
PERSONAL INDEPENDENCE PAYMENTS

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This Note considers the implementation of Personal Independence Payment (PIP) in England and Wales, a benefit introduced in 2013 for working-age claimants who suffer significant ill-health or disability. PIP is frequently discussed in the context of disability and welfare rights. It has also, however, had a notable impact upon Her Majesty's Courts and Tribunals Service (HMCTS). This Note is part of an ongoing research project on legal development and good governance. It presents a brief summary of PIP and places it in the context of broader strategies to simplify the delivery of public services. It raises the prospect that such strategies produce negative socio-legal outcomes, such as reduced access to justice and a consequent increase in pressures on other public services, including the HMCTS and the NHS.

Following the Welfare Reform Act 2012, significant and sweeping changes have been made, and are still in the process of being made, to the UK state welfare system. Arguments for reform centred around three main points: first, a need to simplify what was a complex and disjointed system of different individual benefits; second, a need to cut costs; and, third, a need to develop a social security system more in keeping with a modern, digitized world. Set in an era of economic austerity, these arguments carried force.

PIP was introduced in 2013, to replace Disability Living Allowance (DLA), which was issued to approximately 3 million UK citizens. PIP was a decisive move towards a more simplified assessment based upon 14 'point-scoring' questions. Twelve of these questions evaluate a claimant's eligibility to the daily living component of PIP, whilst a further two questions assess eligibility for a mobility component. Answering these questions is primarily a box-ticking exercise. Applicants are required to select multiple-choice answers to each of these 14 questions. Decision-

makers evaluate whether an applicant's answers meet certain 'descriptors' and calculate points accordingly. The statutory minimum for a successful claim for either of these components is 8 points (Social Security (Personal Independence Payment) Regulations 2013: parts 5.6 and 5.7).

The decision-making process is outsourced by the Department of Work and Pensions (DWP) to three contracted, for-profit assessment providers. Most claimants are invited to a face-to-face assessment with their regional provider. Again, this is largely a box-ticking exercise, which utilizes proprietary DWP software to guide the assessor's decision-making pathway. Assessors are medical professionals drawn from a variety of different fields including doctors, nurses, paramedics, occupational therapists and physiotherapists. There is no requirement for assessors to have specialized knowledge of a claimant's condition. Thus, depending upon regional providers, a claimant suffering from a psychiatric illness could well find themselves assessed by a physiotherapist. The DWP's digital assessment portal and internal guidelines are intended to provide sufficient data for contracted decision-makers to carry out assessments regardless of their specialism.

It should be noted that the application process does not automatically engage with a claimant's own doctors or consultants. Under Question 1, applicants provide the details of their healthcare providers. However, whilst decision-makers may request evidence directly from GPs, the onus is upon the claimant to provide supporting documentation at the time of application. As the DWP (2018: 2) guidelines for health professionals state:

Claimants are only required to send in evidence they already hold, such as copies of clinic letters—they are *not* told to contact their GP or health professional to obtain further evidence.

There is *no requirement* for a statement from a GP or other health professional on the PIP claim form.

It may be necessary to provide factual information, but it will be the assessment providers who will contact you rather than your patient or DWP. (emphasis in original)

When introducing PIP the government intended that the reform would save money and reduce DWP caseloads. In addition, four specific claims relating to good governance were made:

- 1** It would target support more closely on those most in need of support.
- 2** It would be more responsive as claimants' circumstances change.

- 3 It would be based on a fairer, more transparent and consistent assessment of need.
- 4 It would be easier for claimants, DWP staff and disability organizations to understand (Mackley & Ors 2019).

Instead, the simplified assessment procedure has arguably failed to achieve these key aims. Claim rejection rate is high; 47% of DLA claimants who registered a claim for PIP received a lower level of award or no award. However, for claimants who proceed to appeal before a tribunal, the success rate is 73% with an average case clearance time of 31 weeks (Mackley & Ors 2019). Due to over-simplification of the initial assessment procedure, appeal at tribunal may be the first time complex cases are able to receive full and fair judgment. Such a system can have devastating consequences for claimants, as months may pass before critical financial welfare is obtained. Indeed, the DWP has admitted that between 2013, when PIP was introduced, and 2018 some 17,000 claimants died waiting for disability benefit decisions (Pring 2019). On the other hand, despite government estimates that a pared-down PIP process would cost 20% less than DLA, the Office for Budget Responsibility (2019: 120) revealed that by 2017-2018 it was costing around 15-20% more.

