



Northern Ireland

Public Services
Ombudsman



OWN INITIATIVE

SUMMARY REPORT

PIP and the Value of Further Evidence:

An investigation by the Northern Ireland Public Services Ombudsman into Personal Independence Payment



In June 2019, my Office commenced an Own Initiative¹ investigation into the role of further evidence in the administration of Personal Independence Payment (PIP) in Northern Ireland. This report sets out the findings and recommendations of that investigation.

PIP is a non means tested benefit for people of working age (16 – 64 years) intended to provide help toward some of the extra costs arising from having a long term health condition or disability. The Department for Communities (the Department) administers and awards claims for PIP, but the impact of a claimant's disability or health condition is assessed by Capita, a private sector contractor.

I chose to focus my investigation on examining the availability and application of further evidence in the administration of PIP. Further evidence in PIP is evidence which is additional to the claimant's PIP application form and any evidence that is gathered through a face to face consultation with a Disability Assessor. Sources of further evidence in PIP can include, but are not limited to:

- reports from health professionals involved in the claimant's care, such as a community psychiatric nurse or a general practitioner;
- evidence from those who support the claimant, such as care co-ordinators or key workers;
- prescription lists and care or treatment plans; and
- information provided directly by the claimant.

¹ Using powers set out in Section 8 of the Public Services Ombudsman Act (Northern Ireland) 2016.

In my investigation I gave detailed consideration to a number of issues including:

- How the Department and Capita inform claimants of the role of further evidence in the PIP assessment process;
- How the assessment of further evidence is recorded and reviewed; and
- How the Department and Capita investigate and address complaints relating to further evidence.

I fully recognise that the delivery of PIP is sizeable with over 250,580 PIP claims registered since June 2016 when PIP began replacing Disability Living Allowance (DLA) in Northern Ireland.² I also recognise that significant work has gone into implementing PIP in a timely manner and that the Department through engagement has acted to introduce some initiatives unique to Northern Ireland which are not available in Great Britain.

Whilst I acknowledge and welcome the work undertaken, it is my role as Ombudsman to investigate and determine if systemic maladministration has occurred, report my findings and make recommendations. Had I not found systemic maladministration I would have reported this, as I have a role to reassure the public where it is right to do so. However, overall my investigation has made a finding of systemic maladministration having identified repeated failures which are likely to reoccur if left unremedied. It is therefore my view that there is more work to be done to improve the experience and outcomes for claimants, the robustness of decision making and public confidence in the system.

Methodology

My Investigating team:

- reviewed 100³ PIP case files and accompanying telephony records, testing the Department's and Capita's actions against the Principles of Good Administration⁴;
- made extensive enquiries to the Department and Capita;
- undertook site visits;
- engaged with a range of external stakeholders, and
- appointed an external advisor to review the investigative methodology used.

² *Personal Independence Payment Experimental - Statistics* February 2021, Department for Communities, Northern Ireland Statistics and Research Agency, published May 2021. Available from: <https://www.communities-ni.gov.uk/articles/personal-independence-payment-statistics>

³ The 100 cases included claims which had been through all stages of the PIP process, including Mandatory Reconsideration and submission of Appeal, and claims where the claimant had made a complaint to both Capita and the Department.

⁴ Published by the Parliamentary and Health Service Ombudsman on 10 February 2009. See Appendix A & B.

The qualitative nature of the investigation design has provided me with a very rich insight into the Department's (and Capita's) powers, policies, practices and culture. The briefings and site visits with the Department and Capita, the documentation of their policies, procedures and guidance, plus their detailed comments on my draft investigation report have provided me with a comprehensive understanding of how the processes are intended to operate, and how the various staff are meant to undertake their tasks in the performance of their roles.

The Principles of Good Administration

The Principles of Good administration propose a clear framework within which public bodies should seek to work. At the same time, the Principles of Good Administration help clarify the expectations against which my Office will measure performance.

Principles of Good Administration

Good administration by public bodies means:

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

The Principles are intended to promote a shared understanding of what is meant by good administration and to help public bodies in the Ombudsman's jurisdiction provide a good public service to their customers.

I have set out below where my investigation found significant departures from the relevant principles of good administration which I consider to constitute systemic maladministration. I have also made a number of recommendations which, I hope, will help put things right.

Getting it right

Central to '**Getting it right**' is getting the PIP benefit decision right first time. Focusing efforts on conducting a robust assessment of PIP claims, at the outset, is essential to delivering the right support for individuals at the right time and reducing any unnecessary stress. It also safeguards public resources, in terms of saving the time and costs associated with undertaking further examination of the same claims at another step or steps in the benefit decision process. It is estimated that PIP appeal costs, between April 2017 and March 2021, are nearly £14 million.⁵

PIP is a benefit designed to provide support to people who have a disability or are living with a long term health condition, some of whom are the most vulnerable members in our society. Vulnerable claimants may find it more difficult to access and navigate complaints and review mechanisms in the same way as other members of the public. It is therefore highly likely levels of unremedied injustice are significantly higher for these individuals than amongst the wider population.⁶

It is clearly explained throughout the PIP policy and application process that further evidence may form part of the decision taken in relation to a PIP claim. The importance of further evidence in PIP decision making is perhaps best illustrated by the fact that the Department refer to 'new' evidence as being the basis for the overturn of decisions in over 20% of mandatory reconsideration requests; i.e. additional evidence which was not available to the original decision maker.⁷ The Department also state that 'new' evidence is a significant factor in the overturn of decisions at appeal, for which there is currently a 63%⁸ success rate.

Unfortunately, the manner in which the Department gathers and collates the data relating to all aspects of further evidence (including its request, receipt and application in the decision making process), which I will detail under the principles of '**putting things right**' and '**Seeking continuous improvement**', leaves me uncertain as to the accuracy of the reasons, as presented by the Department, for the overturn of decisions. Based on the figures presented however, taking Mandatory Reconsiderations and Appeals together, there are at least 21,853 claimants of PIP for whom the eventual award entitlement was

5 *The Management and Delivery of the Personal Independence Payment Contract in Northern Ireland*. Report by the Comptroller and Auditor General. 23 March 2021. Available at www.niauditoffice.gov.uk/publications/publications/management-and-delivery-personal-independence-payment-contract-northern-ireland

6 Gill, C. (2020) Chapter 5 'The Ombud and Own Initiative Investigation Powers' in 'A Manifesto for Ombudsman Reform' edited by Richard Kirkham and Chris Gill, Palgrave Macmillan

7 Assembly Question AQO 162/17-22 – February 2020. Available at <http://aims.niassembly.gov.uk/questions/printquestionsummary.aspx?docid=295394>

8 AQW 13505/17-22 – February 2021. Available at <http://aims.niassembly.gov.uk/questions/printquestion-summary.aspx?docid=324195>

not made at the earliest possible point in the process.⁹ Many more may have disagreed with the initial decision or Mandatory Reconsideration outcome, but felt unable to face challenging it further.

