that this was not necessary to complete. She then accessed on the web the regulations—link below

<http://www.opsi.gov.uk/>

She then pointed out that under Part II Chapter III Paragraph 10 the first clause under 2(a) states

exemption due to 'that he is in receipt of the highest rate care component of disability living allowance'.

Subsequently we phoned my DWP office and when I spoke with the agent he at first said that he was unaware of this exemption but on checking came back on the phone and said that this is correct and that I should ignore the form and that he would be advising Medical Records who would amend my records accordingly—and that I would be receiving a letter outlining my new next year benefit (I intend to check up again in a week's time by phone just to be sure that it has been amended as stated).

So it may be that you were/are aware of this, but thought that it may be wise to put it out there for anyone else in the same situation.”

4. “Hi to everyone, I’m a hv [. . .] to cut a long story short, I am also being reviewed. I’m currently in receipt of high rate care DLA and high rate mobility DLA, I got the benefit straight away via special rules [. . .] the last eight weeks have been very stressful to say the least [. . .] and I have been very depressed and worried that I won’t be able to cope if they take my benefit off me [. . .] I also feel that I have been made to look like a benefit cheat [. . .] which I am certainly not [. . .] what I would give to be HIV negative and have a job (I used to be a hairdresser) I would be getting more money working that’s for sure [. . .] I have been on every HIV drug going [. . .] and there are not many more options available to me now [. . .] I’m on a trial drug at the moment [. . .] anyway I filled in the DLA form [. . .] but they wasn’t happy with that they also wanted to come out to see me for a medical examination [. . .] anyway she came out on Wednesday, she asked me a few questions about the care I need [. . .] I have lipodystrophy wasting, kidney problems, muscle weakness and mental health probs [. . .] that goes with being a long term survivor [. . .] anyway all she seemed to be interested in is how I acquired the virus, she didn’t ask me any questions what I’m like outdoors [. . .] she also tried to put words in to my mouth by saying you can turn in bed without help [. . .] I pulled her up on it (and told her I felt that she was putting words into my mouth, and know I can’t move properly by myself in bed as I have a buffalo hump on my back [. . .] she didn’t look at the hump. I got the impression she didn’t want to touch me [. . .] anyway I feel it’s a disgrace the way long-term survivors are being treated. I would like them to live just one week of my life and see how it bloody feels [. . .] they haven’t got a clue [. . .] they are just looking at blood results, my blood results are good but I feel like crap most the time due to the side effects of the meds [. . .] long term survivors really need to pull together and fight for our rights, sadly those who fought for our rights in the early 80s mostly gay men [. . .] are no longer with us. I feel like we are being trampled all over and nobody as any compassion for HIV people [. . .] I’m sick of hearing [. . .] its no worse than being a diabetic (bullshit) this disease can still kill [. . .] there is no known cure for this god forsaken illness) if my meds stopped working, I have become resistant to most [. . .] I would properly die in six months as there are not going to be any options for me [. . .] this has become a nightmare with the added threat I will lose my benefit [. . .] and would have to survive on income support alone [. . .] does anyone know how long it takes after the medical examination for them to make a decision? [. . .] I’m very stressed out worrying about it. I don’t feel like they are not looking at the full picture of someone living with this virus and the damaging effects it has on the body and mind [. . .] and the stigma (what employee would hire someone if they knew they were HIV positive) not many I can tell you most people who are fortunate to work, are in the closet about there status.”

INFORMATION AND STUDIES REFERRED TO

- The Social Security (Incapacity for Work) (General) Regulations 1995 Statutory Instrument 1995 No 311.
- DWP Staff Survey 2009.
- Tribunal Service Annual reports (2007–08, 2009–10).

RECOMMENDATIONS

Essentially it always comes down to resource. However better decision making with the necessary investment in regular training and updating staff on new case law ought to pay off with less use for the appeals process.

HIV/AIDS affects a minority of people. The educative and resource needed to ensure equitable treatment of any claim for any benefit can be prohibitive yet we who have HIV remain one of the most vulnerable in society today. Dedicated HIV specialised teams, independently assessed and monitored given appropriate decision making time would lead to better initial decision making. There is nothing worse when someone you speak to doesn’t understand the difference between AIDS & HIV or even how they relate to each other.

Application packs for any benefit claim should include full information on how the claim is processed as well as the appeals process.

Offering HIV+ people anonymity should they appeal would encourage more to challenge adverse decisions and feed the “learning” and training programs internally. This would also start to build trust. There needs to be an acceptance that HIV stigma prevents and remains a barrier to justice in the benefits system.

For complex HIV cases the perception that it is similar to diabetes is misleading and denies a full and proper consideration of benefits applied for on health grounds. You can have diabetes as well as or because of HIV and its long-term affects; I have yet to hear of diabetes leading to HIV. Medical reports from specialists requested as the “norm” rather than the GP where supporting medical evidence is requested.

Independent evaluation and review of random claims to ensure a quality and standard of decision making is attained. Where it comes to complex medical issues larger randomised samples ought to be done.

Incentivise staff on the quality of decision making that is reward them for decisions that, through review and lack of appeal or complaint, deemed right.

Balance the “stick”, compensate claimants for incorrect decision making, over turned through appeal. For the protracted time, stress, financial hardship and sometimes health impact. Compensation in addition to any back payment due. This would incentivise the DWP to ensure better data collection, more thorough investigation and better decision making for fear they may face financial hardship if they do not.

September 2009

Memorandum submitted by PCS (DM 15)

INTRODUCTION

1. The Public and Commercial Services Union (PCS) is the largest civil service trade union with a membership of around 300,000 working in the civil service and related areas. PCS is the largest union within the Department of Work and Pensions (DWP), representing over 85,000 members in the Department and its agencies.

2. PCS welcomes the opportunity to input into this inquiry into decision making and appeals. It is currently within the power of the Department to control standards of decision making, however PCS believes that the Department’s capacity in this area would be undermined and weakened if in future delivery of benefits were to be localised or contracted out.

Is the decision making process effective?

3. The overwhelming emphasis for DWP staff is to meet targets based on the number of cases processed rather than how they are processed. This focus is embedded on the shop floor through the various lines of senior and middle management with the result that decisions are often made on skimpy or even non-existent evidence. Occasional drives to improve accuracy tend to be short-lived and invariably return to the back burner whenever there is a risk that key performance indicators may not be met.

4. This situation could be improved by removing such pressures and by senior and middle management placing far greater emphasis on quality rather than quantity and recognising that a failure to get something right first time can often lead to more work in the long run through re-working and more appeals. Where this balance is correct, a combination of quality training and strong support from management results in effective decision makers.

5. This general problem has been exacerbated by inappropriate arbitrary management moves to downgrade much of the work of decision makers from Band C/EO to Band B/AO. The emphasis in JCP is shifting decisions from the complex category which are dealt with by EOs, to the straightforward category, which are dealt with by AOs. This has intensified the feeling that decision making is being devalued and has also caused resentment among our members in more junior grades who have been asked to take decisions that they feel are not appropriate to their grade and for which they are not properly remunerated.

6. Every time JCP have reviewed the categories they have shifted them downwards. During the last full review PCS was able to argue against the changes with some success. We are concerned that the LEAN process JCP is currently undergoing will result in another major shift downwards.

7. There is a natural tendency for operational staff to seek to “simplify” the process and not take into account the responsibility to ensure that the benefit system is protected, and that payments are made on the basis of entitlement. We are concerned that this leads to a greater number of incorrect awards of benefit rather than disallowances, and therefore does not then lead to more appeals. We believe there also remains an attitude from senior managers from an employment background to regard the correct application of the benefit decision making process as a barrier against achieving performance, and a view that those from a benefit background wish to make the process overly complicated. There is a danger that the emphasis is therefore swinging away from ensuring that awards are made on the correct application and interpretation of the legislation, and towards getting awards made and cleared out of the way so that the job seeking process can be undertaken.

Are there sufficient numbers of decision makers? Is their training adequate?

8. There are large volumes of decision making work outstanding. While some of this can be attributed to impact of the recession on workloads as Jobseekers Allowance claims have increased dramatically as a result of the current economic crisis, significant arrears are nothing new. The longstanding reliance on high levels of overtime over many years also suggests that there is a shortage of decision makers.

9. The quality of training varies. Where it is class-roomed based it is usually of good quality with a strong emphasis on working on live cases. Full consolidation should be made available but this can be truncated due to other work pressures.

10. E-training is becoming more widely used. This is almost universally loathed by PCS members and is seen as an ineffective method of training decision makers.

11. PCS would like to see the Professionalism in Decision Making and Appeals (PIDMA) training made more widely available to DWP decision makers. Where it has been used it has been found to be useful.

Is the process clear to claimants?

12. Feedback from PCS members suggests that the process is reasonably clear though more work could be done to improve the quality of the notifications and forms used to communicate decisions.

How effective is the review stage?

13. Many decisions are overturned at review stage, along with lapsed appeals. These include decisions where no additional evidence has been supplied which indicates a robust process is in place.

Is DWP effectively addressing official error?

14. The key problem here is the lack of emphasis put onto quality as opposed to quantity referred to above. Until this balance is addressed the official error rates will continue at too high a level.

How well does the decision making process operate for ESA and DLA?

15. ESA and DLA have a fair amount of overlap. ESA replaced Incapacity Benefit and the emphasis now is to find out what claimants can do rather than what they can't. Both mental and physical abilities are obtained from a medical examination, using a points scoring system to denote severity. Many, if not most, of the abilities are those considered in deciding DLA entitlement so ESA reports are often useful. There's also the advantage of actually seeing and observing the claimant, which only happens in DLA cases when an Examining Medical Practitioner's report is asked for. This is usually a last resort as the employer wants to keep the medical evidence budget as low as possible.

How effective has the DWP Decision Making Standards Committee been in monitoring decision making?

16. The Committee has no executive power and so cannot ensure that its recommendations are implemented. Consequently there is a tendency for recommendations to be viewed as merely desirable by DWP rather than essential. This often means they are not, or, at best, only partially, implemented.

APPEALS

17. DLA claimants enjoy a 40% success rate. This shows a genuine appeal system is operating that is prepared to overturn DWP decisions.

18. Time limits are clearly explained on notifications, expenses are paid for travel to hearings and delays generally have lessened.

19. Timeframes for appeals are viewed by decision makers as reasonable in all but the most difficult cases. Late appeals are often sympathetically considered and more often than not are allowed to proceed.

20. The provision of support for appellants varies geographically with the geographical spread of welfare rights organisations. DWP staff sign post appellants to the relevant welfare rights organisation.

September 2009

Memorandum submitted by the National Association of Welfare Rights Advisers (DM 16)

The National Association of Welfare Rights Advisers was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

The response has been put together from evidence collated through a questionnaire to members and feedback from a workshop at our conference in September 2009. It is a representation of views from frontline advisers and their clients from across the UK.

NAWRA RESPONSE TO THE INQUIRY INTO DECISION MAKING AND APPEALS

Summary

The main issues as identified by our members were as follows:

- Initial point of contact—while it was generally felt that the first contact was positive at the Pensions Service there were concerns about misadvice when first contacting Jobcentre Plus. There was also concern that use of the DLA/AA checklist when a claimant rang to order a form was in some cases putting them off making a claim.
- Processing of claims—general issues that came up included lack of communication between departments, lack of ownership of cases, difficulty in speaking to decision makers, and lack of experienced staff due to high turnover. Other issues that came up in respect of particular benefits included:
 - Delays—pension credit, social fund, ESA, housing benefit.
 - Lack of understanding of rules—social fund, housing benefit, DLA/AA.
 - Poor decision letters—ESA, DLA/AA, housing benefit.
 - Speaking to reps and implied consent—pension credit.
 - Seeking appropriate evidence—DLA/AA.
- Compliance cases—there were examples of claimants being given incorrect information during the course of compliance interviews. Also a concern that cases were sometimes suspended too easily without being considered properly first.
- Overpayments—there was concern that decision making was flawed without valid revisions/supersessions being carried out. In addition there were delays in cases being resolved and concerns about when and how recovery was sought.
- Revisions—there was a feeling that there had been a marked improvement recently in DLA/AA decisions being looked at again and overturned at revision level—this was noted across the UK. It is hoped that this trend will be built on further.
- Appeals—it was felt that having a representative made a huge difference to the claimant's experience of the appeal process and there was enormous concern at the erosion of services that could provide representation. Although it was noted that many tribunals tried to make the process not too daunting there were also examples of inappropriate comments by tribunal members. Concerns were also raised about problems with use of interpreters and lack of confidential interviewing space at some premises. There were also comments about how long a case could get to appeal though responsibility for this was sometimes down to the DWP.
- The Tribunal Service—there was positive feedback about the provision to ask judges to make directions. Also the reduction in the number of appeals being struck out due to failure to return the TS1 was welcomed.

INITIAL CONTACT

1. The pension service was felt to be a good example of initial contact with the person spoken to seen as approachable and helpful. However, at the customer contact centre for Jobcentre Plus there were concerns about misadvice—examples of this included a claimant being told they could not claim ESA if they were still receiving wages, and other claimants being told they had to claim ESA not income support when they were already on incapacity benefit.

2. Although previously there were no problems with phoning to ask for a DLA/AA claim form, it was felt that the new checklist was in some cases acting as a deterrent to claim as claimants felt they were being told they were not eligible. It was not made clear to claimants that the questions asked were merely a scripted checklist and they were not speaking to a person qualified to make a decision about entitlement.

3. There were a number of problems with claiming a crisis loan. Firstly, it was very difficult to actually get through. When a claimant did get through there were often lengthy waits—although it is a 0800 number this is not free from mobiles and claimants are not allowed to use Jobcentre phones to make a crisis loan claim. There were also concerns about misadvice—one claimant in Edinburgh had been told that he could not have a crisis loan if he was not on benefit—further that this was part of the internal guidance in the office.

PROCESSING OF CLAIMS

4. There were a number of general issues raised. These included lack of communication between different departments. For example an award of DLA/AA did not always result in the appropriate premium being added to their means-tested benefit. When an award of DLA/AA is made it was felt it would be good practice to advise claimants that they may be due an increase in means-tested benefits or indeed become eligible for the first time and encouraged to claim or seek advice.

5. It can be difficult to make contact with the processing centre. For some benefits there are long delays when you ring—this is particularly so for ESA—delays of 20–30 minutes are typical. These calls are to an 0845 number and start being charged immediately as there is a message system and callers are then put in a queue. One claimant had a phone bill totalling £15 for the calls necessary to resolve the problem on her case.

6. It was also noted that there was a lack of ownership of cases—one advisor spoke to 22 different people concerning a particular case. It is extremely difficult to speak to a processor or decision maker. The main point of contact is through the telephony (letters often remained unanswered)—this is to a member of staff who is trained to read the computer screen but without full benefits knowledge. The only way to speak to someone with benefits knowledge is to wait for a callback. If you are not in when the call comes a message may be left but no number to return the call. It is then necessary to start the whole process again which may take some time as detailed at 5 above.

7. Some of our members have formed the view that a large number of the staff are inexperienced due to high turnover. In one area a member has been told informally that only 5% of staff at the local BDC had worked longer than nine months and the average length of employment was only three months.

8. It was also noted that when decisions had been made, either by decision makers or by tribunals, there was often a significant delay in these actually being implemented.

9. Other problems related more to specific benefits. For ESA there was a concern about the length of time decisions were taking to be made. It was also felt that the decision letters were not clear—in particular they do not make clear whether a claimant has been awarded income-related ESA, contribution-based ESA, or both.

10. In another case the claimant had been awarded income-related ESA for themselves and their partner. The partner was also submitting medical certificates to claim incapacity credits but was told they should not be doing this as the ESA was already in payment.

11. Claimants were also not being advised whether the permitted work they were undertaking counted as supported permitted work.

12. Within the Social Fund there was concern about the delays both for initial CCG claims and for the reviews—times of up to 10 weeks were reported. Glasgow area reported that this was due to staff being diverted to crisis loans.

13. There was also concern about the lack of knowledge staff had. In Rotherham a claimant had been told that the appeal deadline for funeral payments was 28 days not a month. When this was queried the member of staff would not look at the guidance. Examples of Direction 4 not being understood by staff at Plymouth included someone being refused a CCG because they were not visiting a sick person although they were visiting their ex-husband who was in hospital. Another adviser reported staff being unaware what a DS1500 was and refusing to prioritise the award because of terminal illness.

14. There were also examples of decision letters being incorrect—one recent letter said you could not make a repeat application within 26 weeks—it had not been updated to say 28 days.

15. For DLA/AA it was felt that decision letters did not give enough information. Although long there was very little information that was specific to the claimant. While sources of evidence were listed it was suggested that it would be helpful to advise claimants that they were entitled to ask for copies of the evidence.

16. With respect to the evidence that is requested by the DCS there is still an over-reliance on reports from GPs (although there has been improvement in this area) whereas there may be more appropriate people to ask eg support workers, CPNs. It was also felt that the report that goes to GPs etc does not ask appropriate questions to determine the claimant's needs in respect to the law for DLA/AA.

17. For claims for DLA for children it was felt there was an over-reliance on school reports and these were not read in the context that they were written eg if a report said there was great progress in speaking/listening it was assumed there were no problems in that area, without considering where the child was relative to other children of the same age.

18. Generally with children's claims reported a lack of understanding of the rules was reported, eg comments such as "all children aged five need supervision out of doors". Also complex cases, eg involving high rate mobility and autism, invariably had to go to appeal.

19. At the Pensions Service the main problems concerned delays with processing claims for pension credit—delays of two to three months were reported at Derbyshire, Swansea, and Rotherham. One adviser reported cases of claimants dying before their claims were settled.

20. The other main issue related to disclosure of information where there was implied consent and also in cases where authority to act had been sent in. Firstly, there was a lack of understanding as to what implied consent was—comments such as "we can only do implied consent if you fax the authority slip over" were typical. Even where there was authority it was not noted on the system and was asked to be faxed over again on every phone contact. This is in sharp contrast to other areas of the DWP where the "Working with representatives" guidance is followed well. It was reported to work well at both Bristol and Glasgow BDCs, and Carer's Allowance have a standard policy of calling the representative back. There is a need for consistent good practice in this area.

21. Within housing benefit there are substantial regional differences. Generally there were a number of examples of lack of understanding of the rules—the following are some examples:

- Newcastle—the housing benefit claim form does not ask whether a claimant of their partner get IB credits or have been sick for 52 weeks thus possibly missing application of the disability premium.
- Rotherham—new computer software not issuing legal decisions—just a computer printout with no explanation, income breakdown or appeal rights. In addition letters were sent with a date two months previous so that appeals were out of time.
- Northumberland—claimant aged 64 refused three months backdating as did not have continuous good cause which is not required for those over 60. Also a refusal to process housing benefits until tax credits assessed although housing benefit is assessed on actual tax credit in payment.
- Cleveland—refusing an appeal as valid although the claimant had written in using the word “appeal” in her letter.
- Scotland—issuing a new claim form when a change of circumstances is reported.

1. There were also substantial delays within the housing benefits system causing potential homelessness. In some cases advisors were having to spend time preparing court submissions for people under threat of eviction because of this.

2. Cornwall also reported delays caused by the new “one Cornwall” system whereby all post goes first to County hall and then goes on via the internal mail and is not always correctly delivered.

COMPLIANCE

3. There was feedback that where there were cases of suspected fraud the claims were suspended without full consideration first. For example, a man had claimed benefit for himself and his wife and the wife’s claim was automatically suspended. If they had looked at the claim the decision maker would have seen that this had happened previously and the case had already been to tribunal (within the last six months) where it was accepted the couple were estranged and that the man had previously exerted financial abuse over his estranged wife in a similar manner.

4. It was also noted that during interviews done by compliance officers incorrect information was given. For example, one claimant was told they could only get high rate mobility if they couldn’t walk more than 50 yards. Another claimant was told they could not claim carer’s allowance and DLA at the same time.

OVERPAYMENTS

5. In overpayments cases there were reports of decision making being flawed—valid revisions/supersessions were not being carried out, eg in one case a claimant had been claiming income support as a lone parent but the child had gone into care—the claimant also had entitlement to income support through the incapacity route but this was not considered.

6. There are also substantial delays in getting to an appeal for overpayments—up to two years is not unusual—frequently with a series of decision which are amended over and over again with a new appeal required to be registered at each stage.

7. Concern was also expressed at Debt Recovery’s policy of asking claimants to pay back non-recoverable overpayments. Also at the policy of automatically asking for recovery at 30% of benefit level where there were no means-tested benefits in payment.

REVISIONS

8. There was very positive feedback in this area that recently there had been a significant improvement in DLA/AA decisions being looked at again and changed at revision stage. This was noted across the UK with advisers from Edinburgh, Neath, Leeds, Glasgow and Cardiff all making this observation. It was hoped that this could be reflected in other benefits also.

9. However, it was felt there was still room for improvement—particularly with seeking evidence from other sources, talking to reps etc. Although it was noted that again there was improvement at widening the range of sources, eg using support workers, CPNs, it was felt there was still over-reliance on “medical” sources such as the GP or EMP.

10. It was noted that where the revision stage worked well it was cost-effective, efficient, and much less stressful for the claimant.

APPEALS

11. Generally this is a stressful process for the claimant. However, the experience is much improved by having a representative who helped to prepare the claimant and support them through the process. There were reports of cuts and losses of representation services across the UK and there was huge concern about the detrimental effect of this.

12. With regard to information, it was felt that claimants weren't given enough. For example, there should always be acknowledgement that the appeal has been registered and accepted (although this happens in some cases it is not consistent) with an explanation of what to expect next. The schedules of evidence are bulky and off-putting to claimants and there was no indication given of how long the process was likely to take.

13. It was also felt that the one month deadline to appeal was too short particularly given the difficulty in obtaining advice. It was suggested that it would be helpful to let the claimant know that there was an opportunity to put in a late appeal and what the criteria for this were. Having said that, the rest of the process was felt to take too long particularly in cases where benefit had been suspended, eg cases where suspected of living together as husband and wife. In one case a claimant had waited over six months for her appeal with no income support (this was due to delay by the DWP as opposed to the Tribunal Service).

14. With respect to what happens at the actual appeal there were a number of observations. Firstly some premises do not have private interview rooms so claimants can discuss their case confidentially. Also the treatment of interpreters was inappropriate—in a number of venues the interpreter was not allowed to meet the claimant before the actual hearing although this is important to establish that they can understand each other. In some areas they were not even allowed to interpret the pre-hearing discussion with the clerk!

15. Derbyshire reported cases of the tribunal adjourning the hearing to get an EMP report without even calling the claimant in to speak to them.

16. Generally it was felt that the tribunals did try to make the process less daunting but there were examples of inappropriate comments or understanding. For example, tribunals not appreciating the side-effects and emotional effects of cancer treatment, one tribunal asking a Muslim claimant if he could make bacon and eggs. One adviser's comment was that tribunals were mostly professional and fair "but on the few occasions they do stray from the path of fairness, it can be staggering".

17. It was also noted that on occasions written statements of reasons had contained judgmental statements about the nature of a client's personality.

THE TRIBUNAL SERVICE

18. The overall feedback since the new tribunal rules was positive with an appreciation of the fact that judges can be asked to give a direction for example, where the DWP are being slow. Also that they can go ahead and list a case without the DWP input if necessary.

19. It was also noted that there had been a reduction in cases being struck out due to non-return of the TS1—instead a reminder letter was being sent to both the claimant and, where there was one, the rep. This was felt to be very positive.

20. The one point which was not seen as so positive was the replacement of Chair by Judge, which was seen as unnecessarily intimidating.

CONCLUSION

21. The members of NAWRA generally tend to see cases where processes are not working so well. We have tried in this response to acknowledge where there has been improvement and also to highlight where there is a need for change. As representatives of our clients we are seeking to work with the DWP to enable resolution of problems as quickly and effectively as possible.

September 2009

Memorandum submitted by Parliamentary and Health Service Ombudsman (DM 17)

I am writing in response to the Work and Pensions Select Committee's inquiry into "Decision making and appeals in the benefit system".

As you will know, as Parliamentary Ombudsman I provide a service to the public by undertaking independent investigations into complaints that a wide range of public service bodies, including DWP and its agencies, have not acted properly or fairly, or have provided a poor service. I therefore welcome the opportunity to contribute to your inquiry.

My office has been investigating complaints about the benefit system for over 40 years and I base my submission on our experience of these complaints. In my submission I do not address directly the individual issues raised in the terms of reference of your inquiry. Instead I would like to bring to your attention two recent publications which provide an overview of my Office's engagement with DWP and its agencies and the lessons to be learnt from that work.

Every complaint matters,⁹ my Office's Annual Report for 2008–09, outlines key statistics on the number of complaints we receive and accept about DWP and its agencies. With 2,692 new complaints in 2008–09, equivalent to 34% of the total number of new complaints received (excluding complaints about NHS bodies), DWP and its agencies are the biggest originator of complaints to my Office. This is not surprising given the size and nature of DWP's business.

⁹ Not printed.

It is due to this large number of complaints about DWP and its agencies that we decided to publish a case digest in March this year. *Putting things right: complaints and learning from DWP* outlines cases that have been selected because they illustrate the wide variety of complaints and complainants, and the often serious results, when DWP and its agencies get things wrong. The case digest outlines five themes flowing from these cases:¹⁰

- (1) poor information provision;
- (2) delay;
- (3) poor record keeping;
- (4) falling between the gaps; and
- (5) poor complaint handling.

One of the key conclusions of the digest is that many of the complaints my Office received could have been resolved much sooner and by DWP themselves, if the complaint handling had been more customer focused.

The digest includes a number of cases which I would like to bring to your attention. The cases of Mrs U, Mr G, Mr L and Miss F seem particularly relevant to your inquiry, although others may well speak to the issues with which the inquiry is concerned.

September 2009

Memorandum submitted by Andrew Currie (DM 18)

ABOUT ME

A 53 year old man, who worked self-employed in building maintenance and gardening; also a casual support worker in Social Services; also pursuing work in photography.

In 1996 I developed a back problem but received no sickness benefit due to an error by the Contributions Agency. Despite considerable efforts on my part, they have still not resolved the matter. The stress of the years from 1996–2000 led to me developing what was much later diagnosed as ME/post-viral fatigue. When my partner left me in 2000, I had to sign on as unemployed and receive benefits and after about four years on Jobseekers Allowance my health was worsening, largely due to the actions of Jobcentre Plus, and I then went onto Income Support.

I am a graduate with wide work experience in various relatively low-paid jobs—admin, manual, technical and people management. I am hard working, conscientious and have strong principles in matters of honesty and integrity.

MY EXPERIENCE

On 26 October I attended a medical. When I received a copy of the report submitted by the doctor, I found 27 factual errors, 12 misleading statements and three instances where it was inferred I was lying. The DWP decision maker did award enough points for me to be eligible for benefits but had totally ignored my two main physical health problems.

My complaints to Jobcentre Plus and Medical Services were met with arrogance and were dismissive. When I provided proof of the errors, I was simply threatened. (I had taken the precaution of recording the medical having experienced considerable incompetence, dishonesty and harassment from Jobcentre Plus over the previous six years).

Since then, my complaints have been ignored. Medical Services have failed to follow their own guidelines regarding medicals and their complaints procedures, and Jobcentre Plus evade responsibility.

BACKGROUND KNOWLEDGE

There is a large number of successful appeals against refusals of benefit. This in itself is evidence that the medicals and/or decision makers' assessments are flawed. A clear bias towards finding claimants ineligible reveals a serious conflict of interest between the state's role in helping people who are unemployed through illness and the private sector's desire for profits. Companies such as Atos win contracts by predicting they will save the state money. Recently, the conflict of interest has gone further, with the extraordinary situation that Medical Services now issue and assess IB50 forms, and have been given the power to decide whether or not to call in claimants for medicals. They are therefore able to generate very profitable work for themselves and the figures do reveal that they call in a large number of people for medicals. The inference is that the claimants own knowledge of their health is regarded as less reliable and more likely to consist of lies than an assessment taking less than half an hour by an examining medical practitioner who has never seen a person before, using computer software known to be unfit for purpose (information on which is illegally kept from the public), administered by a business who profit from generating particular results.

¹⁰ Not printed.

It has recently been revealed that DWP decision makers have altered reports in order to discontinue paying benefits, an activity amounting to fraud.

Note that the President of Appeals Tribunals has been very critical of the standard of medicals and DWP's failure to address the issues.

MY RECOMMENDATIONS

Medical assessment of claimants should be totally independent and outcomes must have no effect on the incomes of those conducting or organising such assessments.

I suggest a significant financial penalty be imposed on private sector contractors every time an appeal reverses a decision.

Doctors working as EMP's should be regulated to the same degree as those working as GP's. The General Medical Council told me they are not responsible for doctors when doing such work. (I am currently unclear as to whether they have intentionally misinformed me on this matter).

Claimants should be treated fairly and respectfully; it is obvious that they are frequently not.

September 2009

Memorandum submitted by National Aids Trust (NAT) (DM 19)

SUMMARY OF RECOMMENDATIONS

Recommendation: Benefits decision should be streamlined so people receive a decision in a timely manner. If there are problems with a person's application they should be contacted immediately so this can be resolved.

Recommendation: It should be easier for people to access Crisis Loan support; delays in accessing this are causing serious hardship. The maximum amount available to people through Crisis Loan support should be increased.

Recommendation: Benefits claimants moving from one type of benefit to another (for example from JSA to ESA) should not be left at any time without financial support. They should not be expected to rely on Crisis Loans at this time.

Recommendation: DWP staff need more training on their own computer systems to speed up the benefits application process.

Recommendation: DWP staff need additional training in relation to HIV so they have a proper understanding of the implications of the virus (both around treatment side effects, mental health, social stigma and the need to safeguard clients' confidentiality).

Recommendation: The decision making process should be simplified and steps should be taken to ensure people who do not have English as a first language can understand the process (for example, jargon should be avoided and plain English standards adopted).

Recommendation: DWP should avoid wasting time and resources and avoid putting claimants through unnecessary stress by ensuring official errors are addressed and that cases are not unnecessarily taken to tribunal.

Recommendation: Any further review of the DLA for people living with HIV should take note of "lessons learnt" from the previous review. A wide range of HIV organisations should be involved in the review process from the outset so they have the opportunity to support service users going through the review process.

Recommendation: DWP should consider reviewing the DLA forms sent to patients' doctors and the DLA award letters to ensure both that forms are completed correctly and that claimants understand why a DLA decision has been reached.

Recommendation: The appeal process should be reviewed and steps taken to address the current lengthy delays claimants face; appeals when claimants have no benefits at all should be fast tracked.

Recommendation: Funding to advice services should be increased to ensure all claimants can access independent advice and representation during the appeals process.

1. INTRODUCTION

1.1 NAT (National AIDS Trust) is pleased that the Work and Pensions Committee is holding an inquiry into decision making and appeals in the benefits system and welcomes the opportunity to submit evidence.

1.2 NAT is the UK's leading independent policy and campaigning charity on HIV. NAT develops policies and campaigns to halt the spread of HIV and improve the quality of life of people affected by HIV, both in the UK and internationally.

1.3 NAT is very grateful to the following support organisations that provided us with evidence which forms the basis of our response: Body & Soul, Camden Citizens Advice Bureau Service, DHIVERSE, George House Trust, Positive Action Aldershot, the Terrence Higgins Trust and Waverley Care. In addition a number of individuals living with HIV contacted NAT to share their experiences and concerns about the benefit systems. These conversations are also reflected in this response.

1.4 This response is structured around the inquiry question headings on decision making and appeals.

2. DECISION MAKING

How effective is the decision making process? Could it be improved, if so how?

2.1 There was universal agreement from HIV organisations contacted by NAT that the current decision making process could be improved. Much of the concern was related to the time taken for an application to be processed. The case studies below provided to NAT from Body and Soul illustrate this effectively:

Mercy was granted leave to remain in the UK in April 2009 and immediately applied for Employment Support Allowance (ESA)—now six months later, she is still waiting for an outcome from her application. Body and Soul contacted the Department of Work and Pensions (DWP) to find out why there had been a delay. Initially they were told that the Department had all the relevant papers but that the claim had been outsourced to another office in Birmingham as they were too busy to process all the claims. Body and Soul then contacted the office in Birmingham who told them they would not respond directly to clients, any enquiries have to go through the London office in the form of an email. An email was sent but nothing was heard for weeks. Eventually Body and Soul were told that the Department could not process the claim as they did not have the correct medical certificate. Body and Soul assisted Mercy in submitting the medical certificate but they are still waiting for the outcome of her application. Whilst waiting for her application to be processed Mercy initially survived on support in the form of Crisis Loans but she was then told she was not eligible for any further support. She is now relying on handouts from friends as well as financial assistance from Crusaid, an HIV emergency fund for people living with HIV. The stress of the process has seriously affected Mercy's health.

Paul's story is another example of someone who has suffered as a result of inefficiencies within the benefits system. In July he applied for ESA. Paul was concerned about the delay in receiving a response and so Body and Soul contacted DWP to find out if there was a problem. It took a month for DWP to respond to say they were unable to tell if Paul had applied for ESA or not as there were problems with the computer system. They suggested making a second application. Body and Soul assisted Paul in making a second application in August and are still awaiting a response. In the meantime Paul has attempted to get emergency support through the Crisis Loan system but has been unable to get through to them. This has had serious consequences for his health. Adherence to treatment is very important for people living with HIV; Paul's medication must be taken with food but he has faced such financial difficulty that he has not always been able to purchase food and as a consequence has not been taking his treatment.

Both Paul and Mercy were left confused and distressed by their experience of the benefits system and even with the assistance of Body and Soul it has proved difficult for them to access the support they need.

2.2 The over-riding concern raised by support organisations for people living with HIV is the lack of transparency in the system and the serious delays people face. In addition many people noted that staff working within the system had a lack of knowledge of the processes involved.

Recommendation: Benefits decision should be streamlined so people receive a decision in a timely manner. If there are problems with a person's application they should be contacted immediately so this can be resolved.

Recommendation: It should be easier for people to access Crisis Loan support; delays in accessing this are causing serious hardship. The maximum amount available to people through Crisis Loan support should be increased.

2.3 Another area where people felt the process could be improved was around the gap in support when people move between different types of benefits. Several organisations gave examples of clients who had come off Job Seekers Allowance (JSA) only to face a lengthy delay before accessing ESA. In the meantime they were provided with no means of support apart from the Crisis Loan system, and many had difficulties accessing this.

Dorothy is living with HIV and expecting a baby. Due to complications with her health and pregnancy she was told to move from JSA to ESA. However, the process of moving from one benefit to the other meant that for six weeks she received no support. This caused her a lot of distress, jeopardising both the baby's health and her own. This is particularly concerning given the need for HIV positive mothers to adhere to treatment to prevent mother to child transmission of the virus.

Recommendation: Benefits claimants moving from one type of benefit to another (for example from JSA to ESA) should not be left at any time without financial support. They should not be expected to rely on Crisis Loans at this time.

Are there sufficient numbers of decision makers and is the training they receive adequate?

2.4 The amount of time it takes for people to receive a decision suggests that there are insufficient decision makers. In addition, the long delays are also contributed to by the lack of training, not only for decision makers but for other staff working within the system. One DWP staff member explained to an HIV support organisation that they had had insufficient training on the new computer systems which was causing serious delays.

Recommendation: DWP staff need more training on their own computer systems to speed up the benefits application process.

2.5 Several organisations highlighted a lack of understanding by decision makers about HIV: “We are still hearing stories of bad practice from clients attending medical examinations and dealing with unsympathetic doctors with little or no knowledge of HIV and related issues. Because of the stigma associated with HIV, people have difficulty discussing and explaining their conditions to doctors who they have never met before. We also get reports that doctors are dismissive of answers.”

2.6 The main areas where people felt DWP staff had an insufficient understanding of HIV were: a lack of understanding about the side effects of HIV treatment; insufficient understanding of the mental health implications of HIV; and a lack of understanding of the stigma associated with the virus (several organisations had experiences when a DWP adviser had refused to provide someone living with HIV with a private room to discuss their status, forcing them to disclose private information in a public space).

Recommendation: DWP staff need additional training in relation to HIV so they have a proper understanding of the implications of the virus (both around treatment side effects, mental health, social stigma and the need to safeguard claimants’ confidentiality).

Is the decision making process clear to claimants?

2.7 There was a general consensus that the decision making process was overly complex and people were left confused by the system. HIV disproportionately affects black Africans, many of whom do not have English as a first language. The complexity of the system is even more overwhelming for these individuals. Many HIV support organisations spent significant amounts of time explaining the process to people living with HIV.

2.8 The need for decision letters to state clearly why a decision has been made was also stressed by several organisations. Organisations reported that the more important information for a client is often “hidden in the body of the letter” and written in a way which is difficult for people to understand. One agency had recently spoken to the ESA section of DWP to question why a client had been refused benefits, only to be told that the ESA staff could not explain why the decision had been made and the client would have to request an appeal to find out.

Recommendation: The decision making process should be simplified and steps should be taken to ensure people who do not have English as a first language can understand the process (for example, jargon should be avoided and plain English standards adopted).

Is DWP effectively addressing official error?

2.9 This is an area where people felt that clients were unnecessarily going through the tribunal process when it would be very simple for DWP to acknowledge an official error. Nobody could give an example of a case where an official error had been acknowledged. Case studies like the example from George House Trust below were more common:

In a recent case George House Trust were supporting Michael who had worked for just four weeks before having to stop because of poor health. The “linking rule” allows people to work for up to eight weeks; if they reclaim their benefit within that time they can resume their former benefit at the original rate, rather than make a fresh claim (this is a really important provision as it enables people with HIV who are thinking of going back to work to “give it a go”). George House Trust wrote to the DWP twice pointing out that Michael was clearly entitled under the “linking rule” to resume claiming his former benefits, asking them to review the decision. The Department persisted in taking the case all the way to tribunal. Michael had to wait months for the case to come to the tribunal, existing on the starter rates for benefits and to go through the completely unnecessary stress of the tribunal hearing. In addition this was a waste of expensive tribunal time and of specialist HIV community sector resources.

Recommendation: DWP should avoid wasting time and resources and avoid putting claimants through unnecessary stress by ensuring official errors are addressed and that cases are not unnecessarily taken to tribunal.

How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)?

2.10 Several HIV organisations had concerns about DLA. Many issues were raised about the review of DLA awarded under Special Rules. The Special Rules provision of the DLA apply to individuals who have been diagnosed with a terminal illness and are reasonably expected to die within six months. Applications are fast tracked to the highest care component, rather than having to wait the usual qualifying period of three months for DLA. The Disability and Carers Service (DCS) decided to review all cases where an individual has been on DLA for more than three years in November 2007. NAT raised their concerns about how this review was carried out with the Minister for Disabled People. We were particularly concerned that the review was conducted in such a way that local HIV organisations were not given sufficient warning to set up local arrangements to assist people living with HIV going through the review. NAT hope that lessons will be learnt from this review in any future review going forward.

Recommendation: Any further review of the DLA for people living with HIV should take note of “lessons learnt” from the previous review. A wide range of HIV organisations should be involved in the review process from the outset so they have the opportunity to support service users going through the review process.

2.11 Organisations also noted that the current DLA decision making process fails to take sufficient account of the side effects of HIV treatment and the mental health impacts of living with HIV. Several organisations reported that the outcome of DLA claims are “something of a lottery.” People reported claimants with very similar circumstances receiving very different awards.

Recommendation: As stated above DLA decision makers should receive proper training around HIV to ensure that issues related to mental health and treatment adherence are given due consideration and that there is consistency in decision making.

2.12 There was a call to simplify the factual reports forms sent to patients’ doctors for the DLA. The current forms can be confusing, which often means that they are not completed correctly. Whilst the clinical information collected is important, there has been a call for the forms to include more questions on supervision and care needs, as well as additional guidance on how to complete the form.

2.13 Organisations also felt that the DLA award letters do not give enough information on how the decision maker reached his or her decision on a particular case. For example organisations had had clients that have provided a detailed description of their needs in their claim form as well as supporting medical evidence and then they receive a nil award letter that did not explain why (despite the information provided) the decision maker has reached that particular decision.

Recommendation: DWP should consider reviewing the DLA forms sent to patients’ doctors and the DLA award letters to ensure both that forms are completed correctly and that claimants understand why a DLA decision has been reached.

3. APPEALS

How does the appeals system work from the claimant’s perspective?

Is the timeframe of appeals reasonable?

3.1 HIV service providers highlighted their concern about the complexity of the appeal process. It proves time consuming to explain both the process and why people have been refused benefits (and often it is unclear even to the HIV support organisation why this is).

3.2 In addition people may be left without access to benefits whilst they await their appeal. The withdrawal of one type of benefit can then lead to the withdrawal of housing benefit which then causes the client a great deal of stress and anxiety as they have to provide additional information to the housing department to get this reinstated as this case study reveals.

Peter is living with HIV and was in receipt of income support on the basis of ill health. This was stopped although he was not informed of the decision to end his income support until he went to the bank to find he had no money. He spent the next eight weeks phoning different parts of the DWP to try to identify why his support had been stopped. As a result of the loss of his income his housing benefit was stopped, and he received threatening letters from his landlord. DWP advised him to put in an appeal, but he was not told how to or given a date when he needed to appeal by. He was also told to claim Employment Support Allowance (ESA), with no explanation given as to what this was or how to do this. Peter did eventually receive assistance, from Positive Action Aldershot to submit an appeal and he made a new claim for ESA. His housing benefit was eventually reinstated. This process started in February this year and Peter’s case finally goes to tribunal later in September. Throughout this period Peter’s actual income has been reduced by approximately £40 per week, and he is now in more debt than he has ever been.

3.3 Organisations gave examples where the withdrawal of a benefit and the wait for the appeal process had led to complete financial breakdown for service users, who had been unable to pay debts. This then led to mental health problems and depression.

3.4 Many people have to rely on support in the form of Crisis Loans which have been found to be unreliable. Some people have exceeded the maximum amount available as a Crisis Loan and are relying on handouts from relatives. As recommended above, the Crisis Loan system should be easier to access, decision making around loans more reliable and the maximum amount provided to people should be increased.

Recommendation: The appeal process should be reviewed and steps taken to address the current lengthy delays claimants face; appeals when claimants have no benefits at all should be fast tracked.

Recommendation: As stated above, it should be easier for people to access Crisis Loan support; delays in accessing this are causing serious hardship. The maximum amount available to people through Crisis Loan support should be increased.

Is sufficient support available to appellants during the appeals process?

3.5 Support organisations identified a lack of funding for advice services to assist clients during the appeal process. As a consequence many advice services are not able to represent clients at tribunals. Several organisations raised their concern that claimants have to carry out appeals without independent advice or attend tribunals without representation.

Recommendation: Funding to advice services should be increased to ensure all claimants can access independent advice and representation during the appeals process.

September 2009

Memorandum submitted by the Action Group (DM 20)

INTRODUCTION

We are submitting written evidence to the Work and Pensions Committee because of our experience and expertise in getting advice and assistance to “harder to reach” groups. We do this by tailoring our services to meet the needs of those who face additional barriers.

The Action Group is a medium sized voluntary organisation for children and adults with a learning disability and other support needs, their parents and carers. We provide wide ranging housing support services, supported employment services and community based children’s services. Our Advice services provide a unique, specialist resource for people with learning disabilities and other support needs across Edinburgh, the Lothians and Falkirk. Advice services include Welfare Rights advice and a Black and Ethnic Minority Advice Service.

In 2008–09 we received 200 new referrals to the welfare rights service and dealt with a total of 5,720 enquiries.

EXECUTIVE SUMMARY

The key themes in respect of decision making and appeals in the benefits system to emerge from our work with clients are as follows:

- Decisions on benefit claims take too long.
- Evidence available to decision makers is not weighed appropriately.
- Content of letters from the DWP is often unclear.
- The review stage of the decision making process is more often a rubber stamping exercise than a thorough re-examination of a decision.
- Understanding and application of linking rules amongst DWP staff is poor.
- Government departments do not work well together to make decisions.
- Decisions about the high rate of the mobility component of Disability Living Allowance are often based on a misunderstanding of the law.
- Reinstatement of benefit after a successful appeal is an arduous process for a claimant.
- The appeals process takes too long.

The subsequent paragraphs provide a more detailed response with reference to some of the areas outlined to by the Committee.

1. DECISION MAKING

1.1 *How effective is the decision making process?*

Firstly, in many cases the decision making process is not effective because it is slow. This is of particular concern where claimants are awaiting decisions on claims to benefits which provide a minimum income to claimants (Income Support, Jobseeker’s Allowance, Employment and Support Allowance). Also, delays in decision making for one benefit can delay entitlement to and payment of other benefits, for example

Disability Living Allowance delays affect Carer's Allowance, Income Support, Tax Credits and Housing Benefit. Secondly, the decision making process is not effective because evidence available to decision makers is not always used, affecting the fairness and accuracy of decisions.

There is evidence of delays in Employment and Support Allowance (ESA) decision making, even early in the lifetime of this new benefit when resources have been targeted at it. This has meant that some claimants have waited in excess of four weeks for an initial decision and payment even when they have provided all the information necessary, for example a current medical certificate. Indeed clients we have assisted have been asked to complete later stages of the assessment phase (the ESA50 questionnaire and attendance at a medical) before any payment has been made to them. Also, decisions about ongoing entitlement are not always made within the DWP's own 13-week assessment phase target. It is our opinion that it is not enough for the DWP to respond that backdating makes up for any such delay. Individuals and families experiencing disability who have to manage without their benefit entitlement (either no benefit payment at all or receiving a reduced assessment phase rate after the 13-week target) on a week to week basis experience financial hardship and face a real risk of incurring debt due to these delays. When a claimant has no other funds and is waiting for a decision on their benefit claim, the DWP routinely advises claimants to apply for a Crisis Loan. In our opinion where a delay in processing a claim is caused by the DWP it is inappropriate for claimants to apply for a Crisis Loan and incur debt; they should be offered an interim payment of benefit instead.

