

Disability – what disability?



A report on the difficulties people with mental health issues face when claiming benefits

October 2019

SUMMARY

This report looks at the difficulty people of working age with mental health issues encounter in applying for eligible benefits, as well as the difficulties they face managing the claim once the benefit has been awarded.

A Work and Pensions Select Committee published a report in February 2018 which stated that *“For most claimants, PIP and ESA assessments go smoothly. But in a sizeable minority of cases, things go very wrong indeed. Those cases, set alongside other problems throughout the application and assessment process, fuel a lack of trust amongst claimants of both benefits. The consequences—human and financial—can be enormous. Our recommendations aim to correct the worst of these problems and rebuild claimant trust. Properly implemented, they will bring real improvements for claimants going through the system now and in the near future. The question of whether a more fundamental overhaul of welfare support for disabled people is necessary remains open. We do not intend this to be the end of our work on PIP and ESA.”*¹

This report uses case studies to demonstrate the actual processes that some of our clients have been subjected to. Most people will be aware of some of the many stories that are published in the press, but there are clearly hundreds more claimants who are refused benefit and may not be aware of the help that is available to challenge these decisions from organisations such as Citizens Advice. These claimants can suffer extremely detrimental effects to their health when negative decisions are made, and it is hoped that reports such as this will draw more attention to their plight.

INTRODUCTION

Mental health disorders affect around one in four people in any given year. They comprise a broad range of problems with different symptoms and can be described as a combination of abnormal thoughts, emotions, behaviour and relationships with others. These disorders manifest themselves in a number of ways such as depression and anxiety, to rarer problems such as schizophrenia and bipolar disorder. Unlike physical illnesses they can be difficult to diagnose.

There is no single cause for mental health disorders – they can be caused by a mixture of biological, psychological and environmental factors. People who have a family history of mental health disorders may be more prone to developing one at some point. Psychological factors such as upbringing and social exposure can form the foundations for harmful thought patterns associated with mental disorders. Changes in brain function from substance abuse or changes in diet can also cause mental health disorders. Examples such as schizophrenia, depression, intellectual disabilities and disorders due to drug abuse can often be successfully treated.

Depression often coexists with other mental health disorders, or certain disorders may have caused depression to start with, e.g. 40% of people with post-traumatic stress disorder also have depression.

There are various approaches to mental health and mental illness around the world. Most health professionals in the UK agree on a similar set of clinical diagnoses and treatments for mental health problems. Prescription drugs can be used in conjunction with behavioural therapy or cognitive therapy. Antidepressants, mood stabilizers and antipsychotics are the broad types of medication prescribed to treat mental illness.

Experiencing a mental health problem is often upsetting, confusing and frightening – particularly at first. Sufferers may feel that it's a sign of weakness, or that they are "losing their mind", and have described their experiences as follows: *"I now know that if I felt there was something wrong, it's because there was, but I didn't understand mental health fully....it's a spectrum and you should feel able to decide where and when you are on that spectrum.."*

In the UK, human rights are protected by the **Human Rights Act 1998**. The Act gives effect to the human rights set out in the European Convention on Human Rights.

The **Equality Act 2010** says you mustn't be discriminated against because of your disability. Some conditions are automatically treated as a disability under the Equality Act, but if you don't have one of these conditions and you want to make a claim for disability discrimination, you will have to show the effect your condition has on your daily life in order to prove it's a disability.

Guidance on the gov.uk website states:

"You're disabled under the Equality Act 2010 if you have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities".²

What 'substantial' and 'long-term' mean

- 'substantial' is more than minor or trivial, e.g. it takes much longer than it usually would to complete a daily task like getting dressed
- 'long-term' means 12 months or more, e.g. a breathing condition that develops as a result of a lung infection. ²

DISABILITY BENEFITS

If a person is sick or disabled, there are a number of different benefits they may be able to claim. This report concentrates on working age claimants so the relevant benefits, which are explained in more detail below, are Personal Independence Payment (PIP) and Employment and Support Allowance (ESA). PIP can be paid to claimants who may also be working, and is not means tested. ESA is an earnings replacement benefit and is means tested. Both PIP and ESA can be paid to a claimant at the same time. ESA is being replaced by Universal Credit (UC) and is explained below.