Despite the stated importance and value of further evidence to the benefit decision making process, as set out in the Department's own policy and procedures, and its reported significance in the overturn of decisions, it was surprising to learn, based on revised Capita figures, that further evidence was only requested in approximately 25% of the total number of PIP cases between August 2019 and April 2020.¹⁰

My investigation found that:

- At the Initial Review stage, further evidence was requested by Capita Disability Assessors in only 35 of the 100 claims that I examined. This figure includes both written and telephone requests. Whilst 10% higher than the overall 25% average, given the importance of further evidence to the PIP process it is lower than would be expected.
- Despite Disability Assessors having the ability to request further evidence at all stages of the PIP process, of the 96 claims routed for face to face consultation, further evidence was requested in only one case at the Assessment stage.
- The most commonly recorded indicator for deciding not to request further evidence was that it was unlikely evidence would be obtained within the timescale required.
- Capita's own written process, in respect of claims routed for a face to face consultation, almost acted as a deterrent to further evidence being gathered from other sources, despite claimants being left with the clear impression it would be an important part of the decision making in their claim.
- When evidence was requested from Health Professionals named by the claimant, the request letters sent by Capita were often poorly completed and did not specify what information was sought.

⁹ 13,040 registered MRs from June 2016 until November 2020 resulted in New Decision & New Award. *PIP Experimental Statistics Supplementary Table (November 2020)*. Available at www.communities-ni.gov.uk/publications/personal-independence-payment-statistics-november-2020
8,813 PIP Appeals Successful. AQW 13505/17-22. Available at <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=324195>

¹⁰ As set out in Chapter 8 of my report, Capita had provided the Department with inaccurate management information pertaining to 'further medical evidence', this inaccurate management information was initially provided to my investigation. Subsequently Capita provided revised management information for August 2019 to April 2020. This figure is based on the number of written requests made during this period and does not include requests made by telephone (the figures for telephony requests are not routinely collated by Capita).

- In the face to face assessments, the evidence from the consultations was often the primary and in some cases the only source of evidence relied upon by the Disability Assessors when providing their advice to the Department.
- Disability Assessors did not explain or record why more reliance was placed on their observations at a face to face consultation than other available evidence from claimants, carers or professionals.
- In addition to passing quality audits, Capita use information about the number of assessment reports completed and submission times to decide bonuses for Disability Assessors. Time pressures and incentives have the potential to inhibit the appropriate use of further evidence to improve the quality of assessment advice.

Extract from Case Study 1, Chapter 2 on Initial Review Stage

Claimant F, whose primary condition is listed as Learning Disability, applied for PIP on 8 September 2018.

Award History:

DLA: Middle Care: Lower Mobility

First Tier Decision (14 November 2018): No Award, No Daily Living (0 points): No Mobility (0 points)

Mandatory Reconsideration (5 December 2018): No change

2nd Mandatory Reconsideration (22 December 2018): Standard Daily Living (9): Enhanced Mobility (14)

This case identifies that evidence supplied by a health professional, whose contact details were provided by the claimant within the PIP2 application form, had a significant impact on the claim. In this case changing the decision from no award to Standard Daily Living and Enhanced Mobility. There are no records to confirm whether or not the health professionals provided on the PIP2 were considered by the Disability Assessor at the outset of the claim. An opportunity may therefore have been missed to request evidence at an earlier stage of the process in order to get the decision right first time.

Extract from Case Study 1, Chapter 3 on Assessment Stage

Claimant O, whose primary condition is listed as Multiple Sclerosis, applied for PIP on 10 June 2018.

Award History:

DLA Award: *Middle Care: Higher Mobility*

First Tier Decision (13 November 2018): *No Daily Living (6 points): Standard Mobility (10 points)*

Mandatory Reconsideration (5 January 2019): *No change*

Lapsed Appeal (7 March 2019): *Enhanced Daily Living (12): Enhanced Mobility (20)*

This case raises concerns that the Disability Assessor, at Assessment stage, did not appear to consider it relevant to seek evidence from identifiable health professionals to help improve the quality of advice. It reflects the risk associated with the policy and practice that indicates face to face consultations negate the need to consider and pursue other evidential opportunities.

Extract from Case Study 4, Chapter 3 on Assessment Stage

Claimant P, whose primary condition is listed as Parkinson's Disease, applied for PIP on 29 July 2018.

Award History:

DLA Award: *Higher Care: Higher Mobility*

First Tier Decision (12 October 2018): *No Award, No Daily Living (0 points): No Mobility (0 points)*

Mandatory Reconsideration (24 November 2018): *No change*

Offer of Lapsed Appeal (24 December 2018): *Standard Daily Living (9): Enhanced Mobility (12)*

It is alarming that no explanation was provided in the justification section as to why no apparent weight was given to the GP's evidence nor therefore were the contradictions in the evidence obtained by the Disability Assessor explained. If no weight was attributed because the evidence from the GP was deemed out of date, it is equally concerning that up to date evidence was not sought. In particular as the consultation findings contrasted so significantly with the impact reported by the claimant and the condition history.

I also found that the Case Managers, who are the ultimate benefit decision makers, did not routinely request clarity from Capita Disability Assessors on assessment reports where advice was not properly explained. There was a failure to examine further evidence opportunities where the reported impact and assessment advice conflicted, even though claimants had pointed to sources of relevant evidence.

Decision making on whether or not to request further evidence was overwhelmingly deferred to Capita, despite Case Managers having the ability to request it and the responsibility to ensure the benefit decision is robust.