In the experience of some of our clients, decision makers may not be weighing evidence properly which affects the quality of the decisions. This can be true for all benefits but particularly Incapacity Benefit, ESA and Disability Living Allowance (DLA). Staff at the DWP have told us that they have to go with medical advice (ie a report from Atos Healthcare) when making their decision. In one case the DWP adopted the findings of the report from Atos Healthcare even though it had not been happy with this report, had returned it to Atos Healthcare to look at again and received it back with the medical advice unchanged. It is of particular concern that findings of an Examining Medical Practitioner or Approved Health Care Professional are adopted wholesale even where other reports are available from professionals who have regular contact with a claimant and conflict with findings from such a report.

1.2 Are there sufficient numbers of decision makers and is the training they receive adequate?

From the issues described in 1.1 above it appears that there may not be enough decision makers (delays in decision making) and/or the training they receive may not be adequate (quality of decision making). In terms of the quality of decision making it is important to note that even when adequate training is provided decision makers need to carry out their role properly, for example with regard to dealing with all evidence available.

1.3 Is the decision making process clear to claimants?

In our experience, the decision making process is not clear to claimants in a lot of cases. This is particularly true where there are a few different stages to a claim process (ESA) or where automatically generated letters arising from a DWP official's work on a claim contain insufficient information and are irrelevant, for example letters referring to an unspecified "change of circumstances" (even when there has been no change) and stating that the amount of benefit is not changed (Income Support).

One client who had not received any payment following a claim for Employment and Support Allowance received two letters, neither of which made any sense in the context of his claim. One stated "We cannot pay ESA from 7.4.09. To continue to receive ESA you may need to attend a Work Capability assessment and Work Focused Interview". The other stated "We have looked at your claim following a recent change of circumstances. We cannot pay you ESA from 7.4.09. You are not getting any more ESA. We will credit you with National Insurance contributions while claiming ESA". Subsequently it transpired that this claimant was indeed entitled to ESA. From this example, it is unclear how the DWP expected the claimant to understand the letters and indeed the process involved in his claim.

1.4 How effective is the review stage of the decision making process?

In many cases the review stage is merely a rubber stamping exercise and not a thorough re-examination of a decision. We have been advised that the DWP aims to complete the revision ('reconsideration') process for Employment and Support Allowance appeals within two days. It appears that this is because this revision process is linked to reinstatement of Employment and Support Allowance payments ie payment whilst appealing is not issued until this has been done. This makes it a worthless process as it does not allow any opportunity to contact other health professionals involved.

For other benefits it is often the case that the revision stage is no more effective but can take a further 8 to 11 weeks (DLA). We suggest that this length of time can only be justified if further evidence is being sought by the DWP; otherwise it contributes to the unacceptable delay in the appeal process (see 2.2 below).

1.5 How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)

The examples in 1.1 to 1.4 above show that there are difficulties with the operation of the decision making process for many different benefits. However there are some issues that we would like to raise pertaining to specific benefits as follows:

Linking rules for incapacity-related benefits (Incapacity Benefit, Employment and Support Allowance) are not applied properly. In some cases the DWP states that linking rules apply when they don't (a contact centre dealing with a new claim for ESA suggested it would be a linked claim for Incapacity Benefit, but none of the linking rules applied). In other cases claimants are not advised of linking rules and their claims are not processed according to these rules when they do apply (one claimant was awarded ESA when it should have been a linked claim for Income Support; the money she received was less than she would have got if correctly awarded Income Support).

Interaction between benefits—An impediment to a claimant receiving a timely decision on their ESA in Youth claim is the ineffective communication between the ESA section at the local Benefit Delivery Centre and the Child Benefit office. New ESA claims are routinely processed but not put in payment because the end of the Child Benefit claim in respect of the young person has not been confirmed by the Child Benefit Office. In one case it took eight weeks for the DWP to request this information from the Child Benefit Office and it then took HMRC at least a further five weeks to respond. It appears from this specific example that one government department (DWP) accepts the fact that another (HMRC) takes a long time to respond to requests for information, rather than seeking to improve the systems and communication between the departments and aiming to work better together to avoid these unnecessary delays in benefit payment.

In a further example it can be seen that sections within the DWP do not interact well. One client's Income Support was terminated without going into payment because the Incapacity Benefit section had not advised Income Support (within the same Benefit Delivery Centre) that they had received the necessary medical certificates. This situation was exacerbated because the Incapacity Benefit section was not paying the claimant either; they repeatedly told the adviser that they were waiting for information from the claimant's school but after four months of non-payment decided that they didn't actually need this information and instead requested an offset calculation from Child Benefit causing a further delay.

DLA high rate mobility—Frequently our clients report that they are informed by the DWP helpline that if their child can walk they cannot get the high rate of the mobility component. Obviously workers on the helpline are not decision makers but it highlights a misunderstanding about the specific criteria for high rate mobility. Also it is clear that this misunderstanding is replicated amongst the decision making staff from the submissions of presenting officers at appeal, for example a presenting officer told a tribunal that people with autism only get awarded the high rate mobility (if it all) on the grounds of severe mental impairment and not on the grounds of being virtually unable to walk. This goes against awards in payment to people with autistic spectrum disorders as well as established case law on this subject. It should be noted that many of these decisions are overturned at appeal. Our organisation works with people with learning disabilities and other support needs including people on the autistic spectrum. Whilst this is a very specific area of social security law it is one that we have to argue again and again at appeals because decision makers do not appear to be fully informed on this matter (see also 1.1 and 1.2 above).

Housing Benefit—It appears that changes of circumstances reported by a claimant to the Council are very rarely processed in time for the next Housing Benefit payment due. For example one client whose wages vary from month to month reports changes in her income but because the claim is not amended in time, the next payment is wrong (possibly resulting in an overpayment) or suspended (leaving the claimant in rent arrears).

2. APPEALS

2.1 How does the appeals system work from the claimant's perspective?

Clients have reported that appeals are scary, confusing and distressing. They also find it demoralising because they think that they are not believed or their difficulties are not considered legitimate. These are clients who already have many things to cope with in their daily lives because of their own disability and/or caring responsibilities for a disabled child or adult. It is an additional hurdle which is unnecessary in many cases if the evidence and law were to be considered properly.

We represented at 30 appeals in 2008–09. Success rates at appeals are high, for example 63% of these appeals were successful. It is often suggested that this is because claimants provide further medical evidence and other reports to the tribunal. When this is the case it is arguable that the DWP, with the resources available to it, should have obtained this evidence at the decision making stage. This is particularly pertinent in the context of the increasingly common policy of GP surgeries to provide a report only when requested to do so by the DWP and not when requested by the claimant, or at least charge the claimant a fee for such a

report which is prohibitively expensive for many people. However in many cases tribunals overturn decision makers' decisions on only the evidence which was originally available to the decision maker, suggesting that initial decisions in these cases have been poor.

We think that there should be fewer requirements for claimants in re-establishing entitlement to benefit following a successful appeal. In many cases, particularly for incapacity-related benefits (Employment and Support Allowance, Incapacity Benefit and Income Support on the basis of incapacity), there are burdensome requirements placed on the claimant including the requirement for a new claim to the benefit under appeal. If the DWP's decision to refuse or stop benefit has been shown to be wrong following a claimant's successful appeal, then it should be for the DWP to take on the responsibility of "righting their wrong", minimising any further delays or work for the claimant.

One appellant who had a successful outcome on her Personal Capability Assessment (PCA) appeal had to re-claim Incapacity Benefit and Income Support (she had been in receipt of Jobseeker's Allowance whilst appealing) after the appeal. It took over two months as well as 8 telephone calls from her representative to get her payments reinstated. She had to complete form S/985(1), a one page form sent out by Incapacity Benefit three weeks after her appeal. This just asked her to confirm her current bank details and that none of her circumstances had changed. Also she had to complete an Income Support review form which is just as big as a new Income Support claim form and was dealt with by the new claims section. Other clients receiving Jobseeker's Allowance whilst appealing have had similar delays and administrative hurdles.

Another client who opted to stay on Income Support at a reduced rate whilst appealing a PCA has only been asked to complete Incapacity Benefit form S/985(1), although he was asked to complete it twice. In his case it took over six weeks to get Incapacity Benefit back in payment and Income Support reinstated to the full rate. A worker at the local Benefit Delivery Centre has confirmed that it would always take between four to six weeks to get Incapacity Benefit back in payment again after a successful appeal.

2.2 *Is the time frame of appeals reasonable?*

The time frame for appeals is not reasonable. There are huge delays in an appeal reaching a tribunal and the DWP contributes to these delays. For example, for one ESA claimant the revision or "reconsideration" part of the appeal process was done by the DWP within three weeks of receiving the appeal. However it took a further three months for the DWP to prepare and send its appeal submission, and only then after five follow up calls about this by the representative. The appeal has still not been scheduled six months after it was lodged by the claimant.

RECOMMENDATIONS

We would recommend the following actions as a priority:

- The DWP should make more use of interim payments where they are responsible for a delay in processing benefit claims instead of advising a client to incur debt by applying for a Crisis Loan.
- The link between revising an ESA decision before reinstating payment whilst appealing should be broken to allow revisions to be done thoroughly.
- Content of ESA letters should be reviewed (see example in 1.3 above).
- An agreement should be established between the DWP and HMRC about how long it is acceptable to wait for information, for example confirmation that a Child Benefit claim has ended.
- Ensure all staff at Disability and Carers Service are aware of the criteria for the high rate mobility component of Disability Living Allowance.
- After a successful appeal a claimant should not be required to give information again to the DWP which they have already provided, nor should they have to make a new claim for benefit.
- The DWP should work with The Tribunals Service following a successful appeal; any further information required could be gained on the day of the appeal so that it can be sent to the DWP along with the Tribunal's decision.

September 2009

Memorandum submitted by Centrepont (DM 21)

SUMMARY

- Homeless young people and Centrepont frontline staff were interviewed to gather their experiences of the benefits decision making process.
- Most young people apply for benefits and receive a decision on their claim without major difficulties, but many of those interviewed identified inefficiencies in the system. A minority experience very serious problems which put them at risk of becoming homeless again.

- A greater number of young people experience problems with their Jobcentre Plus benefits than with their housing benefit claims. Staff members commented that housing benefit offices were generally more responsive as they had a smaller caseload and it was easier to develop positive working relationships with assessors.
- Many of the problems highlighted with claims made at Jobcentre Plus were down to administrative errors, such as forms getting lost on the way to the central JSA office in Glasgow.
- Whether claimants found the process clear and easy to follow depended largely on which individual staff member they saw—the effect of the individual assessor or advisor appears to have a major effect on young people’s experiences of the whole process.
- Staff should therefore be better trained in customer service skills to ensure a more consistent level of service and take greater account of the needs of vulnerable young people.
- Specialist young people’s advisers were found to be very helpful, so such specialists should be available in all Jobcentres, and where necessary the administrative process should be made more flexible to accommodate the circumstances of vulnerable young people.
- There are inconsistencies in how much documentation and information different individuals are required to submit for their claim to be processed. Young people are also sometimes given conflicting advice from different sources within DWP.
- Jobcentre Plus and benefits call centre staff should therefore receive more detailed training about benefit eligibility criteria to ensure that all staff are working to the same set of rules.
- Communication between assessors and claimants is often poor. Young people are not kept abreast of the process of their claims, and are often not told there is a problem with their claim until support staff call to query why it has not yet been processed. This can cause long delays which has a serious effect on young people’s wellbeing.
- The appeals process is seen as hard to access and unlikely to be successful, which deters many young people from making an appeal. Those who have used the process felt it was made deliberately difficult and found that the process was subject to repeated delays.

INTRODUCTION

1. Centrepoint is the leading national charity working with homeless young people aged 16–25. We are a registered social housing provider, a charity enterprise and a company limited by guarantee. Established 40 years ago, we provide accommodation and support to help homeless young people get their lives back on track. We work with around 800 young people a day and have over 30 services across London and the North East. Young people can stay at Centrepoint for up to two years, during which time they receive intensive support to help them develop the skills they need to live independently. All our work is informed by our distinctive support and development approach which responds to young people in a holistic way. To meet the broad range of young people’s needs, our accommodation services are supported by specialist in-house learning and health teams.

2. The majority of the young people at Centrepoint receive housing benefit to help them pay for their accommodation at our services. Most are also in receipt of other welfare benefits such as Income Support, Jobseekers Allowance or Employment and Support Allowance to them meet their basic living costs. Few young people we work with receive any financial support from family or friends, and many find it difficult to find work due to the chaotic nature of homelessness and a lack of qualifications. Many are therefore entirely dependent on welfare benefits to support themselves as they try and rebuild their lives and move towards work and independent living.

3. We are delighted that the Work and Pensions select committee is conducting an inquiry into benefits decision-making and appeals as this is an area where many of the young people have experienced difficulties. Problems often arise from how Department for Work and Pensions (DWP) guidance is implemented on the ground, with local staff often failing to follow the guidelines properly.

4. To collect feedback on this topic, both young people and Centrepoint frontline staff were interviewed to understand their experiences of the benefits decision making process. This submission is a summary of the issues they raised.

MAIN FINDINGS

5. Interviews with staff and young people revealed that most young people apply for benefits and get a decision on their claim without major difficulties. Some, however, experience very serious problems which put them at risk of becoming homeless again, and the majority of young people have at least one example of how they found the benefits system to be inefficient or unclear.

6. On the whole, more problems were reported with Jobcentre Plus benefits than housing benefit, so the issues outlined below apply to Jobcentre Plus benefits unless otherwise indicated.

Inconsistency of information

7. It was apparent from the feedback that inconsistency of information is a significant problem. Young people and staff said that they had received contradictory information from the local Jobcentre and DWP call centres, and in some cases, even from different individuals from within a single Jobcentre. This contradictory information was given about a range of different aspects of decision making process, but there was particular confusion about eligibility requirements and conditions for maintaining benefits. These inconsistencies often left young people confused and discouraged from pursuing their claims.

“The staff at Belfast [call centre] are better trained and more informative than those at the [local] jobcentre. There is frequently contradictory information offered from these two services.”

Staff member

8. At times, information given to staff and young people was not only inconsistent but false. One young person was told by Jobcentre staff that he could not claim benefits because he was homeless, even though he could provide proof of residence at a Centrepoint hostel. Staff also reported examples of Jobcentre Plus staff giving false information to young people about what effect taking a job would have on their other benefits and overall income. It was felt that staff simply wanted to get young people working at any cost, without properly explaining the effect this would have on their housing situation, and exploring whether it would leave them at risk of homelessness.

“There is often misinformation from Jobcentre and DWP staff. Calling is difficult and there is no direct number. There is a distinctive lack of customer service”.

Staff member

9. Centrepoint staff reported that it is sometime difficult to get clarification of eligibility criteria from DWP on what will and will not affect a young person's benefit. For example, one staff member said they had been trying for several months without success to get DWP to confirm what education young people could pursue under the 16 hour rule without risking losing their housing benefit entitlement. For example, staff enquired whether young people are allowed to do exactly 16 hours or whether it must be under 16 hours, whether homework hours count in the total course time limits, and whether Access courses are considered higher education. Staff have enquired with both the local housing benefit office and central DWP enquiry lines but nobody has been able to provide them with a firm answer of what exactly is permitted under the rule. It is important that staff have the correct information so that they can advise young people accurately, and so young people can make informed choices about what educational courses to pursue. The current situation all too often leads young people to choose not to pursue education for fear of losing their housing benefit and becoming homeless again.

10. Another problem with housing benefit, income support and JSA identified by Centrepoint staff was that different young people in almost identical situations can be asked for very different levels of proof in order for their claim to be successful. There is a feeling that requirements vary widely depending on which assessor is handling the claim.

11. This lack of clarity on the requirements for benefits means that there is a great deal of confusion among young claimants of what they are entitled and what documents they need to provide. Unfortunately the inconsistencies in approach also make it difficult for Centrepoint staff to advise them effectively.

Recommendations

12. To resolve this problem of inconsistency, Centrepoint believes that there should be improved training schemes for frontline Jobcentre Plus and call centre staff. Staff should be tested on benefit eligibility and requirements to ensure that their knowledge is sound enough to give reliable advice.

13. In addition, clarification should also be brought on issues where there is confusion, for example over what is permitted under the 16 hour rule. DWP needs to provide a clear, definitive list of requirements for all areas of benefits entitlement so that both DWP staff and support staff in organisations such as Centrepoint can advise young people accurately. There should be no room for confusion and subjective decision making.

14. If they do not have a solid grasp of the system themselves, DWP staff will be unable to ensure young people have properly understood the conditions for acquiring and maintaining benefits. This will leave claimants poorly informed and at risk of breaking the conditions of their benefits without realising.

Poor communication

15. Both young people and staff raised poor communication as a problem in the application and decision making process. For example, a number of young people said that when they went to the Jobcentre they were not offered a meeting with an advisor to discuss what they are eligible for. They were simply given some paperwork and sent away. Where young people did manage to book in appointments with an advisor, some found that their slots were cancelled without them being told.

“The Jobcentre are rubbish at keeping you informed. One of my appointments was changed without telling me. Because I am young, they take advantage and talk down on you.”

Young person

16. Another problem highlighted by both young people and staff was that Jobcentre Plus and call centre staff often fail to give a comprehensive list at the start of the process of everything a young person needs to provide in order for their claim to be processed. Instead, young people are often asked to provide one thing, and it was not until they came to the Jobcentre to give this in, that they were asked for something else, and then something else. This can lead to the young person making multiple trips to the Jobcentre, thus causing numerous delays to their claim. It would be hugely beneficial to processing times and therefore the well-being of young people if staff could simply provide at the first meeting a list of everything that claimants may need to provide.

17. Another frequently cited problem was that young people were given very little information about how their claim was progressing after they had submitted their initial application. Few were given a realistic idea of how long it would take for their claims to be processed, and many did not know their claim had been granted until the money arrived in their bank account.

“When I claimed for JSA, it took about six weeks for it to be processed and I wasn’t being informed about the process. They didn’t say anything about how long the whole process was going to take.”

Young person

18. The biggest problem was that young people were often not told when there was a problem with their claim. For example, in several cases, young people’s claims were not being processed because the assessors required additional information, but the claimants were not told anything else was required until they or a staff member called up to check on the progress of the claim. If no-one had proactively called on their behalf, it is likely that these young people would have been waiting indefinitely for a decision on their claim.

“It’s out of your hands. You hand your form in and that’s it [. . .] They don’t keep their promises. They say they call you but they don’t call you.”

Young person

Recommendations

19. DWP staff should improve their systems of communication with claimants so that individuals have more information about the process of their claim. To facilitate this, DWP should consider producing guidelines on which circumstances should trigger contact with the claimant, (for example when some information is missing from their form), and at which points in the process claimants should receive an update.

Comparisons between HB and Jobcentre Plus

20. Many staff members reported that housing benefit decision-making was more efficient than Jobseekers Allowance and Income Support processing which is done centrally. They felt that this was in part down to the localised system of housing benefit decision making. Housing benefit staff were more likely to know of local Centrepoin services and their status of their clients, and it was easier for Centrepoin staff to develop links with decision-making staff, thus making it easier to get updates on individual claims. For example, one Centrepoin service has a system with the local housing benefit (HB) office that they have a slot every fortnight when they can talk to HB staff to discuss queries they have about young people’s claims. Another service has email contact with individual HB assessors in the local office. In smaller boroughs, staff reported that some housing benefit staff could remember the progress of an individual claim by the young person’s name. These strong lines of communication encourage familiarity between the Centrepoin service and the housing benefit office, and mean that queries are dealt with more quickly. Staff felt this high level of customer service was extremely valuable to them as support staff, and to young people in terms of quicker processing times.

“The email system works really well for this borough. The assessors are responsive and it is an opportunity to build a relationship with them”.

Staff member

21. In comparison, many problems were highlighted by the centralised system for Jobseekers Allowance and Income Support. Young people’s applications made in London have to be posted to either Belfast or Glasgow and everything has to be sent in hard copy. Not only does this slow down the process, but can often lead to forms getting lost in transit. Out of the 14 young people interviewed for this research, several had experienced their forms getting lost on the way from their local Jobcentre to the central office in Glasgow. Centrepoin staff confirmed that this is not unusual. In these cases, the young person is required to resubmit their claims and the administrative process must be started again. This leads to significant delays as young people do not normally find out their forms have been lost until they call up to enquire about the progress of their claim.

22. The lack of a local decision making body for DWP benefits means that young people have to call a central phone number to get information about their claim. This can be particularly problematic for homeless and vulnerable young people who benefit from a more personalised approach. When young people call up, some are passed from number to number as it is unclear who is responsible for different sorts of enquiries. This would be avoided if there was a single local office which dealt with all claims for a particular benefit in that area. One young person experienced such problems when trying to claim for a crisis loan, and his story exemplifies the inefficiency in the current division of responsibilities:

“I was eligible to get a crisis loan. So I went to the Jobcentre and they gave me a number to call for the crisis loan. I called the number and was given lots of options, got through to a woman who told me to go back and choose a different option. I ended getting through to the same woman who gave me a different number. I called them but they told me to go back into the Jobcentre where I was told by a different person that I wasn’t eligible.”

Young person

Recommendations

23. Ideally, a greater proportion of benefits decision-making would be done locally. As shown by the example of housing benefit, this should help speed up the process and make the system more accountable. At the moment, the local Jobcentre cannot tell you anything about your claim, young people are simply told to ring the central call centre.

24. If such decentralisation is not possible, there are some lessons which Jobcentre Plus could learn from HB, as even small changes in procedure can make a big difference. For example, one staff member suggested that young people should be given a receipt for every piece of paperwork submitted at the Jobcentre so they have proof of what they have given in if things get lost. This already happens at their local HB office, and has proved to be helpful in providing a record of what has been submitted at each stage. Centrepoint therefore believes that this receipt system should be extended to Jobcentre applications too.

25. The frequent problems caused by lost forms could be avoided if it were possible to process claims electronically, thus removing the need to post paperwork. Jobcentre Plus should therefore consider how the application process can better utilise online services.

26. To help young people navigate the system more easily, DWP should make division of responsibilities between central teams clearer to local Jobcentres. This will help Jobcentre staff direct claimants and support staff to the correct helpline number first time. Knowing exactly who to go to could help support staff build up relationship with decision makers which is something that can make a huge difference to day-to-day working.

Lengthy processing times and their effects on young people

27. The inefficiencies in the current system mean that the length of the decision-making process is variable and difficult to predict. Many young people find that their claims are processed fairly quickly, within a couple of weeks or so. Others, however, experience long delays, which can have serious implications for the young people affected.

“There is variation in the length of time the benefits decision takes. Sometimes a decision is made almost immediately and other times it can take weeks. This occasionally depends upon the pro-activeness of the young people or the capability of the staff, but more often than not seems to be determined by luck”.

Staff member

28. Delays in the decision making process can have serious implications, not only for young people’s financial situations but for their education and housing security. For example, one Centrepoint resident aged only 16 had to keep missing school to go and attend her appointments at the Jobcentre as she was repeatedly asked for more and more information about her Income Support claim. Another young woman aged 18 told how she had got into significant arrears at another hostel before coming to Centrepoint after her housing benefit failed to come due to a problem with her Income Support claim. She received little support from hostel staff, which meant the issue was not resolved until she moved to Centrepoint. This left her in two months of arrears to her previous hostel totalling £946, which she is now forced to pay back at a rate of £18.50 a week. Given that her total income is only £50.95, this has a significant impact on her ability to meet basic costs and feed herself properly.

29. Many young people also experience problems due to their benefits being suspended when assessors are deciding how a change in circumstances will affect their claim. For example, several young people had their benefits suspended when they changed address.

“I have had a lot of problems with my benefit being delayed, stopped and suspended. I have gone for days without food or money for transport.”

Young person

30. Although there are systems in place to help claimants cope during delays in benefits processing, unfortunately these are often not very efficient, leaving young people with no money to support themselves. For example, young people reported that it was not always possible to get through to the crisis loans application number. One young man reported that the number was engaged every time he tried to call. Even when young people were able to access crisis loans, several reported that the amount was extremely small and not enough to cover basic living costs. One young man reported that the crisis loan staff had simply told him he had to get his benefits sorted quickly. He felt this to be extremely unfair as he had handed his form in and now all he could do was wait for the centre in Glasgow to process it.

Recommendations

31. As mentioned above, delays are often caused by decision making staff asking for one piece of information, and then when this is provided, asking for another and so on. Frontline staff should give a more definitive list of what is required to make a claim at the start of the process by taking the time to talk through the individual's circumstances to understand what requirements are relevant to them. This will prevent later delays by avoiding the need to repeatedly go back to the young person for further documentation.

32. To limit the impact on young people of delays and gaps in benefits when assessors are considering an application or change in circumstances, the process for claiming interim benefits such as crisis loans should be made simpler and more accessible. The current system is failing too many young people, leaving them without money for basic living costs while administrative procedures are undertaken.

Treatment of young people by Jobcentre Plus staff

33. In the focus groups and questionnaires, participants were asked about how helpful and polite they found DWP staff. Both young people and Centrepunt staff were sympathetic to the pressures that DWP staff are under, and acknowledged that most were doing their best under the circumstances. Young people's experiences, however, were extremely mixed in terms of quality of service given. Some reported that staff were helpful and informative, but others said staff were indifferent and dismissive towards them as young people. Staff also reported that their experiences of Jobcentre and call centre staff varied greatly, and felt that Jobcentre Plus should invest more in customer service training for their staff to ensure more consistent levels of service.

“It depends, sometimes they will speak to you nicely, sometimes they will not.”

Young person

“Staff needed to be more helpful, communicative and proactive. Better training is required”.

Staff member

34. Where young people had experiences of good treatment from staff, this appears to have greatly improved their experiences of the system as a whole. Those who said the staff had been helpful generally felt that the eligibility criteria were fair and the conditions were easy to follow. This suggests that positive treatment by staff has a big impact on young people's level of understanding and whole experience of claiming benefits. One young person commented that having the system clearly explained by a helpful member of staff meant they did not have to worry as much and could put more energy into finding work.

“When Jobcentre staff are positive and constructive, they can build good personal relationships with young people and this can really help them”.

Staff member

35. Some individuals are providing an excellent level of service and these people should be celebrated and learnt from. For example, at one service in South East London, young people and staff alike praised the attitude and helpfulness of the local under 18s adviser, saying that he was really good at communicating with young people, considerate of their needs and took the time to explain things clearly. As a result, staff from the local Centrepunt service always refer young people directly to this employee.

“The helpful ones are those which give straight, direct advice”.

Young person

36. Unfortunately, not all young people had such good experiences. Several said that they felt staff treated them with little or no respect because they were young, particularly those who were still in their teens. This can worsen existing feelings which some young people hold that adults and authority figures do not want to help them. One 16-year-old reported that staff had refused to give him an appointment when he went to the Jobcentre on his own, but when he went down later with an adult they were much more accommodating. Another young man was sent away and told to come back the next week because the under 18s advisor was on holiday. This left the young person feeling extremely demoralised.

“I feel like because I’m young, they think they can take the piss. Sometimes when you go down there they talk down to you.”

Young person

37. Many young people also said that staff were very unsympathetic and treated them as another case rather than as a human being. Such a lack of empathy can be extremely damaging to young people, as it can mean they do not engage with the staff member as effectively, thus hindering their ability to effectively complete a claim. Some get so affected by poor treatment that they simply leave without making a claim, which has obvious detrimental effects on their welfare.

“They just want to get rid of you and get to the next person.”

Young person

“It seems like the staff lack any type of compassion when you talk to them. I understand they have to be firm to get people to find jobs but their attitude in general is not very warm and tends to be as if you are simply a number instead of a human being. They have to understand that people coming in there are going there a lot and a little bit of compassion can be a great boost.”

Young person

“Some Jobcentre staff are demotivated and should be more sympathetic to the circumstances of young people. Many regard benefit as charity and claimants as scroungers, rather than as human beings claiming their rights. We need a change in attitude. Benefits are not simply to keep people alive but to encourage them to engage in society.”

Staff member

38. It was clear from the interviews that a helpful, positive, constructive face at the Jobcentre can make all the difference. It is therefore important that DWP works with its staff to change the attitudes of those who are not currently providing a good service, and ensure that young people’s welfare rather than administrative procedures are prioritised in the application and decision making process.

Recommendations

39. All Jobcentres should have a specialised young people’s advisor who is trained in interacting with young people and benefits rules affecting this age group. It is important these staff members have both the time and necessary skills to explain the benefits process to young people in a way that they can understand.

40. To complement this, all Jobcentre Plus frontline staff should attend customer service training to ensure that no matter who a young person’s first point of contact is, they receive a positive reception, and that there are staff available to cover the young people’s specialist advisor when they are unavailable or on holiday.

Inflexibility

41. The inflexibility of the benefits system can often exacerbate young people’s feelings that staff do not care about them or their situation. Numerous young people reported that the conditions for maintaining benefits were unresponsive to their situation, and that there should be more flexibility to take into account the additional pressures they face as homeless young people.

“The conditions were fair when I was at home, but when I became homeless, the staff did not take that into consideration, and assumed it was easy to just carry on looking [for work]. When you’re in a hostel there is so much to do just to survive. The conditions should be relative to your current situation.”

Young person

“They are dealing with people under pressure and should take that into account”

Staff member

42. There were a number of examples given as to the inflexibility of the system. For example, several young people who were late for an appointment at the Jobcentre were told they would have to wait a week before they could get another appointment. Given the chaotic lifestyles that many homeless young people lead, they are frequently unable to keep appointments, often for very understandable reasons. For example, one young person’s benefits were cut off because he was admitted to hospital and was consequently unable to sign on. This young person explained that:

“On the day I was due to sign on, I was receiving treatment in hospital and couldn’t go. I was in hospital for 10 days in the end and they cut off my benefit without telling me. I had to go back in afterwards and fill in new forms again”.

Young person

43. Staff also reported examples of the benefits office demanding what they saw as excessive levels of proof from those who are most desperate for help. For example, one young woman who had been thrown out of home by her mother was told by the housing benefit office that in order to apply for housing benefit, she

needed to obtain a letter from her school, a letter from her mother, and proof of identification before she could get any help. The authorities were more concerned with receiving the proper documentation than the speedy processing of a claim from an extremely vulnerable, homeless young woman.

“Without benefits, people will aim to make money in other areas such as crime and this could be a greater burden to the state in the future. So the jobcentre should take more time to identify people as high risk”.

Staff member

44. Some Centrepoint staff felt that benefits staff are too frequently driven by targets rather than claimants’ needs. In this way, the rigidity of the benefits requirements is damaging to the welfare of the people that the system is designed to protect, as inflexibility is likely to hit the most vulnerable the hardest.

“Targets are misguided, based upon achieving figures rather than actual people’s needs. The system is overly bureaucratic, not accessible or easy”.

Staff member

Recommendations

45. Jobcentres should not be neglectful of the issues young people are going through. Frontline staff should be better trained in how to interact with vulnerable people and identify those who are likely to need additional assistance. To aid frontline staff, procedures and guideline should also be revisited to provide flexibility for the most vulnerable claimants. It should be noted that it is harder for some young people to get hold of documentation, for example if they have been forced to leave home suddenly. Centrepoint recognises the need to properly validate benefits claims, but where appropriate, Jobcentre Plus should provide alternative ways for young people to prove their circumstances. Jobcentres must also recognise that homeless young people are under a great deal of stress and often find it difficult to keep appointments. Where a young person is identified as vulnerable and at risk, staff should therefore be more flexible in accommodating them if they are late or miss their slot.

Appeals Process

46. Most young people and staff had not used the formal appeals process. Staff reported that details of how to launch an appeal was not readily available, and several young people were not even aware that they had the right to appeal. Among those who were aware of the appeals process, young people widely regarded it as an unnecessarily difficult and complicated process, which can deter people from pursuing a complaint. Many felt there was no point in pursuing an appeal as they believed there was little chance of success. For example, the young woman mentioned above who is paying £18.50 of her £50 per week income on arrears repayments decided not to appeal against a decision not to backdate her housing benefit because she saw the appeals process as long and frustrating, and felt it was unlikely to improve her position. She therefore felt it was better to simply pay off the debt in small amounts.

“You never think the complaints procedure is going to work”.

Staff member

47. Young people and staff who had experienced the appeals process agreed that it was a complex and arduous process. Staff members who had supported young people through an appeal reported that they were not given any indication of how long the process would take, and found it to be an incredibly laborious process requiring a large number of phone calls from staff to drive the process forward.

“The appeals process is often not worth young people’s time and usually won’t be successful. It is not a clear complaints procedure and it is difficult to even get the forms. For example, you have to make phone calls to several different numbers and the papers are sometimes lost. It’s an arduous and inconsistent process”.

Staff member

48. The problems with the appeals procedure are exemplified by the difficulties one young refugee has experienced. The young man applied for income support but was rejected and decided to appeal. At first, he was simply told that he needed to provide proof of his right to remain in the country. The young man had indefinite leave to remain, and was therefore entitled to benefits, but unfortunately had lost the paperwork confirming this. With the help of Centrepoint, he managed to obtain evidence from his solicitor of his indefinite leave to remain. However, when he submitted the necessary documentation, he was then asked for proof of estrangement from his parents. The young man in question was an unaccompanied refugee who fled his country due to persecution. The benefits office already had this information. Despite proof of estrangement being clearly unsuitable in his case, as his parents were still in his country of origin, Centrepoint testified to the young man’s estrangement from his family. However, the claim was still not processed. The staff member working with this young person felt as though the benefits staff handling the claim were making the process unnecessarily difficult for this individual. The appeal has been going for several months and the case is still ongoing. The young man has now had no income since January. He has accumulated huge arrears and been dependent upon friends for food despite satisfying benefit staff’s requests at every stage.

“The appeals process is a shambles, designed as if to purposely deter people. No clear idea was given of how long stage 1, 2 or 3 would last. I have no confidence at all in the appeals process. It needs much clearer guidelines [if it is to work more effectively].”

Staff member

Recommendations

49. Centrepoin would like to see the appeals process made more transparent and accountable. Details of how to apply should be more readily available. The Jobcentre Plus website states that “Information on how to appeal is normally included in the decision letter” but the lack of awareness among both young people and staff suggests this practice is not always followed. Information and application forms should be available in all Jobcentres and signposted by staff if a claimant is not happy with the decision made about their claim.

50. This guidance should have an estimated timetable in which assessors must respond. The current guidance on the Jobcentre Plus website lays out the time periods in which claimants must respond at each stage (usually one month), but sets no time limits on assessors. Given the importance of swift decision making for the welfare of young people, DWP too should be subject to reasonable timeframes in which to respond.

CONCLUSION

51. Our research found a mixed picture of the benefit decision making process. Many young people pass through without experiencing serious problems, but too many encounter major obstacles which are often caused by problems that could be easily rectified. Problems often arise due to basic issues such as a lack of communication and poor organisation. If DWP worked with frontline staff to improve customer service, administrative procedures and knowledge of benefits guidance, young people’s experiences could be greatly improved. Many of these improvements could be made without a great deal of investment, but instead through a change of attitude among decision makers and frontline staff.

September 2009

APPENDIX

RESEARCH METHOD

1. Four focus groups were conducted with young people staying at Centrepoin services in order to determine how effectively the benefits system is working for homeless young people. 14 young people were interviewed across three services and a further six questionnaires were completed by young people during support sessions with their key workers. Staff members were also interviewed to gather their experiences of supporting young people through the benefits application process.

2. The focus groups and interviews sought to answer a number of the key questions raised by the committee including:

- (i) Is the decision making process clear to claimants?
- (ii) How effective is the decision making process? Could it be improved, if so how?
- (iii) Are there sufficient numbers of decision makers and is the training they receive adequate?
- (iv) How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)?
- (v) How does the appeals system work from the claimant’s perspective?
- (vi) Is the timeframe of appeals reasonable?

3. To answer these questions, the interviews discussed the requirements for acquiring and maintaining benefits, the length and effects of the decision-making process, the performance of DWP staff, and experiences of the appeals process.

Memorandum submitted by the Tribunals Service (DM 22)

SUMMARY

- The appeals system underpins much of the work done by Tribunals Service Social Security Child Support until 2008 and First-tier and Upper Tribunal since then.
- Tribunals Service deals with around 250,000 appeals against benefit decisions every year.
- There were 165,872 appeals cleared at hearing in 2008.
- 42% of appeals were cleared in the appellants favour.
- The Tribunal Service is an executive agency of the Ministry of Justice (MoJ) and was created on 3 April 2006.

- The Tribunals, Courts and Enforcement (TCE) Act 2007 received Royal Assent on 9 July 2007. The Act provided a new judicial framework and put a flexible tribunals structure in place.
- Upper Tribunal established in November 2008.
- 2,107 rulings on application for permission to appeal to Upper Tribunal and 1,025 decisions on appeals in social entitlement and war pension cases.
- Target is to bring 75% of cases to hearing within 14 weeks of receipt.
- 2008–09—78% of appeals were brought to hearing within 14 weeks.
- There are a number of initiatives within Tribunals Service to improve service to the customer eg a step by step guide to the appeals process, a leaflet assisting claimants through the appeals process, website information and a call service.
- We are constantly working to improve the position further.

1. INTRODUCTION

1.1 This memorandum is provided by the Tribunals Service (TS) as a contribution to the Work and Pensions Select Committee's inquiry—"Decision making and appeals in the benefits system".

1.2 The current decision making and appeals system was introduced by the Social Security Act 1998 which brought in Decision Making and Appeals (DMA) and the consequential changes to appeals. It saw the introduction of the Appeals Service as an Executive Agency, with its own Chief Executive, within the Department of Work and Pensions (DWP). Prior to DMA, appeals were administered by the Office of the President of Social Security Appeals Tribunals which at that time was a Non Departmental Public Body led by a senior administrator. This new structure resulted in significant organisational and cultural changes which had widespread implications. The aim was to introduce a clearer, simpler, more effective process that would be easier for customers to understand and allow for decisions to be made and disputes handled more quickly.

1.3 The DMA regulations were made under the powers in the Social Security Act 1998. That Act set up a new decision making appeals system within social security. The regulations provided the detailed framework for an improved decision making and dispute resolution system, a simplified appeal system and the introduction of a modern, accountable appeals service.

1.4 The need to reform the Tribunals system was initially set out in a review conducted by Sir Andrew Leggatt—*Tribunals for Users—One system One Service*. The Government accepted the recommendations of the review, and following on from this The Tribunals Service an executive agency of the Ministry of Justice (MoJ) was created on 3 April 2006. It is an executive agency with responsibility for the administration of appeals. Tribunals outside the Ministry of Justice and its predecessors transferred into the new organisation, as well as new jurisdictions being added. One of the most significant impacts of the then Appeals Service (now SSCS) joining the Tribunals Service was the separation from DWP and the visible independence this brought by physically establishing the division between First Tier Agency decision makers and those responsible for the administration of appeals.

1.5 The Tribunals, Courts and Enforcement (TCE) Act 2007 received Royal Assent on 9 July 2007. The Act provided a new judicial framework and put a flexible tribunals structure in place. It brings together individual Tribunals into a new, unified tribunals structure. The primary objective in making these changes is to improve services to all tribunal users by:

- making clear the complete independence of the judiciary, and their decisions making, from Government;
- speeding up the delivery of justice;
- making processes easier for the public to understand; and
- bringing together the expertise from each Tribunal.

1.6 The TCE Act framework created a new two-tier Tribunal system: A First-tier Tribunal and an Upper Tribunal, both of which are split into Chambers. Each Chamber comprises similar jurisdictions or jurisdictions which bring together similar types of experts to hear appeals. Each Chamber operates under rules and procedures tailored to the needs of individual jurisdictions within the Chamber.

1.7 The title of each Chamber broadly indicates the type of work within it. Details of the First-tier Tribunal Chambers and jurisdictions are as follows:

Social Entitlement Chamber

- Asylum Support;
- Social Security and Child Support; and
- Criminal Injuries Compensation

Health, Education and Social Care Chamber

- Care Standards;
- Mental Health; and
- Special Educational Needs & Disability

War Pensions and Armed Forces Compensation Chamber

- War Pensions and Armed Forces Compensation.

1.8 The Tribunals Service administration teams arrange independent hearings for appeals on decisions made by the Department for Work and Pensions (including Jobcentre Plus, Child Maintenance and Enforcement Commission and Pensions and Disability and Carers Service), as well as other government departments (HM Revenue and Customs) and local authorities.

1.9 The Social Entitlement Chamber of the First-tier Tribunal deals with disputes about:

- Income Support; Jobseeker's Allowance ;
- Incapacity Benefit; Employment Support Allowance;
- Disability Living Allowance Attendance Allowance;
- Medical Appeals;
- Retirement Pensions;
- Child Benefit;
- Child Support;
- Tax Credits ;
- Statutory Sick Pay (SSP)/ Statutory Maternity Pay (SMP);
- Compensation Recovery Scheme/ Road Traffic (NHS) charges;
- Vaccine Damage; and
- Decisions on Housing Benefit and Council Tax Benefit.

1.10 The TCE Act also provides a unified appeal structure. Previously there was no single mechanism for appealing against a tribunal decision. Appeal rights differed from tribunal to tribunal. In some cases there was a right of appeal to another tribunal; in other cases there was a right of appeal to the High Court; and in some cases there was no right of appeal at all.

1.11 The Upper Tribunal is a newly created superior court of record with jurisdiction throughout the United Kingdom. Its main functions are:

- to hear appeals from decisions of the First-tier Tribunal;
- to decide some first instance appeals in complex matters that are inappropriate for the First-tier Tribunal;
- to take over some of the supervisory powers of the Courts in respect of judicial reviews against the decisions of tribunals and of the government departments and other public authorities whose decisions may be appealed to tribunals; and
- to deal with enforcement of decisions, directions and orders made by tribunals.

1.12 The Upper Tribunal is divided into three chambers. The Administrative Appeals Chamber which deals with appeals from the Social Entitlement Chamber started work on 3 November 2008 followed by the Finance and Tax Chamber on 1 April 2009 and the Lands Chamber on 1st June 2009.

1.13 The Tribunals Service is working hard to continue to improve its current standards of service to our customers through the appeals process. This include a step by step guide to the appeals process, a leaflet assisting claimants through the appeals process, website information, interpreters for the those with hearing difficulties and a phone call service.

1.14 The Tribunals Service produces an Annual Report. The 2008–09 report provides comprehensive information on areas such as delivery against objectives and financial performance.

1.15 The Senior President of Tribunals has published three reviews on the implementation of the TCE Act. In his latest review the Senior President highlights any significant changes set out in previous reviews and outlines the plans for the next few months.

1.16 Prior to the TCE Act, the President of the then Appeal Tribunals was required to make an annual report based on cases coming before tribunals, on the standards of decision-making achieved by the Secretary of State. The Social Security Act 1998 as amended by the *Transfer of Tribunal Functions Order 2008* now provides for the Senior President of Tribunals to continue this requirement and make a written report each year based on the cases coming before the First-tier Tribunal. This work is being taken forward by the President of the Social Entitlement Chamber.

1.17 Under Section 43 of the TCE Act 2007, there is also a requirement for the Senior President of Tribunals to produce an annual report on matters which he wishes to draw to the attention of the Lord Chancellor and on which the Lord Chancellor has asked him to report on.

1.18 We believe that the appeals process in benefits is robust and practical and that it provides an effective basis to deliver services to all our customers. We are constantly working to make it even better.

2. APPEALS

How does the appeals system work from the claimant's perspective?

2.1 The first Tier Tribunal (Social Security and Child Support) deals with around 250,000 appeals every year.

- The volume of appeals received at SSCS from 1 April 2007 to 31 March 2008 was 229,123.
- From 1 April 2007 to 31 March 2008 there were 165,265 appeals cleared at hearing. In SSCS 72,278 (43.7%) of these were cleared in the appellants favour.
- From 1 April 2008 to 31 March 2009 SSCS received 242,825 appeals.
- From 1 April 2008 to 31 March 2009 there was 165,872 appeals cleared at hearings in SSCS. 69,773 (42.06%) of these were cleared in the appellants favour.
- So far this year from 1 April 2009 to 25 August 2009 the number of appeals received is 108,008.
- So far this year from 1 April 2009 to 25 August 2009 there has been 76,835 appeals cleared at hearing 29,989 (39.03%) of these were in favour of the appellant.

Non hearing clearances (cases cleared/disposed of without a hearing) include cases superseded by the department (revised decisions), cases withdrawn by the appellant and cases struck out for non compliance with a direction or return of a form.

Process

2.2 Not every decision made on social security benefits carries a right of appeal.

2.3 The decision letter the customer receives informs them if they have a right of appeal against that decision.

2.4 Their appeal is made to the office which made the decision they wish to contest.

2.5 If a customer believes they do have a right of appeal, and the decision letter says they have not, they may still appeal through the same channels and the Tribunal will make a ruling.

2.6 The referring agency submit details to the Tribunal. This comprises a letter or form on which the appellant has submitted their appeal and supporting documents submitted by the appellant or their representative. They also submit all information they deem relevant to the issue/decision under appeal which are known as appeal documents or a submission. On receipt of the details from the referring agency the Tribunals Service issue a pre-enquiry form to the customer to be returned within 14 days. If it is not returned within that time, a reminder is issued.

