



THE CITIZEN AND THE STATE: POOR STATE DECISION-MAKING AND THE ROLE OF THE PRO BONO BAR

Address by Sir Henry Brooke CMG

I have been asked to talk to you today about the arrangements for Personal Independence Payments (PIPs). These are paid to people suffering from long-term illness or disability who need help with the extra costs they have to incur. They are made up of a daily living component and a mobility component. An award will depend on whether your ability to carry out daily living activities, or your mobility, has been assessed as “limited” or “severely limited”. You may then receive a weekly payment at a standard rate or an enhanced rate for the component in question. The weekly payment for both components at the enhanced rate is now nearly £140. If you receive both components at the standard rate, the award will be £60 less. They mean a great deal to the recipients. A points system is used during the assessments. If you get no points, you are being assessed as having no limitations in the component in question.

PIPs were first introduced in a small way in April 2013, and since then they have more or less replaced the old arrangements for Disability Living Allowance (DLA). The main differences are that the new scheme is far more complicated, and that instead of receiving an award which could well last for life, in most cases the awards are short-term. At the end of the term the applicant has to go through the process all over again.

Citizens Advice received nearly 400,000 queries about the scheme last year. People are becoming very stressed because the consequences of failure may be so dire. 50,000 people have had their Motability vehicles taken away. One woman told me that “existence is all I have at present”. Another has had to fight for four years for her disabled husband. She told me: “It has been an arduous and enduring journey, and in terms of my health I have paid a very high price. I have been so close to giving up on many occasions.”

The way the scheme works is that the Department for Work and Pensions (DWP) publishes the arrangements, and then invites claimants to complete a 55-page form. They are told they can submit medical evidence, and that if an assessment is arranged, they can have someone with them.

Because nearly everyone has had to re-apply, the total number of claimants (including new ones) has reached nearly three million. The job of doing the assessments has been outsourced to private sector companies – first Atos and now Capita. Unless you are terminally ill and receive fast stream treatment, the whole process at this stage now takes 16 weeks on average. It used to be much slower. 73% of DLA reassessment claims and 45% of new claims result in some award being made. The rest are rejected.

Claimants dissatisfied with the result of the first assessment are not allowed to appeal to a tribunal direct. Instead, they have to ask for “mandatory reconsideration” (MR). There have now been over 600,000 requests for MR. Most decisions are upheld. 21% of DLA reassessment cases succeed, and 15% of the rest. If MR fails, claimants must appeal to a tribunal within 28 days. The DWP used to decide whether an appeal could be allowed to go forward out of time, but the High Court has ruled that the executive has no business to be deciding who may and who may not have access to a tribunal out of time.

Tribunal appeals are also a growth industry. Social security and child support appeals make up 58% of the Tribunal Service’s entire workload. Nearly half of these are PIP appeals, of which nearly two thirds succeed: over 16,000 successful PIP appeals in the second quarter of this year. There are a number of stories about applicants being awarded no points at MR and 50 on appeal. There are also stories of documents getting lost and never being read until a tribunal is reached.

There has been a torrent of complaints about the way the scheme has been administered. The most common complaint is that the assessors do not accurately describe, and sometimes misinterpret, the evidence the claimant has supplied. This has caused such bad blood that there is now quite a strong feeling that some assessors do this on purpose, in order to keep the success rate down. 250 people complained about this recently in response to a survey which had asked people to tell them what had happened. When I expressed concern about PIPs on my own blogsite, lots of members of the public or their advisers contacted me with horror stories, which I have published.

One former specialist benefits advisor at a Citizens Advice Office (which has now had to close) told me that he had helped dozens of clients with their appeals. They had all succeeded, either at MR or (more commonly) at a tribunal. He said:

“This wasn’t because I was some sort of super advocate, but because the decision-making was so bad; medical evidence from the practitioners actually treating the client was usually ignored or marginalised, in favour of ‘assessments’ by a disability assessor, who was usually a nurse with no specialist knowledge of the client’s condition, but who had undertaken a short course on assessing disabilities and had examined the client for 30 minutes.”

Here is one of the stories I have told:

Alice (not her real name) is a 54-year old widow. She has had a degenerative eye disease for 40 years, and she was registered blind 30 years ago. Quite recently she was diagnosed as suffering from a type of eye disease which is permanent and untreatable. It only gets worse over time.

She also has profound hearing loss. She had no difficulty in obtaining DLA at an appropriate rate. When she was told she had to apply for a PIP, she had to fill in a 56-page form, which she found very difficult. She also produced doctors' notes. These included a letter from a professor at Moorfields Eye Hospital which described her eye condition in detail.

When the assessor called at her home, it was obvious that she had not read any of the doctors' notes. She set up an eye chart without realising that Alice could not even see the chart, let alone the letters on it. She asked if Alice understood money. Of course she did, but she could not see it, and on "making budgeting decisions" she received no points at all. Although she cannot see, she was only awarded a standard rate mobility allowance. The 10-page decision letter contained only one paragraph setting out the reasons. This was in completely generic terms.

Alice then applied for MR. Although she hasn't written a letter for years she had to compose a very detailed letter explaining why the assessment was wrong. Although her children helped her, she found this a great struggle. A few days later she and her daughter phoned the DWP to check that the letter had been received. They explained the situation. The DWP representative was so shocked he suggested that Alice hadn't produced any evidence about her blindness. When he was told that there was a letter from the top retinal specialist at Moorfields which explained everything, he said: "We don't look at NHS letters because anybody can make them up." He then asked Alice to send him the certificate which stated that she was registered blind. Somehow she managed to find it – it was thirty years old - and she was then upgraded to enhanced rate mobility in double quick time.

What help is there for PIP appeals? All forms of legal aid for this work were axed four years ago. Pro bono support is trying to take its place, but with PIP appeals now running at 100,000 a year, the need is colossal. The Bar Pro Bono Unit leaves this type of advocacy to FRU. FRU is London-based, with a branch in Nottingham. It has received just under a thousand requests for help with PIP appeals, and was able to find a representative in about a third of them. I am sure that LawWorks, the solicitors' pro bono group, also help, as do law centres, Citizens Advice and other agencies, like the Zacchaeus Trust in North Westminster, if they have a local presence and the resources to do so.

As for online help, there are three excellent websites which every claimant should be told about: Citizens Advice, AdviceNow, and Pipinfo. For those who feel comfortable with the Internet, these are a priceless resource. But they are always likely to be a second best.

Some of the appeals turn on disputed points of interpretation of words used in the scheme. A lot of them result from rank bad decision-making, which was not spotted at the MR stage, or from papers getting mislaid. In any event case research shows that unrepresented appellants are nearly always at a disadvantage. If more could be done to improve the quality of decision-making at DWP level, a great deal of expense and stress and needless delay could be avoided. But it would also be good if more pro bono representatives could be found: and these appeals provide excellent opportunities for the young advocate.

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