Extract from Case Study 2, Chapter 4 on First Tier Decision stage

Claimant AM, whose primary condition is recorded as Depression and Anxiety applied for PIP on 14 September 2018.

Award History:

DLA: Middle Care: Lower Mobility

First Tier Decision (1 December 2018): No Award, No Daily Living (0 points); No Mobility (0 points)

Mandatory Reconsideration (31 January 2019): No change

Offer of Lapsed Appeal (5 April 2019): Standard DL (11); No Mobility (0)

The assessment report was received by the Department on the 24 November [2018]. Clarification was not sought from the Disability Assessor why the Disability Living Allowance (DLA) evidence was not referenced in the justification of their opinion. There are no records to demonstrate that the Case Manager examined the DLA evidence and gave proper scrutiny to the Disability Assessor's justification of their opinion against the existing evidence.

In my view, without such routine querying of obvious contradictions, inconsistencies and gaps in further evidence, there was often undue deference given by initial Case Managers to descriptors recommended in the Assessors' reports. Conversely, Case Managers, tasked with reviewing cases where an Appeal request had been submitted, requested further advice more frequently than Case Managers at earlier review stages, despite the fact that the evidential basis for the request was arguably the same at both stages.

Overall, despite the Department's and Capita's contention that further evidence has a key role in the PIP process, it was often the case that it was only at the last stage of the Department's Internal Process, following a claimant's submission of an appeal to the Tribunal, that the role of further evidence was elevated.

Extract from Case Study 5, Chapter 1 on Application stage

Claimant E, whose primary condition is listed as Epilepsy, applied for PIP on 19 July 2018.

Award History:

DLA: Middle care: Lower Mobility

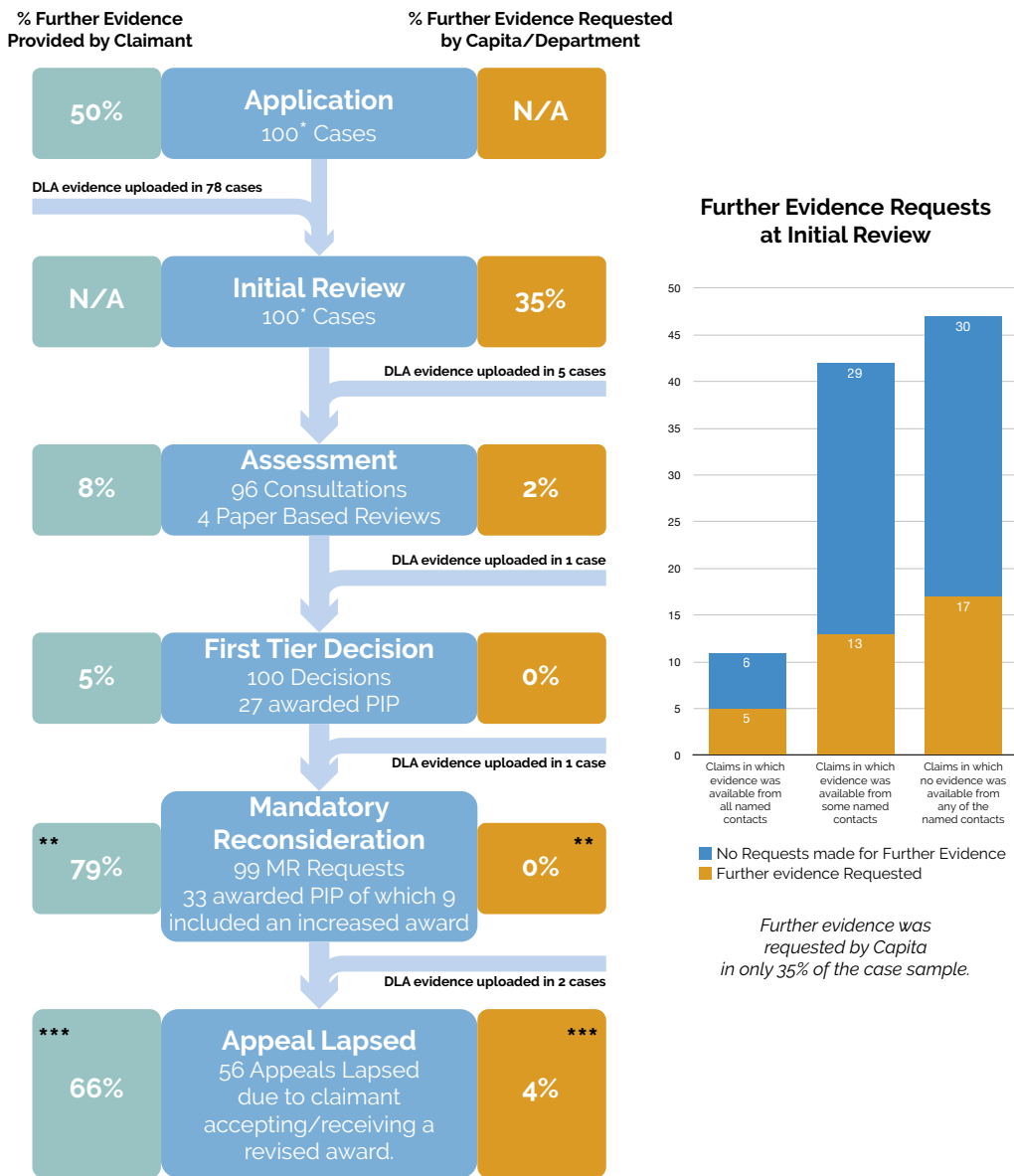
First Tier Decision (14 October 2018): No award, Daily Living (4 points): Mobility (0 points)

Mandatory Reconsideration (27 November 2018): No change

Offer of Lapsed Appeal (13 January 2019): No Daily Living (4): Enhanced Mobility (12)

This case evidences how misleading communication, which provides inaccurate reassurance to claimants that their health professionals would be contacted, may impact on a claim. In this case it resulted in no further evidence being gathered by the claimant from the health professionals at the outset of the claim. Once the claimant became aware that health professionals had not been contacted they were able to access this information and provide it at a later stage, directly resulting in an award being made.

The following diagram, illustrates how often evidence was requested by Capita/the Department or provided by the claimant in the case sample I examined. It also shows the breakdown of cases in which requests were not made to some or all of the health professionals named by the claimant as being best placed to provide advice on their condition.