2.7 If there is no response to either, the clerk directs the paperwork to a duty Judge for directions, which could include the case to be heard on papers or that an oral hearing should be arranged. The judge may also direct the clerk to write to the appellant giving notification of the intention to commence strike out action, this means Tribunals Service will take no further action with their case as we will assume they no longer wish to continue with their appeal.

2.8 The customer can choose to have their appeal considered at an oral hearing to which they are invited or on the papers by the Tribunal Panel.

2.9 The Tribunal works within what the law permits them to do. They can make a decision on legal entitlement to social security benefits or replace a decision being appealed against with a decision they think should rightly have been made.

2.10 The Tribunals Service is a free service with no costs involved for the appellant attending their hearing.

2.11 Appellants can claim expenses for travel to and from their hearing and for loss of wages, child minding costs etc. Interpreting services are also provided if required at no cost to the appellant.

2.12 Decisions are generally given on the day.

2.13 The appellant has the right of appeal on a point of law only to the Upper Tribunal (formerly the Social Security and Child Support Commissioners).

2.14 Since 3 November 2008 when the Upper Tribunal was established, there have been 2,107 rulings on applications for permission to appeal to the Upper Tribunal and 1,025 decisions on appeals in social entitlement (social security and child support) and war pensions cases.

2.15 There is no right of appeal to the High Court but there is a right (under section 13 of the Tribunals, Courts and Enforcement Act 2007) to appeal to the relevant appellate court on point of law and with permission. In England and Wales the relevant appellate court is the Court of Appeal.

2.16 There are six appeals from decisions of the Upper Tribunal pending in the Court of Appeal. There are also seven cases pending on appeal from decisions of Social Security and Child Support Commissioners whose jurisdiction was replaced by the Upper Tribunal. In two of these cases the Court of Appeal has referred questions to the European Court of Justice.

3. HOW HAS THE INTRODUCTION OF THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL (AJTC) IMPACTED UPON THE APPEALS PROCESS?

3.1 The Administrative Justice and Tribunals Council (AJTC) were created under powers in the Tribunals, Courts and Enforcement (TCE) Act 2007 and replaced the Council on Tribunals (COT) from November 2007.

3.2 The AJTC have a framework document and must make an annual report on its proceedings to the Lord Chancellor. The Scottish and Welsh Committees must make their annual report to Scottish and Welsh Ministers respectively.

3.3 The AJTC has a significantly broader remit than the COT. It continues to maintain an overview of the work and procedures within the tribunals within the Tribunal Service and has a new function to keep the administrative justice system under review. It provides a valuable role as a critical friend to the Tribunals Service and its members have contributed to the development of the organisation and its processes in a variety of ways.

3.4 For example, a member of AJTC sits on the Tribunals Procedure Committee (TPC). The TPC is an advisory Non Departmental body established by the TCE Act 2007 and is sponsored by the Ministry of Justice. The TPC's function is to make and amend rules for the First tier and Upper Tribunals. Rules made by the TPC are subject to the approval of the Lord Chancellor

3.5 The AJTC Annual Report 2008–09 gives information regarding their work with Tribunal Service but it is too early to say what specific impact it is having or will have on the appeals process.

4. IS THE TIMEFRAME OF APPEALS REASONABLE?

4.1 The Tribunals Service considers that the one month appeal time limit is reasonable (particularly allowing for the extension). It encourages people to exercise their rights promptly and ensures their case can be resolved quickly.

4.2 SCS target is to bring 75% of appeals to hearing within 14 weeks of receipt at Tribunal Service.

- In 2007–08 86.92% of appeals were brought to hearing in SCS before 14 weeks.
- In 2008–09 78% of appeals in SCS were brought to hearing within 14 weeks.
- In 2009 to date the figure for SCS stands at 66%.

4.3 The deterioration in performance is due to the very significant increase in SCS appeals as a result of the recession. In 2007–08 SCS dealt with approximately 229,000 cases. In 2008–09 this rose to approximately 243,000 cases and in less than five months to date in 2009–10 SCS have dealt with approximately 108,000 cases.

There has as a result of this increase been an increase in time taken to deal with a case from on average 8.6 weeks in 2007–08 to 10.08 weeks in 2008–09 and 11.2 weeks to date this year. Resources have been made available to help manage this increase, but, the increase in resources has not matched the increase in appeals. The result is that clearance times have deteriorated.

4.4 The time limits for claimants to make an appeal are set out in Schedule 1 to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008[1] that is, normally one month from the date of decision. This may be extended by up to 12 months.

4.5 The one month appeal time limit encourages people to exercise their rights promptly and ensures their case can be resolved quickly.

- From 1 April 2007 to 31 March 2008 there were 15,778 late appeals received at SCS, of those received 10,793 (68.4%) were accepted to go to hearing.
- From 1 April 2008 to 31 March 2009 there was 14,382 late appeals received at SCS of those received 9,244 (64.27%) were accepted to go to hearing.

- So far this year from 1 April 2009 to 25 August 2009 3,430 late appeals were received of these received 1,668 (48.63%) were accepted to go to hearing.
- On average from 1 April 2008 to 31 March 2009 it took 8.66 weeks from an appeal being lodged at the first tier agency (FTA) to being received at the Tribunals Service. And on average from 1 April 2009 to 25 August 2009 it has taken 8.27 weeks from an appeal being lodged at FTA to being received at TS.

4.6 During consultation by the Tribunal Procedure Committee (TPC) on rules for the Social Entitlement Chamber a debate arose around the fact the rules didn't provide a time limit for DWP agencies to reconsider decisions which are appealed and to provide a response. Subsequent discussions suggested that there may be scope for reducing the time taken for agencies to respond to appeals and for the Tribunal to deal with them.

4.7 A programme of work is now being jointly undertaken by TS, DWP, and TPC. This will seek to identify what the barriers are to a quicker end to end process with a view to identifying appropriate time limits for the appeal response. This work holds out the prospect of improving the effectiveness and efficiency of the Tribunals Service and the relevant agencies and most importantly improving service to appellants.

4.8 TS and DWP are setting up a mapping workshop to investigate what changes can be made to the existing process. Initially for the following appeals

- Income Support; and
- State Retirement Pension.

4.9 The purpose of this is to establish what time limits could be set and, credibly, be achieved. The results of this exercise will then be evaluated and, if found to be successful, will be rolled out to a wider programme of work to look at other appeal routes. The initial phase of this work should be finished and a report produced in October 2009.

5. IS SUFFICIENT SUPPORT AVAILABLE TO APPELLANTS DURING THE APPEALS PROCESS?

5.1 The Tribunal Service publishes a step by step guide of how to appeal. This leaflet entitled *How to Appeal* explains in details how the process works to help the appellant through the appeal process. This leaflet is also available in an easy read version.

5.2 Appellants can seek information or guidance from various sources including Governments Departments and Internet websites including:

- Directgov,
- DWP website, and
- TS SSCS website.

5.3 Advice is available from Welfare Rights Groups, Citizens Advice and Solicitors.

5.4 An information leaflet *your appeal—what happens next* is enclosed by TS when issuing the enquiry form, and introductory letter. This leaflet assists claimants through the next stages of the appeals process. It includes advice on how to complete the enquiry form, returning the form, what happens when TS receive the completed form, preparation for their hearing and information on the hearing itself.

5.5 Appellants are given the option to request an interpreter or a signer for their hearing.

5.6 Appellants are given a time for their hearing and a clerk is assigned to deal with any last minute enquiries and expenses claims they may have.

5.7 A note is issued to appellants telling them what happens after the hearing. This is provided with the decision and explains if they won what happens, if they lost what their next steps are in terms of an appeal to the Upper tribunal and if they want a full statement of their decision.

6. LIAISON BETWEEN DEPARTMENT OF WORK AND PENSIONS AND TRIBUNALS SERVICE

6.1 The relationship between DWP and the Tribunals Service is important. Operational links have to work smoothly. Regular Joint Steering Committee Meetings take place between TS and DWP Agencies. The main aim of these meetings is to monitor and improve the delivery of the appeals process and focus on the level of service provided to the customer.

6.2 They provide a forum to discuss performance and provide a strategic overview of the end to end delivery from lodgement of the appeal through to implementation of the tribunal decision. They are held on a regular basis (usually every eight weeks) with other communications and discussions taking place between meetings.

6.3 The Pension, Disability and Carers Service and the Tribunals Service have two Joint Steering Committees (JSCs) in place. The JSCs enable both agencies to monitor and discuss appeals arrangements and processes with the aim of improving the end to end service to their mutual customers.

September 2009

Memorandum submitted by Royal National Institute of Blind People (RNIB) and Action for Blind People (DM 23)

1. ABOUT US

In April Action for Blind People and the Royal National Institute of Blind People (RNIB) joined forces in an Association to share resources, skills and expertise to engage and reach more blind and partially sighted people with even better services. Action for Blind People is now an Associate Charity of RNIB. Our two organisations have combined regional service delivery across England whilst maintaining our individual brand identities, boards of trustees and strategic management teams.

Action for Blind People (Action) is an expert national organisation, ensuring blind and partially sighted people across the UK get practical support in all aspects of their lives.

Action is committed to recognising the need for viable, solution focused services and work hard to provide them. We offer support in finding or retaining employment, assisting in applying for benefits, providing advice on housing issues, ICT and assistive technology, visual awareness training, leisure activities and information and advice through their national freephone helpline.

RNIB is the largest organisation of blind and partially sighted people in the UK. We are a membership organisation with over 10,000 members who are blind, partially sighted or the friends and family of people with sight loss. Eighty per cent of our Trustees and Assembly Members are blind or partially sighted. We encourage members to be involved in our work and regularly consult with them on government policy and their ideas for change.

As a campaigning organisation of blind and partially sighted people, we fight for the rights of people with sight loss of all ages in each of the UK's countries. We have three clear priorities between 2009 and 2014:

- stop people losing their sight unnecessarily;
- support blind and partially sighted people to live independently; and
- create an inclusive society.

We run a range of services that support people with sight loss. Amongst these are our welfare rights services which help visually impaired people access the benefits they are entitled to. Much of our work concerns Disability Living Allowance and Attendance Allowance and ensuring that clients receive the correct level of entitlement. The welfare rights service represents clients at appeal tribunals and has a high rate of success (over 95% of clients receive the award we advise them to expect).

2. SUMMARY OF MAIN POINTS

2.1 *Decision Making*

Our comments relate mainly to Disability Living Allowance and Attendance Allowance.

Quality of decision making is variable and there is an urgent need for better decision maker training and specialisation in areas such as mental health and sensory impairment.

We believe that the key to improved decision making lies in the training of DMs. DWP should therefore be giving serious consideration to utilising third sector organisations in this process. HMRC offer an example of good practice in this area.

The advice given to decision makers by Medical Services disability analysts is frequently poor, and can be inaccurate in respect of the assessment of visual impairment and the likely care and mobility needs associated with sight loss.

The review stage of the decision making process is not effective because DWP offices take a long time to issue review decisions, so there is little advantage to be gained in going for review ahead of appeal.

HB and CTB applications are experiencing a number of problems. Decision making by local authorities is even more variable than by DWP. For some local authorities decisions take a long time, information may not be provided in suitable formats, reviews following the provision of evidence take so long that overpayments and underpayments regularly occur and cause a great deal of confusion for the claimant.

Some local authorities do not process appeals properly or send cases and submissions to Tribunal Service. At worst some clients are denied access to independent tribunal by LA misapplication of appeal processes.

2.2 Appeals

Claimants find the appeals process very long and confusing; especially as the different stages of the appeals process are often not properly explained by DWP. Information is rarely provided in a suitable format. The process, particularly tribunal hearings, can be very daunting without support.

It remains to be seen if bodies such as the AJTC or the reorganisation of the Tribunal Service will greatly influence the day to day issues that have an impact on a claimant's appeal.

Individuals are still often not aware that it is possible to appeal to the Upper Tribunal or the grounds that they can appeal on. There also issues with the accessibility of the process for VI claimants.

The timescale for appeals appears to be getting longer rather than shorter, which is a major concern. It now regularly takes over a year from the date of a customer's original claim, eg for DLA, to the date they receive any benefit following a tribunal decision.

Little advice is offered by the DWP during the appeals process and, although the tribunals service is more willing to give advice and information, the two services often seem to work in isolation and do not always know who should be responsible for different aspects of a case.

There still can be problems with appeals at the point of handover between DWP and Tribunals Service. RNIB as representatives sometimes don't get sent copies of submission and DWP and Tribunal Service are not always clear who should provide representatives with copies.

The Tribunal Service has said that they will continue to process the appeal where a visually impaired appellant is not able to complete a TAS1 enquiry form. RNIB have encountered situations where the Tribunal Service admin office have wrongly insisted on TAS1 completion before taking any other action to progress an appeal.

3. OUR FULL RESPONSE

Decision making

How effective is the decision making process? Could it be improved, if so how?

The process is not always explained very well to the claimant and it can be very difficult for a claimant to obtain information as they may be passed between different offices (one point of contact would be better). Also, the lack of alternative formats is an ongoing issue.

The DLA and AA decision making process is still far too arbitrary. This can probably be put down to three main factors;

- (i) Decision Makers (DMs) not having an adequate knowledge of many of the conditions they are asked to decide upon.
- (ii) Clients not providing sufficient information, or the correct information, on application forms, due to a lack of knowledge of what is required.
- (iii) Decision makers are not trained to seek out appropriate evidence about a claimant's sight loss, or how to interpret such evidence. Where a DM refers to a Medical Services disability analyst for advice about a VI claimant's care and mobility needs, the advice is invariably misleading and in many cases actually factually incorrect.

RECOMMENDATIONS

1. All DMs should be given more training and there should also be an increase in the number of them. This would open up the opportunity for training a number of individual to become "experts" in one particular area eg mental health or sensory impairment.

It would also be beneficial to train some decision makers as experts in DLA for children as the disability tests are applied differently to them, and DMs would benefit from specific training in issues relating to child development.

These experts could then operate on a regional or even national basis. To ensure they have an adequate knowledge base the DWP should also give much more serious consideration to using third-sector organisations for training provision.

2. The DLA application form could be improved in a number of ways, the most obvious one for our client group being the inclusion of specific references in each section to sensory impairment, to sit alongside those already included which identify "physical" and "mental" as distinct areas of disability. There should also be some indication on the form of the criteria being applied in the decision making process.

Even where visually impaired claimants complete a new or review claim form well, and put a great deal of relevant information about the care and mobility needs resulting from their sight loss, decision makers do not apply the established caselaw adequately.

RNIB have raised the issue of inconsistent decision making in respect of visually impaired claimants with PDCS DMAPT procedures and advice team (responsible for DM guidance). We provided them with around 10 examples of DWP appeal submissions that incorrectly stated the law in relation to the care and mobility needs of people with sight loss. They accepted our concerns in these cases were justified and have undertaken to issue further guidance to DMs.

3. It would be helpful if PDCS recorded the registration status of new claimants for DLA and AA.

It is the experience of RNIB welfare rights service that there is a systematic failure of PDCS to correctly inform blind and partially sighted people about their possible entitlement to DLA and AA, and similarly a failure to correctly decide many new claims from visually impaired people.

RNIB's welfare rights service regularly hears from visually impaired people who feel they have been dissuaded by the DCS Helpline from making a new claim. They tell us that they have been told it is not worth them making a claim, in spite of the fact that they are registered as blind or partially sighted. We then have to persuade them that they should in fact qualify for disability benefit if their sight-related care needs are correctly taken into account. Unfortunately we also find that a substantial number of new claims are wrongly refused, and a correct decision only made after our intervention. Many cases have to go to tribunal to be resolved.

The majority of these clients are registered as blind or partially sighted, and it is apparent to us that if PDCS were aware of these clients' registration status, and if decision makers were better able to make use of the information contained in the certificate of visual impairment (that most newly registered people would be able to provide), then many of these problems regarding poor decision making would not arise.

We recognise that DLA and AA should be awarded based on the care and/or mobility needs arising from a disability, and that there is no automatic entitlement linked to any particular eye condition or formal registration status. However, this does not mean that registration status is of no relevance when considering whether a person may qualify for DLA or AA.

3.1 *Are there sufficient numbers of decision makers and is the training they receive adequate?*

This varies, but there does seem to have been an increase in the length of time that it takes for decisions to be made across the board. There are certainly gaps in training, eg a lack of understanding about the difficulties faced by blind and partially sighted people and in some instances a lack of understanding about the law.

However, even more worrying is the information that is given out by telephone operators before as well as during the application process. We have special concerns about the recently-introduced pre-claim questionnaire used when a claimant phones to request a new claim form. In effect this new process amounts to unlawful pre-claim screening; newly registered people, for example, may be persuaded not to make a DLA claim after speaking to a PDCS Helpline "adviser".

More generally poor advice from DWP helplines may well be preventing people from making legitimate claims or may cause them to claim the wrong thing, for example, wrongly advising someone who is claiming the middle rate of DLA and living with another person who is receiving Attendance Allowance that they are not eligible for the severe disability premium in means-tested benefits.

3.2 *Is the decision making process clear to claimants?*

Often not, particularly if they have difficulty or are not able to read the letters that DWP send out. Also, the process is not always well explained, eg the use of the words "appeal" or "reconsideration" as generic terms to cover the process from the first decision notification onwards.

There are very few claimants who are aware of the criteria against which their application is being measured, which is why so many of them are left puzzled by the decisions they receive. Written explanations of decisions may be inaccurate in describing how sight related care and mobility needs are treated for DLA or AA.

There is a particular problem with renewals of fixed period awards of DLA. Many visually impaired claimants (who may have gone through the appeal process to get the correct level of award) find their award may be reduced on renewal without any substantial reasons being given. This is another manifestation of the variability and unpredictability of decision making.

3.3 *How effective is the review stage of the decision making process?*

It is not very effective as many decisions are left unchanged, even after relevant new evidence is provided as part of the appeal process.

Advisers attend many "pointless" tribunal hearings, where the tribunal give the award we were expecting without even needing to take evidence from the claimant. These hearings needn't happen if decision makers adequately considered new evidence produced during the appeal process.

The early results from the ADR trials for DLA, for example, suggest that many applications that could be changed at the review and revision stages are being unnecessarily forced through to appeal.

The review stage is also losing its effectiveness because DWP offices are now taking so long to issue review decisions, so there is now very little advantage to be gained in going for review ahead of appeal. We used to advise clients that by seeking review they had a better chance of getting the decision overturned quickly rather than having to go through the rigmarole of an appeal, but now that it is taking at least 11 weeks to give review decisions this is no longer the case. The review process is also being damaged by the fact that offices are taking so long to provide a written statement of reason—many clients who request these are not receiving them until they are well into the appeal stage, waiting for a hearing date, which is obviously too late. Without written reasons it is much more difficult to put together a worthwhile submission at review stage.

3.4 *Is DWP effectively addressing official error?*

This is mixed. Where official error is being dealt with correctly it is being done effectively and in a reasonable amount of time but there are still occasions where claimants have to fight to get the matter addressed.

RNIB Legal Rights Service take many DLA appeals concerning entitlement to DLA middle rate care component. In a significant number of these cases it is possible to argue that the middle rate of care component should be awarded from a date before the most recent application for an increase. This “backdating” of entitlement is only possible in certain circumstances—basically where the existing award (usually lower rate care) can be shown to be an official error. In our experience it is unheard of for a DWP decision maker to consider this issue unless prompted by an adviser. Usually any request for “backdated” entitlement is refused and the case needs to be resolved by tribunal.

3.5 *How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)?*

On the whole DLA/AA and Carer’s Allowance claims seem to go through the process fairly smoothly, albeit over a considerable amount of time. Initial applications are taking the full 11 weeks in many cases and those that go onto appeal can take one to two years to complete. HB and CTB applications are experiencing a number of problems. Decisions take a long time, information is not provided in suitable formats, reviews following the provision of evidence take so long that overpayments and underpayments regularly occur and cause a great deal of confusion for the claimant. Mistakes also often occur because the wrong evidence has been used even where the claimant has done everything that they can to keep their local authority informed. The administration of ESA has also had many problems particularly as a result of delays in processing applications and more worryingly, the loss of documents.

3.6 *How effective has DWP’s Decision Making Standards Committee been in monitoring front-line decision making?*

We cannot see much evidence that would lead us to conclude that the DMSC has been effective. In the areas where decision making has traditionally been of a fairly high standard there has been little change, but where there is a high turnover of staff or changes in the workload, such as within JCP, there seems to be an increasing lack of knowledge about even fairly basic rules and very little support and advice from staff about the claimant’s options.

RECOMMENDATIONS

We believe that the key to improved decision making lies in the training of DMs. The DWP should therefore be concentrating more on what it is going to do about this, and in particular, as mentioned above, giving serious consideration to utilising third sector organisations in this process. They could learn a lot in this regard from HMRC’s approach to raising disability awareness among their staff. Until relatively recently, by its own admission, HMRC lagged severely behind in this area, but in the space of 18 months it has made huge strides—largely thanks to the Disabled Customers Consultation Group—a forum attended by representatives of disability charities and other interested organisations.

Based on feedback and suggestions from this group HMRC have created a disability training course which has been successfully piloted and is about to be rolled out nationally. The pilot involved getting HMRC staff to try out what it’s like contacting/applying to HMRC as a customer—this is definitely something which should be a cornerstone of DM training also, as they can only get a proper understanding of DLA by having to complete an application form/attend a tribunal themselves.

3.7 *Is decision making taking account of the October 2007 European Court of Justice ruling on exporting DLA, AA and carer’s allowance?*

Knowledge about and an understanding of this has taken some time to filter through and there are still some instances where individuals are not given the correct advice. However, where the DM is aware of this ruling they are taking it into account.

APPEALS

3.8 *How does the appeals system work from the claimant's perspective?*

They find it very long and confusing; especially as the different stages of the appeals process is often not properly explained to them by the DWP. Information is rarely provided in a suitable format. The process, particularly tribunal hearings, is also very intimidating for many claimants and we regularly come across clients who have not challenged previous decisions.

Claimants also have very little knowledge of the criteria against which their appeal is being considered—although decision notices do state the law, it is not clear for clients what this actually means in practice as they have no knowledge of case law eg they do not know what is meant by terms such as “attention”, “frequent”, “throughout the day”, etc.

3.9 *How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon claimants' experience of the appeals process?*

At the moment, from the claimant's point of view, there is little change. From the perspective of advisers, time will tell what impact the AJTC will have. Much in the 2008 legislation was left open to interpretation and inclusion in the practice guidance so there is potentially a lot to be ironed out, especially in relation to matters of administration, eg time limits for the provision of evidence such as a statement of reasons has been left open to “as soon as reasonably possible”. Therefore, it remains to be seen if bodies such as the AJTC will greatly influence the day to day issues that have an impact on a claimant's appeal.

3.10 *How effective are the Upper Tribunal Judges (formerly Social Security Commissioners)?*

So far there has been little change in this area as far as claimants are concerned. The process is reasonably quick, although it would be good if the process of appealing to them and getting a decision could be made quicker.

We have concerns about the accessibility of the process to clients who do not have access to representation, although given the complexity of legal arguments involved in a commissioners case it may be difficult to do much to improve this.

Individuals are still often not aware that it is possible to appeal to the Upper Tribunal or the grounds that they can appeal on.

Accessible format provision is an issue, but decisions and statements of reasons are provided in typed rather than handwritten print which is easier for many of our client group to deal with.

3.11 *Is the timeframe of appeals reasonable?*

The timescale for appeals appears to be getting longer rather than shorter, which is a major concern. It now regularly takes over a year from the date of a customer's original claim, eg for DLA, to the date they receive any benefit following a tribunal decision. Given that benefits such as DLA also trigger increases in other benefits, this is an unreasonable time period. One reason for this increase in length is that DWP is taking so long to issue review decisions, which means cases are arriving later with the tribunals service. This is then exacerbated by delays in scheduling of appeals.

3.12 *Is sufficient support available to appellants during the appeals process?*

Support can be limited in many cases. Little advice is offered by the DWP and, although the tribunals service is more willing to give advice and information, the two services often seem to work in isolation and do not always know who should be responsible for different aspects of a case, eg who is responsible for providing alternative formats. More training could also be given on the needs of visually impaired people as there is a significant lack of understanding about certain types of disabilities.

September 2009

Memorandum submitted by Mind (DM 24)

ABOUT MIND

Mind is the leading mental health charity in England and Wales, working to create a better life for everyone with experience of mental distress by:

- advancing the views, needs and ambitions of people with mental health problems;
- challenging discrimination and promoting inclusion;
- influencing policy through campaigning and education;
- inspiring the development of quality services which reflect expressed need and diversity; and
- achieving equal rights through campaigning and education.

SUMMARY

- In April 2006 Mind responded to the Government's proposals for welfare reform. The response outlined areas of concern for people with mental health problems, particularly in relation to the reform of Incapacity Benefit (IB) which provides crucial financial support to people with mental health problems at a time when paid work is not an option.
- Concerns raised by Mind in 2006 are borne out by issues emerging since the introduction of Employment and Support Allowance in October 2008. Main issues include: staff carrying out the assessments do not have adequate mental expertise; the assessment does not take account of the fluctuating nature of people's mental health conditions and; the assessment remains biased towards physical functions.
- Mind is concerned that staff who are responsible for carrying out Work Capability Assessments (WCAs) and for supporting people into work are insufficiently trained on mental health issues.
- Mind is concerned that the WCA does not perform an adequate assessment of a person's functionality in relation to the average workplace.
- Medical Services doctors and Benefits Decision Makers should be subject to a rolling programme of mental health training provided by mental health service users.
- All Employment Advisors should be trained to NVQ level four in Advice and Guidance and be subject to a rolling programme of mental health training provided by mental health service users.
- Anecdotal evidence from claimants and support workers from local Mind associations suggests many people are being placed on JSA despite being unwell and not able for work.
- Mind is concerned about decisions based on insufficient medical evidence.
- The *President's Report* of 2007–08 illustrated consistent reports of underestimation of the severity of disability in medical reports as well as decision makers poorly interpreting medical evidence and deciding questions of causation of disablement.
- Errors related to decision making involving medical evidence commonly included the production of new evidence, under-estimation of the severity of disability, the impact of oral evidence and the inability of the system to deal adequately with mental health issues.
- This is evidence to suggest that poor decision-making, information sharing and training exacerbates claimants' mental distress.

RECENT CASE STUDIES

Case study

James left work in January 2009 due to depression and anxiety. He made a claim for ESA. He had a phone interview, completed the full paperwork and a medical questionnaire. He was then called in for his Work Capability Assessment. He asked for it to be conducted in a private quiet space, which was agreed to. However, when he arrived he was told the interview would be conducted in the main office. When he insisted he needed a private space they provided a separate room with no door. James found this very distressing and asked if he would be able to take a break if he found the interview too stressful. He was told that he would be viewed as terminating the interview. The interview was then conducted over 75 minutes. He found the medical officer's attitude to be very aggressive and found the whole process very stressing. He also felt that the assessment process was more sensitive to physical health conditions not mental health.

Case study

Paul has been claiming IB for a number of years. He received an IB50 form in December 2008, which needed to be completed and returned in February 2009. He received support from his Benefits Adviser to complete the form as he finds forms very difficult to deal with. He received a letter two weeks later telling him to make an appointment for his medical assessment within two days. He contacted his doctor who advised Paul to call Job Centre Plus to inform them that he could not attend the medical assessment and to request their fax number so his doctor could send a letter and medical report explaining why Paul could not attend the assessment, and to request a home visit. Paul had to contact JCP three times even though he finds communicating by telephone very difficult. He was told that he had to attend the assessment or face a sanction.

Case study

Sarah has been diagnosed with PTSD and has mobility problems. She was made redundant in October 2008, which she found very distressing. As a result of her distress she was unable to search for work. She made a claim for ESA in November 2008. She has found the experience very traumatic despite receiving support from a local advocacy service. After her Work-Focused Interview was conducted in March 2009 she was referred to "In-Training", an employment service provider. She had one session with them and was informed that they wanted her to attend a two

day course 30 miles from her home called “Activate”. She was given very few details about the course. She was told that she would be seeing a different adviser for her next appointment. She then asked if it would be possible to see the same person over the next four appointments to help build a relationship.

She then received a call inviting her to attend the two day course at the start of the next week. She contacted the provider raising concerns about the short notice and the impact on her mental health. She was informed that they had not received any medical information about her from JCP due to system problems. She said that she did not want to attend the training course until they had her medical information which they agreed to. Two weeks later she received a letter requesting that she attend the course at the start of the following week.

She informed the organisation once again that she would not be able to attend at such short notice. An advocate from her local advocacy service wrote them a letter and they agreed that they would postpone contact until the end of May 2009 while they awaited her medical assessment.

She has found the experience incredibly stressful as she has been given no indication of time scales and has found it extremely difficult to manage her finances.

September 2009

Memorandum submitted by The National Deaf Children’s Society (DM 25)

SUMMARY

The National Deaf Children’s Society acknowledges positive changes in decision making over recent years but feels that the decision making process could be improved further by ensuring that decision makers have a greater awareness of the needs of disabled children. Cases on deaf children should be considered by those with a good and detailed awareness of their needs.

1. Introduction

1.1 The National Deaf Children’s Society (NDCS) is the national charity dedicated to creating a world without barriers for deaf children and young people. We represent the interests and campaign for the rights of all deaf children and young people from birth until they reach independence. There are over 45,000 deaf children in the UK and three more are born every day.

1.2 NDCS offers a range of services to families including a core team of two specialist benefits advisors, as well as a team of 25 family officers around the UK who provide advice to parents of deaf children on benefits and appeals for Disability Living Allowance (DLA) claims. From 2008–09, we supported 357 families to gain successful awards of DLA. Our submission focuses on concerns relating to DLA.

DECISION MAKING

2. How effective is the decision making process? Could it be improved, if so how?

2.1 The decision making process has, over the years, improved with a greater understanding of the issues that affect deaf children. However, NDCS is concerned that there still appears to be a presumption by decision makers that the supervision needed by deaf children is not substantially in excess of that normally needed. In fact, deaf children, especially deaf babies, need continual supervision to avoid substantial danger to themselves. For example, hearing aid components can be a choking hazard and are far smaller than toys recommended for a child under three. Hearing aid batteries are especially dangerous.

2.2 NDCS believes that the decision making process could be improved by ensuring that decision makers have a greater awareness of the needs of disabled children. Cases on deaf children should be considered by those with a good and detailed awareness of their needs. Decision makers should also ensure that the process results in the different needs of deaf children with additional disabilities being considered as a whole.

2.3 NDCS further believes that the decision making process would be improved if decision makers specialised in certain age groups to ensure greater awareness of the specific risks and considerations for different groups of children. NDCS would suggest:

- children from birth to 5 years of age;
- children from five year to 16 years of age; and
- adults 16 years of age and older.

3. *Are there sufficient numbers of decision makers and is the training they receive adequate?*

3.1 NDCS is unaware of any data that details the numbers of decision makers and their expected case loads, and so feel unable to respond directly to the first part of this question.

3.2 With the introduction of PiDMA, Professionalism in Decision Making Accreditation, we feel that the decision maker training has improved. We feel it could be improved further by involving external presenters from organisations working to support children with specific disabilities such as deafness. This could be either working directly with decision makers or through cascade training with the decision makers' leaders. NDCS has in the past been asked to present such training and information sessions. We would welcome the opportunity of being involved in any ongoing training.

4. *Is the decision making process clear to claimants?*

4.1 NDCS's experience of working with young deaf adults and families of deaf children leads us to conclude that the decision making process works is poorly understood by most parents of deaf children. Before sending in a claim, many parents report that they feel the process is a "mystery". Some parents have told us that they feel it is almost a lottery as to whether they will be given an award of DLA or not and that on occasion, other families have been awarded DLA for similar or lesser need.

5. *How effective is the review stage of the decision making process?*

5.1 The review stage allows claimants to contact an external organisation, such as NDCS, and to take advice regarding gathering further evidence in support of their claim. This will enable young deaf people and parents of deaf children to add more information to their claim and will enhance the decision making process, often leading to a negative decision being overturned. However, we feel that decision makers should be more proactive in contacting more claimants and requesting further information and evidence.

6. *Is DWP effectively addressing official error?*

6.1 In our experience, official errors are not always addressed by DWP unless first raised as an issue by an external organisation. For example, once families alert an external organisation to a problem where they feel they have been given a wrong award or wrong information was used, this is only then taken directly to DWP through Pension and Disability and Carers Service (PDCS) Advisory Forum. From that point onwards, the official error is generally dealt with in a clear and focused manner.

7. *How well does the decision making process operate for different benefits (eg ESA, DLA and Housing Benefit)?*

7.1 NDCS supports families of deaf children and deaf young people through a DLA claim, and to a smaller degree with ESA claims. To date we have not gained enough information regarding ESA to comment on the decision making process.

APPEALS

8. *How does the appeals system work from the claimant's perspective?*

8.1 This varies from family to family. Some families do take their case to appeal with no support, others need a minimum of information to enable them to do so. Some families say the process is not over complicated but appears slow. Others tell us that they feel overwhelmed by the process and rely on NDCS Benefit Appeal Advisor team to guide them.

8.2 For families that need more in-depth support, NDCS offers individual representation throughout the appeals system, and at the tribunal hearing. Families often find the appeal system stressful and worry that they will not be listened to, feeling their evidence will be worth less to the judge and tribunal members than that of the decision maker.

9. *How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon the appeals process?*

9.1 The introduction of AJTC has had little or no negative impact on the appeals system.

10. *How effective are the Upper Tribunal Judges (formerly Social Security Commissioners)?*

10.1 The Upper Tribunal Judges are usually effective in their judgements but tend to over rely on referring appeals back to the 1st tier appeals service. This results in families having to go back to a further hearing and the accompanying stress this brings. Some Upper Tribunal decisions take a long time to be processed and sent out to families.

11. *Is the timeframe of appeals reasonable?*

11.1 The process from claim through revision and on to the appeal hearing is too long. It is common for a claim to take between nine to 13 months from start to appeal hearing. This is a long time for families to be denied benefit that they may be entitled to. The process of appeals is in itself not excessive but in some areas where there are more appeals families inevitably wait for a longer period.

12. *Is sufficient support available to appellants during the appeals process?*

12.1 NDCS believes that there is not sufficient support, as evidenced by the number of families who seek support from organisations. One way of increasing support to families would be to provide greater signposting information to families of relevant voluntary organisations.

September 2009

Memorandum by The National Autistic Society (DM 26)

The National Autistic Society welcomes the opportunity to submit evidence to the Work and Pensions Select Committee inquiry into decision making and appeals in the benefits system. The NAS believes that the Department for Work and Pensions needs to:

- Review how it communicates benefit decisions.
- Improve the quality of the medical reports that benefit decisions are based on.

ABOUT US

1. The National Autistic Society (NAS) is the UK's leading charity for people affected by autism. We were founded in 1962, by a group of parents who were passionate about ensuring a better future for their children. Today we have over 18,000 members, 80 branches and provide a wide range of advice, information, support and specialist services to 100,000 people each year, including a welfare rights helpline and Prospects, the NAS' specialist employment service for people with autism. A local charity with a national presence, we campaign and lobby for lasting positive change for people affected by autism.

ABOUT AUTISM¹¹

2. Autism is a lifelong developmental disability that affects how a person communicates with, and relates to, other people. It also affects how they make sense of the world around them. It is a spectrum condition, which means that, while all people with autism share certain difficulties, their condition will affect them in different ways. It affects around one in every 100 people. Some people with autism are able to live relatively independent lives but others may need a lifetime of specialist support.

3. Asperger syndrome is a form of autism. People with Asperger syndrome are often of average or above average intelligence. They have fewer problems with speech but may still have difficulties with understanding and processing language.

OUR RESPONSE

4. Our response presents the experiences of two adults with autism, Bob and Paula, who each recently applied for Employment and Support Allowance.¹² Based on their stories we make recommendations for how the decision making process needs to change.

THE DECISION MAKING PROCESS

Bob

Bob is 19-years-old. He was diagnosed with autism and behavioural problems at the age of two. Bob lives at home with his family in Mold, North Wales and attends a local day service for people with autism. He is not expected to enter into formal, paid work in the future without constant support.

Bob applied for Employment and Support Allowance earlier this year, with his Mum, Janet, helping with the application process. After completing his application for ESA, Bob received two letters from Jobcentre Plus on the same day. The first letter said that Bob was not entitled to ESA. The second letter said that Bob had been awarded the benefit and the total amount of money that he would receive.

¹¹ The term autism is used throughout this document to refer to all people on the autism spectrum including Kanner autism, Asperger Syndrome and high functioning autism.

¹² Bob and Paula talked to the NAS about their experiences as part of our "Don't Write Me Off" campaign which launches in October 2009.

Confused, Janet called Jobcentre Plus to ask which letter was correct. She was outraged when she was told that Bob had been awarded the benefit but the payments had been suspended because his doctor's letter had no end date. As a solution, Jobcentre Plus suggested going back to the doctor every six months to get a new letter for Bob.

In total it took Bob five months before the decision was made and he was placed in the support group.

5. The receipt of conflicting communications from Jobcentre Plus leads to confusion and delays in the receipt of benefits. Jobcentre Plus needs to review how it communicates benefit decisions, ensuring that they are clear, accurate and easy to understand. As part of this it should ensure that all Employment and Support Allowance written communications are accompanied by an easy read version or other accessible formats.

THE APPEALS SYSTEM

Paula

Paula is 21 and lives with her parents and three siblings in Lancashire. She is a talented writer and spends her time reading non-fiction. Prior to being diagnosed with Asperger syndrome, Paula worked in two different jobs but had to leave both because she couldn't cope with being "around people and loud music and busy [environments]." She couldn't understand why she found it so difficult to stay in a job.

Keen to get the support she needs to find work, Paula recently applied for Employment and Support Allowance. Three days after getting a formal diagnosis of Asperger syndrome Paula went for her medical assessment. The doctor carrying out the assessment rushed through the appointment in just 15 minutes, asking nothing about Paula's Asperger syndrome and ignoring a seven page psychiatrist's report about her diagnosis. The doctor then recorded that he saw "no evidence of communication difficulties" in his report to the ESA decision maker. Six days later, Paula's application for ESA was rejected. She later found out that she had been scored zero points on her medical assessment.

Paula decided to appeal the decision and went to a first tier tribunal.

"I found it a lot more 'aspie-friendly' because you are able to submit written information in advance and can get help from people to do this."

Paula also had help from her Citizens Advice Bureau and this time her psychiatrist's report was taken into account.

The tribunal itself was very relaxed and it was clear that the people there had read all of the written evidence. The questions asked were direct and Paula felt as if they were genuinely trying to understand her difficulties.

Paula was told before she left that her appeal had been successful and she now receives Employment and Support Allowance.

6. Whilst the decision maker is ultimately responsible for awarding the benefit, the reality is that this decision is influenced heavily by the medical report from the atos doctor or nurse who carries out the Work Capability Assessment. It is therefore important that DWP require Atos doctors to demonstrate an understanding of autism before they are approved to complete ESA assessments.

September 2009

Memorandum submitted by HH Judge Robert Martin (DM 27)

SUMMARY

- The President of Appeal Tribunals has produced an annual report since 2000 on standards of decision making, based on a sample of cases coming before tribunals.
- The Department's decisions are overturned by the tribunal in nearly one half of the appeals. This rate has remained largely unchanged since 2000.
- The main reason for overturning departmental decisions is that the tribunal engages directly with the claimant to elicit and make findings of fact to underpin its decisions.
- The information that should be provided to claimants to assist them to decide whether to appeal is limited by problems of distribution and format.
- The review stage by the departmental offers little advantage over appealing straightaway.
- The new tribunal procedure rules are proving useful in removing obstacles in the appeals process.
- The continuing failure of DWP to be represented at hearings compromises the neutrality of the tribunal.
- The time-frame of appeals is uneven and poorly monitored.

- There are regional variations in the level of support provided to claimants. Support can play a critical role, particularly in the early stages of the appeal.
- The Administrative Justice and Tribunals Council is a beneficial influence on claimants' experience of the appeals process.

INTRODUCTION

1. In most cases a decision on entitlement to benefit carries a right of appeal to an independent tribunal. Since 3 November 2008 such appeals have been dealt with by the Social Entitlement Chamber of the First-tier Tribunal. Prior to that date benefit appeals were dealt with by the Appeal Tribunal established by the Social Security Act 1998. The Social Entitlement Chamber was formed by an amalgamation of the Appeal Tribunal with 2 other jurisdictions, namely the Criminal Injuries Compensation Appeal Panel and the Asylum Support Tribunal.

2. The Chamber comprises some:

- 78 salaried judges;
- 630 fee-paid judges;
- 650 fee-paid members who are medically qualified;
- 440 fee-paid members who are disability experts; and
- 15 fee-paid members who are accountants.

3. In 2008–09 the Chamber received 242,825 social security and child maintenance support appeals. The intake is expected to rise by 10% in 2009–10.

4. I am the Chamber President. I was formerly the President of the Appeal Tribunal. I have been a judge/tribunal chairman handling benefit appeals since 1985. Before my appointment to the judiciary I represented claimants for 10 years. This memorandum of evidence draws upon my own experience and that of judicial colleagues. It is also informed by research studies.

DECISION MAKING

The Effectiveness of the Decision making Process

5. Appeals may be regarded as one measure of the effectiveness of departmental decision making. The value of appeals as a measure is limited because:

- appeals are actually made in a very small fraction of cases, perhaps some 2% of the appealable decisions made by DWP;
- appeals are unlikely to constitute a representative sample of departmental decisions. They are self-selected. Unsurprisingly, appeals are, in the main, brought against decisions to refuse benefit, but the tribunal does encounter a number of cases where the validity of a decision to award benefit is in issue. Such cases typically involve the recovery of an alleged overpayment or derive from an application to change or renew an earlier decision awarding benefit;
- the appeal is by way of a fresh determination. In other words, the appeal may succeed not because the department's decision is flawed but because the tribunal arrives at a different conclusion. Many benefit appeals are finely balanced on their facts and a decision to uphold or to dismiss the claim can be equally rational. It is these "borderline" cases that are arguable either way, that constitute much of the tribunal's workload; and
- the tribunal may get it wrong.

6. The Social Security Act 1998 placed a duty on the President of the Appeal Tribunal to supply a report annually to the Secretary of State (for Work and Pensions) on the standards achieved by the Secretary of State in decision making. That duty has now been carried forward as part of the reporting functions of the Senior President of Tribunals. The annual report is published by the relevant Secretary of State and copies placed in the libraries of both Houses.

7. The President's report is based on cases coming before the tribunal, using a method of sampling and analysis originally agreed with the department for the compilation of the first report in 2000–01. The most recent report covers the period 2007–08. A sample of 1,886 appeals was used. The sample reflects the range of appeals by type of benefit, save that child support maintenance appeals (which constitute only about 1% of the overall intake) are slightly over-represented in order to generate meaningful data.

8. The crude success rates (from the claimant's perspective) of appeals across the overall intake are available from the Tribunals Service's computerised case administration system. Thus, in 2007–08 the tribunal overturned the department's decision in 44% of the 165,265 appeals that reached a hearing and upheld the department's decision in 56%.

9. The object of the President's report is to shed light on why departmental decisions are overturned. It does so through the device of the tribunal, in the sampled appeals, completing a questionnaire that sets out a list of possible reasons. Examples include:

- “The tribunal was given additional evidence that was not available to the decision maker.”
- “The facts were not in dispute but the decision maker had misconstrued their effect in law.”
- “The decision maker did not give relevant facts/evidence due weight.”

The tribunal may give more than one of the standard reasons or add its own explanation.

10. The proportion of departmental decisions overturned on appeal and the reasons why vary from benefit to benefit. If we look, for example, at the category of disability living allowance and attendance allowance appeals, the proportion of decisions overturned in 2007–08 was 48%. The commonest reasons given in the sampled cases for overturning included:

- The tribunal was given additional evidence not available to the decision maker—73%.
- The tribunal formed a different view of the same evidence—30%.
- The tribunal accepted evidence that the decision maker had available but was not willing to accept—24%.
- The tribunal formed a different view based on the same medical evidence—19%.
- The medical report under-estimated the severity of the disability—17%.

The tribunal is also asked whether, in its opinion, the Department could have avoided the appeal. In this category of benefit, only 4% of the sampled appeals were thought to have been avoidable.

11. The analysis contained in the President’s report has to be read in the context of what actually happens in tribunal hearings. The “additional evidence” given to the tribunal and not available to the departmental decision maker is seldom an influential document such as a consultant’s report presented to the tribunal at the eleventh hour by the claimant. This does happen but rarely. In the majority of cases the critical additional evidence is the oral evidence of the claimant. It is not so much “given” to the tribunal as carefully and skilfully elicited by the tribunal through questions asked of the claimant. Similarly, the tribunal’s willingness to accept evidence or, indeed, form a different view of the same evidence is influenced by its opportunity to engage with the claimant face to face and use question and answer to test the evidence. Many appeals concerning disability or incapacity turn on the credibility of the claimant’s evidence. It is not surprising that the success rates of appeals where the claimant attends the hearing are more than double those where the claimant does not attend, leaving the tribunal to reach its decision on the basis of the appeal papers only. Very few departmental decisions are overturned for getting the law wrong.

12. The assessment that the Department could have avoided the appeal in only 4% of the overturned cases similarly has to be interpreted in the context of the appeals process. The tribunal tends to reserve this assessment to those cases where the decision maker has demonstrated a conspicuous error, for example, overlooking a material piece of documentary evidence among the case papers. The tribunal does not ask itself whether the appeal could have been avoided had the department adopted a different approach to its decision making. Nor does the tribunal take the view that evidence might reasonably be considered “available” to the decision maker where it only needs the decision maker to ask the right questions of the claimant.