Potential disability benefits and eligibility criteria for all claimants:

- If aged 16-64 with a long-term health condition or disability that affects the ability to live independently, a person may be able to claim **Personal Independence Payment**
- If under 16 with a health condition or disability that means more care or supervision is required than for other children of a similar age, a child may be able to claim **Disability Living Allowance**
- If 65 or over and with care needs, a person may be able to claim **Attendance Allowance**
- If unable to work, a person may be able to claim **Statutory Sick Pay** or **Employment and Support Allowance**, or **Universal Credit**.

Personal Independence Payment

Personal Independence Payment (PIP) was introduced on **8 April 2013**. Prior to this date Disability Living Allowance (DLA) was awarded up until the age of 64. Claimants who were previously in receipt of DLA are not moved automatically to PIP – they are invited to apply for it and this process is still ongoing.

A person does not need to have worked or paid National Insurance to qualify for PIP. It is not means tested so their income, earnings or any savings they may have is not taken into consideration.

PIP is not based on the condition a person has nor the medication they take. It is based on the level of help needed because of how the condition affects them. The claimant is assessed on the level of help needed with specific activities and points are awarded depending on this. There are two components of PIP – for **care** and **mobility** – and each component has both a **standard rate** for which the claimant

needs to be awarded 8 points at assessment and an **enhanced rate**, which requires 12 points.

Making a claim for PIP is not straightforward and it can often take several months before the benefit is paid. If there are specific **physical issues** that require help then it can be easy to see where the points will be awarded, but for people with **mental health issues** it can be much harder for the claimant to explain clearly how their condition affects them. The case studies later in this report demonstrate the difficulty that is so often encountered by people with mental health issues.

Employment and Support Allowance / Universal Credit

Employment and Support Allowance (ESA) is a benefit for people with limited capability for work because of ill health and/or disability. Claimants need to score 15 points on the assessment and are then placed into one of two groups – the **work related activity group** (WRAG) or the **support** group. Those claimants placed in the WRAG, must meet certain work related conditions including attending work focussed interviews and possibly doing work related activities, whereas those placed in the support group do not have to meet these conditions. Support group claimants are also paid a higher rate of ESA.

New claims for ESA can no longer be made and claimants now need to claim either **new style ESA** or **Universal Credit** (UC) but the claiming process remains the same in that they will need to attend a medical assessment to demonstrate that they have limited capability for work. (UC has replaced all means tested benefits including Jobseekers Allowance and Tax Credits so can also be paid to people who are fit and able, who are seeking work or are working.) As with ESA, claimants who are not able to work are allocated to one of two groups within UC, depending on how their condition affects them. These are called the **limited capability for work** (LCW) group and the **limited capability for work-related activity** (LCWRA) group. These groups differ in the same way as the WRAG and support groups in ESA differed.

As with PIP, it can often be difficult for claimants with mental health issues to satisfy the criteria to be awarded ESA or UC.

The claiming process

When a claimant first submits a claim for disability benefits to the DWP they are required to complete a long application form which asks for details about the claimant's ability to carry out day-to-day activities and get around. Citizens Advice train advisers to complete these forms to best describe the claimant's difficulties, but many claimants complete these forms themselves.

Most claimants are then asked to attend a face-to-face assessment with a health care professional. Applicants with mental health issues can be caused an enormous amount of stress and anxiety at the thought of this assessment and often have to overcome huge fears in order to attend. A home visit can be arranged but this can

take many weeks to organise, in which time the stress can become unbearable for the claimant.