* The investigation analysed all claims pertaining to 100 individuals however for the purposes of the diagram, in order to avoid duplication of instances, only one claim per claimant was represented. At the time of NIPSO drafting the report out of the 100 claims reported on - 1 of the claims had concluded at First Tier (initial) decision stage, 8 concluded after Mandatory Reconsideration and 91 had submitted an Appeal (of which of 56 lapsed following a revision of the decision by the Department, 26 went to Tribunal, 5 were awaiting a hearing, 3 were withdrawn and in one case an appeal was allowed but resulted in a new assessment).

** The % figure is based on the 99 MR requests.

*** The % figure is based on the 56 Lapsed Appeals

Although claimants tended to submit further evidence with their appeal submission, I observed cases in which the same substantive information already existed in the claim file and/or additional evidence came from sources previously highlighted by the claimant but were not contacted by Capita or the Department. To describe such cases as overturned decisions on the basis of 'new evidence' is, in my view, misleading given that the evidence or the source of the evidence being relied upon as 'new' was often available from the very outset of the claims. It also masks that, at times, differing advice is provided by Capita to the Department on essentially the same information. I recognise that differing professional judgement can occur, on occasion, and does not necessarily represent a concern, however the reasons for it, and any wider or repeated inconsistency, should be carefully considered.

Extract from Case Study 3, Chapter 8 on Further Evidence Statistics

Claimant M, whose primary condition is listed as Arthritis, applied for PIP on 11 August 2018.

Award History:

DLA: Middle care: Higher Mobility

First Tier Decision (22 October 2018): No award, No Daily Living (2 points): No Mobility (0 points)

Mandatory Reconsideration (14 December 2018): No change

Offer of Lapsed Appeal (22 February 2019): Standard Daily Living (10): Standard Mobility (8)

This case evidences how the Department can determine that cases are overturned on 'new' evidence when the evidence was already available at an earlier stage of the process. The Appeals Case Manager had identified that evidence recorded within the assessment report indicated the claimant's functional restrictions. The GP factual report available prior to the face to face assessment also indicated functional restrictions. It is therefore disappointing that the categorisation of the reason of the lapsed Appeal is recorded as new evidence being received.

The outcome of categorising overturned decisions in this way is that it provides an inaccurate reassurance to the public that the internal workings of the Department's decision making process are precise and robust, and that the evidence that ultimately results in an overturned decision is not available until much later in the process. It appears this line of thinking has taken hold to the point that it has been simply accepted by the Department as a fact outwith its control. An approach in line with the principle of **'Seeking continuous improvement'** would have however meant the Department exploring if this is in fact correct, and if so why it takes until the next or final stage in the process for the 'new' evidence to come to light.

This embedded thinking, as I will highlight later, gave rise to a significant and systemic departure from the principles of **'Putting things right'** and **'Seeking continuous improvement'** both in terms of the Department evaluating for itself as to why so many decisions were not right first time, and in how it responded to the complaints that further evidence was not properly considered or sought.

I found that in practice the value and application of further evidence to the PIP benefit decision was limited from the very outset of a claim. This was underpinned by the minimal, if any, records setting out the reasoning of how it was relied upon or otherwise by Disability Assessors and Case Managers. I do not, and nor would I think a claimant, consider the timeframe in which further evidence will be received to be acceptable as the sole relevant factor in determining whether or not it should be obtained.

Built into the system and culture, in my view, is a mind-set that useful further evidence should have been gathered by the claimant (despite the fact they are told not to gather it and to provide only what they already have) or that it is something that can be obtained 'later on'. There is a focus on taking the decision on the basis of the information available at the time, even where the information is undoubtedly incomplete, and then moving onto the next claim. The impact of this is that the onus is left on the claimant to keep challenging the decision. As I will explain below, in relation to the principles of **'Being customer focused'** and **'Being open and accountable'** often claimants had to do this 'in the dark' not knowing what, if any evidence, other than that obtained during the face to face consultation, had been requested and relied upon. This is unacceptable and puts claimants at a systemic disadvantage.

Extract from Case Study 5, Chapter 4 on First Tier Decision stage

Claimant AD, whose primary condition is recorded as Specific Language Impairment applied for PIP on 15 October 2018.

Award History:

DLA: Middle Care: Lower Mobility

First Tier Decision (11 March 2019): No Award, Daily Living (4 points): Mobility (0 points)

Mandatory Reconsideration (2 April 2019): No change

Lapsed Appeal (2nd Mandatory Reconsideration) (25 June 2019): Standard Daily Living (10): No Mobility (0)

This case evidences that the reasoning provided in the decision letter is difficult to understand and is not clear. The statement *'this information is the best available'* is questionable given no requests for further evidence or input was sought from the professionals whom the claimant listed as being best placed to provide advice on how the condition(s) affect the claimant. The letter does not inform the claimant that input or evidence was not sought from these sources.

Being customer focused

At its most basic level **'Being customer focused'** requires public bodies to provide services that are easily accessible to their customers. This is increasingly important for vulnerable citizens accessing a service designed to support them. As highlighted earlier, PIP is a benefit designed to support individuals who have a disability or are living with a long term condition. On this basis one might assume PIP would attract high numbers of claimants requiring additional support. Disappointingly, my investigation found that the Department's narrow interpretation of its own guidance on this issue meant that many vulnerable claimants may not in fact have been flagged as requiring additional support when adherence to the principle of **'Being customer focused'** may have warranted their inclusion. The approach by the Department on this very important issue, in my view, potentially limited its ability, as a public service, to treat people in accordance with their individual needs whilst responding flexibly to the circumstances of the case.

Extract from Case Study 1, Chapter 1 on Application stage

Claimant A, whose primary condition is listed as Anxiety/Depressive disorder/Borderline personality disorder, applied for PIP on 19 July 2018.

Award History:

DLA: Middle Care: Low Mobility

First Tier Decision (17 October 2018): No Award, Daily Living (4 points):
Mobility (0 points)

Mandatory Reconsideration (2 November 2018): No change

Appeal (23 June 2019): Standard Daily Living (8): Standard Mobility (10)

This case evidences that claimants who have a condition listed* within the Guidance (and have no Personal Acting Body) do not have the Additional Support marker applied on the basis that they may/will contact an informal support (such as an Advice Sector organisation). Without any guarantee that contact is made or that informal support is available or engaged with throughout the process, an opportunity is missed by the Department to provide vulnerable claimants with the appropriate support and flexibility afforded to those with the Additional Support marker.