13. Before the introduction of major changes to departmental decision making by the Social Security Act 1998, there was a degree of consistency of approach across the different levels of the “adjudicating authorities”, namely adjudication officers, appeal tribunals and Social Security Commissioners. The characteristics of the approach involved proactively gathering evidential material, a deliberative weighing of evidence and an independent-minded exercise of judgment, supported in the case of adjudication officers by a Chief Adjudication Officer, who produced an annual report on standards of adjudication.

14. The changes introduced pursuant to the 1998 Act removed adjudication officers, including the Chief Adjudication Officer. The power to make decisions was vested instead in the Secretary of State, who, of necessity, could only exercise that power through administrative staff labelled, almost in default, “decision makers”. Evidence gathering by engagement with the claimant gave way to data processing from forms. The exercise of judgment was displaced by increasingly prescriptive regulations, which did nothing to simplify the conditions of entitlement from the claimant’s point of view.

15. In contrast, the appeal tribunal continues to occupy what now appears to be a relatively privileged position. This centres upon the hearing as a means of establishing the facts of the case by engaging directly with the claimant. While a hearing can prove taxing for the claimant, many comment that the tribunal is the first human face they have seen in the entire process of claiming benefit. Bearing in mind that many claimants struggle to cope with official forms, meeting the tribunal to explain their circumstances plainly is a demonstrable advantage.

16. Finance has clearly been a strong, if not the strongest factor in the department moving away from a system of adjudication. The approach epitomised by the tribunal is not, however, extravagant. The unit cost to the government of an appeal is in the range of £235, of which the judicial cost is about £175. It may have been a false economy to strip out at departmental level key features of adjudication, saving money on administration at the expense of wrongly awarding benefit where the qualifying conditions have not been met and wrongly denying benefit to those entitled.

APPEALS

The Appeals System from the Claimant's Perspective

17. Insight into the claimants' perspectives of the appeals process is gleaned by the tribunal from:

- feedback given at tribunal users' forums. There is a National Customer Representatives Liaison Forum, which involves disability organisations, welfare rights services and advice agencies. At the local level, some 50 user groups meet twice a year with members of the judiciary and the Tribunals Service;
- the complaints procedure;
- surveys; and
- engagement with claimants in the course of appeals.

18. The start of the appeals process is preceded by a decision on the part of the claimant to seek redress. The idea of challenging a government department by instituting legal proceedings is a big step for most people.

19. There are two initial obstacles. Firstly, public awareness of tribunals generally is very low. Media coverage of tribunals dealing with benefit appeals is particularly rare. The notion of being involved in legal proceedings typically conjures up images of the courts, and especially the criminal courts. Trying to create a distinctive and welcoming image for something called "the Social Entitlement Chamber of the First-tier Tribunal" is a marketing challenge that the Ministry of Justice has yet to take up. Two-thirds of claimants have never been involved in any kind of legal proceedings.

20. The second obstacle is the low level of knowledge of the appeals process. To make an informed choice to appeal requires an appreciation of what would be involved in time, cost and effort, set against the chances of success. The Tribunals Service has produced a 30 page step by step guide (available in hard copy and on the net), which provides this information but its distribution has proved a problem. The best time to read the guide is when you've received a letter from the Department turning down your claim and notifying you that you have a right of appeal. However, the Department has declined to add a strapline to its decision letters, giving a Freephone number where claimants can obtain a copy of the guide.

21. Bearing in mind that nearly half of appellants struggle with official correspondence, it would be helpful if the guide were also available in a DVD format. The Ministry of Justice has funded an informative DVD for prospective appellants in criminal injuries compensation appeals. The scale of operation in benefit appeals (some 100 times greater than criminal injuries) will always be deterrent in cost.

Reconsideration or Appeal

22. DWP's own literature on challenging a departmental decision may lead to confusion. The Department is rightly concerned to offer alternatives to an appeal, for the tribunal itself would be among the first to admit that pursuing an appeal can be a daunting experience. The Department's preference is to divert claimants away from the appeals route into its own "disputes process", which invites claimants to ask DWP to "reconsider" decisions that they feel to be wrong.

23. Reconsideration involves the Department looking its original decision again. The outcome may be confirmation of the original decision or a fresh decision. The fresh decision may be wholly or partly more favourable to the claimant or could leave the claimant worse off than before. If the claimant remains dissatisfied, he or she can choose to appeal against the original or revised decision.

24. What is the advantage for the claimant in asking for a reconsideration rather than lodging an appeal straightaway? Lodging an appeal is free, informal and involves scarcely more effort than writing in asking for a reconsideration. Asking for a reconsideration carries the risk of delay and further correspondence should the outcome be no improvement over the original decision. If a fresh decision does bring an improvement, the appeal will automatically lapse without the need for the claimant to withdraw it.

25. The key question is whether the department will look at a case with fresh eyes when a request is made for a reconsideration. The tribunal does not have access to statistics showing how many departmental decisions are changed as a result of reconsideration. It does, however, see many appeals where the reason given by DWP for abiding by its original decision is "No new medical evidence provided", which suggests an unduly narrow approach to looking at the original decision—one without an open mind.

26. Looking at a case again, once an appeal has been lodged, ought to bring about a different approach, since the department is now, strictly speaking, engaged in legal proceedings. The approach that the tribunal believes should be adopted by DWP is not for the original decision maker, or a fellow decision maker, to say, "Would I have made the same decision as before?" but rather, "Could I defend this decision in front of a tribunal?" The Compensation Recovery Unit (which deals with appeals concerning the recovery of benefits paid to accident victims) has consciously adopted the latter approach and seen the number of appeals against its decisions plummet. Other departmental agencies have yet to follow suit.

The Appeals Process

27. Once an appeal is under way the procedure is kept to the minimum necessary to ensure a fair and speedy resolution. One major obstacle to the smooth progression of the appeal is currently being tackled. Prior to 3 November 2008, the regulations covering tribunal procedure stipulated that DWP should send the appellant an enquiry form for completion (the “TAS 1” form). That form asked the claimant for information that would assist the Tribunals Service in making arrangements for handling the appeal, such as whether the claimant wanted a hearing, had a representative, need an interpreter. A notice accompanying this innocuous form contained a warning that if it was not completed and sent to the Tribunals Service within 14 days of receipt, the appeal would be struck out. Each year the Tribunals Service automatically struck out 70,000 appeals for non-return of the TAS 1. Some 20,000 claimants whose appeals had been struck out in this summary fashion felt so aggrieved that they complained and had their appeals reinstated. What happened to the other 50,000 was never pursued. Their appeals were simply closed down, without passing through judicial hands and regardless of their prospects of success.

28. The introduction of new procedural rules on 3 November 2008 (rules which were for the first time drafted by an independent body) has brought about a significant improvement for claimants. The new rules removed the administrative power of strike out and the Tribunals Service has adopted, notwithstanding the additional cost involved, a new user-friendly approach. Instead of the TAS 1 form issued by the Department, now the Tribunals Service sends out a welcoming information pack containing a modified enquiry form. A reminder letter and offer of telephone contact follows if the enquiry form is not returned. If there is still no response from the appellant, the file is referred to a judge to decide how the case should be moved forward to a fair conclusion. Where, for example, it appears that the appellant may have difficulty in dealing with official correspondence, the judge may direct that the appeal goes straight to a hearing before the tribunal. Early analysis of the results of these procedural changes indicate that some 1,200 claimants a year who would, under the old rules, have had their appeals automatically struck out, are now having their appeals upheld by the tribunal.

29. Appeal hearings are held at throughout a network of over 120 venues. The importance of the claimant attending the hearing means that the tribunal strongly believes in local access to justice. It has consistently resisted attempts to “rationalize” the network, being acutely aware that the closure of a venue can result in serious travelling difficulties for tribunal users who, disproportionately, are disabled, poor or otherwise disadvantaged, and their representatives, who are mainly drawn from the voluntary sector.

30. The emphasis at a tribunal hearing is upon striking an appropriate balance between creating an informal atmosphere, which counters the tension of appearing before a tribunal, and maintaining sufficient structure to comply with the requirements of due process. So:

- the hearing takes place in a room unadorned with the trappings associated with courts;
- everyone is seated around a table;
- no one wears wigs and gowns;
- the judges are called “Mr” or “Mrs/Miss/Ms”;
- evidence is not usually given on oath or affirmation;
- there are no strict rules of evidence; and
- the tribunal will take the lead in asking questions.

31. A conspicuous absence from the hearing is the Department. In only 16% of hearings does the Department send a representative (traditionally known as a “Presenting Officer”). The failure of DWP to participate in the hearing has been the subject of adverse comment in every President’s report since 2000–01 (when the attendance rate was comparatively high at 40%) and has also attracted criticism from the Social Security Commissioners. The Child Maintenance Enforcement Commission (formerly the Child Support Agency) is an honourable exception, sending a Presenting Officer in 80% of its appeals.

32. It is a matter for DWP whether it thinks its non-attendance results in more or fewer appeals being allowed or, indeed, makes no discernible difference. From the tribunal’s perspective, the Department’s non-attendance creates two problems. Firstly, the neutrality of the tribunal is compromised in the claimant’s eyes. So that the claimant (particularly an unrepresented claimant) is able to participate fully in the proceedings, the tribunal will do its best to ensure that the claimant understands the decision under appeal and why it was reached. In the absence of the Department, it is left to the tribunal to explain the Department’s case. In explaining the Department’s case, it is difficult for the tribunal to avoid being seen as the Department’s spokesman. The commonest complaint against the tribunal is that it does not appear even-handed.

33. The second drawback is that, by opting out of the hearing, DWP loses a valuable source of feedback on the quality of its own decision making. A Presenting Officer can act as the eyes and ears of the decision maker, relaying what was said by the claimant and witnesses, how the tribunal approached the evidence, what carried weight with the tribunal, how similar cases might be handled differently in future by the decision maker.

34. The proportion of departmental decisions that have been overturned on appeal has remained more or less constant since 2000–01.

35. There is a right of appeal against the tribunal's decision. Prior to 3 November 2008 appeal lay to the Social Security Commissioners. Since that date the Commissioners have formed part of the Upper Tribunal. An appeal to the Upper Tribunal can only be made for error of law and leave to appeal is required. The majority of applications for leave are refused. In 2007–08 1,930 appeals granted leave were heard by the Commissioners. In more than half, the tribunal's decision was set aside and the case remitted to a fresh tribunal for rehearing.

The Time-frame for Appeals

36. The time-frame of appeals is uneven and difficult to monitor. From the claimant's perspective what counts is the time taken from the start of the process (namely, lodging the appeal) to the final outcome (typically, the tribunal giving its decision). Unfortunately, government does not track an appeal by the end to end process but measures the involvement, at various stages, of the different departments.

37. The time-limit for appealing was reduced in 1999 from three months to one month. Although the limit may be extended by the tribunal, it places considerable responsibility upon claimants and is very tight in comparison to other court and tribunal jurisdictions. In 2008–09 the tribunal received some 15,000 applications for an extension of time, most of which were granted.

38. An appeal is lodged by sending it to the office of the Department which made the decision being appealed. Unlike most other jurisdictions, the proceedings are not started by being filed at the court or tribunal. The next stage in the appeal process is for the Department to produce a submission (now known as a "response"). The submission outlines the facts of the case, as found by the Department, a summary of the applicable law and copies of documents used to support the decision. It can run to between 100 and 500 pages. The procedural rules do not oblige DWP to produce its submission within a specific time. Target-times (varying between 28 days and 90 days, according to the category of benefit) are contained in "Service level agreements" between the department and the Tribunals Service but such agreements are meaningless so far as the claimant is concerned. In 2007–08 the average time taken from the appeal being lodged to the department producing its submission was 63 days. Being an average, there were instances of delays of six months or more.

39. The Tribunals Service has been set a target by the Secretary of State of bringing 75% of appeals to hearing within 14 weeks of the receipt of the appeal from the Department. In April 2009 the average waiting time for all appeals was just under 13 weeks. Again, the use of an average is perhaps not the most useful statistical measure. No attempt is made to have different tracks according to the urgency of the appeal.

40. In approximately 98% of appeals the tribunal will deliver its decision on the day of the hearing. In most cases the decision is announced at the end of the hearing. A printed decision notice handed to the appellant and a copy e-mailed to DWP, if no Presenting Officer attends.

Supporting the Appellant

41. Unsurprisingly, the ability of claimants to manage their appeals without support varies greatly. The complexity of social security law defeats all but a few. Its opacity has drawn critical comment from the higher courts and the Commissioners. Its obtuseness increases. By way of example, there used to be fairly straightforward rules of review which provided that a decision on benefit could be changed if it had been based on a mistake or there had been a subsequent change of circumstances. In 1999 a more prescriptive regime was introduced which replaced straightforward "review" with the twin concepts of "revision" and "supersession" and attempted to codify the circumstances in which revision and supersession might apply. At the last count, those circumstances ran to 81 paragraphs and 33 sub-paragraphs.

42. Skilled advisers can play an important role at the point when a claimant is considering whether to appeal or not. The adviser can generally indicate when an appeal would have no realistic prospects of success. (Not every decision of the department, for example, carries a right to an appeal.) Conversely, the adviser can encourage the claimant to pursue a case that is strong.

43. Prior to the hearing, the value of the adviser primarily lies in assisting the claimant to gather evidence. An adviser with access to funds may, for instance, be able to pay for the expense of a medical report.

44. At the hearing, the inquisitorial role of the tribunal may reduce the "added value" of being represented, since it is usually the tribunal that will take the lead in asking questions of the claimant and any witnesses. The scope for advocacy is circumscribed. This observation should not be taken as diminishing the immense benefit to the claimant of having the presence at the hearing of someone to provide support.

45. The level of professional representation varies across the country. It is usually a function of local authority expenditure. Currently, representation varies from 64% of cases in Scotland to 13% in the south-east of England. The absence of legal aid for tribunal representation is a substantial saving for government.

The Administrative Justice and Tribunals Council

46. The Administrative Justice and Tribunals Council has an impact on claimants' experience of tribunals in two ways. Firstly, the Council plays an influential part in the process of drawing up the tribunal's procedural rules by championing the users' interests. Secondly, it performs a monitoring function by carrying out observations of tribunals in action and appraising their performance. It is a little too early to say whether the AJTC is more effective in its role than its predecessor, the Council on Tribunals.

September 2009

Memorandum submitted by Lancashire County Council (DM 28)

1.1 Lancashire County Council is the fourth largest Council in England and Wales. The County Council's Welfare Rights Service ("the Welfare Rights Service") is located within the Adult and Community Services Directorate of the authority. Established in 1987, we are a non-statutory service dedicated to providing the 1.17 million residents of Lancashire with information, advice and advocacy to enable them to secure their legal entitlements within the benefits system. Six area teams deliver a casework service to all types of client groups, and we also have a specialist benefit take-up team.

1.2 The Welfare Rights Service is one of the main providers of benefits appeal tribunal representation in Lancashire and in 2008–09 represented at 485 appeal hearings (with a 69% success rate for appellants). In addition to tribunal representation, a significant proportion of our casework activity centres around helping customers understand the decisions taken on their benefit/Tax Credit claims and, where appropriate, help them challenge these decisions through formal and informal decision making processes.

1.3 It is with over 20 years of experience of benefits decision making processes and appeal representation (and the resulting impact on the lives of claimants), that the Welfare Rights Service welcomes the opportunity to respond to this Select Committee Inquiry. This response is based on evidence/comments provided by our frontline benefits advisers, and (where possible) includes recent casework examples relating to the issues raised.

1.4 Representatives of the Welfare Rights Service are also active members of the Local Government Association's Social Security Advisers Group. This submission is presented as a supplement to the response already submitted by that Group.

1.5 As evidenced throughout this document, our primary concern regarding the decision making process in the benefits system is the actual quality of the decisions being made, and how decisions are notified/explained to claimants.

1.6 Our main improvement suggestions are:

- more, better-trained decision makers;
- the rigorous use of claim checking processes;
- full implementation of the DWP *Working with Representatives* guidance across the Department;
- improved decision notices;
- claimants provided with clearer information about the decision making process;
- improved liaison between DWP agencies (eg Jobcentre Plus) and the Department's Debt Management Service; and
- a review of the Tribunals Service arrangements regarding the listing of appeal tribunal hearings.

DECISION MAKING

2. *How effective is the decision making process? Could it be improved? If so, how?*

2.1 The main concern raised by the Welfare Rights Service's advisers is the over-reliance of DWP decision makers on medical "opinion" provided by DWP Medical Services when determining disability and incapacity-related benefit claims. Evidence suggests that benefit entitlement decisions—eg for Disability Living Allowance (DLA) are being made without any claimant-specific corroborative evidence being obtained by the decision maker to support their determination. As evidenced by the examples below, the information supplied by claimants is often dismissed without obtaining relevant clinical information as to how their medical condition(s) impact on their actual care needs or mobility difficulties.

2.2 It is acknowledged that decision makers will often need advice on particular claims, eg to help them analyse the information provided by the claimant. However, in our experience, this often results in the decision maker accepting the "opinion" given by the DWP's Medical Service, even if it contradicts medical evidence provided by the claimant's own GP/consultant. It is often apparent that the decision maker has no understanding as to how to "weigh up" medical evidence provided to them. It often appears as if they look at one aspect of the claimant's condition etc without considering the bigger picture eg how multiple conditions

interact to restrict functions. Our advisers are reporting that, for DLA claims, DWP Medical Services reports based on an actual examination/face-to-face interview with the claimant are becoming increasingly rare—with an increasing number of cases being referred for a Medical Services “opinion” instead.

2.3 Decision makers’ continuing failure to carry out proper reconsiderations when decisions are challenged not only results in appeal tribunal hearings that could have been avoided, but also increases the distress claimants face when their “evidence” is, in their eyes, unreasonably dismissed. It is not unusual for claimants not to proceed to the appeal stage of the decision making process (even though they may have a good case) because they cannot cope with the stress of attending an appeal tribunal hearing.

61-year-old woman with multiple health problems. Our adviser helped her complete a DLA claim form. The adviser felt an award of higher rate Mobility Component and at least the lower rate Care Component would be appropriate. However, the claim was completely disallowed, based on the opinion of an “approved disability analyst” who is neither a doctor/consultant, nor has seen the claimant, nor accessed medical evidence regarding the actual effects of the claimant’s health problems. This case is now the subject of an appeal. Neither the claimant, nor our adviser, can understand why this claim has been totally disallowed.

39-year-old man with severe abdominal problems, which have not responded to surgery. DLA claim disallowed, again based on the opinion of an “approved disability analyst”—which on this occasion totally contradicted a report provided by the claimant’s consultant regarding the severity of his condition. The claimant was too ill to attend the appeal tribunal hearing, however his claim was successful, and the higher rate Mobility and the highest rate Care Components awarded.

2.4 Incorrect decisions also continue to be made on a regular basis (most notably in relation to Pension Credit), the most common being reported are the date a claim takes effect (eg awarding premiums following an award of a qualifying benefit from the wrong date) or paying the wrong weekly amount (eg missing out relevant premiums). This could be improved by better training of staff, but more importantly having better claim checking systems at all stages of the decision making process.

63-year-old woman contacted the Pension Service to check if a lodger moving into her home would affect her Pension Credit entitlement. She was correctly advised by them that it would not. Sometime later, the decision was revised, and benefit accordingly reduced (by over £50 a week). The claimant appealed. There were a number of errors in the DWP’s appeal submission, including reference to the wrong regulations. The appeal tribunal panel did overturn the Pension Service’s decision, and the claimant’s benefit was fully re-instated. (The appeal tribunal hearing was also arranged without notification to the claimant or adviser. The claimant only found out about the hearing a few days beforehand, when she rang to follow up the action being taken on her appeal. This is not an isolated incidence.)

2.5 A frequent topic for discussion at our in-house Practitioners Forum, where advisers share/discuss casework issues, is the persistent failure of DWP staff to correctly apply their Department’s *Working with Representatives* guidance regarding the sharing of claimant information with intermediaries. The guidance offers the opportunity for DWP decision makers and advisers to work together to improve the quality of decision making. Being able to discuss (and resolve) “problem areas” with a decision maker at an early stage of the decision making process would hopefully reduce the need for so many of our cases being escalated into appeals/complaints/referrals to MPs or the DWP Chief Executive’s Office. Instead, advisers are often unable to escalate their enquiries etc beyond the Helpline staff, and are normally told to write in. However, there is extensive evidence that these letters that are not responded to and telephone calls not returned, particularly in regard to Pension Credit claims. Our advisers often report that a lot of their follow up work with this benefit is following up on letters. Surely, being able to talk to a decision maker would be a more effective use of resources for all concerned. One of our advisers now regularly escalates enquiries/complaints about very basic Pension Credit decisions to the DWP Chief Executive.

87-year-old woman living in a residential care home. Number of claims for Income Support (Minimum Income Guarantee) and Pension Credit made since 2002 that do not seem to have been satisfactorily resolved. Most recent activity concerns a claim for Pension Credit initiated by local Pension Service staff at the end of 2006. The claim was disallowed, and an appeal submitted on the claimant’s behalf. A number of late appeals and complaints were submitted by our Service throughout 2007 and early 2008, without any satisfactory resolution by the Pension Service. A referral to the DWP Chief Executive was made in April 2009, and a revised decision regarding entitlement (and arrears of benefit) finally issued early August 2009—and the case referred for a compensation award.

2.6 DWP delays in issuing decisions are also being reported by our advisers at each stage of the decision making process, which does not appear to be caused by the lack of evidence/information available to the decision maker. This is more likely to be the case with more complex issues such as housing costs to be included in means-tested benefits like Income Support, but is not unique to these issues.

3. *Are there sufficient numbers of decision makers and is the training they receive adequate?*

3.1 The delays in processing claims and making decisions would indicate that there are insufficient numbers of decision makers. The quality of decision making, as evidenced elsewhere in this document, also raises concerns about the amount and standard of training that decision makers receive.

3.2 Our Take Up Team advisers were told at their last local Pension Service liaison meeting that managers were aware of the extent of wrong decisions being made and were arranging further training for staff. However, no improvement has been noted to date.

4. *Is the decision making process clear to claimants?*

4.1 In our experience, claimants do not fully understand the decision making path. One reason for this is the fact that it is not clearly explained on decision notices. Decision notices make no reference to the process or possibility of reconsideration if the claimant thinks that the decision is wrong or if there is some extra information that was missed etc. The decisions only invite a claimant to get an explanation or to lodge an appeal. Claimants certainly do not understand or follow the reconsideration—review—revise—supersession process, especially if there have been changes of circumstances. As a result, it is not always clear when claimants contact the Welfare Rights Service whether a decision is under review or appeal. Claimants will have often telephoned the DLA Unit, for example, to complain about the decision and just been told that someone will look at it again. However, it will not necessarily have been explained to them that this is the start of the process for officially challenging the decision—nor will they necessarily understand that additional supporting evidence would be helpful at this stage.

4.2 Another reason for the lack of clarity in the decision making process is that DWP/HMRC still issue standardised, computer-generated decision notices/letters that contain little, if any, relevant factual personal information about a claimant's circumstances. This is a particular issue for DWP correspondence relating to DLA/Attendance Allowance claims. From the claimants' perspective, the information contained in such letters is often contradictory. For example, someone with anxiety problems, resulting in difficulties going outdoors without supervision or guidance, was told that the reason their claim had been disallowed was because they are "not anxious outdoors".

4.3 DLA/Attendance Allowance decision notices also tend to make reference to the basic qualifying criteria, yet not explain why the decision maker thinks these are not met in the claimant's case. For example, simply saying "you are not virtually unable to walk", of itself, is of no real help to a claimant (or adviser) when deciding if they have legal grounds to challenge the decision. What would be more helpful would be a full explanation as to why a customer's needs do not meet the relevant criteria. This information should be made available to the claimant at the time the decision is issued.

4.4 Standardised, computer-generated letters are not unique to DLA and Attendance Allowance. Nor is the confusion they cause for claimants. There should be some process in place at DWP/HMRC decision making teams for the checking of the clarity of the notices and letters issued to (individual) claimants; currently, the onus (and costs) for follow up rest with the claimant (and their representatives). It is our view, that issuing a standard "just ring us if you want any more information" paragraph on decision notices is insufficient execution by the DWP/HMRC of their decision making responsibilities. In order to exercise their full legal rights under the decision making process, claimants need to have a meaningful decision right from the start.

One of our customers received a decision letter regarding his Jobseekers Allowance (JSA) claim. It said that he was not entitled to JSA, then later in same letter it said an amount of JSA would be paid into his bank account. The letter did not state that the refused element was (Income-Related) JSA and that he would actually be paid (Contributory) JSA. It was impossible for the claimant (or adviser) to identify which was which.

Another customer was sent a letter advising him that he had been awarded Employment and Support Allowance (ESA). This letter was accompanied by a factsheet about Incapacity Benefit and an information leaflet telling him what to do if he did not agree with the amount of JSA he had been awarded! No wonder the claimant did not know what benefit was going to be paid.

4.5 Very often claimants will receive a girocheque (or money paid into their bank account etc) without any correspondence advising them what the payment is for (nor the period it covers).

65-year-old woman applied for a Severe Disability Addition to be included in the assessment of her Pension Credit in July 2008. In August this year, she received arrears for the period from April 2009. No correspondence has been sent to the customer regarding this decision.

4.6 Sometimes decision notices are never issued, and the decision making process for the claimant never starts, or is significantly delayed.

60-year-old man claimed JSA after being made redundant. He subsequently made a claim for Pension Credit for him and his wife. On following up this claim two months later, he was advised that it had been disallowed because JSA was still in payment. Customer was advised to reclaim when his JSA award expired. No decision notice regarding the Pension Credit claim had ever been issued, and it is unlikely that the claimant would have been aware of the outcome of his claim if he had not instigated the follow up telephone call.

4.7 Decision notices, even if technically correct (as evidenced in the JSA example above), can leave claimants (and their representatives)—and local authority staff determining entitlement to passported benefits eg free school meals—unclear as to the exact nature of entitlement. Like the JSA decision notice, the ESA decision notice does not state which element of ESA the claimant has been awarded. In some instances, this is difficult for experienced benefits advisers to determine; for local authority staff who are not benefit specialists this can be virtually impossible. Lancashire County Council staff who determine entitlement to free school meals have contacted the Welfare Rights Service on a number of occasions to ask our opinion as to whether a family should qualify.

The response from DWP when the problems with the ESA decision letters were brought to their attention:

Printed ESA award notifications do not distinguish between ESA income related and ESA contribution based awards, however, they do contain information on the amounts awarded. You may be aware that in order to deliver ESA in the required timescales and within budget, the IT solution to deliver ESA was built upon the same platform as the JSA payment system. The issue you have raised in relation to ESA also applies to JSA notifications. We are aware that this does not necessarily provide the levels of customer service we would like to deliver. In order to rectify this we have put a process in place whereby customers can be issued with a clerical notification which distinguishes their ESA award between income and contributory entitlement.

Changes to system generated notifications are extremely expensive and have a long lead in time due other system changes which have a higher priority, such as up-rating and other benefit changes. As there is a process in place to provide customers with this information, changes to the system generated notifications are regarded as having a lower priority and as such it is likely to be some time before the change can be made to the system generated notifications.

Note: the “clerical notifications” have to be requested from Jobcentre Plus, but only when an official computer-generated decision notice has been issued—thus further delaying the claim for the passported benefit.

5. *How effective is the review stage of the decision making process?*

5.1 The experiences of advisers regarding entitlement to DLA/Attendance Allowance is mixed. In one area of the County, advisers are reporting that, as evidenced elsewhere in this document, once a claim has been appealed the DWP rarely use their pre-hearing reconsideration powers to overturn a decision, despite additional medical/supporting evidence being supplied. However, in other areas, advisers are reporting a significant improvement in the past 12–18 months. This inconsistency, obviously, gives cause for concern.

63-year-old man, who is in “considerable” pain when walking. Previous claim for DLA successful and higher rate Mobility Component awarded. On renewal the claim was disallowed, although medical evidence relating to the previous claim had stated no improvement likely. Further medical evidence was obtained from the claimant’s GP, which confirmed the severity of his walking difficulties. This was submitted to the DWP in advance of the appeal tribunal hearing, but the decision was not revised. Claim allowed at the appeal tribunal hearing.

52-year-old man requested a review of his DLA award to include the higher rate Mobility Component. The claim was disallowed—no medical evidence obtained by DWP. Claimant appealed, submitting very supportive medical evidence from an occupational therapist. DWP refused to revise the decision in advance of the appeal tribunal hearing. The appeal was successful and the higher rate Mobility Component awarded.

58-year-old woman with severe depression and uncontrolled hypertension. Our adviser helped the claimant complete a DLA claim form. Adviser felt the lower rate Mobility Component and at least the lower rate Care Component would be an appropriate award. The claim was disallowed. No medical evidence obtained by DWP decision maker, and no explanation in the decision notice as to why they had not accepted the claimant’s statements about the effects of her condition. Adviser basically “dumbfounded” by the decision. Appeal submitted, plus medical evidence from GP regarding the severity of the claimant’s condition, but the reconsideration request was disallowed. From our experience, the appeal tribunal hearing is likely to be adjourned for medical evidence to be obtained.

5.2 Despite some reported improvement at the review stage of the DLA/Attendance Allowance decision making process, advisers consistently report that there has been no noticeable change in other benefit areas—in particular those relating to incapacity-related benefits (eg Incapacity Benefit/ESA) where reconsiderations in advance of an appeal tribunal hearing are a rarity.

39-year-old man with complex long-term mental health problems. After a 21 minute “medical” his claim for Incapacity Benefit was terminated. He had only scored nine points under the Personal Capability Assessment used to determine on-going entitlement to benefit—he needed a score of 10. In preparation for the appeal tribunal hearing, our adviser identified a number of other areas where additional points could have been awarded if a thorough assessment of the effects of the claimant’s condition had been undertaken. The appeal was successful and benefit re-instated.

5.3 As evidenced above, appeals can be successful as a result of more thorough scrutiny (by an adviser) of the evidence the decision maker has used to disallow a claim, highlighting to the appeal tribunal panel where the evidence supports the claimant's claim. This, in our view, should be a process undertaken at the pre-hearing reconsideration stage. Although we are, obviously, concerned about the impact of the lack of effectiveness of this stage of the decision making process on our customers; we are even more concerned about those claimants who may be in a similar position but do not appeal, or do not make contact with agencies like ourselves.

6. *Is DWP effectively addressing official error?*

6.1 Given the evidence reported elsewhere in this document, the answer has to be no; mistakes in decision making are just as likely to cause an overpayment as an underpayment.

A number of Pension Credit overpayments have been identified by our advisers. Not only have these caused distress to very elderly, often disabled, claimants (who think they have done something wrong), but it also (again) defaults to agencies like ourselves to put right very basic administrative mistakes made by DWP decision makers.

7. *How well does the decision making process operate for different benefits?*

7.1 In the experience of our advisers, means-tested-benefits do not fair well compared with contributory benefits, the latter giving rise to very few disputes. It is also true that for universal benefits (eg Child Benefit) the process is, with one or two exceptions, generally unremarkable.

7.2 The unanimous view from our advisers is, as evidenced below and elsewhere in this document, is that the decision making process for Pension Credit is very ineffective. (This has a knock-on effect on the decision making process for Housing/Council Tax Benefit claims for pensioners, because local authorities rely on Pension Service information to determine entitlement to these benefits.) Even when advisers invoke the DWP complaints process on behalf of their customers to try and resolve (in many instances) basic decision making failures, these are often not responded to.

72-year-old man had previously had claim for Pension Credit incorrectly assessed in 2006. Appealed at that time, and arrears awarded. The same problem regarding the treatment of his income arose in May 2008. Again, the claimant appealed. On this occasion, the decision was revised in advance of the appeal tribunal hearing. This decision, however, only came to light as a result of our adviser contacting the Pension Service to follow up the appeal. Although the award was revised and arrears paid, at no stage has there been any correspondence sent to the claimant (or adviser) regarding this decision, nor anything explaining how the revised award/arrears have been calculated. There has, to date, also been no response to the official complaint concerning the treatment of this case.

67-year-old man on higher rate Mobility Component and middle rate Care Component of DLA. Has had problems with his Pension Credit claim dating back to 2007. Pension Service finally resolved the issue in March 2009, and notified the claimant that full benefit would be re-instated and arrears paid. Despite numerous promises from Pension Service staff to prioritise the processing of these arrears, the claimant is still awaiting payment. Letter of complaint was sent to DWP Chief Executive last month.

7.2 Concerns are also starting to arise regarding the ESA decision making process. There is still a lot of confusion, and incorrect advice given by Jobcentre Plus staff, as to the correct claiming process for people who become too ill to work ie whether they should still be able to claim Incapacity Benefit/Income Support or whether they need to claim the "new" ESA. Concerns are also starting to arise regarding the medical assessment process.

53-year-old man, terminally ill with cancer. He was already receiving higher rate DLA under the "special rules" for this benefit when he claimed ESA—ie on the grounds that medical evidence had been supplied (in the form of a completed DS1500) to confirm he was terminally ill and not expected to live six months. Being accepted as terminally ill with this life expectancy should also fast track an ESA claim into the main phase of benefit without the need for a medical assessment, as well as the inclusion of a Support Component from the date of claim/evidence of prognosis supplied. This did not happen in this claimant's case—despite the DWP already paying another benefit on these grounds. A duplicate DS1500 was obtained from the claimant's consultant, and the correct decision was finally issued (and the correct amount of benefit paid) two months later. Within three months the claimant had died.

7.3 Another frequent discussion topic in the Welfare Rights Service's Practitioners Forum has been problems arising from the interaction between Jobcentre Plus and the DWP Debt Management Service (DMS) regarding the decision making processes relating to benefit overpayments. To quote one of our advisers "the normal rules go out the window". A lot of the problems seem to arise out of confusion regarding the respective (decision making) roles of the two agencies.

38-year-old woman incurred an Income Support overpayment as a result of a failure to report her son's DLA ceasing. Recovery of the overpayment was not disputed, just the amount. The DWP appeal submission contained a number of errors regarding the calculation of the overpayment, and the appeal tribunal hearing was adjourned for these to be addressed. Whilst waiting for the appeal to be re-heard, DMS contacted the customer regarding recovery arrangements. Not only was this contrary to the arrangement whereby recovery should be suspended pending the outcome of an appeal, but the amount of the overpayment had increased—no reason for this was given, and Jobcentre Plus were also unable to shed any light on the reason for this increase. With a corrected submission, the appeal was re-heard and the amount to be recovered determined. Three months after the hearing, DMS again contacted the claimant regarding recovery arrangements. Again, the amount they are still seeking to recover is still a lot higher than that determined at appeal. Again, there has been no explanation as to why the amount to be recovered has increased. Our adviser has written to both Jobcentre Plus and DMS, suggesting that they liaise with each other to resolve the matter.

Unemployed couple with a £150 Income Support overpayment, which arose as a result of a lack of understanding on the claimant's part regarding the interaction of Working Tax Credit and Income Support. Claimant appealed recovery. The DWP appeal submission, however, only addressed the calculation of the overpayment—not the legal grounds as to why the amount should be recovered from the claimant. Our adviser contacted the local Jobcentre Plus office regarding this, and a corrected submission was received a day or so before the date of the appeal tribunal hearing. In the new submission, the level of overpayment had increased. The couple were also concerned that there looked to be some inaccuracies as to the level of income attributed to them during the period in question. The appeal tribunal hearing was adjourned, as a result of the “confusing, unnecessarily complicated” DWP submission. DMS had again contacted this customer regarding recovery of the overpayment whilst the appeal was pending, and again cited a different amount to that submitted by Jobcentre Plus. The appeal was finally heard and the correct amount of overpayment determined. The claimant in this case has been very stressed by the whole process and prescribed anti-depressants by his GP. A complaint was submitted in April this year regarding the DWP's handling of this case, particularly DMS's involvement with the claimant—to date, there has been no response from the DWP.

8. *How effective has DWP's Decision Making Standards Committee been in monitoring frontline decision making?*

8.1 An adviser from the Welfare Rights Service was a “fieldwork” representative on the Standards Committee's Representatives Group. It is his view that the Committee dealt mainly with general issues (rather than specific casework problems) and was somewhat removed from effecting change in the frontline DWP decision making processes. Unfortunately, there can often be a wide gap between policy-making and intention, and everyday practice at the customer-interface.

9. *Is decision making taking account of the October 2007 European Court of Justice ruling on exporting DLA, AA and Carers Allowance?*

9.1 No evidence has been presented by advisers that there are any problems regarding this.

APPEALS

10. *How does the appeal system work from the claimant's perspective?*

10.1 The view of advisers within the Welfare Rights Service is that this will inevitably depend on how the claimant is treated at the appeal tribunal hearing, the ability of the claimant to understand and respond to the decision making process, and the outcome of their case.

10.2 Time delays in listing appeals (see paragraph 12.1) and adjournments at hearings tend to frustrate claimants, who generally do not understand the reasons for it, whether the delay etc is needed to obtain extra evidence or for some procedural/legal reason.

10.3 Claimants are more often than not intimidated by the whole process and often report that they feel they “are on trial” or “made to feel like a criminal”. This has definitely not been helped by the re-naming of tribunal chairs as judges. The change in appeal procedures at the end of last year has made an already difficult experience for appellants even more stressful. Advisers representing at appeal tribunal hearings now report that they have to go to greater lengths to assure their customers that the tribunal experience is not as difficult or as formal as going to a court hearing.

11. *How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon claimants' experience of the appeals process?*

As evidenced elsewhere in this document, the administration of the appeals process has deteriorated not improved. There is no evidence that the commendable purpose, vision and values of the AJTC (www.ajtc.gov.uk) are currently making any positive impact upon claimants' (and advisers') experiences of the appeals process.

12. *Is the timeframe of appeals reasonable?*

12.1 Currently, there are significant delays in appeals being listed for a hearing. Appellants are waiting six to nine months for an appeal tribunal hearing. In our view, this is totally unacceptable and not only makes it more difficult for appeal tribunal panel members to elicit relevant information, but also for appellants to remember things accurately. This is more of a problem than it used to be since appeal tribunal panels can now no longer consider the appellants circumstances “down to the date of the hearing”.

13. *Is sufficient support available to appellants during the appeals process?*

13.1 In our experience, the support claimants need during the appeal process is that currently supplied by independent representatives, ie:

- help to explain the decision to them in terms they can understand;
- advice as to whether there is a legal remedy to their claim;
- advice as to what additional evidence/information (if any) is needed to support their appeal;
- help to understand the appeal documents;
- help to construct a legal argument to support their appeal; and
- (most importantly) help presenting their case at an appeal tribunal hearing.

This level of support is not something currently provided by the Tribunals Service or the DWP, but by the independent advice sector (via agencies like ourselves). Our concern is that the number of agencies able to provide appeal tribunal representation may be diminishing. In some areas of Lancashire, even Citizens Advice Bureaux are referring claimants to our Service for help with appeals.

13.2 As indicated above, the presence of an experienced representative at an appeal tribunal hearing can be very important to appellants; some of our customers would not proceed with their appeal if this was not available to them. It is, therefore, of concern to note that the changes to the administrative processes for the listing of appeals introduced at the end of 2008 appear to be resulting in what happened about 10 years ago when appeals were being listed aggressively without much, if any, consultation with representatives. Effective liaison arrangements regarding the listing of appeal tribunal hearings (which benefited all parties) have now broken down. Some appeals are even being listed without notification to the appellant or representative (see example in paragraph 2.4).

13.3 Appeal tribunal panels also continue to resist allowing postponements on the grounds that the claimant’s nominated representative is unavailable. The Tribunals Service do not seem to appreciate not only what a small organisation even agencies like ourselves are (and that we do not always have the time or resources to take over other advisers cases), but also that the claimant has the right to choose who they would like to represent them. Surely this should be the person who best knows their case, and their circumstances. It is our view that Tribunals Service staff need to be reminded of the new rule 2 introduced in November 2008; ie that “the overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.” The current perception is that the Tribunals Service are more interested in getting casesthrough the appeals process (understandable if there is a backlog), rather than enabling the appellant to have proper representation.

13.4 Not only is support regarding representation taking a backward step, but so to is the availability of information to appellants, particularly unrepresented appellants, that might help them steer themselves through the appeal process. Information regarding the points scoring system for determining entitlement to ESA is no longer included in the DWP appeal submission. Appellants are instead directed to the DWP website.

From a recent appeal submission:

“Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP’s website at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>.”

September 2009

Memorandum submitted by Department for Work and Pensions (DWP) (DM 29)

SUMMARY

- The Department for Work and Pensions makes millions of decisions on social security benefits each year. Decisions are made by a large number of staff in Jobcentre Plus and the Pension, Disability and Carers Service. Decisions on Housing Benefit and Council Tax Benefit are made by Local Authorities.
- The majority of decisions are accepted by customers.

- Around 250,000 appeals are received every year by the First-tier Tribunal. In about half of those appeals, the decisions are upheld. There are clear variations between the different types of benefit. Those benefits which involve the exercise of discretion and consideration of medical evidence in particular generate a large number of successful appeals, often based on new evidence.
- Effective decision making supports other departmental initiatives, for example, the reduction in official error overpayments.
- Payment accuracy rates across the major benefits all more than 90%.
- October 2007—September 2008 2% of benefit overpaid due to fraud and error—continues to be the lowest proportion recorded.
- October 2007—September 2008 4.5% overpaid due to fraud and error on Housing Benefit (HB)/ Council Tax Benefit (CTB)—10% reduction since 2002–03.
- October 2007—September 2008 HB/CTB official error at an all time low, 0.9% of expenditure.
- Claims clearance rates across the major benefits all within target.
- There are a number of initiatives within Jobcentre Plus and Pension, Disability and Carers Service (PDCS) to improve service to the customer and decision making and reduce official error. These include claims by phone and online; professional development programmes for decision makers; Lean process improvements.
- Improved decision making on certain Disability Living Allowance claims has led to savings of £20 million in PDCS.
- In August the Department launched its Customer Charter. Developed in collaboration with more than 2000 staff, customers and intermediaries, it clearly spells out what customers can expect from its decision makers: that they are knowledgeable; they will make the right decision at the first time of asking; they will do this quickly; and where customers need to contact the Department about their decisions this will be easy for them.
- The Department believes that the decision making process for benefits is robust and practical and that it provides an effective basis to deliver services to all its customers. But it is constantly working to make it even better.

1. INTRODUCTION

1.1 This memorandum is provided by the Department for Work and Pensions as a contribution to the Work and Pensions Select Committee's inquiry—"Decision making and appeals in the benefits system".

1.2 The Department makes millions of decisions on social security benefits each year. Decisions are made by a large number of staff in Jobcentre Plus and PDCS. These decision makers act on behalf of the Secretary of State for Work and Pensions. Decisions on Housing Benefit and Council Tax Benefit are made by Local Authorities. The Department makes around 2.5 million payments each day.

1.3 The current decision making system was introduced by the Social Security Act 1998. The aim was to introduce a clearer, simpler, more effective process that would be easier for the Department's customers to understand and allow for decisions to be made and disputes handled more quickly. The Department strives to achieve the best decision for all its customers. The current system for making decisions and handling appeals in benefit and child support matters is accessible, thorough and comprehensive. Customers can make an initial claim and the Department is committed to increasing customers' ability to claim by telephone and on-line. They can seek an explanation of the decision made on their claim or application, and can ask for it to be reconsidered—this often provides a quick and simple way to resolve disputes. They then have access to two independent tribunals. If a legal point remains unresolved, the customer can seek access to the higher courts.

1.4 The benefits system itself is complex. There are different entitlement conditions for different benefits. There are also the huge variety of circumstances faced by the Department's customers which require consideration by decision makers.

1.5 Of the millions of decisions made each year, around 250,000 decisions—less than 10% are appealed.¹³ That implies that customers are satisfied with the majority of decisions given to them. The number of these appeals where the Secretary of State's or Local Authority's decision is upheld varies between benefits. In the medically and disability based benefits such as Disability Living Allowance (DLA), Attendance Allowance (AA) and Incapacity Benefit (IB) around 60% of decisions are upheld. For the non-medical benefits such

¹³ The Department makes tens of millions of decisions each year and has no mechanism for counting them. This is all decisions, not just those on new claims. The appeal rate varies from one benefit to another. While the phrase "less than 10% is correct in context, clearly the number appealed is very much less than 10%. "Appeals" in this context refers to the annual intake received by the Tribunals Service, that is, appeals referred for an appeal hearing before the First-tier Tribunal. It does not include all the appeals received by the Department, which are subject to the reconsideration process. The Tribunals Service does not administer those appeals which are lapsed after the decision is reconsidered or withdrawn before the Department sends its appeal response.

as Jobseeker's Allowance (JSA) and Income Support (IS) the rate is higher. The Annex contains statistical information on appeals. Of the 250,000 cases appealed each year, about 3,000 go on to the next stage of the process before the Upper Tribunal, from where a smaller number will proceed to the higher appellate courts.

1.6 The Department continually seeks to improve current standards of service to customers in both decision making and associated areas. Initiatives such as making claiming easier on-line and by telephone, will not only benefit customers but will also speed up the decision making process. In certain areas of decision making the Department is investing in programmes for its decision makers such as the Professionalism in Decision Making and Appeals (PiDMA) course run in conjunction with the University of Chester. The Department is also applying Lean techniques to streamline its processes.¹⁴

1.7 In August the Department launched its Customer Charter. Developed in collaboration with more than 2000 staff, customers and intermediaries, it sets out what customers can expect from decision makers:

- that they are knowledgeable;
- they will make the right decision at the first time of asking;
- they will do this quickly; and
- where customers need to contact the Department about their decisions this will be easy for them.