Once the assessment has taken place, a DWP Decision Maker assesses whether the claimant is eligible for the benefit and the claimant is then informed, in writing, of this decision within one month. If it is refused they have two chances to request that the claim is reassessed – firstly by requesting an internal DWP review, known as a **mandatory reconsideration**; and if the decision remains the same, they can then request an **appeal** which will be heard by HM Courts and Tribunals Service. There are strict time limits in which to make these requests – one month from the date of the decision letter.

The select committee report into disability benefits referred to earlier¹, published on 7 February 2018, clearly acknowledges that there is breakdown of trust from claimants in the claiming process. Witnesses told the committee that there are recurring problems throughout the application and assessment process resulting in the perception that it is “*opaque and unfriendly throughout*”. These problems include:

*“a) claimants experiencing difficulty filling in application forms and understanding the basis on which they are being assessed
b) basic accessibility issues relating to the forms and to arrangements for assessments, including home visits
c) the inconsistent application of guidance on claimants being accompanied to assessments, including whether the comments of their companions are given due weight in assessment reports
d) concerns about the expertise and diligence of contractor HCPs [Health Care Professionals], and how weaknesses in this area affect decision-making
e) the effectiveness and rigour of Mandatory Reconsideration as a check on initial decision making, and consequential reasons why Departmental decisions are overturned at appeal.”*

The Guardian reported that an Inquiry in 2017 into disability benefits was deluged by tales of despair: “*more than 3,000 people have written to the work and pensions committee in despair at the system, saying they have been driven to suicidal thoughts*”³. The evidence included testimonies saying that claimants’ mental health had deteriorated as a result of trying to claim ESA and/or PIP to cover the extra costs caused by long-term disability.

In February 2018, it was reported that the DWP had spent more than £100m in just over two years on administering reviews and appeals against disability benefit decisions. Tens of millions of pounds were also spent by the Ministry of Justice on the appeals, about 2/3 of which were won by claimants, in the 12 months to February 2018. Between October 2015 and February 2018, 87,500 PIP claimants had their decision changed at mandatory reconsideration, while 91,587 others won their appeals at tribunal. In the first half of 2017-18, 66% of PIP appeals went in favour of the claimant, with 68% of ESA appeals also going in favour of the claimant.⁴

Disability Rights UK update of 16 January 2019⁵ reports that “*Government disability benefit spending has increased by 15% to 20% despite the aim of reducing it by a fifth according to a new Office for Budget Responsibility (OBR) report*”.

The OBR says that the introduction of PIP has cost £4 billion more than estimated due to DWP predictions dramatically under-estimating the costs of its roll out from 2013.

Chair of the Work and Pensions Committee, Frank Field said:

“DWP told us PIP would save taxpayers money and introduce a fair, transparent assessment process. Today’s report lays bare that it has achieved neither ... Far worse, though, is that the PIP assessments are riddled with repeated and serious errors and have caused untold anxiety and misery for far too many of the people who rely on the benefit to live.”

There are many “horror stories” of people trying to claim benefits such as a disabled woman forced to crawl up the stairs at a benefits centre or medically inappropriate questions asked such as where the claimant had “caught” Down’s Syndrome from or how long they had suffered with spina bifida, etc.

Citizens Advice Rutland is funded to employ a dedicated benefits caseworker who assists clients with their appeals for all benefits including disability benefits such as PIP, ESA and UC (for the limited capability for work groups). This involves helping the claimant to obtain medical evidence from their health professionals to support their case and to prepare a written statement referencing the legal position of the claim which will be submitted at the hearing.

One such case involved the appeal of a client ‘A’ who was reassessed for PIP having previously been in receipt of the enhanced rate for care and the standard rate for mobility. ‘A’ was diagnosed with paranoid schizophrenia in 2010 along with associated OCD, Anxiety and Stress which she has suffered with since 2007. She is supported by the Community Mental Health Team who closely monitor her condition and any side effects that her medication may induce.