It is of note that once the claimant had support from the Belfast Citywide Tribunal Service at Appeal, they were awarded PIP.

*The claimants' conditions included Bi Polar disorder, Obsessive Compulsive Disorder, Post Traumatic Distress Disorder, Schizophrenia, Learning Disability, Brain injury.

In '**Being customer focused**' policies and procedures should be clear, accurate, complete, and provide understandable information about the service. Specifically, public bodies should aim to ensure that customers are clear about their entitlements; about what they can and cannot expect from the public body; and about their own responsibilities. Key to all of this is that public bodies should communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.

Contrary to this my investigation found a lack of openness and clarity in the Department's and Capita's communications to claimants about the role further evidence would play or had played in deciding their entitlement to PIP. Incomplete, and at times misleading, communications led some claimants to believe that the health professionals, whom they listed as being best placed to provide advice on their condition, would be or had been contacted when they had not. As mentioned earlier, further evidence is only requested in approximately a quarter of all PIP claims.

Varying communications in regard to the use of DLA evidence to support a claim for PIP also meant that some claimants were provided with different opportunities to select and review the evidence to be used. Claimants who initiated their PIP claim by telephone were asked only if they consented for their most recent DLA evidence to be used and were not provided with any details on what specific pieces of DLA evidence were available to the Department. In contrast, claimants who initiated their claim through the paper based alternative were given information on the different types of DLA evidence that could be used and asked to select which were to be used, as well as the option of being provided with a copy of the available DLA evidence to assist them in making their decision.

My investigation also identified that the various stages of review of PIP award decisions were not properly explained to claimants and many were not made aware of the impact additional evidence may have on claims after initial entitlement decisions have been made. Specifically I found:

- inadequate and inconsistent advice was provided to claimants on the Mandatory Reconsideration process; and
- claimants were not told of the Department's subsequent review of their claim, which automatically happens following a claimant's submission of an Appeal to the Appeals Tribunal. They often only became aware of this review if they received an offer of an increased award or were informed their Appeal had lapsed as the decision had been revised to the highest rate.

These issues had understandable implications for a claimant's ability to understand and challenge decisions at all stages of the process. Consequently, there was and remains a level of confusion among claimants on how further evidence is used to make PIP benefit decisions. This, as I have described earlier, puts claimants at a systemic disadvantage for progressing a review/appeal.

Extract from Case Study 1, Chapter 6 on Lapsed Appeals

Claimant AB [whose primary condition is reported as Fibromyalgia] submitted an Appeal request to the Appeals Service on 4 October 2018.

Award History:

DLA: Middle Care: Higher Mobility

First Tier Decision (19 July 2018): No award, No Daily Living (0 points): No Mobility (0 points)

Mandatory Reconsideration (1 September 2018): No change

Offer of Lapsed Appeal (25 November 2018): Standard Daily Living (9): Standard Mobility (10)

This case evidences the lack of communication provided to claimants prior to, and during, the lapsed Appeal process. In this case the claimant's evidence (which had already been provided at Mandatory Reconsideration) was twice referred [to Capital] for advice without the knowledge of the claimant. The claimant only became aware that the case was being reviewed by the Department when they received the offer of award letter - which provided significantly limited information. As a result the claimant assumed their award was overturned following their 'complaint'.

Being open and accountable

Public bodies should be open and truthful when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for their decisions. Moreover, public bodies should create and maintain reliable and usable records as evidence of their activities.

As set out in 'Records matter', good record keeping tells us not only what has been decided but also why it has been decided.¹¹ Records not only provide evidence of the activity of the decision making process, they promote accountability and allow others to verify what has been done. Even when correct decisions are made, poor record keeping on the decision making process makes it difficult to convince others that the public body behaved properly.

Given the sheer volume of the PIP benefit claims to be processed, measures to increase efficiency are to be expected and in fact promoted where these do not adversely affect the quality of the benefit decision making. However, I found that record keeping across all stages of the claim process was poor and below the standard of what I would expect. This included, but was not limited to:

- a failure by the Department and Capita to create records on their systems of all the health professionals put forward by the claimant as being best placed to provide advice on their condition, as listed in their application for PIP;
- inadequate recording of Disability Assessors' decision making on the choice of assessment (i.e. why a face to face or paper based was selected), the considerations around requesting further evidence and its use in formulating their advice;
- an absence of records on how Case Managers weighed and evaluated all the evidence to decide entitlement or of the explanation provided when claimants requested an explanation call of the decision; and

¹¹ *Records Matter. A view from regulation and oversight bodies on the importance of good record keeping* [records-matter-january-2020-digital-edition.pdf](https://nipsos.org.uk/records-matter-january-2020-digital-edition.pdf) (nipsos.org.uk)

- inadequate record keeping within the Department's complaint investigations.

As previously outlined I found the information provided to the claimants during the process to be inaccurate and incomplete. Not only was it strongly inferred that health professionals would be contacted in the claim (when more often than not, this did not happen), many claimants received correspondence from Capita that stated all health professionals whom they had listed had been contacted when this was not the case.

Extract from Case Study 6, Chapter 2 on Initial Review stage

Claimant K, whose primary condition is listed as Degenerative Disc disease, applied for PIP on 9 June 2018.

Award History:

DLA: *Middle Care: High Mobility*

First Tier Decision (14 September 2018): *No Award, Daily Living (4 points), Mobility (0 points)*

Mandatory Reconsideration (5 November 2018): *No Change*

Offer at Lapsed Appeal (17 February 2019): *Standard Daily Living (8): Standard Mobility (8) (offer declined)*

Awaiting Appeal

A clinic face to face consultation was booked and the claimant was advised of the appointment date. No record was made to identify why further evidence had not been requested from the claimant's health professional(s), and no advice was provided to the claimant as to why this form of assessment was chosen.

In respect of the decision letters from the Department to claimants, which should provide the reasoning for the award outcome, I found the quality of explanation to be poor. I have read and reread a number of the letters sent to claimants that formed part of my investigation setting out the basis for the individual decision on their PIP claim. Having done so, I remain unclear as to what those reasons are.