1.8 The Department believes that the decision making process for benefits is robust and practical and that it provides an effective basis to deliver services to all its customers. But it is constantly working to make it even better.

2. DECISION MAKING

2.1 The essential elements of the decision making and appeal processes are common to all benefits. A customer submits a claim and the evidence to support it. A decision maker assesses the claim and issues a decision on it. If the customer is not satisfied with the decision, they can ask for an explanation or can ask for the decision to be reconsidered.

2.2 A decision maker will consider the request and any new evidence submitted by the customer. The decision maker will then decide whether the original decision was correct or should be changed.

2.3 If the customer is still not satisfied, in the majority of cases they can appeal to the First-tier Tribunal, which is independent of the Department. These tribunals are administered by the Ministry of Justice's Tribunals Service. The customer can ask for an oral hearing of the appeal or for it to be decided by the tribunal on the papers only.

2.4 The tribunal will consider the appeal and the evidence submitted by the customer and the Secretary of State or Local Authority. The tribunal will then issue its decision.

2.5 Both the customer and the Secretary of State/Local Authority have the right of appeal, on a point of law only, to the Upper Tribunal (formerly known as the Social Security and Child Support Commissioners). Further avenues of appeal lie with the higher appellate courts.

2.6 Both Jobcentre Plus and PDCS have sufficient numbers of decision makers for the levels of claims and applications they normally receive. There are a large number decision makers in JCP, including approximately 1500 specialist decision makers, around 8,000 in PDCS and 298 in Debt Management.¹⁵ In addition there are the thousands based in the 380 Local Authorities making decisions on HB and CTB. The Department and Local Authorities will continue to keep staffing levels under review during the current economic downturn.

The reconsideration process

2.7 If a customer is not satisfied with a decision, they can ask for an explanation and for the decision to be reconsidered. A decision maker will re-examine the original decision, in the light of the customer's representations or additional evidence, and will decide if the decision should be changed; legally this is known as a revision (prior to the introduction of the current decision making system by the Social Security Act 1998, this was legally known as a review). If the decision is changed, the customer has the right of appeal against the new decision.

2.8 The ability to revise decisions is key to the decision making system. Of course, the aim is to get the decision right first time. However, if a decision is challenged on revision it will be referred to another decision maker. It is beneficial both to the Department and the customer if the decision can be corrected at this stage instead of waiting for a tribunal hearing.

2.9 The onus is on the customer to explain why he thinks the decision is incorrect. A decision will only be revised if a decision maker agrees an error has been made.

¹⁴ LEAN is the application of a set of behaviours and techniques to improve the department's benefit administration. By using Lean ways of working and a set of techniques to make the most of staff knowledge and experience, Lean reduces "waste", engages staff and improves efficiency.

¹⁵ Debt Management is part of the Department for Work and Pensions, responsible for decision making on the calculation and recoverability of overpayments of benefit.

2.10 If a decision is not revised but is then overturned on appeal, it does not necessarily mean that the revision outcome was wrong or that the revision process was ineffective. Whilst every effort is made to ensure that the customer provides all relevant information at the revision stage often new evidence will be presented at the tribunal hearing—this is particularly so with the medical/disability benefits (In his report for 2007–08 the President of Appeal Tribunals found that in a sample of DLA cases overturned by the tribunal, 73% were because the tribunal was given additional evidence not available to the decision maker, with 78% of this being provided orally). It is also possible for the tribunal to examine the same evidence as the decision maker and interpret it differently—again this is more likely with the medical/disability benefits.

Is the decision making and appeals process clear to customers?

2.11 When a customer contacts the Department or a Local Authority, they are told what they need to do to claim benefit or, as necessary, dispute or appeal a decision.

2.12 Customers are told about their dispute and appeal rights in the decision notification on their benefit claim and application. They are also told that they can ask for leaflet GL24, *If you think our decision is wrong* which provides a detailed explanation of the decision making and appeals process.

2.13 The customer can also check the law and benefit guidance on the Directgov website.

3. TRAINING FOR DECISION MAKERS

3.1 The Department invests a considerable amount of effort in providing training and support to decision makers.

Jobcentre Plus

3.2 All decision makers receive training in the relevant benefit. Recent developments to improve efficiency include criteria to differentiate between non-complex and complex decisions, so that the former can be dealt with quickly and without reference to a specialist decision maker.

3.3 Jobcentre Plus is currently reviewing all of its decision making training with a view to improving the quality of decisions made. From April 2010, all new decision makers will undergo Foundation Decision Making Training with more complex subject areas delivered as needs arise.

3.4 Jobcentre Plus has established accuracy teams to monitor error levels in cases where wrong decisions affect the amount of benefit to be paid. Guidance and templates are provided to decision makers to improve the standard of consideration of evidence, legislation and the presentation of decisions. These matters are subject to external checks by the Department's Risk Assurance Division and the National Audit Office.

3.5 Annexes B & C further explain the role of decision makers in relation to the labour market and benefit sanction regime within Jobcentre Plus.

PDCS

3.6 The initial training for new decision makers is already robust, but after nine months in post they will all be taken through the Technical Evaluation Package (TEP) process for further development. The DWP Standards Committee will be looking at the effectiveness of training for all PDCS administered benefits in their work programme for 2009–10.

3.7 PDCS has developed a series of TEPs for State Pension (SP) and Pension Credit (PC) that target the more complex areas of decision making. These are being delivered in Pension Centres with a completion date of March 2010.

3.8 All DLA/AA decision makers receive full technical training that includes contributions from health care professionals. Decision makers then move to mainstream operations where, under the guidance of more experienced colleagues, they begin to gain operational experience. Annex D provides further details of the training given to DLA/AA decision makers.

3.9 The decisions made on certain claims, for example DLA, are complex and require the exercise of discretion. In the light of this, PDCS has developed a learning and development programme called PiDMA (Professionalism in Decision Making and Appeals)—over 200 staff have completed or joined the programme. It is targeted at Executive Officer decision makers and Higher Executive Officer managers for DLA and AA. The programme includes an accreditation scheme linked to the University of Chester. PDCS consider that PiDMA provides high quality training for decision makers who are involved in complex decisions which require the exercise of discretion.

3.10 The Department wants to be sure that all its decision makers can receive appropriate accreditation. Work is in hand with the Council for Administration to refine the content of the existing National Occupational Standards to ensure that the requirements of departmental decision makers are covered.

Advice and guidance to decision makers

3.11 The Department's Decision Making and Appeals (DMA) Leeds unit provides support to all its decision makers. They also issue guidance to HB/CTB decision makers on certain common subjects. DMA Leeds publishes and maintains guidance for decision makers in the Decision Makers Guide (DMG).¹⁶ There are a large number of amendments to social security law and practice every year. DMA Leeds ensures that these are communicated to decision makers by memos and consolidated in the DMG. In addition they maintain the social security law volumes (known as the Blue Books) and a complete record of reported Upper Tribunal decisions. The unit also responds to more than 3,300 guidance requests per year from decision makers on specific cases.

3.12 For HB/CTB the DWP Performance and Good Practice Guide and the Performance Development Team provide free consultancy support to Local Authorities in delivering effective decision making.

3.13 In DLA and AA expert medical advice about impairments is supplied by Atos Healthcare medical services when requested by the decision maker. This informs decision making.

3.14 Customer Case Management medical guidance on-line has replaced the Disability Handbook. This has been written by experts and reviewed by disability organisations. It is a comprehensive resource for the latest information on medical aspects of disability.

4. APPEALS

4.1 Customers are informed of their appeal rights in a clear and unambiguous way. The decision notice explains what needs to be done and within what time. It also explains that they can get more information from leaflet GL24 *If you think your decision is wrong*—this contains an appeal form but it is not essential that it is used.

4.2 However, the Department encourages customers to seek explanations for decisions before appealing. Where a customer feels that the decision is wrong, the Department will look at it again, so that any favourable change can be made as soon as possible—see para 2.7 above. Where the Department does not change the decision, the customer has the right of appeal.

4.3 The Department provides the customer with a full explanation of how and why it reached the decision (now known as the response) along with copies of all the evidence used to reach the decision. It is sent to the customer and Tribunals Service well in advance of the hearing allowing both the customer and the tribunal time to prepare for the hearing or seek further advice.

Timeframe for appeals

4.4 The time limits for customers to make an appeal are now prescribed in the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.¹⁷ They replicate the time limits which have existed since 1999, that is, normally one month from the date of decision which may be extended by up to 12 months where special circumstances apply.

4.5 The Department considers that the one month appeal time limit is reasonable (particularly allowing for the possibility of extension). It encourages people to exercise their rights promptly and ensures their case can be resolved quickly. It also ensures that decisions are revisited while the facts are still fresh.

Support for customers during appeal process

4.6 The Department publishes leaflet GL24 *If you think our decision is wrong*. As well as containing the form which can be used to make an appeal, the leaflet explains how the process works and who is responsible for each step. Page 20 of the leaflet provides advice on the type of organisations who may provide free assistance in preparing for a tribunal hearing and page 21 directs customers to websites where more information can be obtained on the law or processes involved.

4.7 The Department and Local Authorities ensure that all disputed decisions are fully reconsidered. Customers' rights are fully explained in decision notifications. Every effort is made to ensure that the right decision has been given and that it is adequately explained. When a decision is revised in favour of the customer, the appeal will lapse. Where the decision is checked and found to be correct, the appeal response is prepared and the case referred to the Tribunals Service. The response sets out the relevant law, case law, evidence and argument in support of the decision under appeal and stands alone as the Department's case.

4.8 From that point the Tribunals Service is responsible for handling the appeal and providing support for their customers. They will contact the appellant and provide further information about the hearing.

4.9 If a Presenting Officer attends the hearing then as part of his role (see section 9 below) he will make points in favour of the customer where appropriate.

¹⁶ This is available on the Department's website.

¹⁷ SI 2008/2685.

Alternative Dispute Resolution pilot

4.10 The Department participated in a Tribunals Service pilot of Alternative Dispute Resolution, which tested the Early Neutral Evaluation approach. The pilot operated in Tribunals Service and PDCS, and focussed on DLA and AA appeals. It involved a preliminary assessment by a tribunal judge of the facts, evidence and merits of the appeals. Where deemed appropriate, and supported by the evidence available, the judge then sought to secure an early resolution of the case by contacting the relevant party advising them that their appeal has little prospect of success. The pilot ran from September 2007 to January 2009. The pilot has been evaluated and the Tribunals Service is considering the report's recommendations.

Review of time limits for an appeal response

4.11 The Department and HM Revenue and Customs are currently working with Tribunals Service officials and the Tribunals Procedure Committee to review time limits for sending an appeals response to the Tribunals Service. The First-tier Tribunal Rules currently require responses to be sent as soon as reasonably practicable. The review involves working together to establish how best to achieve workable time limits.

5. OPERATION OF DECISION MAKING IN INDIVIDUAL BENEFITS

5.1 As explained in section 2 there is a common process for decision making across social security benefits, including HB/CTB.

5.2 For the individual benefits the method of claiming may vary, for instance, by phone, internet or claim form, but once the claim is made the process of determining the claim is common. A front-line or specialist decision maker will consider the evidence and make a decision. If the decision is challenged again the steps taken to resolve the dispute are common.

5.3 The effectiveness of the operation of the current process in individual benefits can be gauged from the following statistics:¹⁸

Benefit accuracy rates

The 2008–09 position on payment accuracy for the major benefits is as follows:

- Carer's Allowance (CA)—99.4% (target 98%);
- Pension Credit (PC)—92.1% (92%);
- State Pension (SP)—98.2% (98%); and
- HB/CTB—98%.

For DLA and AA the accuracy is measured in terms of the quality of the decision itself: for DLA it is 92.2% (target 94%), for AA it is 94.1% (94%).

Claims clearance rates

The 2008–09 average clearance rate for the same benefits is as follows:

- AA—12.3 days (target 16);
- CA—12.4 days (13.5);
- DLA—29.8 days (38);
- PC—15 days (15); and
- HB/CTB—26 days (down from 56 days in 2002–03).

A further measure of the effectiveness of decision making can be seen in the fraud and error figures—see section 6 below.

6. INITIATIVES TO IMPROVE DECISION MAKING

6.1 The decision making and appeals process supports much of the rest of the work done by the Department. Effective decision making is important not only to the individual customer but also to help in improving standards of service to all customers and in making the Department more efficient. Details of some of the relevant initiatives are given below.

6.2 The Department want to be able to get the right decision for every customer. That means work on decision making itself but there is also a range of other initiatives that contribute to get the right result every time. These include:

- The Customer Management System enables working age customers to experience, as far as possible, a single claims process when claiming HB and/or CTB alongside claims for Income Support (IS), Jobseekers Allowance and Incapacity Benefit. Jobcentre Plus obtains the necessary benefit claim information by phone and then passes it to the relevant Local Authority, thus simplifying the procedure and avoiding duplication for the customer;

¹⁸ PDCS Annual Report *Housing Benefit Operational Database Timeseries data*.

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- Employment and Support Allowance, Pension Credit, State Pension, Income Support and Jobseekers Allowance can be claimed by telephone;
 - Carers Allowance and, from October, State Pension can be claimed on-line;
 - The role of Jobcentre Plus Personal Advisers in supporting jobseekers in finding work continues to develop;
 - From September 2009 PDCS is testing a shorter DLA claim pack for benefit renewals;
 - PDCS has plans to test a new approach to deciding DLA entitlement for children—a difficult area for the Agency;
 - Jobcentre Plus is introducing an online service for claims to JSA. This will allow customers to claim contributory-based Jobseekers Allowance on-line—the main advantage will be to speed up the processing of the claim;
 - Jobcentre Plus has a strategy and programme of continuous review and improvement of administrative processes using Lean techniques;
 - Trials have been conducted on how decision making and appeal processes could be improved and simplified. For example, up to 20% of ESA assessment decisions have been re-allocated to a lower grade of decision maker; this has removed the need for referrals to senior staff when customers have satisfied the requirements of the medical examination. This speeds up the decision making process. Jobcentre Plus has centralised the processing of benefit claims and decision making within its Benefit Delivery Centres. The agency anticipates looking again at how this is working to ascertain what further opportunities there may be;
 - In PDCS specialist teams support all decision makers. It uses other internal and external scrutiny mechanisms to assess decision making effectiveness—National Audit Office, DWP Standards Committee, Accuracy Support team;
 - From November 2008 it has been possible for pension age customers to make a telephone claim for HB/CTB alongside their claim for PC without the need to complete or sign a claim form;
 - The pension benefits decision making process has been reviewed recently by the Pensions Transformation Programme. The process has been simplified to enable most decisions to be made by AO grade staff. The evidence gathering process has been revised. More complex decisions will increasingly be done by more experienced staff;
 - In HB/CTB for working age customers, Jobcentre Plus has developed the Customer Management System with the objective of introducing a more streamlined and integrated approach to benefit administration.

Tackling official and customer error

6.3 In January 2007 the Department launched its strategy for reducing the level of official and customer error *Getting welfare right: Tackling error in the benefits system*. This strategy was aimed at reducing the levels of both over- and underpayments caused by official error and customer error. It is now fully implemented and the latest decrease in the Department's overall level of official error shows it is working.

6.4 Between October 2007 and September 2008 2% (£2.7 billion) benefit overpaid was due to fraud and error. This is the lowest proportion since 2000–01. Underpayment was 0.9% of benefit expenditure in the same period.

6.5 Between October 2007 and September 2008 4.5% (£770 million) HB expenditure is estimated to have been overpaid due to fraud and error. This is a 10% reduction since measurements were first taken in 2002–03.

6.6 In the same period HB official error was at an all time low at 0.9% (£150 million of expenditure).

6.7 In 2007–08 20,985 cautions and administrative penalties were applied by Local Authorities for HB fraud; there were 6,493 successful prosecutions.

6.8 In Jobcentre Plus further measures are in hand to further reduce the level of official error:

- it has increased checks on staff by over 25%;
- there are short- and long-term projects looking at how better use can be made of the Department's IT in tackling official error;
- data matching of IT systems both within DWP and with outside systems has proved to be beneficial in identifying anomalies and errors; and
- fraud and error training is to be made mandatory for all new Jobcentre Plus starters, those changing their role and promotees.

6.9 PDCS initiatives include:

- targeting the most frequent and common errors—issuing additional guidance on these;
- holding accuracy workshops;
- introducing pre-payment checks on cases which have a high probability of going wrong;
- requiring mandatory medical evidence for certain DLA claims—it is estimated that this prevents approx £20 million pa of benefit being incorrectly paid out;
- enhancing its IT to identify errors caused by the non-compliance with benefit regulations; and
- undertaking a full review of its accuracy checking process and management arrangements.

7. DWP DECISION MAKING STANDARDS COMMITTEE

7.1 The DWP Standards Committee (SC) provides independent advice to the Agency Chief Executives on matters relating to decision making. It consists of a Chair and three members, all independent of the Department. Each member of the SC has a specific role. The SC has no executive authority and its scope is exclusively to Jobcentre Plus and PDCS (including decisions made on their behalf by Debt Management in relation to Jobcentre Plus and PDCS-administered benefits).

7.2 The SC agrees a programme of work with Jobcentre Plus and PDCS on the areas where work is needed. The role of the SC is to provide independent advice and make recommendations on areas where decision making standards can be improved. The SC presents its findings to the board of directors of Jobcentre Plus and PDCS annually.

7.3 Jobcentre Plus works closely with members of the SC and gives them access to all levels of the business. Their work plan is informed and agreed by the Jobcentre Plus Board and their comments are actively sought and acted upon as part of the agency's efforts to continuously improve standards of decision making. In particular, Jobcentre Plus has worked with the SC to improve access to agency services for vulnerable customers and to extend levels of support for decision makers and their managers.

7.4 Two members of the SC work exclusively with PDCS, one covering pensions and the other disability benefits. PDCS ensures that the members are continually supported by effective liaison arrangements to ensure that their recommendations are based on full information.

8. EUROPEAN COURT OF JUSTICE RULING ON EXPORTABILITY CASES

8.1 The October 2007 European Court of Justice decision in case C-299/05 reclassified the United Kingdom's disability benefits—DLA (care component), AA and CA—as sickness benefits. Since the judgment over 1400 claimants have exported their benefits to another European Economic Area (EEA) state or Switzerland and 200 (of these) people have had their benefits which they lost on leaving the country reinstated.

8.2 The export of sickness benefits within the EEA and Switzerland is regulated by Title III, Chapter I of Council Regulation (EC) No 1408/71. This European Regulation provides rights for workers and people who used to work and in certain circumstances, their family members. Thus people in receipt of long term contributory benefits like State Pension and Incapacity Benefit and those who have been paying National Insurance Contributions recently may be eligible to export disability benefits.

8.3 But there are also people who do not come within the scope of the Regulation at all. For example, people who have never worked, perhaps because they have been disabled from birth, will not be able to export their benefit (unless they can claim as a family member of someone who does fit the relevant criteria) because they will not have rights as a worker or a pensioner. In addition people who have worked in their new country of residence will find that the United Kingdom is no longer the competent state for payment of sickness benefits.

8.4 Cases are considered by decision makers on the basis of customers' individual circumstances taking account of the interaction between domestic and European law in relation to the disability benefits.

9. ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

9.1 The Administrative Justice and Tribunals Council (AJTC) was created under powers in the Tribunals, Courts and Enforcement Act 2007 and replaced the Council on Tribunals from November 2007.

9.2 It continues to maintain an overview of the work and procedures of the tribunals within the Ministry of Justice and has a new function to keep the administrative justice system under review. It is as yet too early to predict what impact the Council will have on the Department's customers.

10. PRESENTING OFFICERS

10.1 A presenting officer (PO) is someone (usually an experienced decision maker) from the Department who represents the Secretary of State at First-tier Tribunal hearings of appeals against decisions made on her behalf; a similar arrangement exists for Local Authorities. The role of the PO is to act as *amicus curiae* (friend of the court). The PO helps the tribunal to reach the correct decision based on all the facts and the application of the law. Although the PO presents the Secretary of State's/Local Authority's case, they should also assist the appellant, where possible.

10.2 The Department's policy is that a presenting officer should attend tribunal hearings:

- where the facts and law are considered to be complex, for example where complex legal arguments have been raised or where contentious case law has been referred to;
- where the appeal involves new legislation which needs a "bedding in period" (this period will be determined by the complexity of the legislation);
- at an Upper Tribunal rehearing (where that is to be an oral hearing); and
- where directed to do so by the Tribunal Judge.

11. UPPER TRIBUNAL

11.1 DMA Leeds provides written responses on more than 1,500 DWP customer (and some local authority) appeals to the Upper Tribunal on benefits, child support and compensation recovery cases as well as supporting legal colleagues in taking appeals to the higher courts. With the support of policy and legal colleagues the unit makes applications for permission to appeal (and if permission is granted, submissions on the substance of the case) on behalf of the Secretary of State in more than 500 cases a year before the Upper Tribunal and higher appellate courts. The unit also responds to more than 350 directions from Upper Tribunal Judges.

12. LIAISON BETWEEN THE DEPARTMENT AND TRIBUNALS SERVICE

12.1 The relationship between the Department and the Tribunals Service is important. Operational links have to work smoothly. Jobcentre Plus has a Joint Steering Committee (JSC) with the Tribunals Service which deals with strategic and operational issues—it has nothing to do with judicial matters.

12.2 At present liaison meetings take place on a regular basis (usually every eight weeks) with other communication and discussions taking place between meetings.

12.3 Jobcentre Plus is currently working with the Tribunals Service to investigate ways of improving average clearance times for Income Support appeals, particularly those involving overpaid benefit and considering how best to establish improved feedback loops between the two organisations.

12.4 PDCS and the Tribunals Service have two JSCs in place. The JSCs enable both agencies to monitor and discuss appeals arrangements and processes with the aim of improving the end to end service to their mutual customers.

12.5 There are also liaison arrangements between the Department and the Tribunals Service to exchange information on developments affecting appeals. In addition, the Department is involved in the initiatives described in paragraphs 4.10 and 4.11 above.

13. CONCLUSION

13.1 The Department believes that the process for making decisions it has put in place from claim through explanation, reconsideration, first appeal and, finally, appeal to the Upper Tribunal and beyond, offers its customers an accessible service in terms of getting decisions right and the opportunities to bring about that result.

13.2 This is illustrated by the fact that whilst the Department makes millions of decisions each year, the majority are accepted. Of course, no system will ever produce 100% accuracy, and there is always room to improve. Overall the figures illustrate an efficient system: overpaid benefit due to fraud and error and expenditure on official errors is low and claims clearance and payment accuracy rates are within targets. The Customer Charter makes it clear that customers can expect decision making of the highest quality and the Department is working continuously to make further improvements.

September 2009

APPEAL STATISTICS¹⁹ 1 APRIL 2008 TO 31 MARCH 2009

<i>Benefit</i>	<i>Intake</i>	<i>No of cases cleared at hearing</i>	<i>No Decisions Upheld</i>	<i>% Upheld</i>	<i>No in Favour of Appellant</i>	<i>% in Favour</i>
HB/CTB	5,491	3,408	2,304	67.6%	1,062	31.2%
HB	4,989	2,971	2,080	70.0%	864	29.1%
CTB	1,236	775	583	75.2%	181	23.4%
IS	21,669	12,166	8,185	67%	4,043	33%
JSA	22,842	9,245	6,917	75%	2,299	25%
IB	85,510	62,926	31,222	49.6%	31,964	50.4%
ESA	1,319	27	26	96%	1	4%
DLA	70,204	53,875	30,135	55.9%	23,600	43.8%
AA	3,959	2,782	1,892	68%	857	30.8%
CA	1,190	693	579	83.5%	126	18.2%
SP	755	415	392	94.5%	45	10.8%
PC	1,448	883	634	71.8%	270	30.6%

JOBSEEKER'S ALLOWANCE

- The Welfare Reform Bill will introduce a number of changes to the Jobseeker's Allowance regime, subject to Parliamentary approval.
- The Bill provides for a sanction for customers who fail to attend their fortnightly jobsearch review or other advisory interview; a new sanction for customers who have been convicted or cautioned for violence against a Jobcentre Plus member of staff; and mandation to an initial discussion with a drug treatment provider and subsequent participation in the programme.

DECISION MAKING AND THE NEW SANCTIONS

Failure to attend interview

- The changed procedure for failure to attend an interview will build on the existing process for sanction decision making, including considering good cause for the failure in the same way as now. The only difference in the process is instead of the award terminating a sanction is imposed. Decision makers will receive guidance on this and the agency is considering the need for awareness sessions.

Violent behaviour

- A sanction will be imposed where someone has been convicted or cautioned. Decision makers will have no discretion in this matter—good cause will not be an issue. The customer will need to challenge the conviction or caution to have the sanction lifted. Accordingly there are no training issues for this sanction.

Mandation to treatment centres

- Existing legislation, in the form of a Jobseeker Direction and the associated good cause will be used to mandate customers onto drug treatment programmes. As this is an existing process the decision makers will not require any new training, instead this proposal will be supported by detailed guidance.
- Decision makers will be required to make decisions on whether a customer has failed to undertake a work-related activity and the usual good cause reasons will apply.
- Guidance and specific training modules will be issued to decision makers on the application of the sanctions. Guidance on good cause will also be reviewed for both Advisers and decision makers.

Lone Parent sanctions—child care issues

- Decision makers are very clear of their responsibilities in relation to child care issues. Where a parent with childcare responsibilities refuses or fails to carry out a jobseekers direction or refuses to apply for or accept a job because their childcare responsibilities make it unreasonable for them to do so, these will be taken into account for good cause and just cause (the latter, which is similar to good cause, applies when a lone parent has left employment). Decision makers will take account of the availability and suitability of childcare and whether any childcare costs incurred represent an unreasonable sum from the person's earnings.

¹⁹ Provide by the Tribunals Service—Generic Appeals Processing System (GAPS).

- Normally if a customer fails to attend an interview their award would be terminated but for lone parents this action is not taken. Instead Jobcentre Plus advisors make at least one attempt to contact the lone parent by telephone on the day they fail to attend. The advisor then sends a follow up letter to advise the lone parent of the need to make urgent contact with the office.

Annex C

LABOUR MARKET SANCTIONS—EMPLOYMENT SUPPORT ALLOWANCE AND INCAPACITY BENEFIT

General

- Jobcentre staff ie those working on labour market issues in ESA and IB, have a specific role in the decision making process arising from decisions on failing to attend or participate in a work-focussed interview.
- For incapacity benefits the jobcentre staff will consider the good cause issue and decide whether the sanction should be imposed. For ESA Jobcentre staff will consider only the good cause issue; the decision whether to impose a sanction is made by a decision maker usually based in a Benefit Delivery Office.
- A comprehensive training programme is designed to equip advisers with the full range of knowledge and skills required to support all customers, for example, in health conditions. This contributes to informed decision making in these cases, where attending or participating in the work-focussed interview is a condition of receiving the full amount of benefit.
- The training for employment advisers has been organised around employment related topics. The focus is on encouraging advisers to regard the jobseeker as the expert on their capability and capacity for work and to include them fully in any work related discussions.
- Advisers have access to suitable internal and external support which can assist them in arriving at a decision on good cause arising from failure to attend or participate in work-focussed interviews. Specialist services, for example, the Work Psychology Service can provide this service in cases of more extreme or severe health conditions or disability.

Managing Mental health conditions

- A customer with a mental health condition may act in a way which could lead to their benefit being sanctioned. The customer may fail to attend a work-focussed interview or a medical assessment or they may fail to return a questionnaire.
- The Department has put a process in place which ensures that before any consideration is given to imposing a sanction, every effort is made to contact the customer. The Secretary of State has made a commitment that in cases where a customer claiming ESA or incapacity benefits has a stated mental health condition, a learning disability or a health condition which affects cognition, for example, a stroke, no sanction will be imposed until the customer has had a face-to-face explanation, with an advocate in support, if appropriate.
- It is only when this process has been completed that a determination on good cause and a sanction decision will be made.
- Jobcentre staff identify customers with mental health conditions from sources including: direct information on the medical certificate provided by the customer when they claim benefit; the department's medical services may advise staff; and advisers may also identify a problem through interaction with the customer. After these customers are identified, staff need to manage their claims.
- A new training product *Introduction to Working with Customers who have a mental illness* was introduced in 2008 and provides a basic introduction to mental illness. Specialist Incapacity Benefit advisers (now Pathways Advisers) will have already received this introduction in their additional specialist training.

Moving from ESA to Jobseekers Allowance

- The Department recognises the need to continue to manage those customers with mental health conditions who move off ESA on to Jobseekers Allowance.
- The Department is putting into place a package of support for ESA customers moving onto Jobseekers Allowance. This includes ensuring that advisers who are knowledgeable about locally available support provide specific health-related advice. This may include Improving Access to Psychological Therapies, an NHS programme, which offers evidence-based psychological therapies to people with mild to moderate depression and anxiety disorders. The mental health co-ordinator will act as a focal point for Jobcentres to build practical links between health and employment services and provide advisers with further information.

TRAINING FOR DLA/AA DECISION MAKERS

- All DLA/AA decision makers begin their careers with an initial seven week technical training program covering the law, case law and the criteria for entitlement to benefit. This includes five days' input from Health Care Professionals discussing common disabilities and a session by Disability and Professional Programmes Group (DPPG) entitled *Understanding our Customers*.
- Decision makers consolidate their learning by making decisions on live claims within a supported classroom environment prior to moving to mainstream operations where, under the guidance of more experienced colleagues, they begin to gain further operational experience.
- The technical training includes modules on disability awareness, how disability impacts on daily life, what guidance and information is available and how medical facts are interpreted. Mental health conditions, learning disabilities, fluctuating conditions and the impact on parents who have a child with a disability are all covered during this training.
- All decision makers have on-line access to comprehensive, up-to-date impairment specific medical guidance, developed and maintained by medical experts in Health, Welfare and Wellbeing Directorate. This is the Customer Case Management [CCM] system.
- The guidance provides information on medication, treatment, prognosis, duration and the likely mobility and care needs arising from the specific impairment, depending on the severity of the functional loss.
- The content and delivery methodologies of modules delivered by Medical Services colleagues are currently being updated to ensure they reflect the contemporary work based learning methodologies of the PDCS Professionalism in Decision Making and Appeals [PiDMA] accreditation programme and CCM guidance.
- PDCS is also close to a trial of a new approach to dealing with claims for children, which includes a new design of claim pack developed with input from customers, supported by new and expanded guidance in the CCM system.
- The work of decision makers is sampled and checked both locally within operational units and by national teams. Emerging information about difficult areas or weaknesses is used to inform any remedial training and developmental activity. Decision makers' development and competency is kept under review during the ongoing Departmental staff appraisal system.

Supplementary memorandum submitted by the Department for Work and Pensions (DWP) (DM 29A)

Jobcentre Plus does not maintain detailed statistics on the reconsideration process. PDCS holds information in relation to Disability Living Allowance (DLA) and Attendance Allowance (AA) only.

How many requests have been made for reconsiderations?

The table below shows for the number of DLA and AA reconsiderations that were registered in 2007–08 and 2008–09.

	2007–08	2008–09
DLA Reconsiderations registered	125,233	132,338
AA Reconsiderations registered	17,800	17,368

How many decisions progress to the reconsideration stage and are revised in favour of the claimant?

The table below shows the number of DLA and AA reconsiderations that result in a decision revised in the customer's favour.

	2007–08	2008–09
DLA	55,416	67,668
AA	9,924	10,373

How many decisions progress to the reconsideration stage and are superseded?

The table below shows the number of DLA and AA decisions that have been changed either in the customer's favour or not.

	2007–08	2008–09
DLA Reconsiderations decision revised	55,964	68,442
AA Reconsiderations decision revised	10,075	10,542

How many decisions are sustained at the reconsideration stage and then progress to the appeals process?

This information is not available. This is because PDCS management information systems do not have the facility to track particular cases from one business event to another.

How many decisions are sustained at the reconsideration stage and do not progress to the appeals stage, as the claimant decides not to proceed with his claim?

This information is not available.

How many claimants that reach the reconsideration stage are assisted by welfare rights advisers?

The Department does not hold this information.

How many decisions that are appealed are found in favour of the claimant when they are reconsidered by DWP in preparation for the appeal?

This information is not available. The Department does not maintain statistics on the number of appeals lapsed following reconsideration of the disputed decision.

November 2009

Memorandum submitted by the Parkinson's Disease Society (DM 30)

1. SUMMARY

We would like to highlight the following areas for particular attention:

- poor understanding of the complex and fluctuating nature of Parkinson's leads to mistakes—decision makers should have a basic level of training about the condition;
- because they are non means tested the decision making process for DLA and AA is relatively transparent and clear—if the claimant can demonstrate sufficient incapacity they will get benefit;
- the decision making process for ESA is highly ineffective and is unclear to claimants;
- more time needs to be allocated for medical assessments for complex conditions such as Parkinson's;
- apparent regional variations in ESA decisions should be investigated to ensure consistency of decision making process across the UK; and
- ESA decisions must not just be based on medical assessments and should properly reflect the evidence within medical notes.

2. ABOUT THE PARKINSON'S DISEASE SOCIETY

2.1 Parkinson's Disease Society (PDS) was established in 1969 and now has 30,000 members and over 330 local branches and support groups throughout the UK. It provides support, advice and information to people with Parkinson's, their carers, families and friends. It also provides information and professional development opportunities to health and social services professionals involved in their management and care.

2.2 This year, the Society is expected to spend £4 million on research into Parkinson's Disease. The Society also develops models of good practice in service provision, such as Parkinson's Disease Nurse Specialists, community support, and campaigns for changes that will improve the lives of people affected by Parkinson's.

About Parkinson's Disease

2.3 It is estimated that 120,000 people in the UK have Parkinson's. Parkinson's is a progressive, fluctuating neurological disorder, which affects all aspects of daily living including talking, walking, swallowing and writing. The severity of symptoms can fluctuate, both from day to day and with rapid changes in functionality during the course of the day, including sudden "freezing".

2.4 Parkinson's affects people from all social and ethnic backgrounds and age groups. The average age of onset of Parkinson's is between 50–60 years of age, though one in seven will be diagnosed before the age of 50 and one in 20 will be diagnosed before the age of 40.

Evidence base

2.5 Evidence from the PDS members' survey published last year,²⁰ which was completed by 13,000 people, showed that 82% of people with Parkinson's were reliant on benefits and/or pension; including 10% on Incapacity Benefit, 41% on Attendance Allowance and 30% on Disability Living Allowance. Nearly a third of people with Parkinson's reported that they were "just getting by" or "getting into difficulties with" their finances.

2.6 The PDS has a network of 120 local Information and Support Workers, now in place in nearly every area of the UK, who provide information and advice to people with Parkinson's and their families and assist those than need help in completing forms. Our Information and Support Workers helped people with Parkinson's and their carers make benefit claims worth £2.5 million during 2008.

2.7 The PDS does not represent clients in appeals, so our evidence is based mainly on feedback from our Information and Support Workers and Helpline staff who have assisted and advised people, data from our members' survey²¹ and findings from a survey of people claiming Employment and Support Allowance (ESA).

Issues and evidence

3. Are there sufficient numbers of decision makers and is the training they receive adequate?

3.1 Long waits for decisions are a common complaint, which would suggest that there are insufficient decision makers, though we have no further evidence to support this.

3.2 Many claimants tell us that their assessor had a poor understanding of Parkinson's, often meaning that they misunderstood or overlooked a key symptom of their condition. Common problems include a failure to understand the fluctuating nature of the condition and the mental health symptoms associated with Parkinson's.

3.3 Whilst it would be unreasonable to expect decision makers to have expertise on every condition and disability, complex and fluctuating conditions such as Parkinson's are more likely than others to be misunderstood and there is a strong case for ensuring a basic level of training about the condition and about neurological conditions generally.

3.4 Monitoring of successful appeals would be one way to identify those conditions where mistakes are more likely to be made in first instance and this may be one way of targeting training most effectively.

How effective is the decision making process? Could it be improved, if so how?

How well does the decision making process operate for different benefits?

4. DISABILITY LIVING ALLOWANCE AND ATTENDANCE ALLOWANCE

4.1 AA and DLA are popular benefits amongst our membership. One of the main advantages of these benefits is that it is clear what people will get if they meet the criteria. Because they are non means tested the decision making process is transparent and clear—if the claimant can demonstrate sufficient incapacity they will get benefit. There is no confusion over their amount of savings, wealth, income, or national insurance contributions and there are clear national benefit rates that they will receive to meet their needs.

4.2 Given the range of disabilities and variations in individual symptoms, decisions regarding Attendance Allowance and other disability benefits can never be an exact science. However, feedback from our Information and Support Workers does highlight inconsistencies in the decisions relating to different clients that could be avoided if staff were trained to better understand Parkinson's.

4.3 DLA and AA are both largely successful in getting extra money to people that need it. One of the main reasons that such a high proportion of our members have successfully claimed DLA or AA is that they are able to appeal if they believe that the decision is wrong and to reapply if their condition deteriorates. However, addressing error in the initial decision making would save the cost and inconvenience of many appeals.

"I receive the highest rate of allowance, but had to appeal twice [. . .] However I don't think there's a limit to the number of times you can appeal, so keep going until you wear them down!" Person with Parkinson's

²⁰ *Life with Parkinson's today—room for improvement*, Parkinson's Disease Society, 2008.

²¹ *Life with Parkinson's today*, *op cit*.

5. ESA

5.1 Initial feedback from people with Parkinson's claiming the new benefit, indicates that the decision making process is highly ineffective and leaves many people who have considerable physical and mental disabilities being placed in the Work Related Activity Group, and in many cases onto Job Seekers Allowance.

5.2 The decision making process relating to ESA is unclear to claimants, which may partly be explained by staff still learning about the new benefit, or by claimants confusing ESA with its predecessor Incapacity Benefit.

There are a number of common concerns expressed with the process:

5.3 Lack of time for the medical assessment—Claimants state that the medical assessor did not allow them time to properly answer the questions. This is likely to have a disproportionately negative impact on people with complex and fluctuating conditions such as Parkinson's, who are likely to need more time to discuss the wide range of symptoms and the fluctuations in those symptoms. This problem is exacerbated by a general poor understanding of the condition, which means that the assessor does not understand the combined impact those symptoms are likely to have on the person's ability to work.

5.4 Medical notes and reports from specialists are not properly taken into account in decision—Feedback from ESA claimants with Parkinson's suggests that decisions are made based on how the person presents during the medical examination, with scant regard to their medical notes and the opinion of specialist consultants involved in their care, meaning that people with fluctuating conditions such as Parkinson's are often wrongly assessed.

5.5 Parkinson's symptoms fluctuate during the course of a day, depending upon when their medication was taken and similar factors, symptoms can also fluctuate from day to day, meaning that someone who is mobile one day can have great difficulty moving and many other complications the next day. It is essential that proper consideration is given to the medical notes so that these fluctuations can be properly taken into account.

“He felt reasonably well at the time that his Work Capability Assessment (WCA) meeting started. However, he says that if it had started at a different time of the same day, the results/points would have been quite different, and his entitlement to ESA would not be at risk.” Information and Support Worker

5.6 The mental health elements of Parkinson's are frequently overlooked. It is unclear whether this is due to poor understanding of the condition, or the time pressures discussed above that prevent detailed discussion of both mental and physical symptoms, though both are likely to be factors. Improved training and increased time for assessments would be sensible adjustments to address this.

5.7 Apparent regional inconsistencies in decision making—Initial feedback from our network of Information and Support Workers, suggests that there are stark variations in how Employment and Support Allowance is applied across the country. One Information and Support Worker has supported three people to claim the benefit, all were unsuccessful, despite serious disabilities in all three cases. Recent media reports have stated that 90% of ESA claimants were turned down in some areas, which suggests that there are major regional inconsistencies in how ESA is applied. Unfortunately the data on which the media coverage is based are not yet in the public domain, but we would urge the Committee to investigate these regional inconsistencies.

“X was involved in a Road Traffic Accident where he sustained a Traumatic Brain Injury and afterwards PTSD (Post Traumatic Stress Disorder)—(ongoing). He was diagnosed with Parkinson's within two years of the accident [. . .] He has all the usual symptoms of PD—freezing, slow and quiet speech, difficulty with swallowing, shuffling, poor balance, dribbling (mouth), accidents when he can't reach the toilet on time, he has difficulty getting in and out of bed, nightmares, needs help with personal hygiene, and assistance with getting dressed [. . .] He was given no points and advised to join JSA at Jobcentre Plus.” Carer of person with Parkinson's

6. HOW COULD THE DECISION MAKING PROCESS BE IMPROVED?

6.1 *Employment and Support Allowance*

- More time needs to be allocated for medical assessments for complex conditions such as Parkinson's. Parkinson's has a range of symptoms, including both mental health and physical symptoms, which fluctuate in intensity.
- Apparent regional variations in ESA decisions should be investigated to ensure consistency of decision making process across the UK.
- Decisions must not just be based on medical assessments and should properly reflect the evidence within medical notes

7. HOW IS THE REVIEW STAGE OF THE DECISION MAKING PROCESS?

7.1 Reviews can cause a great deal of stress to claimants. AA and DLA are essential sources of income that help people with Parkinson's and their families meet the additional costs that their condition brings. In many cases people don't know why the review is happening, this needs to be better explained to claimants.

7.2 Parkinson's is a progressive and degenerative condition, and if a person has been disabled and in receipt of AA or DLA for a long time it is sensible to assume that in the vast majority of cases the review should be found in their favour and it would be anticipated that many people on the lower rate would benefit from a review and be placed onto a higher rate, though this rarely seems to happen.

7.3 The PDS does hear from claimants with Parkinson's who have had AA or DLA for a number of years who have had this withdrawn following a review. Often, this decision is reversed following an appeal.

Appeals

8. HOW DOES THE APPEALS SYSTEM WORK FROM THE CLAIMANT'S PERSPECTIVE? IS THE TIMEFRAME OF APPEALS REASONABLE?

8.1 Appeals are daunting for claimants and the support available does vary across the UK. However, the appeal system does seem to work, in that many people with severe disability who have initially been turned down are able to reverse the decision.

8.2 Our Information and Support Workers report a lack of transparency in evidence used to decline claims in some instances, ie if a GP has made a report the appellant should have the opportunity to make comments on that report. They also report a lack of consistency between decisions, with the reasons for refusal often inadequate and not case specific.

8.3 The long time taken for appeals to take place can be an unnecessary stress for claimants. This delay adds to the stress faced by appellants and makes it very difficult for them to manage their finances, given the uncertainty of the eventual outcome. Delays in appeals can lead to an added complication in relation to a degenerative condition, as it can become unclear whether claimant's current disabilities were presented at the time of the original claim.

September 2009

Memorandum submitted by Citizens Advice (DM 31)

Citizens Advice welcomes the opportunity to comment on this inquiry. In 2008–09, Citizens Advice dealt with 144,000 enquiries relating to decision-making and appeals across all DWP benefits, including local authority administered housing and council tax benefit. The highest number of these enquiries relate to disability and incapacity benefits (including ESA) as Citizens Advice Bureaux help large numbers of people who have been refused, or have had these benefits withdrawn.

A delay in a decision—or a protracted appeal process—for one benefit can have a significant effect on another benefit—particularly housing benefit—which can then have desperate consequences (see section 3). Even when the consequences are not so extreme, the impact on our clients of poor decision-making includes significant stress and anxiety, as well as financial hardship:

A client in the North West failed her WCA, despite awaiting operations for the replacement of both her knees. The CAB was confident that she should have received some points in the assessment of the three physical functions of walking, standing and sitting. She needed two arm crutches for support and the support of friends to cope with her mobility needs. She was finding it very difficult to meet the extra expenses caused by her illness—travel to hospital appointments and various medical prescriptions for painkillers and antidepressants.

While the focus of this inquiry is on decisions relating to disability and incapacity benefits, we also take the opportunity to raise some important questions about the quality of decision making and communication of JSA decisions at a time when JSA claims are on the rise. We also mention housing benefit, and the case to improve decision making at asylum tribunal hearings, by providing legal representation. The response is in six sections as follows:

1. Medical assessments and decision making;
2. Appeals and reconsiderations;
3. Housing benefit;
4. Decision making and appeals for JSA;
5. Legal representation at asylum tribunal hearings; and
6. Appendix: evidence from Great Ormond Street hospital.

1. MEDICAL ASSESSMENTS AND DECISION MAKING

Deciding who is entitled to disability and incapacity benefits is much more difficult than for most other benefits. Claims for JSA, for example, may be decided on more objective measures such as a person's income, national insurance contributions and availability for work (although see below for a discussion on increasing complexity in decision making for JSA).

Although there are defined criteria for assessment for disability and incapacity benefits, there is a higher level of subjective judgement involved. For DLA and AA, DWP staff must decide if the claimant's care and/or mobility needs are debilitating enough to qualify them for the particular benefit. For incapacity benefits, the DWP decision maker must decide if a claimant meets the test of the Personal Capability Assessment (PCA)—designed to assess if the claimant's functional limitation prevents them from seeking work—or if an existing recipient continues to pass the PCA. For Employment and Support Allowance, there is an additional layer of decision making: not only must the DWP decision maker decide if a claimant meets the test of the Work Capability Assessment (similar to the PCA, but geared more towards what a claimant can do), but also whether they will be required to undertake work-related activity, or whether they will be included in the “support” group, who are not expected to undertake work-related activity in order to receive benefit.

Since 1998, medical assessments and advice to the DWP have been provided under contract by Atos Origin. We see problems both with the medical assessments and the decision making processes based on these assessments. Our 2006 report, *What the doctor ordered?* highlighted our evidence in both of these areas and a copy is attached with this submission. We are disappointed that bureaux continue to report very poor experiences of clients during the medical assessment itself.