The reassessment awarded her only the standard rate for care and nothing for mobility. The date of this decision was 12/10/2017.

The appeal was eventually heard 10 months later on 16/08/2018 and ‘A’ was awarded PIP with the enhanced rate care and standard rate mobility. The decision stated that *“at the date of the appealed decision, the claimant suffered from paranoid schizophrenia with hallucinations, delusional thoughts and stress related persecutory ideation as well as obsessive compulsive disorder and anxiety”*. The decision notice also noted the level of benefit that ‘A’ had previously been awarded and that her *“condition has only worsened”*.

The appeal relied heavily on the evidence provided by Citizens Advice Rutland which included letters from the client’s consultants radically contradicting the report of the health care professional who conducted the PIP assessment.

Another case that our benefit specialist helped with was client 'B' who had been in receipt of Disability Living Allowance at the high rate for care and the lower rate for mobility for some years, and had been asked to claim PIP. Following a medical assessment she was awarded 0 points for each component. 'B' suffers with bipolar disorder, borderline personality disorder (BPD), post-traumatic stress disorder (PTSD) and obsessive compulsive disorder (OCD).



On 27/09/2017, the disability assessor appointed by Capita deemed 'B' capable of all activities but Citizens Advice Rutland's caseworker identified blatant untruths in the Capita disability assessors' report. 'B' was described as "*maintaining good eye contact*", which she simply cannot do; that "*she was able to hold the door handle*" – her OCD prevents her from ever doing this and the assessor in fact held the door open for her; that "*she attended the assessment unaccompanied*" when she is unable to leave the house without the help of her partner who attended the assessment with her.

The appeal was heard on 25/07/2018 and stated that "*by reason of her existing medical conditions, 'B' is significantly limited. In reaching its decision the Tribunal placed particular reliance upon the written evidence in the claim form, the GP letter and upon the oral evidence of the appellant and her accompanying partner. We have also made this award based on our own observations from the time the Appellant walked into the hearing room right up to the end of the hearing*".

'B' was awarded the **enhanced** rate of both components. The time taken for this claim to be resolved (10 months) is typical of such cases. The stress of the appeal that was caused to 'B' cannot be measured – her GP confirmed that the level of self-harm increased and there was a significant increase in her suicidal ideation, which prompted the caseworker to assist 'B' with a formal complaint to Capita. The caseworker contacted the local MP who supported Citizens Advice Rutland with the complaint.

Following personal tragedy several years ago, client 'C' found herself unable to work and had been placed in the support group of ESA. She suffers with severe anxiety and depression, and has regular panic attacks and emotional outbursts. The thought of leaving her house causes her to panic and causes diarrhoea, which then leads her to panic further. She wakes repeatedly throughout the night with intrusive thoughts and vivid dreams of family members coming to harm. She self-harms as a way of coping and has been hospitalised following suicide attempts.