I fully appreciate that PIP claimants will not always agree with the decisions the Department makes on their entitlement to benefit, but fundamental to any administrative decision making process, and at the heart of the principles of good administration, is that the claimant understands the decision and believes they have been fairly assessed. The ramifications of incorrect and/or poorly explained decisions, go far beyond those claimants directly affected. They contribute to a much wider

perception of an unreliable opaque process which is at odds with the principle of **'Being open and accountable'**.

Acting Fairly & Proportionately

Public bodies should always deal with people fairly and with respect. They should be prepared to listen to their customers and avoid being defensive when things go wrong.

Whilst I welcome that the Department has been successful in providing support to a large number of claimants and that many have been satisfied with the PIP process, there are many individuals who have not had that experience. Concerns have been consistently raised by claimants, their Carers and family members, the Advice Sector and in Statutory and non-Statutory reports. Many of the issues I have raised are not new.

Within my investigation I have evidenced that there is a clear disparity between the policy intent regarding the role of further evidence and its use and application in reality. This gap does not provide for fairness, or support consistency in the quality of outcomes and experience for individuals.

Extract from Case Study 12, Chapter 5 on Mandatory Reconsideration stage

Claimant H, whose primary condition is listed as Fibromyalgia, had been awarded Standard rate PIP for both Daily Living and Mobility. Following a deterioration in condition, and further diagnosis of a new condition, the claimant applied for an unplanned intervention.

Award History:

PIP Award (13 Oct 2017): Standard Daily Living: Standard Mobility
Change of Circumstances (Unplanned Intervention) (May 2019): No award, No Daily Living (6 points): No Mobility (4 points)
Mandatory Reconsideration (18 June 2019): No change
Offer of Lapsed Appeal (31 August 2019): Standard Daily Living (10): Standard Mobility (10)

This case evidences that although contradictions arose between the assessment observations and the claimant's reported restrictions, and despite a specific request from a claimant for the Department to contact their health professional (as the health professional would only accept a request from the Department/another health professional) this was not requested either directly or indirectly by the Department. The claimant was instead advised that PIP don't request reports.

Acting fairly and proportionately is also a key principle for good complaint handling. To adhere to this principle, public bodies should investigate complaints thoroughly and fairly and should avoid taking a rigid, process-driven, 'one size-fits-all' approach to complaint handling.

Naturally, but not always, the benefit decision is often closely associated with the complaint issues raised by PIP claimants. I recognise that claimants must utilise the appeal mechanisms should they seek to dispute the award decision, however claimants also deserve to have their concerns about the process and treatment thoroughly examined. Although I recognise that the Department responded quickly to complainants and often invested effort in explaining policies and procedures, they rarely addressed the specific issues of complaint in a comprehensive manner.

My investigation found:

- The Department's overall standard of investigation into service complaints about Capita was inadequate.
- The Department relied on assurances provided by Capita that the issues had been investigated and addressed, as opposed to conducting its own enquiries. This extended to the Department's complaint response to the claimant being primarily based upon Capita's complaint response letters to the claimant and at times the Department did not have a copy of the claimant's original complaint.

Learning from complaints is a powerful way of helping to improve public services and build trust amongst the people who use the service. Regardless of the veracity of the complaint, I do not consider the manner in which the Department handles these complaints has the capacity to either improve services or build trust. Indeed, I believe it may have had the opposite effect, albeit unintentionally, of diminishing trust which can cause some claimants, and those who support them, to disengage from the complaints process.

Specifically, in respect of complaints raised about further evidence, I found both Capita and the Department to be lacking in how this issue of concern was investigated. When a claimant raised a complaint that an important piece of relevant evidence was not sought, the standard response was to state that the decision to request or not request further evidence is a clinical decision for the Disability Assessor. Given the potential seriousness of the issue raised, I do not consider it to be either fair or proportionate of the public body not to examine the specifics of a complaint about the gathering of evidence where this is clearly linked to the decision made on whether to award a benefit.

Without investigation of this critical issue, the Department and Capita simply cannot establish whether the decision not to request was reasonable or indeed if the concern was valid or indicative of a wider problem.

There was also an inconsistency in the investigations of complaints about whether existing further evidence in a claim had been properly considered in the advice and decision; the scrutiny sometimes merely relying on the fact that the evidence was listed in the assessment report. As previously explained I found a distinct lack of records detailing the decision making surrounding the requesting and application of further evidence.

Extract from Case Study 2, Chapter 7 on Complaints

Claimant AJ's primary condition was recorded as Diabetes Neuropathy... Within the complaint correspondence the claimant raises various issues, including their concern that no requests were made for further evidence. [No evidence had been sought from any of the six health professionals named by the claimant, nor had their DLA evidence been made available prior to Assessment and First Tier Decision.]

Award History

DLA: Highest Care: Low Mobility

First Tier Decision (25 February 2019): No Award, Daily Living (2 points): Mobility (0 points)

Mandatory Reconsideration (16 April 2019): No change

Appeal Decision (15 March 2020): No Award Decision Confirmed, Daily Living (4): Mobility (4)

It is acknowledged that the Department, made significant efforts in correspondence to provide reassurance to the claimant about the policy intent of the PIP benefit system assessment process. The Department outlined the quality standards set down for Capita as the Assessment Provider and explained the auditing mechanisms in place which it relayed provide confidence that the standards are delivered. It is notable and concerning however that at an operational level the Department did not address the case specific issues of complaint over and above providing the statement that Capita confirmed that the issues were investigated.

Putting things right

Where a decision is found to be incorrect, **'putting things right'** is a key duty for public bodies. This is essential for providing remedy to individuals but also for delivering services effectively and securing the confidence of service users. The case sample I selected included a large number of overturned decisions following submission of an appeal. I welcome the action taken by the Department to review and correct the decisions at that point of the process, however similarly to the decision letters at First Tier and Mandatory Reconsideration, the Lapsed Appeal notices provided little insight to the claimant as to the reasoning behind the change in decision.

I am also concerned that this may be indicative of an approach which considers that, as there are appeal mechanisms available to claimants in PIP, there is less onus to ensure all best efforts are taken at the outset to get the decisions correct. This approach ignores the added time, frustration and distress caused to claimants both financially and experientially, where the correct decision may have been reasonably achieved at an earlier stage. Critically, it is also a higher risk approach to the delivery of an essential benefit which is to support individuals, many of who are the most vulnerable members of our society, and who will invariably be further disadvantaged if the decision is not correct.