Assessing mobility and care needs, or evaluating the impact of a person's health condition on their ability to work, is difficult, and requires the exercise of considerable judgement. The Atos Origin contract requires that doctors follow standards of conduct, which include maintaining a non-adversarial manner and performing the examination in a way that avoids unnecessary discomfort. Despite this, CAB evidence indicates that the conduct of examinations still leaves much to be desired, causing substantial hardship and distress to benefit claimants and their families:

- many clients report encountering rude or insensitive examining doctors;
- doctors frequently appear not to give sufficient consideration to mental health issues; and
- bureaux continue to report that doctors produce inaccurate reports, giving an inaccurate assessment of the claimant's abilities; reporting incorrectly what the claimant has said about their own conditions and taking answers out of context.

A CAB in the North West saw a man in his late 50s who had been treated rudely and dismissively by a doctor carrying out the WCA. When the client told the doctor he had undergone an operation on his neck, the doctor said there was no scar. He was, in fact, looking at the wrong place and the client had to point out the scar. At one point the examiner told the client that it did not matter whether he got the benefit or not, the doctor would still get paid.

Clients who have problems will have developed coping strategies, such that they may be able to perform certain tasks, but only with extra effort or adaptation that is relevant to their eligibility for benefit. In our 2006 report, we recommended that, if an examining medical practitioner (EMP) is going to use an answer as evidence, they should ask the client to explain in more detail how they do the task. Any evidence of ability which does not explore how the client actually achieves the activity is potentially misleading evidence.

Furthermore, the current system means that evidence from the assessment made by the Atos Origin doctor often outweighs other evidence supplied by medical practitioners who are more familiar with the applicant's condition. We suggest that decision making would be improved if greater weight were given to detailed evidence from applicants, their carers, and the professionals providing them with health and social care.

A CAB in the North West saw a man in his twenties, with severe heart problems. He was previously employed as a builder but when it was discovered he had a leaky heart valve he was warned that it would be dangerous for him to work. He was awaiting open heart surgery and had sick notes to verify his condition. When he moved from JSA onto ESA, however, he failed the WCA.

Computerised decision making

Since 2004, EMPs have used a computerised expert system to guide their questioning and record their findings during a PCA (and now a WCA). DWP and Atos Origin say that this helps the EMP to give the decision maker advice that is “logical, consistent with the evidence, and clearly justified”.²² It is hard to say whether the system has improved the quality of medical assessments. However, bureaux advisers continue to express concern that:

- doctors pay more attention to the computer than the client;
- the system is inflexible and gives rise to inappropriate stock phrases in reports;

²² DWP (2005) Touchbase, August 2005.

- options for investigation and findings are blocked off by the system inappropriately; and
- doctors sign off reports without checking what they say, because the phrases have been generated by the system, not the doctor.

A CAB client in Birmingham with a genetic kidney disorder felt that the medical examiner's report, which led to her ESA being stopped, was inaccurate. She had one of her kidneys removed as well as part of the other and had various medical complaints stemming from this, yet she did not score any points in the assessment. The client informed the CAB that the medical examiner was impolite and did not look at her throughout the interview, merely staring at the computer screen and asked inappropriate questions. She had since been informed that her condition may be terminal and her regular doctor was writing a letter of complaint on her behalf.

We suggest that the use and development of computer-aided decision making in medical assessments for IB and ESA should be subject to a transparent review involving stakeholders including Citizens Advice. We urge that this is done before a similar system is introduced for examinations for disability benefits.

Review of ESA decision making process

As ESA becomes established, Citizens Advice Bureaux are seeing the same levels and types of problems with the decision making for ESA as they did with IB. We are disappointed that the current review of WCA descriptors is taking place before any appeals have occurred under the new ESA system. We feel that the two recent reviews represent two wasted opportunities, which have not addressed the effectiveness of assessments or the conduct of EMPs.

DLA renewals

Many CAB clients find that disability benefit awards are made for relatively short periods of time, and come up for renewal quickly and a long way in advance, resulting in repetition of medical examinations which can be highly stressful. PDCS should review their practices on the length of awards, renewal procedures and the extent to which they need to use repeat medical examinations by Atos Origin.

Training

Citizens Advice has long held concerns about the training of EMPs, and the evaluation/feedback mechanisms available to them. Continuing evidence of poor conduct at medical assessments indicates that training is inadequate, while the number of decisions overturned at appeal suggests that individual EMPs are not given relevant feedback when inappropriate decisions are made by DWP following their reports from the medical assessments.

2. RECONSIDERATIONS AND APPEALS

Claimants who think that the decision on their claim is incorrect can ask for the decision to be reconsidered, and when a claimant appeals, DWP automatically considers the decision again. A claimant can also ask for the decision to be considered by an appeal tribunal.

Judgements on eligibility for DLA, AA and IB are more complex than those required for JSA or IS, so a higher percentage of reconsiderations and appeals might be expected, but the number of decisions taken to appeal for IB and DLA are in the order of ten times more than for JSA or IS.²³ The DWP's own assessment concluded that only 55% of decisions on DLA and AA were correct in 2001–02.²⁴ In the year to February 2005, 39,000 out of 240,000 DLA awards (16%) were the result of reconsiderations or appeals against initial refusals. There are no recent statistics available about cases overturned at the appeal stage. This is an important tool in monitoring performance and the DWP should make these figures available or give an explanation as to why they cannot. CAB advisers spend large amounts of time helping people who have been refused these benefits, or had them withdrawn, to challenge those decisions. To improve decision making at the outset would clearly save time and money for the Department, as well as reducing hardship and anxiety for claimants.

A CAB client in the East Midlands helped a client who was wrongly refused DLA for her autistic child. The child had high care needs, especially linked to a lack of control over his bodily functions. His sleep was very disturbed, leading to the client and her partner regularly experiencing broken nights. The decision maker made reference to the fact that the child was at school for a substantial portion of the day. The client appealed and when she appeared at the hearing the panel told her that they had agreed to award her the middle rate of DLA care for her son, based only on the paperwork. When they asked her a few more questions about the case, they increased it to higher rate care. The client was put under a huge amount of stress by the original decision and was tearful and bewildered when she attended the CAB.

²³ The NAO reported that 0.3% of JSA decisions and 1% of all income support decisions in 2002–03 were taken to appeal, but 6% of all IB decisions and 8% of all DLA decisions were taken to appeal.

²⁴ NAO (2004) *Getting it right, putting it right: improving decision making and appeals in social security benefits*.

3. HOUSING BENEFIT

There is an inherent tension between the requirement of most landlords to have rent paid in advance and the fact that housing benefit is paid in arrears. This means that HB claimants looking for private rented accommodation start off at a disadvantage compared to others not on benefit, and it is therefore essential that this is not compounded by slow decision making at the local office.

While there has been significant improvement in processing times for HB claims over recent years, there remains far too much variation between the fastest and slowest authorities. Initiatives such as those of Wolverhampton City Council which has introduced fast track processing of claims within 48 hours of the customer providing all the necessary information show what is possible. Regrettably, however, claimants in many other authorities receive a far less efficient service, with potentially desperate consequences for their tenancy:

A CAB in the east Midlands reported a client who applied for Housing Benefit and Council Tax Benefit in February 2009. Following his application, he did not hear anything from the council, so assumed all was well. His landlord contacted him in early May to say that he had not received any rent. He therefore visited the council's office, where he was asked to provide proof of his sickness. Eventually this was cleared up. However he had to visit the council office many times before his application was processed. On two occasions, on a Friday, the computer system was down, and hardly anything could be done as a result, which delayed matters. It then transpired that his application had been held up because when the council scanned his application, some of the scanning did not work properly, and the information supplied by the client on paper was deemed by the Council to "be missing". He tried to ring the council many times, but couldn't get through, or spent a lot of money on calls which never got him through to the person he needed to speak to. When he came to the bureau he was facing a possible possession order due to rent arrears.

4. DECISION MAKING AND APPEALS FOR JSA

While the focus of the inquiry is on the quality of complex decisions involved in disability and incapacity benefits, this inquiry provides the opportunity to raise some important questions about the quality of decision making and communication of JSA decisions at a time when JSA claims are on the rise. Second only to the rise in redundancy enquiries, the number of JSA enquiries to Citizens Advice Bureaux rose 61% to 109,400 in 2008–09 compared with the number of enquiries in the previous year. Though the majority of enquiries are about eligibility, bureaux are particularly concerned about:

- the decision making processes around the "right to reside" test; and
- the application of benefit sanctions.

Over the last year Citizens Advice Bureaux have been reporting an increasing number of problems experienced by EEA nationals when claiming benefits. Some claimants are denied the opportunity of claiming benefit as poor advice by local Jobcentre Plus staff and inadequate contact centre scripts mean that lone parents without the right to reside are incorrectly advised to claim income support—which is then correctly refused when they fail the right to reside test. They then claim JSA, but have missed several weeks of money in the meantime. However, CAB evidence also suggests a level of poor decision making when applying the right to reside test. Lone parents who have lived in the UK for many years and should have acquired the permanent right to reside, and A8 nationals who have worked for more than the required 12 months under the workers registration scheme, are both failing the test. In these cases it is not clear whether the problem is with the decision making itself—all of which is centralised at Wick in Scotland—or the quality of information and evidence submitted by the benefit delivery centres on which the decision is made.

A Polish client was a lone parent with an 11-year-old daughter. She had lived and worked in UK for more than four years but had recently lost her job due to the economic downturn. She was advised by her local Jobcentre Plus office to see their lone parent adviser who then advised her to apply for income support. She applied but was turned and told she had no right to reside. She was then advised to apply for contribution based JSA but the wrong advice has caused nearly a six week delay in getting any money, leaving her with difficulties paying her rent and other living expenses.

There is also concern that benefit delivery centres are often unable to explain why the claimant has failed the test, and the decision letters contain no explanation. This makes an efficient reconsideration of the decision difficult and an appeal more likely. Advisers winning their clients' appeals have also reported concerns about quality of the DWP appeal submission, where it often fails to address the issue in dispute.

Despite the rise in overall JSA enquiries, the proportion of JSA enquiries concerned with sanctions and hardship payments remains constant. CAB evidence highlights the many claimants who have been sanctioned apparently inappropriately. Others, it is clear, do not know why they have been sanctioned, and get no explanation or warning in advance of the sanction being applied. The failure to warn the claimant that they are being referred for sanction means that the decision maker will only have evidence from one party—Jobcentre Plus—when coming to their decision about whether to apply a sanction or disallow a claim. CAB advisers report seeing clients who have been sanctioned several times because they have failed to understand what was required of them, or who haven't attended courses or applied for jobs because the

options have been inappropriate to their disabilities or levels of literacy. Unless Jobcentre Plus has sufficient Disability Employment Advisers, and properly examines the reasons why a claimant has failed to attend, there is a serious risk that vulnerable claimants will be unfairly and inappropriately sanctioned.

A London CAB client had been claiming JSA for a couple of months when he had been threatened with sanction for failing to apply for three jobs a week. He was a driver by trade and reported that despite looking for work, there were not three jobs a week advertised that he could apply for, as he was restricted to public transport because he did not own a car. He felt that the requirement was an unreasonable expectation in the present job market. The bureau commented that Jobcentre Plus only mentioned not applying for three jobs a week whereas there were many other actions which would qualify for the “three steps a week” required to continue to receive full JSA. The client was very worried about the threat of sanctions, to be discussed at a meeting later that day.

A disabled client had been sanctioned for failing to attend a job interview. She was in her 40s and had never had a paid job, though she had done voluntary work. She was paralysed down one side since birth and suffered from other conditions including memory loss. She had forgotten about the interview and said she felt under increased pressure to attend different appointments and she was struggling to remember what was required when. She said she found it difficult to cope with a lot of things at the same time, and was getting stressed which caused her to forget things. The bureau assisted her to complete a form challenging the sanction and advised her to make a copy of it and attach supporting evidence from her GP. The sanction caused her further stress, exacerbating her health condition.

5. LEGAL REPRESENTATION AT ASYLUM SUPPORT TRIBUNAL HEARINGS

While this subject does not strictly lie within the scope of this review, we feel it is worth raising awareness of the issue: asylum seekers are some of the most vulnerable people in this country, and decisions made at asylum support tribunal hearings have a critical impact on their well-being—losing an appeal results in destitution and homelessness.

In a recent oral appeal against a refusal of section 4 support, the AST judge concluded that “the position for the appellant is extremely grave. There can be no dispute that she suffers from a number of debilitating medical conditions. She is depressed and has mobility problems, [and] I have heard clear evidence that [she] has had to resort to night buses and sleeping in corridors within the past month or so. This is inappropriate for a woman with these medical conditions and who is nearly 60 years of age [. . .] In these circumstances, and upon a balance of probabilities, I do consider that the appellant does not have adequate accommodation and that it is certainly arguable that her essential living needs are not being met—she has had to resort to approaching British Red Cross”. In both cases, the appellant was represented at the hearing by the ASAP, and the appeal was allowed.

There is a significant body of evidence that legal representation at a tribunal hearing has a significant impact on the decisions made. A landmark research study, published in 1989, indicated that such legal representation increased the chances of success from 30% to 48% in Social Security Appeal Tribunals, from 20% to 38% in Immigration Tribunals, from 20% to 35% in Mental Health Review Tribunals, and from 30% to 48% in Industrial (now Employment) Tribunals—a “representation premium”, across the board, of 15–18%.²⁵ And a further academic study, published in 2006, found a “representation premium” of 14% among a sample of 1,697 users of Social Security and Child Support Tribunals.²⁶

More recently, research by Citizens Advice has shown that legal representation increased the chances of success from 39% to between 61 and 71% in the First-Tier Tribunal (Asylum Support), a “representation premium” of between 22 and 32%.²⁷ And the Tribunal’s own outcome and representation statistics indicate a “representation premium” of 28%.

In the words of one Government-funded research study, “tribunals cannot be expected to compensate entirely for the disadvantages of some users. It has to be recognised that there are situations in which an advocate is not merely helpful, but is necessary to the requirements of procedural fairness and may also be crucial to substantive outcome”.²⁸ We therefore recommend that the Work and Pensions Committee urges the Government to fund legal representation at asylum support tribunal hearings, in order to ensure sound and reliable decision making for this vulnerable group.

September 2009

²⁵ Genn, H and Genn, Y (1989), *The effectiveness of Representation at Tribunals*, Lord Chancellor’s Department (now the Ministry of Justice), 1989.

²⁶ Genn, H, Lever, B and Gray, L (2006), *Tribunals for diverse users*, DCA research series 01/06, Department for Constitutional Affairs (now the Ministry of Justice), January 2006.

²⁷ Dunstan, R (2009), *Supporting justice: the case for publicly-funded representation before the Asylum Support Tribunal*, Citizens Advice, June 2009.

²⁸ *Ibid*, Note 23.

APPENDIX

PROBLEMS WITH CLAIMING INCOME SUPPORT—EXPERIENCES OF FAMILIES AT GREAT ORMOND STREET HOSPITAL

Camden Citizens Advice Bureau runs an advice service at Great Ormond Street hospital for sick children. Its aim is to support the families of children who use the hospital services at a time when they face reductions in income through reducing or ending of employment, or through not being able to meet the labour market conditions of being available for work for Job Seekers Allowance and the conditionality requirements for Employment and Support Allowance. These problems are typically caused by needing to be at the hospital to provide care and support but also at home where care may be needed on a 24/7 basis after discharge. They can also be linked to changes involving adjusting to becoming a full time carer for children with long term disabilities.

Over its first year of operation, the service has identified continuing and repeated problems for families claiming income support. These problems occur at the time of application where the Customer Management System (CMS) appears unable to identify any entitlement other than as a single parent or a person in receipt of Carers Allowance. After completing the telephone-based questionnaire style application, the claimant is informed that they have no entitlement and the situation is then compounded by poor knowledge amongst decision makers. The process of revision and appeal is time consuming, often taking several months, leaving families in what can only be described as a nightmare of worry and stress with little financial support. Many families may well give up after the initial telephone-based application.

For those dependent on housing costs for help with mortgage interest payments, delays and poor decisions could mean the loss of their home.

The bureau is concerned that the provisions in Schedule 1B of the Income Support general regulations are not identified by either the CMS or by decision makers.

The following cases illustrate current problems. The bureau has never experienced a successful claim through the Schedule 1B provisions. In terms of advice options, others at the hospital are rumoured to advise their clients not to inform the Job Centre of their inability to be available for work and if family members are so stressed (not an uncommon occurrence) as to be incapable of work, the option of an ESA claim is suggested.

Relevant law—

Schedule 1B

Persons temporarily looking after another person

3. A person who is—

(a) looking after a child because the parent of that child or the person who usually looks after him is ill or temporarily absent from his home; or

(b) looking after a member of his family who is temporarily ill

4. A person (the carer)—

(ii) the person being cared for has claimed attendance allowance [or disability living allowance] but only for the period of 26 weeks from the date of claim.

Case 1

The client's daughter, aged eight months, was diagnosed with leukaemia. Onset was sudden and she was admitted as an inpatient for chemotherapy. The client's wife stayed at the hospital while the client mostly stayed at home looking after two other children aged three and two years.

The client had been claiming Job Seekers Allowance, but this terminated when he explained he could not be available for work due to caring and regular visits to the hospital. He was advised by the Job Centre to make a claim for Income Support on 1 August 2008. This was refused in a decision letter dated 16 August as "you have to be available for work" and that he should claim Job Seekers Allowance.

At first interview on the 28 of August the family had been living on Child Benefit and Child Tax credit only since the 16 of July 2008 and had been supported with some small payments through social services. The client appeared very distressed.

The bureau successfully asked for the decision to be revised on the basis of paragraph 3(a) of Schedule 1B of the Income Support General Regulations as he was caring for a person while their usual carer was temporarily absent. The revision date of 1 September meant that the family had been without payment of Income Support since 10 July 2008, although payment was backdated to this date.

Case 2

This client's daughter, 16 years, was admitted to hospital for a spinal operation; she had multiple physical disabilities and learning and behavioural problems. She was an inpatient from 8 February 2008 to 5 August 2008 and the client lived at the hospital—as she was encouraged to do—in order to provide care and look after her daughter. The hospital's policy is that children's health is best served by their parents being in close proximity to provide care and reassurance. After 28 days as an inpatient, her daughter's DLA stopped and after a run-on period the client's Carers Allowance stopped. As her Carers Allowance stopped, Income Support also made a decision to cease entitlement and she was advised to claim Job seekers Allowance. The client's living costs were much higher living at the hospital due to travel, laundry and extra costs of food. She was left with child benefit and child tax credit as her only income and of course she continued to provide care to her daughter.

The bureau helped the client appeal the Income Support decision and a number of appeal letters were written asking for the decision to be revised as she remained a prescribed person for Income Support purposes. Paragraph 3(b) of Schedule 1B applied as she was looking after a family member who was temporarily ill. These were not answered despite several follow-up calls, no direct access to the appeal section was allowed, and promises that a decision maker would telephone back never materialised.

On discharge, Income Support started again and the disputed period 11 June 2008 to 3 August 2008 was decided at an appeal hearing on 2 June 2009. The Secretary of State's submission relied on a Deputy Judge's decision, CIS 866/2004, a decision which basically suggests that a disabled person can not be "temporarily ill" This case law has been superseded by CIS 4312/2007 where the judge found that the previous reasoning was "not helpful". The appeal was accepted and payment of Income Support finally made several months after the original decision to supersede entitlement. However, in the following ongoing case the decision maker from the same Benefit Decision Centre uses exactly the same argument.

Case 3

A client who had limited English received Income Support for caring for his sick wife after her recovery. His son, one year old, was diagnosed with a rare immune system disorder requiring extreme attention to hygiene to prevent life threatening infections. His son was admitted as an inpatient for a period in October 2008 and continually from December to May 2009 before being discharged and payment of disability living allowance at the highest rate of the care component was awarded. Both he and his wife stayed at the hospital and they also had two other young children to look after.

The client claimed Income Support on 20 October 2008 and was refused entitlement as he had to "be available for work" By the time the client visited the bureau in April 2009, he had claimed ESA but had not been paid any benefit for the intervening period.

The bureau assisted with an appeal, but there was no contact from the decision makers despite the matter being chased up on a number of occasions. The Secretary of State's submission eventually read exactly the same as Case 2 and additionally stated that the client had been in receipt of ESA from 10 September 2008. ESA is a new benefit that did not come into effect until 27 October 2008. The bureau contacted the decision maker and although he accepted that ESA could not have been in payment was unable to explain what the relevance of CIS 866/2004 was to this case. The matter is awaiting a hearing date at time of writing.

Case 4

The client's wife is seven months pregnant and their daughter, 10 months, was an inpatient; with tuberculosis and meningitis, she was very poorly. The client spent every day from 9 am to 12 pm at the hospital looking after his daughter returning home at night. He visited the bureau as he had told the Job Centre of these circumstances and they had terminated his claim.

The bureau assisted with a telephone claim for Income Support, but he was told he was not eligible as he was not in receipt of Carers Allowance. The bureau provided a detailed letter to take to his Job Centre interview setting out his eligibility, as he was caring for a family member who was temporarily ill and had just returned a Disability Living Allowance claim form for processing. A decision to refuse Income Support was made and when the client telephoned he was told again that this was because he was not in receipt of Carers Allowance. He described the person as off-hand and rude when he tried to explain his circumstances and why he should be entitled.

The client had travel and extra living costs from his visits to the hospital and had already used the maximum amount of his crisis loan. His application for Child Tax Credit had been lost by HMRC on two occasions and further delayed by the need for his wife to get a national insurance number. He was provided

basic food supplies through section 17 of the children's act and was very distressed. Following an appeal and revision request, Income Support was paid in a decision in early June 2009 some two months after his original claim.

Memorandum submitted by the Administrative Justice and Tribunals Council (DM 32)

INTRODUCTION

1. This memorandum is submitted by the Administrative Justice and Tribunals Council (AJTC) in response to the Select Committee's call for written submissions to its inquiry into decision making and appeals in the benefits system.

EXECUTIVE SUMMARY

2. The key points that the AJTC wishes to make in response to the Committee's inquiry include:
- the need for a greater drive by the Department for Work and Pensions (DWP) to reduce the level of complexity in the benefit rules;
 - more could be done by the decision making Agencies to analyse systematically the outcomes of tribunal hearings in order to provide better guidance to decision makers;
 - Presenting Officers should attend tribunal hearings as a matter of course in order to assist the tribunals in the *amicus curiae* role and to provide a feedback link to decision makers;
 - the DWP should consider rolling out the Professionalism in Decision Making and Appeals training initiative across all its decision making Agencies;
 - appeals should be lodged with the Tribunals Service rather than with the original decision making Agencies;
 - a uniform statutory time limit for responding to appeals should be introduced for the decision making Agencies; and
 - greater efforts are needed to reduce appeal delays and to provide meaningful information for tribunal users about how long appeals take to get to a hearing.

THE ROLE OF THE AJTC

3. The AJTC is an advisory Non-Departmental Public Body (NDPB) established by the Tribunals, Courts and Enforcement Act 2007 (TCE). The AJTC is the successor body to the Council on Tribunals (CoT), which was set up in 1958 following the publication of the Franks Report on Administrative Tribunals and Enquiries in 1957. The current AJTC Chairman is Richard Thomas CBE.

4. The TCE Act gave the AJTC a wider remit than that of the CoT, namely to:
- keep the administrative justice system under review;
 - keep under review and report on the constitution and working of tribunals designated as being under its oversight; and
 - keep under review and report on the constitution and working of statutory inquiries.

5. The Act defines "the administrative justice system" as:

"[. . .] the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including:

- (a) the procedures for making such decisions,
 - (b) the law under which such decisions are made, and
 - (c) the systems for resolving disputes and airing grievances in relation to such decisions."
- [TCEA 2007, Schedule 7, para 14]

6. In acquiring a new general duty to keep the administrative justice system under review the AJTC thereby gained a new role in relation to first tier decision making across the administrative justice landscape, including in respect of social security decision making, which the former CoT did not have. The AJTC welcomes the Committee's inquiry into this important policy area, which impacts on some of the most vulnerable members of society.

7. The Committee is invited to note a draft AJTC paper attached, examining the landscape of administrative justice, which may help give a better perspective of the AJTC's new role.

8. One of the ways in which the AJTC oversees the decision making and appeals process is through attending appeal hearings to observe the proceedings in order to ensure that they are open, fair and impartial from the user's perspective. This enables members to take a view of the effectiveness of tribunal systems, measured against the Framework of Standards for Tribunals developed by the CoT, a copy of which is attached.

9. AJTC members provide feedback to tribunals as part of their discussions with the tribunal on the day of the hearing, which is followed up by a written feedback report. A copy of members' reports is also sent to the judicial Head of the tribunal system. The AJTC also provides regular feedback from members' visits to tribunals within the new unified system to the Senior President of Tribunals, Lord Justice Carnwath.

10. Members regularly engage in discussions with policy and operational officials in the department and its Agencies on issues affecting tribunal users. They also meet frequently with the senior tribunal judiciary, formerly the President of the Appeals Service (now the President of the Social Entitlement Chamber of the First-tier Tribunal), and the regional Chairmen to discuss issues of common interest.

FURTHER BACKGROUND

11. The Social Security Act 1998 imposed a statutory duty on the President of Appeal Tribunals to make an annual report, based on the cases coming before tribunals, on the standards of decision making achieved by the Secretary of State. Successive Presidents' reports from 2000–07 have raised broadly similar issues year on year, painting a picture of slow progress in raising standards across the department's agencies.

12. In 2005 Sir Leonard Peach, a non-Executive Director of the Appeals Service, undertook a feasibility study of decision making and appeals in social security, the objective of which was to improve the quality of decision making and reduce the volume of appeals. The CoT had an initial meeting with Sir Leonard to provide evidence to his study and a subsequent meeting to discuss his draft Report to the Secretary of State. The findings from his study touched on matters such as the complexity of the legislation; a lack of understanding by claimants of claim forms and conditions of entitlement; lack of confidence in the reconsideration process and wide variations in practice in its operation; claims targets imposing limits on the time spent on cases, leading to poor decision making; and failure to provide adequate explanations for decisions. Sir Leonard's report made a number of recommendations, which the CoT welcomed as a means of securing much needed improvement in the quality of decision making, ensuring that errors are corrected at the earliest opportunity, and thereby reducing the number of cases that need to go to appeal.

13. The AJTC has also had regard to reports by the department's Decision Making Standards Committee, which was established in 2003 in order to monitor decision making standards across DWP. The Committee reports to the Chief Executives of the decision making agencies, and as such, is perhaps not generally perceived to be as independent as the former Chief Adjudication Officer, whose office was abolished by the Social Security Act 1998.

14. The 1998 Act also requires the Secretary of State to report to Parliament, either annually or at such times or intervals as may be prescribed, on decision making standards. So far as the AJTC is aware the last report published by the Secretary of State related to the period 2002–03. The AJTC would welcome a commitment by the Secretary of State to report more frequently on decision making standards, ideally on an annual basis.

15. The AJTC's overarching objective in overseeing the administrative justice system is to focus first and foremost on the needs of users. In 2006 the CoT ran a series of Users Support Workshops in order to consult on the proposals in the White Paper *Transforming Public Services: Complaints, Redress and Tribunals*. The workshops were attended by delegates from the organisations that provide support to tribunal users, with particular focus on those tribunals which were due to become part of the new Tribunals Service. The majority of delegates came from a welfare benefits background, reflecting the fact that the Appeals Service (as it then was) was by far the largest of all the tribunal systems under the CoT's supervision. The key messages from the workshops included:

- tribunal users need access to better information at each of the stages leading to an appeal hearing;
- the need for better and clearer explanations of the reasons for decisions at the initial decision making stage and more effective use of the provisions for reviewing and revising decisions;
- decision makers, particularly within the DWP agencies, need to be more readily available to their customers and the advice agencies that support them;
- pilot studies are needed to establish how best alternative forms of dispute resolution could be made to work within individual tribunal jurisdictions; and
- greater simplification across the board is desirable, from underlying policy and procedures, to the arrangements for tribunal hearings, and everything in between.

DECISION MAKING

16. Social security and child support appeals account for the largest of all the tribunal systems under the AJTC's oversight. In 2007–08 there were 229,123 appeals lodged, 165,264 of which went on to be decided by a tribunal. It is recognised that the number of appeals represents only a small proportion of the total number of decisions made by the DWP Agencies. However, there is believed to be an unresolved issue about why some people might choose not to appeal an adverse decision, and whether they might in fact be successful if they did appeal.

17. From the AJTC's first hand observations of appeal hearings there appear to be three key factors which impact on the quality of initial decision making:

- the complexity of the benefit rules;
- lack of feedback from tribunal decisions; and
- training for decision makers.

COMPLEXITY OF THE RULES

18. The undue complexity of the benefits system has an obvious impact, not only on the quality of decision making but also on customers' understanding of their legal rights and entitlements. This was particularly highlighted in the National Audit Office's report in 2005 *Dealing with the complexity of the benefits system*. The complexity of the system derives not only from the rules for particular benefits but also as a result of the interaction between the conditions of entitlement for linked benefits and the complicated arrangements for review, revision and reconsideration of decisions, which are not fully understood even by decision makers themselves. The AJTC believes that the Department could do more to address the root causes of complexity in the system.

LACK OF FEEDBACK FROM TRIBUNAL DECISIONS

19. The system for providing feedback on decision making standards through the statutory report of the President of Appeal Tribunals has not been as effective as it might have been, largely due to the apparent lack of response on the part of the DWP to the recommendations made in his reports. This resulted in the same recommendations being repeated in successive reports, particularly with regard to the non-attendance of Presenting Officers at hearings and delays in cases coming to a hearing, which are mentioned below.

20. AJTC members' observations of appeal hearings highlight the fact that too many cases continue to be overturned on appeal that could potentially have been reviewed favourably by the initial decision making Agency. This is particularly prevalent in respect of medically-based benefits, that is, Disability Living Allowance (DLA), Attendance Allowance (AA) and the former Incapacity Benefit (IB) (now Employment and Support Allowance). The success rate for appeals in 2007–08 was around 45% across all benefits and is believed to be higher for DLA and AA.

21. Many of the cases observed by AJTC members were overturned on the basis of fresh evidence provided by the appellant on the day. If customers could be encouraged to provide such additional evidence to the Agencies, decisions could be revised favourably at an earlier stage, thereby removing the need for a tribunal hearing. It is thought that the pressure to meet key performance targets for deciding claims for benefit could lead to some initial decisions being taken on the basis of insufficient evidence. However, bearing in mind that there is an internal review stage between the initial decision and the appeal, it is not clear why more cases are not revised on review in the customer's favour. Some other decisions are overturned on appeal because tribunals take a different view of evidence to that taken by decision makers.

22. It is recognised that tribunal decisions do not create precedent that applies to other cases, as is the case for decisions of the Social Security and Child Support Commissioners (now the Upper Tribunal). However, the AJTC believes that more could be done to analyse systematically the outcome of tribunal hearings in order to provide better guidance to decision makers with a view to improving first-tier decision making across the board. This could also help in identifying areas of complexity which are seen as a particular cause of appeals, which could inform work towards greater simplification.

23. The attendance of Presenting Officers (POs) at appeal hearings would be an effective means of providing a direct line of feedback to decision makers, but for the fact that the incidence of attendance by POs at hearings has declined to around 23%,²⁹ usually limited to hearings involving "complex" cases. Both the AJTC and successive Presidents of Appeal Tribunals have pointed out the benefits of having a Presenting Officer in attendance at hearings, both to the tribunal itself as an *amicus curiae* and to the Agencies as a useful source of direct feedback from tribunals to decision makers.

24. It would be helpful if the DWP were to establish an effective method by which the learning from the outcome of appeals gets back both to decision makers and policy makers so as to influence front line performance and improvement planning.

TRAINING FOR DECISION MAKERS

25. It goes without saying that decision makers should receive appropriate training according to their particular level of responsibility within the decision making hierarchy. We have taken a keen interest in an initiative piloted by the Pension, Disability and Carers Service (PDCS) in partnership with the University of Chester, aimed at improving initial decision making. Professionalism in Decision Making and Appeals (PIDMA) is a work based learning programme leading to accreditation and higher education awards for DLA/AA decision makers and their managers within PDCS. This not only equips decision makers more effectively to deal with more complex cases but also has the potential to reduce the numbers of cases that go to appeal. The PIDMA programme is being rolled out across decision makers in PDCS.

²⁹ Source: Report by the President of Appeal Tribunals on Standards of Decision Making by the Secretary of State 2007–08.

26. We recognise the significant investment costs incurred in introducing such an intensive training commitment but envisage that in the longer term the results will lead to better quality decision making, thereby resulting in reductions in the numbers of cases going to appeal. Whilst the cost benefits of PIDMA have not yet been fully ascertained in business terms we believe these will more than justify the initial cost investment.

27. PIDMA is an exciting development within PDCS, which appears to have clear potential to make real improvements in standards of decision making, not just within the PDCS and the other DWP Agencies but also in other areas of administrative justice. The AJTC has highlighted the PIDMA initiative in its electronic magazine *Adjust* in order to bring it to the attention of a wider audience across the administrative justice landscape.

APPEALS

28. As mentioned above, in the AJTC's view too many appeals continue to get to an appeal hearing, which could have been reviewed favourably by the initial decision making Agency. Other unsatisfactory aspects of the appeals system include:

- appeals continue to be lodged with the initial decision making agency rather than the Tribunals Service;
- whilst there is a statutory time limit for appeals to be lodged by customers, there is no corresponding time limit for the DWP Agencies to respond to appeals; and
- appeals take too long to get to a hearing.

LODGEMENT OF APPEALS

29. Social Security and Child Support Appeal Tribunals now sit within the Social Entitlement Chamber of the First-tier Tribunal and are administered by the Tribunals Service (TS). The move of the tribunals to the TS, which involved transferring responsibility for sponsorship of the system from the DWP to the Ministry of Justice, strengthened the perception of the independence of the tribunal. However, appeals continue to be lodged with the relevant DWP Agency that made the original decision. The DWP argues that it makes administrative sense for appeals to be lodged with the Agencies as they are required to carry out an internal review of the decision under appeal. Any decision that is subsequently revised results in the appeal lapsing and a fresh appeal right being given. If the Agency decides not to revise the appealed decision, a submission is prepared and forwarded with the appeal notice to the TS.

30. The AJTC believes that in a demonstrably independent appeals system appeals should be lodged with the appeal body, and not the Agency against whose decision an appeal is being lodged. This would place the management and control of appeals properly with the TS, which should have greater responsibility for case managing appeals from the outset, ensuring that they are processed more efficiently. It is unacceptable that the current practice should be allowed to continue for the sake of administrative convenience.

TIME LIMIT FOR RESPONDING TO APPEALS

31. Responsibility for the procedure rules for the First-tier Tribunal lies with the Tribunal Procedure Committee (TPC), established under section 22 of the TCE Act. One of the members of the AJTC sits as a member of the TPC.

32. In developing the rules for the Social Entitlement Chamber the TPC was unable to reach agreement on the introduction of a universal time limit of 42 days for responding to appeals because the Department for Work and Pensions and Her Majesty's Revenue and Customs (in respect of tax credit claims) considered this to be impracticable for their decision makers. In each case the rules provides for a response to be submitted to the TS "as soon as reasonably practicable after the decision maker received the notice of appeal". The 42 day time limit applies in the other jurisdictions of the Social Entitlement Chamber.

33. The AJTC has strongly supported the introduction of a time limit for responding to appeals since it is inequitable that the rules should impose a time limit for customers to submit an appeal but no time limit for the Agencies to respond. Setting such a time limit would also be beneficial in helping to reduce delays in cases getting to a hearing.

34. Lord Justice Elias, the Chair of the TPC, has established a sub-group of the TPC to work with officials from both departments to consider how best to overcome the perceived difficulties of having a universal time limit in the rules and to report back on progress towards this. One of our members sits on this sub-group and is pressing for the early introduction of a time limit as near to 42 days as possible. The AJTC is keeping this issue under close scrutiny to ensure that progress is made.

HEARING DELAYS

35. The AJTC believes strongly in the need for continued efforts to reduce the time it takes for an appeal to get to a hearing. However, this issue has become more problematic in recent times following the transfer of the tribunal to the unified structure. Previously, the DWP collected and published statistical data on the time taken for an appeal to get to hearing, that is, from the date of lodgement to the date of the actual hearing. Following the transfer to the new unified system the DWP ceased collecting any information relating to appeals.

36. The Tribunals Service now publishes statistical data for tribunals within the unified system, measured against its key performance indicators, which for social security and child support appeals is for 75% of cases to get to a hearing within 14 weeks of receipt of the appeal by TS. However, since appeals are lodged with the first tier Agencies the TS only becomes aware of an appeal when it receives the appeal submission from the Agency, which can be some considerable time after the appeal was originally lodged. The TS never learns of appeals that are subsequently lapsed by the DWP Agency, which makes it difficult to obtain statistical information about the overall numbers of appeals that are lapsed on review by the Agencies.

37. TS statistics concerning the time it takes for an appeal to get to a hearing only relate to the period from when the TS receives the notice of appeal along with the Agency's submission, which can be many months after the original date of lodgement. This makes it difficult, if not impossible, to give tribunal users any meaningful indication of the overall time it takes for an appeal to get to a hearing as neither DWP nor TS measures this. This has created an unhelpful gap in the recording of information about appeal waiting times which needs to be resolved urgently.

38. Moreover, whilst it may suit the TS's business needs to present details of its performance in the format "x" % in "y" days, this is not particularly helpful from the perspective of its customers who are more interested to know how long they will have to wait to get to a hearing.

39. The AJTC recognises the high pressure and volume of cases being managed within this system but believes that the most vulnerable in society deserve the highest standards. There are opportunities to improve the service whilst reducing the cost of decision making and appeals by addressing the issues mentioned above.

September 2009

Memorandum by the RNID (DM 33)
SUMMARY

1. This submission is based on evidence resulting from new research into deaf people's experiences of claiming Disability Living Allowance and Attendance Allowance. It concentrates mainly on DLA as the benefit where we see consistently poor decision making and a high rate of successful appeals.

2. Key statistics from the research show the extent of the problem;

- 57% of people who had applied for DLA had been turned down at some point, and three in 10 had been refused DLA more than once.
- Eight in 10 people who had been refused appealed against the refusal, with 78% of them being successful in their appeal. One in five people abandon their claim at this stage.
- 85% of people who had taken their appeal to tribunal had been successful in having the decision overturned. This includes 91% of those who use British Sign Language (BSL) as their first language.

3. The main contributing factors to poor decision making are:

- A form that is difficult to understand and complete, especially for people who use BSL.
- A lack of awareness of decision making staff and medical assessors of the needs of deaf people.
- Guidance on deafness that is not being followed correctly.

4. We conclude that more flexibility is needed for deaf people claiming DLA, with more accessible forms, stronger guidance and an adequate level of deaf awareness training for staff. The facts remain that too many deaf people are forced into making appeals, when a correct decision in the first instance would serve to save time and public money, as well as target a key benefit more effectively.

1. BACKGROUND

1.1 The key benefits claimed by people on the grounds of hearing loss are Disability Living Allowance and Attendance Allowance. RNID's Welfare Rights service deals mainly with rejected claims for DLA, and for each of the past five years has recouped more than £125,000 for clients. The evidence from the service is that the quality of the decisions made not to award DLA to deaf people have not improved, and we remain concerned that many people are being denied the very benefits designed to help them.

1.2 In 2008, we conducted research with 1,315 users of RNID's Tynetalk, a telephone relay service, to find out about their experiences of claiming both DLA and AA. This followed on from similar research conducted in 2001, and found that little had changed in the intervening years. All the figures in this submission relate to this new research unless otherwise stated.

1.3 At the time of the research there were almost three million claims for DLA in payment, and over one and a half million claims in payment for AA.³⁰ Of these, 36,900 DLA cases and 3,700 AA cases were awarded on the basis of deafness as the primary qualifying condition. Of course, the number of claimants who are deaf will be larger than either of these figures, as many claimants will have other health problems or disabilities for which they may be eligible to claim.

1.4 The evidence for poor quality decision making on DLA is clear. If decisions were more accurate, we would not see such a large success rate for appeals. We believe that there are a number of contributing factors that lead to inaccurate decisions being made. These include; the claims forms, the guidance to decision makers and the ways in which this guidance is applied.

2. DLA REFUSALS

2.1 Our research found that more than half (57%) of those who had applied for DLA had had a claim refused at some point. This rate of refusal has hardly changed at all since 2001, where 56% of respondents had faced rejection.

2.2 In the survey, 87% of claimants were currently in receipt of DLA. This shows that a significant proportion of people have their initial claim turned down when subsequent approval shows they were entitled to the benefit all along.

2.3 More than three in 10 of those who had had a claim for DLA rejected had been rejected on more than one occasion. The number of rejections appears to make no difference as to whether someone was receiving DLA at the time of the research, with 77% of those facing one refusal and 78% of those with multiple refusals later getting DLA.

2.4 Eight in 10 people who had had a claim turned down decided to ask for this decision to be reconsidered or lodged an appeal against it. However, one in five people did not take action against the refusal to grant DLA. 34% of these simply accepted the decision, while 40% said that any further action would be too much trouble or too stressful and 16% said that it would involve too much paperwork. It seems as though the sheer complexity of the appeals process puts people off from claiming a benefit that they could qualify for.

2.5 The other main reasons for doing nothing after a rejected claim concerned a lack of knowledge about reconsideration or appeal. One in four said that they did not know where they could get help with challenging a decision, and one in eight said that they did not know how to appeal. Also, one in five whose claim for DLA had been rejected did not even know that they could appeal against the decision. Poor decision making, coupled with a lack of information will lead to people not claiming the benefits to which they are entitled.

3. APPEALS

3.1 Our research shows that making an appeal or asking for a reconsideration of the decision to reject a claim can be very beneficial. Of all of those people who had had a claim for DLA rejected, over three-quarters (77%) were actually in receipt of DLA at the time of the survey. This must raise further concerns about the quality of the decision making process. Even recognising that the number will include some people who may have made separate claims with a lengthy gap between each application, it still suggests that too many people with a valid claim for DLA are being rejected without good reason.

3.2 Information about reconsiderations of decisions and appeals should be made more freely available to claimants, and sources of help should be more clearly signposted. However, we would rather that claimants do not need to go through the complex, lengthy, time-consuming and possibly difficult process of appealing at all, and that the right decisions are made first time.

3.3 This also has ramifications for those people who did not choose to appeal, or did not know that they could, as it is likely that a significant number of these people be eligible for DLA and are therefore missing out on the valuable extra income it provides.

4. TRIBUNALS

4.1 Of those people who took their appeal to tribunal, 85% had the initial decision overturned. Whether or not a claimant had any additional health problems or disabilities made no difference to whether a claim was successful or not, indicating that those whose claim was based on deafness alone are as likely to succeed as those with more complex needs.

³⁰ August 2008 figures show 2,967,800 DLA claims in payment, with a further 1,529,100 for AA.

4.2 There is some indication that BSL users are likely to be more successful, in that 91% of them had decisions found in their favour, compared to 83% of those whose first language is English. Whilst this may show that the tribunal system does work for people who are deaf, it is another indictment of the original decisions and those responsible for them.

4.3 Tribunals are an expensive drain on the public purse, and require a great deal of time and effort from individual claimants and those who support them. If the original decisions had been more accurate and the majority of this 85% had had their initial claims accepted, time and money would have been saved.

5. REVIEW AND RENEWAL

5.1 A growing trend, especially amongst deaf claimants, is for them to have their claim stopped. One in six claimants who had been receiving DLA has, at some point, had their claim stopped either on periodic review or renewal. The sudden loss of benefit can be quite shocking for deaf people, and the financial loss leaves them with a loss of income that they simply cannot make up from other sources.

5.2 We found that the rates of stoppage were higher (21%) for people with BSL as their first language than for those with English as their first language (14%). This suggests again that there is less awareness of the needs of people who are profoundly deaf, and that they are more likely to face the distress and anxiety of losing their benefit without good cause.

5.3 Once more, our research raises questions about the accuracy of the decision to stop DLA in such cases, as 94% of those who had experienced a stoppage of their benefit were in receipt of DLA at the time of the survey.

6. WHY ARE POOR DECISIONS BEING MADE?

6.1 One of the main reasons that bad decisions are made so frequently is that the form itself presents a barrier to the provision of accurate and relevant information. Three-quarters of the people who had made a claims for DLA in our survey said that they found the form difficult.

6.2 Two in three of these people said that they thought that the questions on the form were not relevant to deafness, with a similar number saying that they found it difficult to explain their needs. The current form prompts a claimant to provide information about their ability to “understand” people, read letters, fill in forms and use the telephone. It also asks whether people find it difficult to ask for help when it is needed. A further question does prompt people who use BSL to indicate this when asked about the help they need from another person to communicate. Whilst the form has improved with respect to the information required of people who are deaf, there are still issues regarding its relevance to their daily lives. The use of the word “understanding” rather than “hearing” is one source of confusion, and the fact that difficulties resulting from hearing loss are included along with difficulties with comprehension resulting from mental health problems and learning difficulties could mean that some people who are deaf are discouraged from providing relevant information where needed.

6.3 The accompanying guidance booklet for help in filling out the DLA form can also be quite confusing and difficult to read if a person’s first language is not English. Further evidence of this is found when we see that 47% of those responding to this question said that it was not made clear what information they should provide.

6.4 More than half (56%) of people with BSL as their first language who found the form difficult stated that they did not understand some of the questions. It is obvious, then, that the DLA form needs to be made much clearer for people who are deaf in order for them to make a claim without encountering unnecessary barriers.