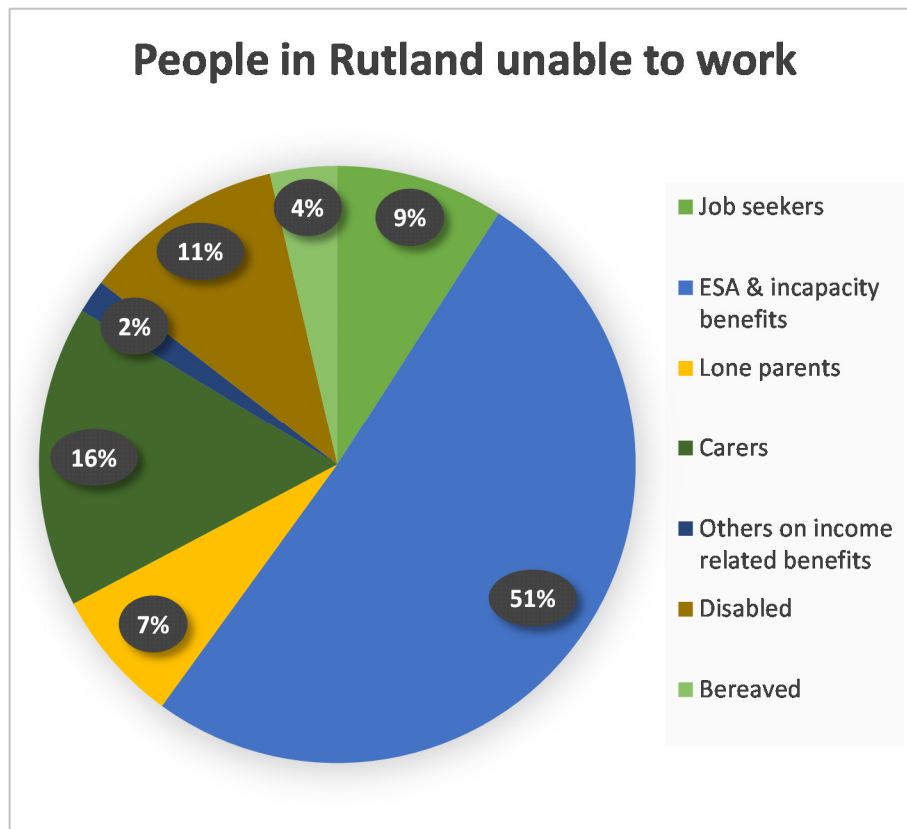
'C' was reassessed for ESA and was awarded 0 points on 11/10/17. The original decision was upheld at the mandatory reconsideration, so the Citizens Advice Rutland welfare rights specialist assisted with an appeal. When the appeal was heard, over a year later on 21/11/18, 'C' was awarded 18 points, and placed in the support group. The Judge stated in the appeal decision that no descriptor on the ESA regulations was satisfied but Regulation 35 of the ESA Regulations applied. This regulation states "*by reason of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity*".

These three case studies demonstrate clear and obvious eligibility for disability benefits but unfortunately, the assessors did not believe this to be the case.

In August 2018, new figures showed that DWP Decision makers are questioning only a tiny proportion of the Atos and Capita PIP medical assessment reports⁵. Figures from social security tribunals show the proportion of claimants who won their PIP appeals rose by seven percentage points in a year, from 64% in the fourth quarter of 2016-17 to 71% in the same period of 2017-18.

Complaints as to inaccuracy and omissions by Atos and Capita Health Care assessors have continually been made since PIP was introduced in 2013.

It can be seen from the chart below that the majority of people in Rutland unable to work are in this position due to poor health, and they are therefore in receipt of disability benefits. The table does not differentiate claimants with physical or mental health issues. It is worthwhile noting that there is very little (0.5%) unemployment in Rutland.



Source: November 2016 – ONS – Working Age Client Group – Main Claimants

CONCLUSION

Welfare benefits is the largest advice area delivered at Citizens Advice, and this work gives us a clear insight into the way in which the system works and the challenges it poses. Local Citizens Advice offices have a huge amount of information on the issues clients and the local community are facing and what policies or practices aren't working.

When Citizens Advice advisers record details of clients' issues and complete evidence forms this also enables Citizens Advice Head Office to monitor what is happening nationally and aids with national research and campaign work.

We can use this insight and data to do several things:

- To help us to research issues further
- To influence decision makers to change policies and practices
- To campaign to get decision makers to change policies and practises.

By collating this information, Citizens Advice is able to help policymakers understand the impact of changes, and to work for a better service design as well as highlight the importance of robust advice and support. Citizen Advice is also able to provide evidence to strengthen reports such as The Select Committee's report of February 2018 which stated:

"We recommend that the Department commission and publish independent research on the impact of application and assessment for PIP and ESA on claimant health. This should focus initially on improvements to the application forms, identifying how they can be made more claimant-friendly and less distressing for claimants to fill in."

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