The principle of **'putting things right'**, relates not only to individual decisions but extends also to reviewing and amending any policies and procedures found to be ineffective or unfair. As outlined, opportunities for the Department and Capita to systematically improve the quality of assessment advice and decision making were lost due to incomplete analysis of the reasons for overturns in decisions. The limited analysis which was completed, was relied upon by the Department to provide a simple narrative that there is no maladministration in the system and decisions are only changed on the basis of 'new' evidence that the claimant provided late in the process. This narrative is likely to perpetuate rather than rectify deficiencies in the process.

Extract from Case Study 3, Chapter 4 on First Tier Decisions

Claimant AN, whose primary condition is recorded as Schizophrenia applied for PIP on 5 October 2018.

Award History:

DLA: Middle Care: Lower Mobility

First Tier Decision (8 January 2019): No award, No Daily Living (2 points):
No Mobility (0 points)

Mandatory Reconsideration (6 March 2019): No change

Offer of Lapsed Appeal (4 May 2019): Standard Daily Living (9): Standard
Mobility (10)

It is of interest to note that subsequently a further letter was received from the Consultant Psychiatrist, however the content of the letter was the same as that of the first letter received prior to the assessment. A Department's Appeals Case Manager requested further advice from Capita. The information provided in the Consultant Psychiatrist's letter and the GP factual report (both of which were available during the initial assessment and decision) were relied upon in the change the advice. The Department subsequently revised their decision of entitlement and offered an award to the claimant which resulted in the Appeal lapsing.

I found the Department, as the duty bearer, failed to grasp risk areas around the handling of further evidence and its impact on service. This was observed in the Department's failure to recognise and proactively address inaccurate management information provided by Capita on the overall number of further evidence requests made in claims. The Department also provided inaccurate figures on the number of further evidence requests in response to Freedom of Information requests. The failure to effectively monitor this critical activity by the service provider impacted on the Department's ability to report accurate information, which is disappointing given the level of concerns raised by many parties about the issue of further evidence.

Another key opportunity for public bodies to **put things right**, not only for individuals but for the system, is through the operation of an effective complaints procedure through which complaints are investigated thoroughly, quickly and impartially. As discussed under the principle of **acting fairly and proportionately**, I found that the Department's overall standard of investigation into service complaints about Capita was inadequate and does not reflect their outward commitment to independently investigate complaints. The Department, at a governance

level, had not taken effective ownership of how reliably concerns about further evidence in the PIP process were addressed within the complaints system. This is a missed opportunity to tackle and remedy shortcomings at both individual and system levels.

Seeking Continuous Improvement

For public bodies, **seeking continuous improvement** must be more than a statement. For this principle to be realised, it involves regularly reviewing policies and procedures for effectiveness and also using the complaints system and feedback to improve services and performance.

I found however that the failure of the Department to **get it right** in the:

- scrutiny of further evidence in individual claims and management information,
- the incomplete analysis of why decisions are overturned and
- the ineffective complaints process,

hindered the Department's ability to improve. Although the Department has consistently advised it is committed to continuous improvement and has engaged with stakeholders, it has not properly utilised and reflected on the rich data that is available to it contained in the claims that it processes and the complaints that it receives.

Extract from Good Practice Case Study 15, Chapter 5 on Mandatory Reconsideration stage

Claimant AA, whose primary condition is listed as Cardiac, Raynaud's Syndrome, and Liver Problem, [was awarded PIP in 2016 had their entitlement reviewed in 2018. The claimant appealed the review decision that they were no longer entitled to PIP].

Award History

PIP (21 November 2016): Standard Daily Living (11 points): Enhanced Mobility (12 points)

Award Review (7 January 2019): No Award, No Daily Living (0): No Mobility (4)

Mandatory Reconsideration (24 February 2019): No Change

Offer of Lapsed Appeal (27 May 2019): Standard Daily Living (8): Standard Mobility (10)

This case has been highlighted as Good Practice due to the Appeal Case Manager's decision to question the inconsistencies in the assessment and request further advice from the claimant's health professional (despite the advice of the Telephony Advisors that this

would not happen). As a direct result of the Appeals Case Managers request for further advice, and the receipt and review of the GP report, the claimant's award was overturned. The claimant was subsequently entitled to Standard rate Daily Living and Standard Mobility.

It is also of note that the Appeals Case Manager's request for further evidence highlighted the lack of recent evidence held as part of the necessity to gather further evidence. This is a practical observation which does not appear to be routinely applied by Case Managers. A number of the cases reviewed (where evidence was not requested) did not have recent evidence available on file.

I was also concerned to note that at times where the Department had reported implementing improvements in respect of previous reviews and recommendations, such as reviewing the clarity of its written material¹², some of the changes made by the Department were superficial and unlikely to have impact.

Through my investigation I have challenged the Department to comprehensively reflect on how communication can be improved and better decision making may be achieved. Whilst different professional judgements on the same information may on occasion occur, and relevant further evidence may not always be able to be obtained, it is clear that the inadequacies in requesting and applying further evidence must be tackled. I am also very clear, that although the failings identified span across both Capita and the Department, the duty to ensure improvements are made sits firmly with the Department, the public body with the responsibility to deliver PIP.

¹² Review of the Personal Independence Payment Assessment Process, *Department for Communities' Interim Response*. November 2018. Available at www.communities-ni.gov.uk/publications/independent-review-personal-independence-payment-pip-assessment-process-northern-ireland-report

Conclusion

I fully recognise the work of the Department to implement PIP, the scale of the delivery and the introduction of initiatives, unique to Northern Ireland, with the aim of improving outcomes and claimants' experience. I also welcome that there are many individuals who have received support by being awarded PIP and note that some have received a higher level of monetary support than they received through DLA. I know however there are many other individuals for whom the system has not delivered as it should have done and my investigation has evidenced further improvements are required.