6.5 We believe that there is little understanding of the real impact that deafness and hearing loss can have on an individual, and a corresponding lack of knowledge about the support that DLA can provide. RNID’s Welfare Rights service has numerous examples of rejected claims where the decision maker has quite evidently not complied with existing guidance on hearing loss. There have also been a number of cases where existing case law has been misquoted as a reason for refusal to grant DLA.

6.6 Examples of the kinds of problems faced by deaf claimants can be seen in their experiences of medical examinations for DLA. Our survey found that just over half of those required to undergo such an examination reported that they had found the examination a problem. This situation has worsened since 2001, when 60% of those who had undergone a medical examination had been “satisfied” with it.

6.7 The main reasons for people reporting a problem are either that they have difficulty communicating with the doctor and a feeling that doctors do not understand deafness. This latter finding is disturbing, as it suggests that those people employed by DWP to undertake examinations do not have the necessary

expertise to deal comprehensively with the needs of people who are deaf. Those claimants who state that deafness is a factor in their claim should at least have the option to be examined by a health professional with a good understanding of deafness and be able to conduct the examination accordingly.

6.8 It is disappointing to note that one in seven people with BSL as their first language said that they had asked for communication support for the examination, but did not receive any. Not only does this make communication during the examination very difficult, but is very likely to be in breach of the duties of the DWP under the Disability Discrimination Act. It is absolutely vital that medical examinations are conducted with the appropriate requested professional communication support, as the lack of this will lead to incorrect decisions being made and people being denied their benefit.

7. CONCLUSION

Our research and other evidence shows clearly that the current system is simply not working well enough for deaf people. The forms are over-long and complicated with little useful guidance. If the forms were more straightforward for people who are deaf to complete, decision makers would have a better chance of making the correct decision at the first attempt. Likewise, the accuracy of decisions would be improved markedly if DWP staff—including decision makers and health professionals—had received at least some basic form of deaf awareness training. Until this happens, the mistakes of the past eight years and further are likely to continue and many people who are deaf will continue to miss out on the very benefits that are designed to help them.

September 2009

Memorandum submitted by Peter John Farrington (DM 34)

SECTION 1: DECISION MAKING

How effective is the decision making process? Could it be improved, if so how?

1. Most claims are eventually dealt with appropriately, but the system is fast becoming unfit for purpose due to the increasing delays and doubts over the quality and consistency of decision making. In my own case every single decision by the DWP since 1997 has alarmingly been subsequently overturned at appeal. The system therefore clearly could and indeed must be improved, but I would suggest this can only happen with the active involvement of claimants like myself in an urgent and detailed review of current policy and procedures, not least as such direct involvement by individual disabled claimants would be in line with the Department's duties under the Disability Equality Duty of the DDA.

Are there sufficient numbers of decision makers and is the training they receive adequate?

2. My belief is this is not simply about the number of decision makers, but their apparent lack of knowledge and understanding of the true nature of disability and how it impacts on the day to day life of individual claimants in the modern world.

Is the decision making process clear to claimants?

3. In a word no, even those familiar with the system find many decisions beggar belief.

How effective is the review stage of the decision making process?

4. When used appropriately it can be, the trouble is that this is still rarely the case.

Is DWP effectively addressing official error?

5. Not at all, in fact the recent change in ethos has exacerbated rather than reduced error.

How well does the decision making process operate for different benefits?

6. The system copes better with HB & CTB which only involve checking of verifiable facts than others like ESA and DLA which involve making objective judgements based on professional opinions especially those involving contracted out medical assessments.

How effective has DWP's Decision Making Standards Committee been in monitoring front-line decision making?

7. Given the increasing numbers of questionable decisions it would appear not well at all.

Is decision making taking account of the October 2007 European Court of Justice ruling on exporting DLA, AA and carer's allowance?

8. I am unable to comment on this not having any experience of this specific issue.

SECTION 2: APPEALS

How does the appeals system work from the claimant's perspective?

9. For many the appeals system is quite literally a life saver, especially me, but one has to wonder just how many other legitimate claimants have already fallen through the gaps in a system that still continues to use the appeals service as a form of quality control rather than ensuring that decisions it makes are correct, lawful and fair in the first place?

10. Had it not been for my own previous experience and knowledge of the system before becoming a claimant I doubt I would have been able to cope with the process at all, even with the help of an outside agency like the CAB or a Welfare Rights Officer and might well have ended up as just yet another suicide statistic.

11. As it is being forced to fight, for what is after all my right to appropriate fair and decent treatment for well over 10 years already just to get the benefit I clearly qualified for from day one, has led to a serious deterioration in my health and wellbeing that has inevitably now greatly added to both my level of disability and degree of social exclusion.

12. The papers already supplied to the Committee detailing my on-going dispute with the DWP, regarding my DLA claim from its inception in 1992 to the involvement of the BIP in 1997–99 and the subsequent appeals to tribunals Commissioners, High Court, Court of Appeal and even an application to the European Court of Human Rights as well as an initial referral to the Parliamentary Ombudsman in 1999, provide a rather unique insight into the failures of the Department during this period and especially the impact changes in ethos as well as the regulations themselves have had on the impact of the system on claimants such as me.

13. Perhaps the most disturbing aspect of all this though is illustrated by the Secretary of State's submission to the High Court in February this year, as part of the Judicial Review of their handling of my DLA claim from 1997–2008 to date, to the effect:

“The Department for Work and Pensions has no duty of care towards claimants.”

14. Whilst the Secretary of State and their advisors might believe so I do not and I trust, if nothing else comes of this submission, that the Committee will now make it 100% clear to the Department and especially the Secretary of State themselves that everyone from the person opening the mail to the Secretary of State and everyone in-between owes the highest duty of care to claimants especially those whose disability already places them at a severe disadvantage and vulnerability to such negligence and/or incompetence.

15. Whilst there will always be a degree of incompetence and error in any large system, especially one as complex as that for benefits such as DLA, there is absolutely no excuse for such shortcomings continuing unabated when problems are highlighted and all those involved are fully aware that the claim is under external scrutiny.

16. In this context I trust the Committee will be duly alarmed by the fact that at the time of writing the renewal of my DLA claim from April 2008 is still awaiting resolution because of continuing delays and incompetence by the Department who seem to be totally incapable of even following the clear directions of the Chair of the Tribunal hearing my appeal which had to be adjourned for a second time over three months ago because of this continuing failure by the Department to handle my claim appropriately or in a timely fashion.

How has the introduction of the Administrative Justice and Tribunals Council (AJTC) impacted upon claimants' experience of the appeals process?

17. Given the complexity of my own case and the involvement of each and every facet of the appeals process including tribunals, Commissioner, the Courts and finally a judicial review as well as one previous and one pending referral to the Ombudsman, my main observation would be that my case is a prime example of precisely why such a joined up approach is now required, not least given that much of the delay in getting justice I experienced was because of bouncing between the various agencies involved.

Is the timeframe of appeals reasonable?

18. A delay of three months is not unreasonable in cases where only independent review of the facts by a tribunal can establish the most appropriate award, but any delay where such a decision should have been made in the first place is clearly not reasonable at all.

19. Even in very complex cases the initial stage of the appeals process to the lower level tribunal should, in my view, never take longer than six months from the date of the initial decision even where the claimant has asked for a review prior to lodging an appeal.

20. There can not, I believe, be any justification for it ever taking 10 years to get such an appropriate award in place however complex the claim is but, as is clearly illustrated by the papers I have already submitted, this is precisely what has happened to me.

21. Given the history of my claim it is even less acceptable that the appeal of my current award should still be pending now some 18 months after my renewal claim was lodged in April 2008 given the Department's clear acceptance that my existing award at that time was justified and the fact my needs have clearly increased rather than decreased since the award being renewed had been made by the tribunal back in 2005.

Is sufficient support available to appellants during the appeals process?

22. As part of the vast army of people now offering support and advice to claimants on a voluntary unpaid basis, either as part of an organisation like the CAB or via the many on-line communities now available, I would say only just, but that without the contribution of such help by fellow disabled people like me and others the answer to this question would sadly be a resounding no.

23. That said, those of us that provide such support are now already overwhelmed by the recent dramatic rise in the number of people experiencing problems, especially in regard to renewals of Disability Living Allowance, but also in respect of Incapacity Benefit and ESA claims, particularly from those with mental health issues forming part of their claim.

CONCLUSION

24. The current situation is clearly untenable, and if nothing is done soon will, I believe, lead to what should be avoidable tragedies in any modern society. We are not statistics we are people and so should be treated with care, respect and fairness by all those making decisions which impact so directly on the quality of our lives.

9 October 2009

Memorandum submitted by Stewart and Elaine Downey (DM 35)

We are sending this email to tell you that the UK DWP export benefit department is not fully implementing the European court case C-299/05 in the export of benefits in our case DLA (care) and Carers allowance. They have now spent two years trying to find and delay not reinstating and paying our rightful benefits one way or another.

The European Commission is now instigating infringement proceedings against them for not complying with the ECJ ruling (Ref No 2009/2139).

So we ask you now please can you put pressure on the DWP to comply with the ruling and pay our benefits that we have contributed too all our working lives, until we had to give up and look after each other.

October 2009

Memorandum submitted by Rod Delmar-Sims (DM 36)

Firstly, let me apologise for contacting you directly. Frustration at the torment we are being put through makes this necessary.

I believe that you are a member of the Select Committee for Works and Pensions and that the Committee is to inquire into aspects of the appeals procedure. One facet "Is decision making taking account of the October 2007 European Courts of Justice ruling on exporting DLA,AA, and CA." The answer in a simple nutshell is "No".

I currently live in Bulgaria with my wife, Virginia, having moved there from France after leaving the UK in January 2004 following the advice of a doctor for the betterment of her health. She surrendered her DLA at that time, although it had been awarded to her for life. We were honest and declared the fact of our move. However, in hindsight, it was not a good move because of the problems we have encountered since dealing with the DWP(DLA) over the last 18 months. If the way our case has been dealt with there is little or no encouragement to be honest. Great store has been made of catching the "benefit thief" but honest deserving cases are treated with "contempt".

In April 2008 I became aware of the European Courts of Justice ruling made in October 2007 and since that time I have been trying to get my wife's benefit reinstated. I have encountered prevarication, lies and time-wasting and I am still no further forward. I have to e-mail any contact because the postal system here is unreliable but I need not bother because I very often don't get any reply. My request for information goes unheeded.

I write this to you, although I know that you cannot help in an individual case, but because I believe you should be aware of what is happening from a person caught up in the middle of all this debacle and there are many of us in the same position. The appeals procedure is a joke. It is used as another tactic for time wasting by the Exportability Team and we for one have no faith in that system. How can it be a good system if, as in our case, it has been going on for 18 months and still no final result in sight? With respect, this is the sort of thing you need to be looking at and as I have said previously there are many of us in the same position.

Ask yourselves would the European Commission have filed a case for infringement by the UK government of the ECJ ruling if everything was going to plan and as intended? I believe you are being told what people think you want to hear and not as the facts truly are. It seems to us "on the outside" that the bureaucrats are not taking any notice of what their masters (Ministers and MP's) are saying should be happening. They seem to be doing it their own way. We hear one thing in the media that the Government

intend this to happen and yet the minions take no notice. Who is running the country? Because we no longer live in the UK does not mean we cease to be British. In most cases we still pay our taxes to the UK, retain our citizenship, and think of the UK as “home”. We have contributed to the UK economy all our working lives and now that those of us have retired we encounter problems from the very Government that we worked to support.

Finally, I wish to add that people’s disabilities do not disappear when they leave the UK for other climes and in some cases get worse because they get older.

October 2009

Questions submitted to the Department for Work and Pensions following the Oral Evidence Session

Has an evaluation of PiDMA been published? If not do you know whether there will be one?

At present there is no PiDMA evaluation report in the public domain. However, an internal evaluation report is currently being produced and is expected to be finalised in early January. We are currently working through the process regarding it being placed in the public domain.

Date of the publication of WCA internal review?

To be provided separately.

Response to the DWP Standards Committee report or to the Presidents of the Appeal Tribunals report.

The Department does not publish a response to the DWP Standards Committee annual report.

Section 15A of the Social Security Act 1998 requires the Senior President to report to the Secretary of State and Child Maintenance and Enforcement Commissioner on the standard of decision making in cases before the First-tier Tribunal. There has never been a published response to that report.

January 2010

Response from the Department for Work and Pensions following the Committee visit to Leeds on 2 November 2009

1. *Official error—what are the top categories of official error and specifically what is the proportion of data entry error.*

JOBCENTRE PLUS

The causes for Official Error generally fall into four categories:

- Omission—where staff fail to action information;
- Non-compliance with the process—where staff fail to follow the correct process laid out in guidance;
- IT systems—integration issues across systems and complexities linked to benefit rules; and
- Human Error—decision makers sometimes make mistakes despite the Department’s investment in training and their experience.

In terms of categories of Official Error, the March 2009 estimates of the monetary value of fraud and error (published as National Statistics 4 November 2009) show that the top categories of loss are as follows.

Income Support:

- Conditions of Entitlement
- Income & Other Benefits
- Premiums
- Applicable Amounts
- Capital

Jobseeker’s Allowance (JSA):

- Labour Market Issues
- Income & Other Benefits
- Conditions of Entitlement
- Other
- Capital

The Department is unable to confirm the proportion of Official Error in Income Support and Jobseeker's Allowance that is linked specifically to data entry errors. This is because the fraud and error measurement methodology does not currently categorise errors down to this level of detail. It reports cases incorrect where the claim information is wrongly recorded but cannot differentiate between simple data entry errors or where the relevant information was incorrectly treated and input accordingly.

This situation will be resolved from April 2010, when new, more detailed fraud and error measurement recording codes will replace the existing codes.

PENSIONS, DISABILITY AND CARER'S SERVICE (PDCS)

- Top five underpayment categories for Pension Credit are:
 - Additional amounts, primarily extra amount for severe disability;
 - Income and other benefits, includes non-statement pension;
 - Missed or incorrect capital;
 - Retirement Income provision (incorrect application of assessed income periods);
 - Incorrect housing costs.
- Top five overpayment categories for Pension Credit are:
 - Income and other benefits—this includes non-state pension;
 - Additional amounts, primarily extra amount for severe disability;
 - Retirement income provision (incorrect application of assessed income periods);
 - Missed or incorrect capital;
 - Incorrect housing costs.
- PDCS does not collect national statistics on data entry error.³¹

2. Mistakes by JCP officials that lead to appeals being made taking up tribunal time—what are the top categories of mistakes and what is the proportion of data entry error.

This information is not available as the Department does not record the reasons why decisions are appealed.

It is assumed however that the number of data entry errors prompting an appeal is extremely small. As an appealed decision is first reconsidered and then further checked by the response writer, the Department would expect data entry errors to be quickly identified and resolved without the need for a tribunal hearing.

3. Why is habitual residence in the UK viewed as a complex issue?

Although it is used in both domestic and European law, there is no statutory definition of the term "habitual residence". There are different considerations in applying domestic and EC law but in both instances the expression should be given its ordinary and natural meaning.

Within Jobcentre Plus decisions on Habitual Residence are considered as complex because each case is considered on its own merit, which involves weighing of customer evidence, decisions on the balance of probabilities and tests of reasonableness.

The need to take into account case law, including Commissioners'/Upper Tribunal decisions and EC law—see references below—further add to the complexity of decision making on these cases.

Guidance on Habitual Residence in the Decision Makers Guide explains that—"The Decision Maker (DM) should be satisfied that the work is genuine and effective and is not on such a small scale as to be marginal and ancillary. As the terms "genuine and effective" and "marginal and ancillary" are not defined in EC law the DM should decide each case on its own merit. The DM should take account of all work done in the UK and consider, amongst other things:

- the period of employment;
- the number of hours worked;
- the level of earnings;

³¹ Some ad hoc data is collected locally for internal use, but this does not meet the requirements of the code of practice on official statistics and so is not published.

- whether the work was regular or erratic; and
- whether the person has become voluntarily unemployed.

1 *CH/3314/2005, CIS/3315/2005 paras 21-30; Case C-357/89 Raulin (1992) ECR 1027;*

2 *Case C-53/81 Levin (1982) ECR 1035*”

4. *See question 8 below—PDCS to provide details of how many reports fell into each of the categories.*

See 8.

5. *Provide a copy of the guidelines for attendance at Tribunal by a Presenting Officer and to provide a definition of a complex case.*

The following are extracts taken from the Department’s Code of Appeals Procedures

(The Code is publicly available at—<http://www.dwp.gov.uk/publications/specialist-guides/code-of-appeals-procedure/appendices/>)

PRESENTING OFFICERS (PO)

The PO’s role is to act as “amicus curiae” (friend of the court). Their job is to make sure the First-tier Tribunal (FtT) considers all the facts, not just those advantageous to the Department.

When should a presenting officer attend a hearing

The PO should attend all FtTs:

- where the facts and law are considered to be complex, eg where complex legal arguments have been raised or where contentious case law has been referred to; or
- where the decision involves an element of judgement; or
- where the case involves new law which needs a “bedding in period” (this period will be determined by the complexity of the legislation);

see Difficult Cases below for further information

and

- at a FtT rehearing of a remitted Upper Tribunal case.

“The PO must attend all hearings where directed to do so by the FtT or the UT or where an appeal is remitted to a FtT for rehearing.

If the AT37 is noted that a PO will attend the hearing and attendance is not possible, the TS must be notified immediately. The FtT will decide whether to proceed with the hearing.

Difficult Cases

The following section gives guidance for all benefits on the cases which DWP consider are likely to raise difficult issues where a PO should attend. Attendance in these circumstances is at the discretion of local management.

Not all hearings require a PO to attend. In some business units the practice is for a PO to attend where the appeals officer considers that the appeal raises difficult issues. This approach should be continued.

Examples of difficult cases where business units should consider whether a PO should attend the hearing are listed below. The list is not exhaustive, and there may be other cases where business units consider that PO attendance is required.

Not every case listed below will require attendance. For example, although overpayment appeals are included not every such appeal will require the attendance of a PO. The appeals officer may consider that the response is self-explanatory in relation to the evidence and grounds for appeal, and that the presence of a PO is not required to add to the response.

Where the business unit [tells the Tribunals Service] that a PO will attend, the PO must [. . .] attend the hearing [. . .]

PDCS policy is to strive to send Presenting Officers to all hearings involving complex cases and as many other hearings as possible but as there are resource constraints, it is a question of balance.

The majority of appeals for DLA and AA should not be complex because tribunals are familiar with weighing evidence and there is a medically qualified member to deal with medical issues.

EXAMPLES OF APPEALS LIKELY TO RAISE DIFFICULT ISSUES

General—all benefits

- Complicated evidence or legislation
- New legislation or case law
- Serious errors in decision making process
- Difficult judgemental element
- Human rights
- Overpayments
- Late claim
- Fraud cases

AA/DLA

- Severe Mental Incapacity
- Persons subject to immigration control
- Benefit reduced following revision or supersession
- Whether the customer has a physical or mental disability (DLA mobility component only)

Bereavement benefit / Widows benefit

- Date of death
- Date/validity of marriage
- Date/validity of civil partnership

IB

- Working including exempt and permitted work
- Good cause for failure to return questionnaire or attend and submit to medical examination

IS/JSA

- Ancillary workers
- Asylum seekers/People From Abroad/Habitual Residence Test
- Capital (including deprivation/diminishing capital)
- Compensation payments on termination of employment
- Customary holiday
- Employers sick pay
- Housing costs/high housing costs/re-mortgages
- Income
- Refusing to enter into a Jobseekers Agreement
- Availability and Actively Seeking Employment
- Sanctions
- Living Together as husband and wife/living together in a civil partnership
- Polygamous marriages
- Relevant education
- Remunerative work
- Student income
- Membership of the household
- Temporary absence
- Trust funds

RP

Date/validity of marriage

Date/validity of civil partnership”

6. *To provide details of the average cost to DWP of an appeal.*

In the financial year 2008–09, the average unit cost of an appeal in Jobcentre Plus was around £130.

Note:

This amount represents the unit cost for direct staff costs on appeals work only. It does not include management, support and non staff costs.

7. *DLA complexity of the application form—how many customers use the Agency’s telephone help line to complete the application form?*

This information is not collated centrally but DLA claim packs are under constant review and PDCS are working with customers and their representatives to test new approaches designed to make the claim process easier.

8. *Of the 95,000 [DLA] appeals received last year 69,000 went to Tribunal. Can we provide a breakdown of the main categories of the remaining 26,000 cases that did not go to Tribunal.*

This information is not available.

[PDCS do not collect the information for a number of reasons. Because of the way our management information is gathered, when a DM lapses an Appeal eg to revise the decision, the DLA/AA/CA computer system does not capture the reason for the lapse. On the pension side of the house an appeal could be reconsidered before it gets to the centralised appeals team and the computer systems again do not recognise that this is an appeal being reconsidered.]

9. *Atos—to provide a copy of the guidance and procedures for employing, training, reviewing performance, corrective action and dismissal of doctors.*

The Annex contains a copy of the relevant guidance “Contract Doctor—Performance Management Including Approval/Revocation of Approval of Doctors”.³²

10. *When a doctor is dismissed is there an automatic review of all cases on which he has provided a decision over a specified period of time.*

The Department does not routinely review the work of healthcare professionals whose contracts are revoked by Atos Healthcare on quality grounds because the work of these healthcare professionals is already closely monitored.

Procedures are in place to ensure that any reports identified as not meeting Atos Healthcare’s professional standards are corrected before they are returned to the Department’s decision makers.

11. *Where we have identified a doctor who “lets everyone through” even when the evidence suggests otherwise does the Department pursue and assess if dismissal is warranted.*

The Department requires Atos Healthcare to audit the work of healthcare professionals conducting assessments for Employment and Support Allowance when their assessments result in either a high or low proportion of claimants being found to be below the threshold for award of benefit. The results of the audit findings are reported to the Department on a monthly basis.

If the results of audit reveal problems with any individual healthcare professional, they receive appropriate feedback. If the problem continues, then further action will be taken, which can include full retraining. If a healthcare professional fails to respond to this remedial action Atos Healthcare may arrange to have his/her approval to carry out such work revoked.

12. *With regard to the 86 doctors who were dismissed last year what were the main categories for dismissal.*

The Department does not recognise the figure of 86 dismissed doctors, nor does it know the origin of this information.

The total number of healthcare professionals who left Atos Healthcare for any reason (such as retirement or personal choice) in the 12 months to August 2009 is as follows:

Employed doctors	37
Sessional doctors	245
Nurses	70

³² Not printed.

The Department does not request regular information on the proportion who were sacked as current criteria and quality controls help ensure that inadequate medical reports are identified. However, according to records held, 10 doctors have been dismissed in the last 12 months. The categories of dismissal related to:

- contract terminated during probation;
- quality of work; and
- GMC registration issue.

13. *To provide figures on the number of appeals which the Department takes to the Upper Tribunal and what proportion of these are decided in favour of the Department.*

Decision makers submit to DMA Leeds, decisions from the First-tier Tribunal which they consider should be taken to the Upper Tribunal. DMA Leeds rejects on average 6% of the cases submitted. In considering the cases submitted by the decision makers, the Department has regard to:

- identifying an error of law in the First-tier Tribunal decision;
- the need for case law; and
- the cost implications of implementing the actual decision.

Of those cases that DMA Leeds do take to the Upper Tribunal—in the period April 08 to March 09, a total of 131 Secretary of State appeals were made to the UT—in 90% of the cases the First-tier Tribunal Judge (on application) or the Upper Tribunal agrees with the Secretary of State's submission and either remits the case for another hearing at the First-tier Tribunal I or substitutes the Upper Tribunal's own decision. The Department does not keep statistics on the outcomes of these hearings.

14. *To provide data which illustrates the regional variations in overturn rate of decisions made on DLA and AA.*

Data about DLA/AA appeals outcomes is gathered and held locally by PDCS units. The data is gathered in order to feed back to individual decision makers the outcome of appeals about decisions they have made in order to identify training needs, if any. Most units deals with several Tribunals and unit managers have observed that there are appear to be differences in the way Tribunals interpret evidence in different geographic areas. Where this trend is apparent, it is good practice to meet with the Tribunal Chair(s) to discuss the situation.

Data gathered about individual Tribunals is not held nationally and is not published.

January 2010

Response from the Tribunals Service following the Committee's visit to Leeds on 2 November 2009

Following the DMA Select Committee visit to Leeds on Monday 2 November, there was one supplementary question that was for the Tribunals Service to answer.

The question was “What is the average cost of cases adjourned”?

The answer to the question is “The average direct judicial cost per case adjourned in 2007–08 was £140.96, in 2008–09 was £145.35 and in 2009–10 to October £146.33.” I also understand the Committee were looking for the total costs of adjournments. Unfortunately, I am unable to provide this information due to the difficulty in attributing staffing and other administrative expenditure specifically to adjournments.

16 November 2009

Further supplementary memorandum submitted by the Department for Work and Pensions

1. *The variations on the Disability Living Allowance (DLA) claim forms currently being piloted by PDCS*

As requested, copies of the test versions of the shortened DLA renewal form and child claim form are enclosed for the information of the Committee. The Department asks that these forms are treated as confidential items, not to be published on the Committee website.³³

DLA/AA CLAIM FORMS

Pensions, Disability and Carers Service (PDCS) have made significant improvements in recent years to the DLA adult and Attendance Allowance (AA) claim forms to address a number of concerns over the years about:

- complexity;
 - unnecessary questions;
-

³³ Not printed.

- duplication of information;
- difficulty in completion; and
- length.

PDCS developed new claim forms for DLA Adult and AA customers resulting in generic claim forms that were easier to complete and contained more relevant information at the outset. For the first time these forms had the Plain English Campaign's crystal mark for clarity of language.

The first revised DLA Adult claim form was introduced in April 2006. An AA claim form and a further improved DLA Adult claim form were introduced from September 2008.

The approach to design and development of all these forms has been collaborative. PDCS involved customer representative groups, lawyers, policy and operational colleagues in all our work.

RENEWAL CLAIM FORM

PDCS developed a shorter renewal claim form to reduce the burden of information requested from customers renewing their claim.

Around 70% of people who make a renewal claim are awarded benefit at the same rate for a further period. This means the change the agency expected to happen did not occur. These customers do not want or need to fill in another 40-page claim form repeating information they have already given to the Department. The new form still allows people to report any relevant changes they have not already told PDCS about.

The current DLA adult renewal form is 40 pages long and the AA renewal form is 30 pages long; PDCS has replaced these with forms just four pages long.

The test and evaluation

The form was tested in 2007 and subject to a rigorous evaluation covering the impact on customers and claims processing before roll-out was approved.

The new four-page renewal claim form obtained the seal of approval from the Plain Language Commission for clear English. The form was well received by customers and received their highest satisfaction rating of 99% for ease of completion.

The shortened form is being rolled-out across the business in phases. The impact on key areas of the business is being assessed before the roll-out is extended to other areas. This began on 11 September 2009 for customers whose awards are due to end across the Manchester, Leeds and North East regions. In Spring 2010 the impact will be evaluated and next steps for the roll-out considered.

As part of our programme of claim form improvements PDCS always intended to develop a new claim form for children.

CHILD DLA CLAIM FORM

Direct feedback from parents of disabled children and child welfare groups told the Agency the current form was complex, contained unnecessary questions and was difficult to complete. Parents tend to understate the needs of their child, the form focussed on what the child could not do and used negative language. Parents find making a comparison to a normal child particularly difficult.

PDCS expanded or removed existing questions, increased the use of tick boxes reducing the reliance on free text and removed the comparison to another child. PDCS have also radically reviewed the notes and included a diary.

Independent qualitative research was undertaken with 40 parent and carers on the proposed new claim form, to establish whether:

- it was easier and quicker to complete;
- it was easy to understand;
- the notes helps customers fill in the form; and
- the diary helps customers fill in the form.

The full customer research report was finalised on 6 August 2009 and concluded that the new child claim form was an improvement in the key areas evaluated.

Parents told PDCS that:

- they prefer the colour to the orange current form;
- the order of questions and their presentation gives a positive impression of less questions on each page;
- illustrations make the form more friendlier and reinforce what the questions are about;
- they liked the combination of tick box options and space to add extra information;
- the tick boxes are especially helpful:

- they act as a prompt;
- saves parents having to write their own scenarios;
- saves time;
- there was less emphasis on physical disabilities; and
- the notes were very useful.

From 21 September 2009 until the end of March the form is being sent to customers in the South East of England and South London area.

PDCS will send a questionnaire to parents and carers involved in the test to evaluate customer perception of the form. PDCS will report on the impact of the form on customers and claim processing in the summer of 2010 before a decision is made on whether to roll-out the form.

2. Details of the training and development programme being created for Jobcentre Plus decision makers

Jobcentre Plus is looking at two forms of training—Technical Decision Making and Appeals (DMA) Training and Accredited DMA Training.

The Technical training is aimed at new decision makers at Band C and consists of Foundation Decision Making for all of the primary benefits. The training concentrates on decision making techniques, evidence gathering, revisions and supersession, and the make up of the First-Tier Tribunal and Upper Tribunal. The training will be available from January 2010 and will be three to four day facilitator led training. Following this the agency plans to run one day facilitated courses dealing with specific areas such as Habitual Residence Tests, Self Employment, Appeal Writing and Capital.

The Accredited Training is being taken forward by Organisation and People Development. The training will result in an NVQ but the Governing body for NVQ standards are currently in the process of rewriting the standards; therefore the training is unlikely to be in place before June 2010.

3. A note on the impact the increased recession volumes and the implementation of Employment and Support Allowance (ESA) has had on the time taken between an appeal being lodged and it being submitted to the Tribunals Service, specifically a comparison between 2007–08 and the present.

Jobcentre Plus aims to ensure that appeals are made ready for submission to the Tribunals Service within 50 working days of receipt, this benchmark has been met both this and last year. Therefore the same performance has been maintained during the economic downturn and with the introduction of ESA. At present Income Support appeals are falling short of that target however the root causes of these delays are as a result of the higher impact of fraud and debt considerations for these appeals.

January 2010

E-mail exchange between the Committee Specialist of the Work and Pensions Select Committee and the Department for Work and Pensions

Some information is gathered for internal management information purposes but this is not suitable for publication as it has not been validated.

Department for Work and Pensions

3 December 2009

Para 5.3 of DWP's memorandum provided information on payment accuracy for major benefits (Carer's Allowance, Pension Credit, State Pension, HB/CTB) and average claims clearance rates for the same benefits.

I would like the equivalent information for JSA, IS, IB, ESA.

Committee Specialist

1 December 2009

Memorandum submitted by SAMH (DM 37)

CONCERNS ABOUT EMPLOYMENT SUPPORT ALLOWANCE FOR PEOPLE WITH MENTAL HEALTH PROBLEMS

Recent figures released from DWP suggests that less than one in six people who apply for employment support allowance (ESA) are being granted this benefit; worryingly, almost 45% of new claims for ESA (74,500 people) had their claim closed before the assessment was completed between October 2008 and February 2009, so would have received neither ESA or been channelled to apply for Job Seeker's Allowance. As is often the case, those least well off and articulate will be least able to advocate for themselves, and the mental health problems that many experience would have been exacerbated by the hurdles in applying for

ESA, or led to their abandoning their application. A snapshot of appeals, both through SAMH direct experience and borne out by the figures published by DWP, show that the DWP decision is upheld in more than two in three cases.

We undertook at the meeting to send you a case study, with a view for you to pass this information on to the House of Commons Work and Pensions Select Committee. The following synopsis outlines the situation of a male single parent in Glasgow who has mental health problems which affect his concentration, motivation and memory. His wife died last year; he has one son and receives £45 Child Tax Credit per week.

January	He made a new claim for Employment Support Allowance.
March	He was called to a medical but papers had been mislaid.
April	He attended a new medical and doctor said he felt he was unfit for work.
July	He had heard nothing about his ESA application and went to an advice centre. DWP said that they had no record of him attending a medical and asked for backdated sicklines to be provided.
August	Sicklines were sent to DWP.
October	Still had not heard a decision and contacted advice centre again. DWP say claim has been closed as person did not attend medicals and have no record of any contact in July or August.

He and his son have now been living on £45 per week for nine months; I am sure you will agree that this is unacceptable. At this stage a complaint has been made to DWP and Medical Services, and we have also recommended that he contact his local MP, John Robertson.

We also look forward to the results of the Perkins Review, as well as Dame Carol Black's analysis when both are published.

November 2009

Listener feedback received from: You and Yours—BBC Radio 4

MEDICAL ASSESSMENT

Hi, I have a good story for Y&Y concerning the way the government treats individuals claiming the new Employment Support Allowance (in place of Incapacity Benefit). Despite explaining the nature of my disability, serious difficulties in walking, the privatised service handling these assessments for the DWP sent me an appointment with an explanation on how to get there. The explanation starts "Walk to bus stop—time 14 mins". This is just the start. Give me a call if you want to follow up.

A pertinent question for your incapacity and/or disability survey. "Follow the money" is the adage the wise have been advised to follow. The question is, therefore, how are the doctors (or whoever does it) paid who carry out the medical assessment of applicants for incapacity and/or disability benefit? Are they paid specifically for eliminating applicants from the rolls in either case or both? A related question: Is there a target agenda for eliminating people claiming disability and/or incapacity benefits.

According to letters I have from both DWP and Atos there is no obligation to consult records which are only held available for 12 months. Reassessments are called at 14 months plus thereby allowing all previous NFD's to be ignored and the only medical description of disability is the "customers]". Under the biopsychosocial model used pain breathlessness and fatigue are ignored. Its a fixed system.

I am a 58-year-old single mother claiming incapacity income support. I have no other financial support from my son's father and therefore live totally on £180 every two weeks. I have been suffering from weekly migraine the last six years, they last one to three days, not on the same day every week. It was extremely difficult for the problem to be acknowledged by the job centre or my doctor. I was even sent on a course at the local college, which I had to attend where older unemployed men and women were put in with drug addicts and people with disgusting language and behavioural problems. This treatment was degrading, although an insight the vast amount of varying problems the jobless have. Everything came to a head when I broke down at the doctors and said I couldn't go back to that discussing centre and it was making my migraines worse, I thought I was heading for a breakdown. Finally the doctor signed me off.

I have a degree in Art & Design and Post Graduate Teaching Certificate; I am not a work-shy person and previously had a very successful career. I would not wish to be in this situation, but could not be a reliable employee. I was treated as a stupid person and even the job centre's disability job recruiter sent me packing, telling me I could only be employed if I could tell them which day I would have a migraine, which of course I couldn't. Like the medical conditions mentioned on your programme, you have some good days, when you function normally so this makes it difficult for them to assess. Not many people would choose to live like this, although incapacity income support is a safety net for people, the money is so little that you never stop worrying. I carried on because of my son who totally relied on me, was sitting his A levels and wanted

to go to university. My son has now successfully gained a place at a top London university to study physics and not join the unemployment queue as so many other kids have, this he has done even with the ongoing problem of his mother's health.

I have arthritis, good and bad days but I managed to work until I was 65. Fifteen years ago my neighbour was diagnosed to have back pains. She did manage to build a fence in her back garden. She had DLA payments. This was supplemented by her dad's carers allowance so she did his shopping. She also looked after her niece and was paid for this. There is a whole section of society who seem determined to get as much out of the system which should really be a safety net for those who really need financial support. How long can we continue to finance these expectations?

I was taken off Incapacity Benefit last November, I believe as a result of blatant cost cutting as a result of the Welfare Reform Act. This act, I believe does not take into account client's problems but is a result of bureaucratic and government misunderstanding of Mental illness.

After listening to the you and yours programme on 5 August I want to feed in my experience of claiming ESA. I had my medical examination about 10 weeks ago and was refused ESA. I have ME and have given up work as a result of the illness. I have appealed the decision and have just got the appeal papers. I have read what the Atos Doctor has written and feel like most of what I said has been twisted or taken out of context. I was judged by the fact that I had been able to get there on the bus. The bus stop is at the end of my road and goes right near the examination centre. I explained that my husband shopped on line for us for groceries and this is recorded as has no problems with shopping. I explained that I do cook but prepare the meal gradually through the day, chopping veg earlier then resting. This is recorded as has no problem cooking. Driving makes me tired and the only driving I do is about once a week three miles to my parents' house. This was recorded as has no problem driving. I do walk my children to school but then rest for an hour afterwards and the same with collecting them. This was used against me as has no problems walking the children to school. I speak on the phone to friends and family but not very often but because I said I could do this, this was recorded as has no problems keeping up social interaction with friends. I had explained that I don't go out socially any more and many people I cannot meet up with. No questions were asked about my RSI problems with using a computer. My mental confusion and memory problems. Noise problems and ear pain and the problems these would present in a working environment. Nothing I wrote on the questionnaire seems to have been taken into account. The medical examination lasted about 15-20 minutes. On the basis of the findings of a Work Capability Assessment which took place on 1 June 2009, I have recently been found to be ineligible for ESA. I have appealed against that decision. During my Work Capability Assessment with the Healthcare Professional employed by the DWP, it was clear to me that he was not listening to anything that I said. Rather he seemed to be operating a narrow "tick box" approach to the assessment, where my contribution to this exercise was deemed unnecessary. When I left the appointment I was upset, I felt diminished by his lack of consideration for me as a person and had I had the energy at the time, I would have made a complaint about his behaviour. In the course of writing my appeal against the decision, I requested and was sent a copy of the medical report completed by the Healthcare Professional. When I studied the report, I found that it was inaccurate and bore no relation to the events which had taken place at the appointment. Furthermore, I was shocked that it wrongly stated that a medical examination had taken place and that I gave consent for this to proceed. I suffer from complete heart block, dilated cardiomyopathy, heart failure and related anxiety. As a result of my condition (and possibly the medication that I take for it), I suffer from profound fatigue. If I could work I would. I have worked all my life and I am now not working because I am not well enough to work. This is a bad thing made worse by the way I have been treated by the DWP. In his report, the DWP's Healthcare Professional does not accurately describe my conditions or my symptoms; he does not precisely detail the purpose or the effect of my medication; and nor does he correctly assess my abilities. Overall the medical report is completely flawed and without reference to, or consultation with, the specialists who have been treating me for a number of years, the Healthcare Professional was prepared to state that I am fit to return to work "within 3 months". Interestingly, the same Healthcare Organisation as used by the DWP (Atos Healthcare) have recently, on behalf of NHS Pensions, assessed me as eligible for ill health retirement from the NHS Pension Scheme and this was awarded shortly after my appointment with the DWP's Healthcare Professional in June 2009. In assessing my application for ill health retirement, NHS Pensions consulted with my Cardiologist, my GP and my Occupational Health Physician. It was found that in addition to meeting the Tier 1 condition (permanent incapacity for the duties of NHS employment), I also met the more stringent Tier 2 condition (permanently incapable of regular employment) and my pension was enhanced as a result. However, further to my concerns regarding the efficacy of the Healthcare Professional's Medical Report, I am very, very concerned and shocked that he has stated that he performed a physical examination on me and that I gave consent for this to proceed. At no point did the Healthcare Professional perform a physical examination on me, yet he has stated that he did, he has detailed his 'findings' across a number of pages in his report and he has even gone so far as to state that I, "was able to get onto the couch without assistance," so that he could perform the examination. Yet I did not get onto a couch, but merely sat on a chair next to his desk throughout the interview. My husband accompanied me to the appointment and he can confirm that a medical examination did not take place. Furthermore, (if my husband is not considered an independent witness to the events that occurred), I have further evidence which I can provide in support of my assertion that I was not physically examined on that day. I cannot begin to explain to you how anxious this whole experience has made me feel. I believe that I have been treated as someone who has no value and who can easily be dismissed as

unimportant. If this is how the DWP is administering this relatively new benefit, then it is my view that it is being mal-administered and that it has been deliberately designed to exclude as many claimants as possible. I am concerned that had I not requested a copy of the medical report I would not have been aware of what had been written about me and I wonder how many other vulnerable people have been refused ESA based on such shocking medical reports. I am saddened and angry that anyone applying for a benefit should be treated like this.

Despite GPs and Consultants giving details of patients condition and their ability to work, people like myself who are unable to work temporarily due in my case to the collapse of an ankle joint along with fracture of Tibia, Fibula and all metalwork involved, and who are awaiting a serious operation to reconstruct the joint are being sent for assessments by a private company called Atos Healthcare and who are being paid £801,000,000 for their contract by the Government. I have to walk on crutches to avoid further damage to the joint which may result in reconstruction of the joint becoming impossible and may even result in amputation. I was given an appointment for 15.10 and was given details of how to get there by public transport, I would have to leave home at 10.00 to arrive in time for the appointment. The distance to travel—13 miles, with seven changes of bus, all to be carried out on crutches. I have written to Messrs Atos three times, I have written to the DWP three times and also wrote to my MP at least four weeks ago, along with the Secretary of State for W & P and the Shadow Sec. of State, and have yet to receive a reply from anyone. This is a benefit I have paid in to of many years and I and my GP who issues my medical certificates are both made out to be scroungers or conspirators. All this for the princely sum of around £60 per week. I am a self employed building surveyor and do not require retraining for another job, I would however not be allowed on a building site on crutches until my operation is carried out tomorrow and following a period of recuperation. I am unlikely at my age (63) to be offered a job, especially in these times of recession so it's a good job I do have employment to return to.

In respect of today's programme and discussion of the ESA and the work capability assessment, I am appalled at the implementation of Machiavellian measures that purport to be designed to enable and support and which everyone who will be affected by these assessments knows to be sophist nonsense and a genuine threat to their welfare, and promises to leave them in poverty. The measures have been carried through on a tide of resentment about "benefits culture" exploited and stoked for the past few years both via the media and the governments own press releases to vindicate and legitimise the proposals it has now enacted. All recipients have been left with the sense of being feckless and undeserving and are now subject to these social Darwinist measures imported from the USA where welfare is an obscenity. The legislation is in place and people in receipt of ICB or applying for or subsequently migrated to! ESA should be very afraid of assessments conducted by DWP computer modelling and carried out by doctors with minimal specialist knowledge around a range of illnesses. Moreover assessments are also being carried out by nurses employed by Atos (cheaper than employing a doctor of course) one of the main privately contracted companies deployed to conduct medical assessments and paid by results! Experience of the benefits system over a number of years has seen me in an adversarial relationship with decision makers at the DWP on three occasions necessitating two appeals and a reconsideration all ending in decisions in my favour but each taking an average nine months to process. The welfare reforms have been carried out with the collusion and support of the disability organisations who painted themselves into a corner agreeing with government positions on people needing to work for self esteem, sloganeering around work being good for health (except of course for many it is deleterious to health!) What is about to follow is even more frightening! A green paper that proposes radical changes that are a fundamental attack on current disability entitlements. Aimed ostensibly at Attendance Allowance and by extension Disability Living Allowance the plan being to transfer funding to local authorities to commission services for those it deems to be need worthy in contrast to the present purpose of DLA viz to meet the increased costs associated with living with long term ill-health and disability. The assault on welfare provision continues unabated with a savage enthusiasm from the New Labour party which has deemed the words left-wing and socialism to be anachronistic profanities incompatible with its newly crafted (crafty) relationship with business and the middle classes and has ditched its labour credentials as any kind of champion of the vulnerable in favour of garnering the populist support of the mass of voters who don't/wont/can't distinguish between recipients of welfare (unless they are visibly wheelchair bound) as deserving or feckless! The government has gone through six previous incumbents at the current DWP and is now on it's seventh following Purnells' term and subsequent resignation. Despite assurances from previous incumbents that those who were too ill to work would not have anything to fear the goalposts have been moved to satisfy the requirements of a spending black hole and the buying of an electorate that sees an undeserving mass who should be in work. Consequently each successive Minister of State at the DWP has sought to outdo their predecessor in the "stick" department with ever more draconian rhetoric and proposals, coupled with contempt and dismissal for counter-argument. Never mind that the broad sweep of that electorate itself receives state welfare payments on a massive scale via the child benefit, pension credit mechanisms. To cut the most vulnerable adrift may satisfy the anger of those for whom survival of the fittest and self reliance are a daily mantra, but the human consequence in this current climate are leading to misery and hardship for a good swathe of vulnerable people stereotyped and demonised as indolent & feckless. For the many ill-health and disability arrived after many years of work and contribution. I am incensed, ashamed and disgusted by the adoption of the ideas championed by David Freud the investment banker with a whole dubious portfolio of expertise in health and illness disability and the needs of those he has made into a sub-class with the enthusiastic cheerleading of all the leading political parties. I'm fascinated that he can be so knowledgeable around the needs of those with MS/HIV/AIDS/

Cancer/Mental health problems, limb-loss etc. How well acquainted he must be with our daily needs to be so confident that we can take up our beds and travel to work with the rest of the commuting world, and a short burst of CBT will be the panacea. That our own medical practitioners and consultants should be excluded from the work capability assessment process in favour of a computerised model of questions and judgements made by a practitioner never acquainted with the examinee. The aim I expect is that at the very least we could all be stuffing envelopes at home and be productive. The nonsense of the rhetoric of re-skilling and retraining us to equip us to work again is palpable. Meaningful training and re-skilling involves anything from a year to three or four. The actuality is cheap modest basic re-skilling in order to funnel us into any low-skilled minimum waged corner where we can be shoe-horned, from the supermarket checkout to the call centre desk. Irrespective of whether our health can sustain us in that role. We're told that our needs will be met, our disability status taken into account and protections afforded. How arrogant and ill-conceived! Check the disabled seating on trains buses and undergrounds and see who's actually occupying them, observe your local street and note the general ebb of human traffic as it weaves recklessly and selfishly around those less able-bodied. Why not buy us all a one-way ticket to a DIGNITAS clinic? Angry? You bet! Trust in politicians? No! They bleated about their fall from grace and the stereotyping of them all as thieves and rogues having first done exactly that same thing to the vulnerable groups they should be protecting [. . .] a plague on all their houses!