As the statutory body responsible for making the decision of entitlement and in aiming to get PIP outcomes right first time, the Department needs to place testing the sufficiency and strength of the overall evidence at the core of their decision making role. It must engage properly with claimants, on an individual basis, about where the best evidence to support their claim may be found and be proactive about bringing such evidence to light. Where aspects of its delivery are outsourced, such as in the undertaking of assessments by Capita, the Department must ensure the standards of service provision meets what the Department needs in order to make good decisions at the earliest opportunity possible.

To determine whether maladministration occurred I tested the actions of the Department and service provider Capita against the framework of the Principles of Good Administration. Having tested the actions, the evidence supports a finding of systemic maladministration. The issues I have reported do not point to 'one off' mistakes but instead support the need to fundamentally review how further evidence is obtained and applied in the PIP process and how this is communicated.

I am confident that the insight into the PIP process provided in my report along with my findings and recommendations will have a positive impact for the delivery of PIP to citizens in Northern Ireland.



Margaret Kelly

The Northern Ireland Public Services Ombudsman

Recommendations

I have made 33 recommendations to the Department for improvement, which are set out in full in my report. My recommendations, summarised below under the Principles of Good Administration, centre on helping the Department to get the delivery of PIP to claimants right first time.

GETTING IT RIGHT

It is recommended that:

- The Department should be clear in its communication about where the responsibility lies for gathering further evidence in support of a PIP claim.
- The Department review Capita's policy for requesting further evidence at the Initial Review and Assessment stages and address any processes, time or bonus incentives that may act as barriers to pursuing further evidence to improve the quality of assessment advice. It should also ensure the quality of written request letters sent to claimants' health professionals is improved.
- The Department should ensure Capita's processes are compliant with guidance and service requirements, so that any unnecessary face to face consultations are cancelled and further evidence which is brought to consultations is properly considered.
- Training for Disability Assessors must emphasise the importance of explaining how all relevant evidence in a claim is evaluated when justifying the descriptor choices recommended in their assessment advice. The Department should review whether it properly applies the 'fit for purpose' criteria to assessment reports produced by Capita and enhance the auditing of further evidence criteria.
- The Department renew its own focus on the importance of further evidence for good decision making on PIP claims. Case Managers must be empowered to test the evidence (including Disability Assessor opinion) and seek further evidence (medical and non-medical) to ensure their decision making on PIP entitlement is robust.
- The electronic tool used to record the reasoning for decisions on PIP entitlement should be reviewed, given a reliance on pre populated and automated responses, and the limited amount of information that can be input. Case Managers need to make records about how they evaluate all relevant evidence in a claim and significantly improve the quality of explanations given to claimants in decision letters.

(Related recommendations 1.2, 1.4, 2.2, 2.4, 2.6, 3.1- 3.4, 4.1, 4.2, 5.6, 5.8, 6.3)

BEING CUSTOMER FOCUSED

It is recommended that:

- The Department review and improve its initial communication to claimants to provide clear and consistent information about the role of further evidence in the PIP process. Key information that should be clearly explained, includes how evidence to support a claim is gathered and the limited number of requests currently made by Capita to health professionals.
- The Department review its application of the Additional Support policy and consider further engagement with the Advice sector on providing support to vulnerable claimants.
- As well as improving the quality of the explanations provided in decision letters, the Department should provide claimants with a copy of their Assessment report along with the First Tier decision letter.
- The Department review and improve its communication to claimants on the Mandatory Reconsideration process, to include providing more detail about the provision of further evidence and update the Mandatory Reconsideration request form to be of assistance to claimants.
- The Department should consider the introduction of an acknowledgement letter to claimants who apply for a Mandatory Reconsideration, to include advice on further evidence which is specific to the claim and areas of dispute.
- The Department should include information, within the Mandatory Review notice, about the additional review stage conducted by the Department when an Appeal is submitted.

(Related recommendations 1.1-1.4, 2.3, 3.3, 5.2 - 5.4, 5.5, 6.1)

BEING OPEN AND ACCOUNTABLE

It is recommended that:

- Record keeping must be significantly improved across the administration of PIP, including better quality recording of: the details of health professionals provided by the claimant; the reasoning for the choice of assessment; considerations on the value of pursuing further evidence; how all the evidence is evaluated in the decision making; explanations provided to claimants; and the actions taken to investigate complaints.
- The Department should ensure Capita revises their information pack so that claimants are accurately informed as to whether or not further evidence requests have been made to the claimants' health professionals and with whom contact has been made.
- The Department should make it clear to claimants that when a complaint is raised about Capita's service in respect of PIP assessments, Department Case Managers who are making a decision on the claim are not notified, nor do they have routine access to the complaint information.
- The Department should place an emphasis on making sure PIP information provided, in response to requests made by individuals and organisations, is clear and accurate. The relevant staff should be retrained accordingly.

(Related recommendations 2.1- 2.3, 2.5, 3.3, 4.1, 4.2, 5.1, 5.8, 6.3, 7.1, 7.3, 8.2)

ACTING FAIRLY AND PROPORTIONATELY

It is recommended that:

- There should be a clear policy on when Case Managers refer additional evidence received by the Department to Capita for further advice and ensure claimants are informed if it is referred or alternatively when a decision has been made not to refer.
- The Department should review the process by which it conducts its investigations into complaints about Capita service delivery. It is critical the Department sets out the standards of investigative action expected, as well as the administrative arrangements, for the thorough and independent investigation of these complaints.
- Both the Department and Capita should ensure complaint issues about further evidence are properly investigated and explain comprehensively to claimants as to why a complaint was or was not substantiated.

(Related recommendations 5.7, 7.1, 7.2)

PUTTING THINGS RIGHT

It is recommended that:

- The Department should review the robustness of its methods of monitoring statistics provided by Capita in respect of further evidence requests and response rate. Consideration should also be given by the Department to undertake its own collation of data in respect of this key activity.

(Related recommendation 8.3)

SEEKING CONTINUOUS IMPROVEMENT

It is recommended that:

- The Department should review the process for recording and analysing the outcome of PIP complaints to ensure learning and improvement. It should publish information about complaints, including the action taken to improve the service as a result of complaints, in a way that reaches claimants and other interested parties.
- The Department should review its current method of recording reasons for the overturn of awards decisions at Mandatory Reconsideration and Lapsed Appeal. It should continuously review and analyse the reasons to inform learning and improvement and report publicly to increase understanding.

(Related recommendations 7.3, 8.1)



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