I applied for Attendance Allowance on behalf of my mother who had for 10 years suffered with COPD. In the past six months she had become unsteady and I had taken three days a week to look after her. She received a call from a "decision maker" who was assessing her claim; the call was of the duration of some 15 seconds, after which she was adjudged to not need help over night. She fell on one night, I could not be there and took six hours to reach her "panic button". She fell out of bed twice after which she was admitted to hospital and died within three days. My attempts to reason with the "decision maker" was met with cold contempt and the conversation attempted to imply that I was a liar and that everyone attempts to claim more than that allowance due. My mother was due at least the lower rate of allowance for the past 10 years and had claimed nothing. My father claimed nothing until his death three years ago and I had claimed nothing as a carer. It was obvious that there is a move to dissuade proper claims in the interests of saving money: a disgrace.

It was such a relief to hear your report on the accuracy of medical assessments for Employment and Support Allowance. On today's programme 5 August 2009. Everything that was said was so familiar to me as I am currently in the exact position you were discussing I have tried for five weeks to talk to somebody about the fact my benefit was stopped from 30 June because I scored nil on their tick box scheme. I suffer from OCD which is so severe I cannot work, my doctor supports this diagnosis. The decision maker at Bury St Edmunds has not written with any explanation or even acknowledged my letters and enclosed three month medical certificate. The help line is very hard to get through often it is off altogether and at best an operator can do nothing to help but promises somebody will call which they do not. I am currently being helped by the CAB but even she can't get through to the benefits department to find out if my appeal is being looked at or even if the form has been received. I have not been paid for over four weeks, I have nothing in writing or by phone from anybody at the benefits office in reply to my letters, I have been through the CAB I feel like I don't exist, that I must be a liar about my condition and am helpless to do anything about it because the benefit office, who were quick to stop my benefit, then ignore me.

The ESA enquiry line, which one is referred to after making an initial telephone claim, is inaccessible. When the number is dialled a recorded message is played and then the caller is automatically cut off. Even if one redialled all through the day there would be no guarantee of getting through to anyone, but would always be charged for the privilege. A completely farcical, yet foreseeable, situation, which typifies the approach of both the DWP and the Government.

While its a laudable aim to help people get back into work it begs the question—where is this work? It seems the policy makers are living in cloud cuckoo land [. . .] With more and more recent graduates signing on if there isn't work for them then where is this work?

I found out about your request via the Hypermobility forum. Hypermobility is a "rare" condition, caused by a genetic mutation of the Collagen Producing Gene, and is Hereditary. I was finally diagnosed in 2005 with this condition, which causes a variety of problems for HMS sufferers. Such as early Osteo Arthritis, Bursitis, General joint problems, pulled muscles, and sprains, IBS, Fibromyalgia, tremors, Raynauld's Syndrome, depression, etc, see main site <http://www.hypermobility.org/> This is a fluctuating condition. It sometimes doesn't cause me any major problems, but currently, it is. I applied for "ESA" on 14 April this year, and did not get any "Support" from them until beginning of June. I have had a back to work assessment in the Job Centre, and tomorrow am going for my second appointment with the Shaw Trust. Next week, I have to go for a medical assessment for the DSS, to see whether they will give me time to recover from this bout or not. If they decide against giving me time, I will be forced onto JSA, even though I am seeing Rheumatology the next day. If I wasn't obviously as bad as I am at the moment, ie visibly, the emphasis is not on giving me time to regain my health and equilibrium. I would instantly be forced onto JSA, and into finding a job. I actually felt quite intimidated, having read the information on ESA, having previously been on Incapacity Benefit off and on for some years. This condition is one which requires pacing one's self, before you are unable to continue. Sometimes things go wrong, and we have no control over when a bad day occurs. Unfortunately, nowadays, most employers require that you disclose your health and previous reasons for

leaving work, in my case my health is periodically so bad that I am unlikely to be employed because of my past history. Holding down a job, let alone finding an employer who will make the concessions for your health requirements, is increasingly hard to find. I can see myself being forced to look for a job and attending interviews, and being refused on grounds of my health. What happens then? My husband and eldest son have put me on forced house arrest at present, as walking causes pain and severe tremors, which is very embarrassing, but if the tremor doesn't kick in next week I am unlikely to be given time to resolve my health issues. Let alone find an employer willing to take me on. ESA should be binned. This is not support for the sick, this is a means of them saving money, by forcing everyone back to work, whatever their condition. I appreciate that there are those who do abuse the system, but those of us with fluctuating conditions such as HMS, ME etc should be left in the care of our GPs, as they are the ones who know how best to treat us, and when we have pushed ourselves too far, and need to regroup. Instead we are forced into incredibly stressful situations by the ESA, which actually worsens our conditions, instead of giving us the support we need, when we need it. Stress and Tension is not good for HMS sufferers as it causes muscles to become strained, headaches, flare ups of associated conditions, and so on. All of us want a normal life, work, family etc, and do strive to achieve it some how. But we also need support and understanding when things go wrong, instead of being made to feel like a malingerer, which ESA strives to do.

Okay I get IIB and REA, for life because of an injury on duty, which means I'll never earn as much since the injury as I am no longer a Police Officer. I have had numerous assessments with DSS, so I have a huge file for them to read, before they see me, anyway. So I am now claiming ESA since April this year, which involves DSS medical again at Albert Bridge, Manchester. I hadn't heard anything, so got the phone number from my local Job Centre, and phoned mid June saying hey guys, been on ESA for quite some time and not heard from you, can you tell me if you have forgotten me? "Oh no," says nice lady on phone, "We were due to send appointment out later this week, but as you are on phone now we'll book you in." "Great," I say, so we arrange appointment, then say, "And what about a taxi there as my neck is really bad, and can't travel on public transport?" "Oh," she says, "No problem, get your GP to write a supporting letter, and fax it to this number". So off I troll to GP, who writes and faxes letter. 19 July, 10 days before appointment. I phone up because I have not heard about the taxi, and if they haven't got fax, I will have to do it again. "Oh sorry, got letter, but we are cancelling your appointment, new one will be sent out in post." says guy on phone and hangs up! Get new appointment for 11 August. Phone up to find out why they cancelled, apparently because the doctor who was supposed to have seen me had decided he wasn't coming in that day, and yes they have the letter from GP and will make a decision in the next few days, and phone me. Cross at delays, as I have had to have two work focused interviews in meantime, when I can hardly string two words together with my tremor kicking in with a vengeance. Phoned Thursday as I hadn't heard anything, still. "Oh we'll get someone to look at it, and give you a ring." Phoned again Friday, "Oh we are going to have to cancel your appointment, as the doctor hasn't had chance to look at your file yet, but don't worry, this won't count against you, we'll send a new appointment out in the post, when the doctor has made a decision." Appointment was for Tuesday next week. I now have to undergo another work based interview before I get another appointment, embarrassing, stressful and now very very very angry. Sorry to rant, but so cross. I have done everything to make this as easy as possible, and they can't be bothered.

I have recently attended a medical assessment for the above allowance after being diagnosed with osteoarthritis in both knees and found some of the questions I was being asked ambiguous to say the least. I got the feeling that I was trying to be "caught out". The interviewer, was afro-Caribbean and, whilst remaining pleasant at all times, was a little difficult to understand at times.

I am writing to congratulate you on Wednesday's excellent programme which I am sure has given help and encouragement to many people who are currently attempting to claim Employment and Support Allowance for legitimate reasons. I am very well aware that any responsible government has a duty to ensure that expenditure on benefit payments is carefully monitored and controlled. However, I am alarmed that the current administration is utilising such a simplistic assessment programme which is manifestly unfit for purpose and is certainly causing widespread distress and anxiety. In response to your invitation for listeners' participation, I am attaching some of the documents associated with my appeal against a recent decision made by the Department of Work and Pensions. I am conscious that the attachments contain a significant degree of detail, but trust that they demonstrate the dimension of the tasks which many people face when they endeavour to appeal against decisions which emanate from such a flawed system. I feel that it is important to recognise that, by definition, the majority of people affected are not in the best of health and many are not even capable of lodging an appeal, because they are simply too ill to do so.

BRIEF NOTE: RE INCAPACITY MEDICALS—YOU AND YOURS

History

1984—Hit a car at 80 mph while riding pillion. Was taken to Mayday—Croydon, from thence Roehampton. Skin grafts were performed then muscle grafts—but the limb was left completely mangled. The treatment was—so negligent it flies off the scale. The limb should have been removed on day one. It was left for 19 years. It was removed in 2003 by Professor Bruce Campbell of Wonford Hospital Exeter (five inches above the knee). During the most abysmal time in the mid to late 90s, I tried to get incapacity, but the doctors (idiots) who "examined me", declined to see the problem. The agony, was indescribable and I was apparently not entitled to this benefit when quite obviously I should have been. My medical records also

show that, not one single GP or consultant prescribed a single appointment for physiotherapy. Therefore, the biggest problem is that GPs and the medical profession have become detached from the patient and should be viewed as beauracrats. GPs do not know anything about pain, if they did by definition they would not be able to work. I know a great deal of pain and understand the mechanics of it. The base premise being thus. The more pain one is in there is obviously a physical disfunctionality. The physical disfunctionality is shunted through the system. If a person is in a great deal of pain, their sexual health will be impaired in terms of experiencing revitalizing sexual experience. Sexuality and sexual function being an absolute area of neglect in any branch on western medicine.

Re: Benefits System

Below is a quick run through of my recent experience of the benefits system. Prior to 12/01/2009 I had been full time employed after graduating University in 2002.

12/01/09	Fled my home in Bristol three months pregnant following yet another physical attack by my husband.
14/01/09	Allocated room in Brighton Women's Refuge.
23/01/09	Applied for Benefits via telephone system provided at the refuge.
26/01/09	Attended interview at Brighton Job Centre. Reports from Police medical Officer and Women's Refuge supplied. Both reports identified high risk of being found by husband, and hence my complete inability to access any of my old bank accounts until legal protection in place. (Incidentally this interview lasted about an hour and a half and I was not allowed to use the toilet in the benefits office, meaning I popped out to local public toilet only to find that on my return the security guard wouldn't let me in as he said I was late for my interview and had to phone to rebook. The interview was carried out on a public table with no offer of privacy at all. Just as well I had no self respect left at all at that time.)
17/02/09	Application for benefit declined. Reason "capital assets of over £16k".
18/02/09	Rang to query decision. I was told that Complex Decision Maker (CDM) had reviewed the case and the decision was final. I asked if the CDM had in fact read the file.
19/02/09	Benefit awarded (Job Seekers Allowance JSA).
26/02/09	Notified in writing that JSA awarded. Claimed Housing and Council tax Benefit.
26/02/09	Housing and Council Tax Benefit awarded. I found a landlord willing to accept DSS payments for his rent, borrowed the deposit from family and moved to a little flat.
18/03/09	applied to the Social Fund for a grant to set up my little flat.
01/05/09	£225.00 grant from social fund awarded to cover expense for single bed (£150.00), Kitchen Utensils (£20.00), Crockery (£15.00) Towels (£10.00), single bed set (£30.00). Because of the limited nature of the Social fund, it was unable to provide funding for the other items on my submission namely; Cot, Settee, table and chairs, wardrobe, chest of draws, iron, vacuum cleaner, heater, pushchair, ironing board, bedroom cabinet, kitchen appliances, clothes airer, TV.
05/05/09	As advised by benefits people phoned DWP to swap JSA to Income Support (IS) pending birth of Baby. JSA stopped being paid post speed.
07/05/09	Attended interview at Haywards Heath Job Centre to re-submit all info already submitted to JSA (its a different department) as well as up to date legal documents.
18/05/09	Letter from IS people saying application declined as no proof of pregnancy submitted. I phone and operative confirmed that proof of pregnancy (for MATB1 signed by Midwife) was in fact on file, and please disregard letter.
20/05/09	Claim for IS declined as CDM had assessed I had over £16k capital assets. No-one could or would help, my Housing and Council Tax Benefits were stopped leaving me homeless again with nine weeks until Baby. I took all the information into Haywards Heath Job Centre and refused to leave until my case was assessed properly.
03/06/09	IS awarded, Housing and Council Tax Benefit restarted. Sure Start Maternity Grant (£500.00) awarded, Health in Pregnancy grant (£190.00) awarded, Vouchers for milk, fruit, and veg awarded. These benefits should now give me six months rest bite to begin to rebuild a new and safe life for me and Baby. Overall I have found the Benefits system has added a fair amount of extra stress in a very bad time. If some-one had told me my experience a year ago I would not have believed them, preferring to think that there must be more than meets the eye—no welfare state system could treat someone in genuine hard times so badly. I would have thought that the events must have been self made—maybe being abusive to staff, or just lazy, or with some sort of extra support need or some such. Unfortunately, I now know that a British Welfare State exists only in name, and if ones life crumbles it is Family, Friends, Charity, and Faith that will help begin to rebuild the splinters.

Regarding your program today 5 August 2009. Four years ago I was diagnosed with spondylosis. My spondylosis is very severe and I cannot get by without up to three Diclofenac pain killers, paracetamol and amitriptyline each day. I have received the lowest benefit for four years receiving £90 per week. I also get

rent and council tax paid. However from this £90 per week I have to pay a cleaner £30 per week as I cannot iron or clean my flat. I have tried twice to get Disability Allowance but apparently because I can walk (although this is always in pain and with the help of pain killers) I am not entitled to any other help. I cannot drive my car as it makes my neck and spine pain worse. I cannot carry shopping etc. I have been repeatedly told that I cannot get any extra help because I can walk 50 yards without help. I am left in limbo. Told that I am too ill to work by specialists and doctors but by Department of works and Pensions not ill enough to get any other benefit and yet somebody on disability allowance is allowed it seems to be able to do a college course or part time work. I would be very happy to talk with anyone regarding this as I have also recently had a medical by the Department of Health. I have been waiting now since June for their latest decision. Their entire policy revolves around whether you are able to walk unassisted and makes in my case no allowance for good or bad days.

The current Medical Assessment for INCAP needs reviewing because it does not consider the individual. How is it possible to evaluate the physical and mental state of anyone, especially someone with complex or multiple conditions, in just half an hour? I'm a 62-year-old epileptic, controlled by Phenytoin for 30 years, and have a peripheral cardiovascular disease. I lost my job on 8 August due to an incident caused by my increasingly fluctuating moods. My GP advised me to apply for INCAP which was agreed by DWP in November. I had a medical assessment in early June 2009 and according to that assessment I'm fit for work. In the report of my interview, under the heading: Description of functional ability; no mention was made of the number of hospital appointments or days off work I've had and there was at least one factual inaccuracy. None of the descriptions take into account the amount of support I need to carry out most of the activities. Also no mention of my need to rest/sleep before completion of a task. Only passing credence was given to my medical history (in 1990 I had a brain haemorrhage, and a right frontal lobotomy) and no report from my GP was considered. Only passing reference was made to my constant tiredness and needing to sleep in the afternoon and the doctor completely misunderstood some comments I made: going to get a paper is regarded as doing the weekly shopping; going on holiday means I get around without help; walking to the village (five minutes) is walking daily for 45–60 minutes; my attack on a youth and the subsequent investigation by police has resulted in "mild anxiety" rather than the real fear I have of what could happen next time. Where once (five years ago) I was a confident graphic designer for *The Times*, I'm now an ex-Coop-baker with a history of aggressive behaviour. The medical assessment "tick box" form does not include a good day/bad day evaluation or any space for "pain". All in all the medical assessment interview was a waste of everyone's time—and will continue to be because I'm going to go to tribunal. I would much prefer to work but the fact I might put myself or anybody else in danger while working does not bare thinking about.

Dear You and Yours Team, Thank you so much for your quick reply in spite of you having a very busy sedulous. I do really appreciate your kind and generous support. The reason I wrote to you in regarding to my problem with DSA are facing by so many people and though it would be nice if you could please help us to find out what exactly is going on. People are not in a position to loose money just to fulfil some driving instructors' self interest and self convenience. They cannot cancel the driving test whenever they wish without having any solid concrete reason. In my case it seems the issue of racial discrimination has been involved too. If you listen my story you may find it very interesting to know what happened. I am sure it will help a great deal to so many other people who are going through my position too. If you are still interested to pursue, you can contact me. I look forward to hearing from you.

Sir. I was listening to You and Yours programme today and was particularly interested in the item on the changes to the recently introduced employment and support allowance (formerly incapacity benefit). I am writing to you in the hope that the BBC and your programme will add its considerable weight to highlighting forthcoming proposed changes to disability benefits outlined in a Green Paper to be published in November 2009. I am severely disabled by a lifelong condition and after 21 years service, was medically retired from the Department for Work and Pensions several years ago. I am in receipt of a small disability pension from the Department but this is supported by the payment of disability living allowance (DLA) which comprises care component and mobility allowance. I have watched with increasing alarm as the benefits system for disabled people has been reformed and altered out of all recognition. The Government has stated as its aim, ensuring that all disabled people have the benefit levels and support that they need, while in reality they have systematically eroded the value of the benefits and made it increasingly difficult to claim them. Incapacity benefit is making the news again, because the numbers of people who are medically eligible and in need of the benefit, are being refused in significant numbers. This is because the Government has reduced the ability of the claimant to describe how their disability affects them, to a series of "one size fits all" tick boxes on a computer form, and they are now in the process of determining how to reduce the tick boxes even further, less than 12 months after the new benefit was introduced. Various disability organisations and the Citizen's Advice Bureau have expressed their concern that since the introduction the new employment and support allowance, more and more seriously disabled people are reporting that their benefits have either been refused on application, or more alarmingly, that those already in payment have been reviewed and stopped or reduced even though the conditions of the claimants remain unchanged. The new assault on disability benefits, about which I am writing to you, concerns the payment of attendance allowance and the care component of disability living allowance. The proposal in the green paper to be published in November, is to stop paying these benefits directly to the disabled person and instead to allocate a budget for each person, using the benefit in payment to the individual, to the local council, who will then determine how the benefit

is to be spent, providing “services” in return. Major disability organisations have voiced the opinion that this will be to the detriment of most claimants, and thinking about the way in which my care component is spent, I have to agree. The care component is paid to the most severely disabled people, in varying amounts according to the severity of the disability, and is intended to be used to pay for the extra costs in day to day living, incurred by the effects of that disability (hence the term disability “living” allowance). It is for personal needs and was never intended to be used for the kind of care services which are currently provided on a means tested needs basis by social services. To give you an idea of what I mean, my own allowance helps to pay for bowel and bladder incontinence supplies (which are not provided by NHS or social services, and which currently cost me around £35 per week), it contributes towards my electricity bills which are higher due to the need for more frequent use of washing machine, baths and showers two or three times daily, and to pay for help around the house for the things I can’t manage to do. It also helps to keep me mobile by contributing towards petrol expenses, as I am unable to use public transport and have severe mobility restrictions. There are other things too personal to mention, which the allowance helps to fund, and I cannot for the life of me, see how passing the payment to social services can improve my situation—I am also very concerned that if disability benefits are to be paid directly to social services, it will not be long before they are absorbed into their general budget and allocated elsewhere. I suspect that these changes are being brought about as a result of the Government’s mishandling of the budget and the bailing out of the banks, and the easiest way to recover revenue is to claw money back from the sick and disabled, as they have little or no voice to defend themselves. I know this is not a popular subject at the moment, as benefit claimants are seen as scroungers—largely due to the highlighting of the unscrupulous people who exploit the system (and who are anything but genuinely disabled), but I am asking for your support in highlighting this matter, as apathy on the part of the public will mean that the green paper will be published unchallenged and the changes will come into effect soon after. These changes will firstly affect elderly pensioners, as the attendance allowance is paid to those people who by reason of the fact that they are over 65, do not qualify for DLA—this makes a nonsense of the Government’s so called commitment to improving their quality of life and reducing the numbers who are living in poverty. The measure of any society is how it treats it’s most vulnerable members, and this is no way to treat the sick, the old and the disabled. The tax take in this country is at a very high level and this government has to realise it cannot squander taxpayers money in the shameful way it has done recently, and then expect the poorest section of those taxpayers to start footing the bill in this way. For more information on the proposed green paper, please contact www.disabilityandwork.co.uk. If you require any further input from myself please don’t hesitate to contact me.

I have long-term mental health problems (broadly spanning severe depression, an eating disorder, self-harm and a complex anxiety disorder) and have had great difficulty with applying for Employment and Support Allowance. I first went to Jobcentre Plus and was told I needed to apply by phone (they didn’t mention that there are other ways of applying—by paper or online—which are often significantly easier for people with poor concentration or social anxiety problems to deal with). The initial phone call took nearly two hours, including all the time I was in a queue to speak to an advisor, and the questions were difficult and confusing to answer. I have no access to a landline phone so I’ve had to do benefits-related phone calls by mobile, which if I were paying (I was fortunate that I have an NHS support worker whose phone I could use) would cost me dozens of pounds (which I don’t have!). Each time I’ve needed to phone about the ESA (which has been quite a few times now) I’ve had to wait in long queues, and I’ve been passed from person to person. When a problem arose with my application (for example I had some paperwork missing) they didn’t contact me about it; they also were very unclear about what documents I needed to send. When the application was finally complete (which took 2 months in which time I was finding it more and more difficult to cope financially) I was awarded ESA. The payments didn’t appear and then a couple of weeks later I received a letter saying that I am not entitled to the benefit because I am “a student”. I in fact was not a student, but had a university place reserved for me for if/when my condition improved. The initial application phone call had asked about education, so they knew I had a university place already, but it took them 10 weeks to realise. As a consequence of all of this I was in great difficulty financially. I looked into what constitutes “a student” in terms of benefits and the information was impossibly hard to get hold of—it doesn’t appear to be on the DWP’s website, the benefits advisors didn’t know, advisors at the Citizens Advice Bureau didn’t know, and the university didn’t know. I eventually discovered that if you have a university place you are not entitled to benefits (such as ESA, JSA or housing benefit) AND you’re not entitled to any student finances (such as loans). Unable to apply for housing benefit I’ve become homeless, which is extremely stressful and frightening. Fortunately I had relatives 140 miles from home who have taken me in and provided me with financial assistance temporarily. It is not conducive to a good mental state to be 140 miles from home and my support system. I have had to give up my university place in order to reapply for benefits, and unfortunately my claim will not be backdated to mid-May when I initially applied. I really hope that there aren’t other people with mental health issues who are having as much difficulty as I have recently.

I listened with interest today to the discussion about the replacement benefit. I am a 59-year-old woman who has been told that I do not have enough insurance stamps paid to be given IB although they will pay my stamp. This they have been doing for the past few years, even though I have been told that my DLA claim meant that this should have been done. As my condition slowly deteriorates I have been had an increase to a grand total of around £37 per week. I do not qualify for Income Support as replacement as my husband (also on Incapacity Benefit) has a small medical retirement pension from our previous employer. Until recently I have been lucky enough to have a grand total of just over £17 to cover all my needs. I am therefore

reliant on my husband for all my financial needs. I have been waiting to hear about the result of my most recent ability to work questionnaire for almost six months now and have been told by dwp to wait until I hear from them again. In the mean time I am increasingly worried about bills and paying my share, let alone on everyday things like clothes, haircuts etc. I seem to be waiting forever for a decision, although I have previously been told that I no longer need to send in medical certificates. I hope this makes sense to you as I am at my wits end as to how to proceed. Thanks for your time.

My close friend (a single mother) recently had her “old” disability benefit cut from £90 to £64 after being told she is fit to work, following a recent re-assessment, even though she has severe mental health problems. (The first appointment had to be rearranged as she was too ill to attend. She only made it to the second one, as she was having a “good” day, and had someone to come with her). On contesting the decision, which had many factual errors, her benefit has now been immediately cut to £50. She was not at any point warned about this “punishment” issued for daring to contest the decision. I note that according to the CAB website, the decision should firstly be “revisited” by the original panel, before being referred to a tribunal, thus initially avoiding triggering this punishment. This was not done. She is now in despair as to how she will survive. Her mental condition has substantially worsened as a result of this. I am at a loss to know how to advise her.

I suffer from fibromyalgia, arthritis and asthma, my doctor in January of this year signed a sick note for me to say that I was unfit for work. I went for the Medical Assessment in April and it just so happens that it was a good day for me, so I was not surprised when the medical came back to say that I was fit to go back to work. I tried to appeal but I got no response from the people I spoke to. I am now in a situation where I’m being pressured to finding a job when it is obvious to anyone who sees me that I am unfit for work. I walk with difficulty and need a stick. My illness can change from day to day and I feel no one is interested in my welfare. I have just over 12 months to go before I retire and it makes me very depressed to think that I have to go through all of the procedures of looking for a job, otherwise my benefit will be stopped. I cannot go back to my doctor until six months after the medical for her to sign me off again. The ESA is politically driven, it has nothing to do with what is best for the individual.

My daughter who is 18 & has had ME for three years has recently had her medical and scored zero. She is so incapacitated by ME there is no way she could possibly go out to work even for two hours per week. The person doing her interview who my daughter thinks was a nurse gave her no chance to explain her symptoms and most of the questions are irrelevant to ME. She did not have the energy to insist on being listened to as she was exhausted by the journey to the medical centre. This feels like a kick in the teeth when you are suffering a horrible condition. It makes me wonder why my husband & I have been paying our taxes all these years.

My son, aged 22, has had ME on and off since 2001 but a relapse in 2005 left him unable to concentrate on reading or writing for more than 5–10 minutes without being physically sick. On the surface Jack looks incredibly fit and has worked over the last four years to train as a football coach for one hour a day three times a week—not enough to live on but enabling him to have some pride in earning some money. However, the process of getting him benefit has proved problematic all the way through as the system is very set in stone and no effort made to help individuals—as mentioned in the programme “one size has to fit all” and if you don’t fit into the category then that is your problem. Under the incapacity benefit you are allowed to earn over £20 per week for a year after which time you have to come off the benefit or give up the work! Jack needs to work a little more each year ie hour by hour to build up the stamina with his ME to enable him to do this. He is lucky that he lives at home with his parents at the moment. We are awaiting a letter at the moment to say whether he will be getting the ESA or not and in the meantime he has been without benefit from June.

I am presently supporting a friend through an appeal contesting their decision to stop her Incapacity Benefit. My friend suffers chronic fatigue syndrome and unfortunately due to many myths and ideas around the real validation of the symptoms, my friend is now having to live on her savings while the appeal takes place. I wonder what happens to those who don’t have savings? The emotional and mental trauma my friend is experiencing has intensified her symptoms due to all the stress because she is not fit to work. I don’t think there is any realisation of how disabling ME is. The medical was distressing but was made worse when we looked at how many points she scored. It was amazing as they had in no way considered what she had told them. My friend at times can barely walk any distance, has to rest to preserve her energy, have support to keep standing for a short period, yet she scored nothing for these components. I would like to ask those people who have decided to change the benefit system, have they ever suffered to the point of not being able to function compounded with the suspension of benefit because they believe, wrongly that my friend is capable to work when she clearly is not. The fear is she will become homeless, lose her savings because no one is clearly understand the devastating effects that ME has had on her life.

Dear You and Yours, I listened with interest to your item today on ESA and totally agree with the criticisms of the medical assessment process. I attended my own medical assessment last Friday and found the whole process frustrating and stressful. Firstly, I had to wait approximately 30 minutes to be seen in an empty waiting room without any explanation. I was eventually seen by an East European doctor whose English was poor and I am not sure how much she understood of what I told her about my condition and its effect on my life and currently my ability to work. Throughout, the interview she remained focused on her computer screen. I had previously filled in a self assessment booklet and the whole of this interview appeared to be a repeat of this without any reference to my already detailed answers. After about 20 minutes

she told me that we had little time left for the remainder of the assessment which was then rushed. When I pointed out that the leaflet sent out on behalf of the DWP by Atos Healthcare implies that assessments might take between 75 mins and up to two hours she became upset and told me that she was required to complete them in 40 minutes! I too was asked seemingly irrelevant questions such as “Do you have a pet?” and “Can you look after it?” I think the DWP is being disingenuous when it says that the assessment focuses on what claimants can do as well as what they can’t—I think they use this to justify taking people off benefit. I have a mental health problem—I was signed off work in November with depression brought on by severe stress. Fortunately, with support from my Occupational Health Team and my doctors and psychologist I hope to return to work in a few months time. I went into the assessment having prepared myself and having taken advice. I came out very stressed and upset (my blood pressure at the end was 195/121) and I hate to think what this experience would be like for someone with more enduring and “serious” health problems. I would be happy to contribute more and would like to submit my views and evidence to the Select Committee. Please feel free to use any of this e-mail but please can I remain anonymous—I don’t mind you using my first name—I am still awaiting a decision from the DWP on my claim based on this assessment!

I was awarded ESA on 19 February 2009, to be backdated to November. I received no payment until 3 July at which point I was paid 22 weeks @ £60.50. No letter accompanied this payment, which went direct into my bank, but I received two letters also on 3 July stating I have been refused ESA because I didn’t “pass” the medical assessment. This took place on 7 June yet the benefit stopped on 6 April. This is suspiciously close to the date when benefits were due to rise. I suspect I have fallen foul of “target setting”. The scoring of descriptors does not match in any way my own experience, nor that of my psychiatrist or GP. I applaud the notion of focusing on what an individual can do, not what they can’t, but why would an employee want someone who cannot leave the house because they have agoraphobia, or complete a simple task because their memory and concentration are so poor? I have used up all my savings and will soon have to sell my car in order to have money to live on as this is my only asset. The medical assessor gave no inkling of having received the training purported to be undergone by such assessors (as seen on a website), inasmuch as he was rude, unsmiling, unspeaking and focused almost entirely on barking out commands to move my limbs in particular directions etc. I have no recollection of questions asked about my mental state except a calculation on his part of the number of years I have suffered from depression. I withdrew psychologically from the whole experience since he was such a typical example of an individual who has little idea of how to behave with someone who has a mental illness. The upshot of all this is that my mental state has worsened considerably and yet I am supposed to sign on for JSA—this would be dishonest, given that I am not in any fit state to work. I strongly suspect this is simply a target-driven decision, aimed at allowing the government to deliver rhetoric regarding “getting people back into the workforce”, rather than a system of supporting people who are too unwell to work.

I fell ill with ME in November 2005 and experienced first hand the fact that neither the medical establishment nor the benefits system knows how to deal with sufferers. ME (or CFS) is a fluctuating illness with no visible outward signs. The most striking (but by no means the only) symptom is overwhelming fatigue. One day you might just about feel up to popping out to the shop, the next day you will be unable even to wash your hair. My GP diagnosed depression. He thought that I should give up my demanding job in the city and advised me to settle down and have children. I managed to persuade him to send me for tests but later found out that he had written referral letters warning specialists that my condition was psychological. He finally diagnosed CFS, but told me it was a “depressive” disorder. It was only several months later that I started researching ME and I understood what had happened to me. I had resigned my job without understanding what was wrong and I lost any sick pay due to me because my GP refused to sign me off work, saying he thought it would make my “depression” worse. I was sure I would get better once I had a chance to rest. I would recover in my own time and then start looking for work again. I lived off my savings (and the endless generosity of my husband) for nearly a year before I realised that this illness might continue and I had no money. Never mind—I had earned a very good wage when well and paid my taxes. Now was the time for the benefits system to help me. Unfortunately, it was not that simple. The benefits system treated me with a mixture of indifference and suspicion. I don’t think I ever spoke to the same person twice. On several occasions, long forms and letters were lost by the DWP. Not easy to deal with at the best of times, never mind when you are ill (too ill to function properly at work—its kind of the point of incapacity benefit). Slowly—too slowly, I started to feel a bit better. By April 2008, I was ready to consider my next move. I had a few “good” days in amongst the bad and I wanted to do something constructive with them. However no employer in their right mind would want to cope with the amount of sick days I would need to take, even if I could overcome the stigma of the illness and the gap in my CV. So I started researching a business idea from home, taking breaks to rest and days off as necessary. It took a year of this painful part-time struggle before I started to feel like I was working anywhere near to full time. Around this time, the benefits office contacted me regarding a medical assessment. I filled out a long form, explaining that I felt much improved and hoped to be finishing benefits soon. I just needed a couple of months to support me as I transitioned back into working life proper (the business was not making any money yet and my capacity was still pretty limited). The only response I received was an invitation to a medical assessment. I was asked to raise my arms above my head and touch my toes, and answered questions about practical disability. I received a letter the next week telling me that I had been kicked off benefits. There was no one to call to talk to about this and I decided not to waste my energy trying. I felt completely let down by the system from the beginning to the end of this illness. I don’t really talk about this experience now and try not to think about it too much. But I do feel that it’s important to improve things for those that follow. So when I heard the

programme about medical assessments, I thought I'd write my story and ask you to pass it on to the government. There are hundreds of thousands of sufferers in England alone and you don't hear from them—they are housebound and they don't have the energy to pursue better treatment. ME is a living death and the people who are suffering don't get heard. Please help them.

As far as I can see this is set up to harass the sick. My partner is ill and was sent for an assessment—the doctors opening words were—"they don't really want to give you the money so the test is a lot harder". How is it that we can live with bankers earning a 100K per week and are persecuting people who already have to deal with disability or illness and at best even with benefits will be living near to the poverty line.

My mother is a dementia sufferer. She is living in a nursing home and has to pay for her care. No-one has ever suggested that the NHS should pay. She has no capital, living in a rented, warden-controlled flat prior to moving from hospital to the home. She has to pay all of her nursing and state pensions, less about £21 a week. This, they say, is "sufficient to cover all her personal needs". In fact, this just about covers her hairdresser and chiropodist. All her other needs, clothing, shoes, slippers, toiletries, gifts, etc. I have to pay for. How can I go about getting mum re-assessed so that the NHS pays for her care?

Following the interesting and timely "You and Yours" programme on 5 August 2009, I should like to suggest one way in which the new benefit system can be more appropriately accessed by some claimants. As the present "one size fits all" is the least appropriate system for those suffering from serious long term incurable mental illness such as schizophrenia, a change is needed in this area. Having given active support to three mental health charities over the last 20 years, I have learnt that any system which tries to use compulsion and threats on people with schizophrenia will fail; it will serve only to increase their levels of uncertainty and anxiety, and reduce their levels of confidence—the exact opposite of what we should be aiming at. I have a suggestion to which it is worth giving serious thought. Some people with schizophrenia do manage against the odds to find a successful route into a rewarding occupation, not via compulsion but by "discovering" a path which offers them realistic choices. It would make sense, therefore, to remove those with long term schizophrenia from the compulsory job-seeking procedures required by the new system, and instead give every possible encouragement to these claimants to join the job-seeking system (modified appropriately) on a voluntary basis whenever they felt it was right for them. During this process (and whatever the outcome) the claimant's benefit would never be at risk. A smaller number of such volunteer claimants would certainly lead to an improved percentage success rate, especially with the support of knowledgeable and fully resourced advisors. The present system of compulsion spread over almost all claimants seems to me a worrying waste of professional time and public money.

Yesterday Terry Rooney MP was discussing the process of reviewing assessment and decision making processes for all benefits. I feel that currently the process of applying for DLA (Disability Living Allowance) is long winded and it also involves unnecessary appeals. I am registered blind and have no useful vision yet my claim for middle rate care DLA was turned down. I was then getting lower rate mobility and care components. I then appealed the decision and then we went to tribunal. The tribunal members could not understand the reasons for turning down my claim and awarded the middle rate care component. I know numerous other blind people who have been in this position. It is unnecessarily stressful for blind people and is a waste of time and money for the DWP. At best this is clumsy and inefficient as the fact that myself and others in this situation are blind was never in doubt. At worst, this is an example of DWP hoping that claimants will find the appeals process intimidating so they will just give up.

My wife has had a medical for ESA and the result was she had no points awarded. This is strange as she has diabetes systemic heart disease and a back injury from a work place accident (her employer does not acknowledge) she is not fit enough to go into the garden or be in a crowd of people as she becomes distressed and has no confidence. She is currently awaiting the outcome of an appeal. She has also had to appeal against a decision made regarding DLA.

It's useful to look at the rules for assessors. For example, the minimum level of problems with memory and concentration is: "Frequently forgets or loses concentration to such an extent that overall 6 day to day life can only be successfully managed with pre-planning, such as making a daily written list of all tasks forming part of daily life that are to be completed". So anything better than that is seen as being irrelevant to work, when it could actually be a factor making it impossible to work effectively.

I have recently been reassessed and signed off for a third three year period so am not so badly affected by what appears to be a fear mongering "innovation". I have, however, asked for help getting back into employment. I have been told that I am not entitled to support in this as I am not currently well enough to attempt full time employment. I cannot be the only person with a long term condition who would appreciate help working part time, or as self employed in a way which could make me more financially independent. I would have thought that if the system did support people in this way then the way that disability is assessed would seem less punitive.

I had my medical assessment yesterday. I have degenerative spondylolisthesis and am awaiting surgery on the NHS (am on the waiting list but do not as yet have a date). I am a freelance HR consultant and have been unable to work now for over a year. Initially pride prevented me from claiming any benefit. However, under duress, I relented and have been in receipt of the minimum award on a means tested basis since February 2009. I was told at my assessment yesterday that it is unlikely that the award will continue as I am fundamentally able to cope on my own. The doctor concerned also confirmed exactly what your programme

this morning has suggested, namely that ESA has replaced incapacity benefit as the government wished to reduce the number of claimants. He further suggested that the “see-saw” had now swung from one extreme to another. So, although I remain in considerable pain with my condition, and am awaiting surgery but with no scheduled date for hospitalisation, it is likely that I shall lose the ESA. I have paid income tax and NI contributions for 25 years and have never taken recourse to benefit from the state before. However, due to the assessment yesterday, I am now likely to lose any benefit.

I have had difficulties with medical assessments for benefits on a number of occasions. Mostly it has been hdoocr wrriin something completely different from what I said. They say I did things on examination I am physically incapable of. On one occasion two of their doctors said I was on mild pain killers, claiming I could buy doses of 60mg codeine over the counter. I had to get a letter from a dug company to counter this!

Surely the opinion of a Specialist, eg Consultant Psychiatrist, should be enough to satisfy the Benefits Agency that a person is unfit for work. If doctors are erroneously stating that patients are unfit then the Benefits Agency should address that, rather than submit the mentally ill individual to unnecessary worry and stress.

I am responding to your request for people’s experiences of problems claiming ESA. I was recently interviewed by the Guardian on this topic for a piece on welfare reform, due to be published in September, so I am very happy for my story to be told if required. I have had ME for 10 years. Until April 2008 I was fairly mildly affected and able to work almost full time. After completing my PhD I worked as a research scientist in various Universities across the country, most recently at the University of Strathclyde where I held a prestigious Fellowship in bio-nano-technology. In April 2008 I suffered a major relapse leaving me housebound, feeling extremely ill all day, very weak, sick and dizzy and struggling to do basic tasks such as prepare a meal. I suffered huge cognitive problems—I was even unable to watch TV or listen to music for more than 20 minutes at a time. I was eventually forced to leave my job. I applied for ESA in January 2009. Even filling in the medical questionnaire form was a major task, that took me three weeks, doing five minutes a day. I was invited to attend a medical assessment. However as the travelling and the assessment itself was likely to take over two hours, there was no way I was well enough to attend this. At this point a 20 minute trip to a local cafe would leave me extremely ill for days. My GP wrote and explained this to the company Atos who carry out the assessments, asking for a home visit. Atos refused. After a lot of effort (please see note below), including getting my MP involved, they did eventually agree to a home assessment. The stress and worry greatly affected my health. The assessment took place in April. In May I heard that I had not qualified for ESA. I had 12 points and needed 15. I am not even close to being able to work an hour a week, yet according to the system, I haven’t scored enough points. The doctor who examined me at the assessment himself wrote comments such as “she can’t Hoover, wash dishes or make beds and struggles to stand in the kitchen-she usually sits. She needs to hold on to the rail when using the stairs and sometimes crawls on the stairs due to fatigue and pain. She struggles to move from one room to another on bad days . . .” “On good days she can prepare meals for a few days by dividing this into 5–10 minute stages of activity” and “Dr Wood is likely to have significant disability regarding walking, standing and using stairs”. I do not understand how anyone reading this description can possibly think I am well enough to work. I have no choice but to appeal the decision—a long, costly (for the government) and complicated legal process that is extremely stressful and is leading to a further deterioration of my health. This could ultimately lengthen the time that I am out of work for, thus costing the government even more money. The system not only completely fails to identify correctly those who are not fit to work, but is also extremely stressful. I do not know of one person with ME who has not suffered additional physical or mental health problems as a direct result of the process of applying for benefits. The descriptors are not sufficient for conditions like ME, where “energy level” or level of functioning are often the main disabling factors. Although the condition is variable, it is quite clear that even on a good day I couldn’t work whatever the job is. It is not just the descriptors that are a problem, but the way in which they are applied. For instance in my assessment I was asked if I could lift my hands above my head, and if I could bend down to pick something off the floor. I did both of these things, and scored no points on these descriptors, however, I am unable to repeat them in any way that is useful, either for day to day living, or indeed for work. For instance I am unable to hang washing out, as I would have to repeatedly lift my hands above my head, which would leave me exhausted. Similarly I am unable to bend down to weed the garden for more than a few seconds due to pain and weakness in my legs. The system should take into account the effect of these actions on the functionality of day to day living, rather than assuming that because someone can do an action once, they can do it happily all day. Another problem is that the descriptors concentrate on tasks related to everyday living, yet are assessing people for whether they can work. Once again, it is people with ME who suffer badly from this approach. Someone may be at stage where they can just about get through the day, cook a meal and do some household tasks, but going out to work would be still too much. What is needed is a much more humane approach that can effectively distinguish between those ill and unable to work and those who need help to get back into work. A humane approach should look at individual circumstances. For instance, I do not understand how anyone can think I would want to give up a promising career as an academic scientist to live like this, let alone give up the £500 a week salary (after tax) to live on currently, £65 per week. I am highly skilled, I have huge drive and enthusiasm, and I am desperate to get better and back to work. I have paid my taxes for many years, and I and many others who are unable to work due to ill health, are not only entitled to help, but entitled to be treated with integrity and respect during this awful period of our lives. Note 1: The company (Atos) would not tell me the criteria they used for deciding if a home visit was appropriate. They said the decision was made by one

of their doctors but would not disclose the guidelines. There was no way to directly challenge the decision. I spoke to their complaints office in Leeds, they advised me to make a freedom of information request to find out what the guidelines were. There was not time to do this. Eventually after my husband spent a long time on the phone, over several days to the DWP a supervisor agreed to get the number for someone at the Atos Glasgow office so we could talk to them (This number is not publically available). The DWP claimed they did not know what guidelines the company should be using even though Atos is subcontracted by the DWP. The lady at Atos just kept telling my husband to complain to the Leeds office which he had already done. Although she didn't sound very helpful on the phone she did then get a doctor to review the case and he agreed to a home visit. This was a very protected and stressful procedure for getting a home visit which exacerbated my symptoms—not great for helping me get back to work

Following your programme the other day I would like to briefly summarise my experience of the “medical assessment” carried out on the behalf of the DWP and the following appeal. Prior to my medical on behalf of the DWP; 1992—97, Dissection of disc in lower spine, two steroid injections, traction and countless physiotherapy, acupuncture, osteopathy sessions and pain killers. Autumn 2006 discs in my lower spine deteriorated so that I could not stand at all for over one week. I have been on pain killers from that point. Early 2007 the discs in my spine prolapsed to the extent that I could not stand for three weeks, required walking stick for next two months, on strong pain killer, opium based, for nine months, (MRI scan and -rays confirmed cause of pain), then on codeine until medical at DWP 2008. At medical March 2008 the doctor asked me to try to touch my toes while standing, but I could not get near, then both legs went into painful cramps and spasm and I had to hold on the pillar in the office to prevent falling to the ground. The doctor listed in his assessment/report in which I received “0” points, that these symptoms specifically did not occur. There were many obvious falsehoods in his report such as the medicine I was taking had “no reported side effects”. Anyone with the slightest medical knowledge will know this is unlikely of any medicine. Much of the “evidence” quoted from the doctor was in no way carried out even allowing for his “special expertise”. That evening while lying on the floor watching TV (as always since 1992), both my legs simultaneously went almost entirely rigid, into terrible painful spasm and it took me 30 minutes to stand and move about to recover. Approximately three months later the discs deteriorated again so that I was put back on opium, crawling on all fours, could not open the front door for three weeks, and needed the walking stick for following two months. Subsequently I had third MRI scan, confirming further deterioration, so I had a steroid injection in the spine which has currently alleviated the worst of the symptoms but I am permanently now on codeine as pain is constant and easily aggravated by sitting or basic daily chores. At my appeal in January 2009 I felt that all my evidence including a CD record of my MRI scan, had not been taken seriously. I was told that the board had not been able to look at the CD prior to the appeal as they had not been able to find a PC. (It had worked OK on my own “low spec” PC). Also one of the board observers spent 90% of the time behind me, re packaging office photo copy toner cartridges and taping up the boxes which was rather noisy. I had already explained I was having trouble hearing due to the (elderly) doctor on the board speaking very quietly indeed, while looking down at her notes and I now have permanent hissing in the ears from the medication. The appeal was disallowed. I was employed without interruption from age 16 until 41. I would dearly love to find regular work that doesn't return my health to square one and pays my rent but this is proving extremely difficult. From my own and others experiences, I am certain people not working are systematically being treated with serious sly dishonesty and contempt by the DWP, because much money needs to be saved and it is easy to get away with.