The introduction of the Welfare Reform Act 2012 coincided with significant changes to the provision of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO removed legal aid eligibility for welfare benefit cases. Whilst the Ministry of Justice (MoJ) recognized that this would have a disproportionate impact upon the ill and disabled, it concluded that 'legal aid is not justified in these cases because the issues are not generally of sufficiently high importance to warrant funding, and the user-accessible nature of the tribunal will mean that appellants are able to represent themselves' (Ministry of Justice 2010: 4.219). However, MoJ statistics revealed that only around 28% of unrepresented benefit claimants are successful on appeal, jumping to 90% for those who go with the support of a legal representative (HC Deb 23 April 2019, vol 658, col 22).

There was an expectation that the not-for-profit sector would fill the gap left by cuts to legal aid for welfare benefit cases (Ministry of Justice 2010: 4.218). This has failed to manifest. Services such as Law Centres have struggled under the burden of both legal aid and local authority funding cuts, whilst the Citizens Advice service (Citizens Advice 2014: 2) withdrew provision of specialist legal advice across the majority of its centres. In addition, there has been a shortage of new legal practitioners specializing in social welfare law. Modules on legal aid have been removed

from law school curriculums and the Solicitors Regulation Authority has included no mandatory social welfare law modules in its plan for the new solicitors qualifying examination (Law Centres Network 2019: 19; Rose 2019). Thus, an existing lack of access to advice may become entrenched.

A consequence of lack of access to advice is that opportunities for early intervention have been limited, increasing the likelihood that individuals do not, or cannot, seek help until they are at crisis point (Low Commission 2014: 16). Individuals eligible for PIP are by nature a particularly vulnerable group, suffering from physical and/or mental illness and disability, including terminal conditions. It has been well documented that in family law LASPO precipitated a fall in mediation and a sharp increase in litigants in person, placing considerable strain on the courts (Richardson 2018). Similarly, the implementation of PIP, combined with the changes set in motion by LASPO, has created a perfect storm for a dramatic increase in caseloads at tribunals.

PIP appeals at the First-tier Tribunal level are heard in the Social Entitlement Chamber, which deals with cases from three jurisdictions Asylum Support, Criminal Injuries Compensation and Social Security and Child Support (SSCS), the latter being the largest of the First-tier Tribunals. In the last quarter, the SSCS received 38% of receipts to all First-tier Tribunals, of which 60% were PIP appeals (Ministry of Justice 2019: 2-3). The Senior President of Tribunals' Annual Report 2019 notes that the rapid rise in appeals before the SSCS since 2012 'has outstripped our ability to recruit and train sufficient numbers of panel members to keep pace with increased receipts' (Aitken 2019: 25).

Judge Aitken (2019: 27), the president of the Social Entitlement Chamber, has noted that one reason PIP appeals have come to represent the bulk of cases before the SSCS is that: 'The regulations relevant to a claim to PIP were drafted in such a way that considerable interpretation was always going to be a significant requirement.' This raises important questions about the legislation-drafting process in relation to the then presiding government's claims that disability benefit reform would embody, and advance, fundamental principles of good governance. What was outwardly a simplified assessment process, purportedly designed to increase accessibility, instead gave rise to complex issues of interpretation that are only slowly coming into focus through case law. Meanwhile, vulnerable claimants have been left with a shrinking resource pool of advice and representation, with considerable uncertainty about the criteria for eligibility.

PIP is just one of several welfare benefits administered by the DWP, and along with DLA—which PIP is in the process of replacing—constitutes approximately 8% of overall welfare spending (Office for Budget Responsibility 2018: 23). However, PIP has the unique status of producing the largest workload in the Social Entitlement Chamber. It therefore warrants particular scrutiny, especially in light of the ambitious project of reform currently being implemented across HMCTS. As part of this project, introduced in 2016 (Ministry of Justice & Her Majesty’s Court and Tribunal Service 2016), the SSCS is intended to lead the way in the shift to Online Dispute Resolution (ODR).

Across the welfare system as a whole, it is expected that over 80% of UK claimants will eventually manage their benefit claims online (Finn 2018). Whilst human decision-makers will still play a role, person-to-person contact will decrease and automated decision-making will increase. PIP is not marked out as an e-delivery benefit, but the move away from face-to-face tribunal appeals for PIP to digital appeals has already begun (Aitken 2019: 26). There remains considerable uncertainty about if and how ODR will meet the needs of PIP claimants. Social welfare law is a markedly complex area of law, and there are concerns that the digitization of the appeal process will result in a simplification that will have detrimental consequences for claimants. It has been noted that ‘the ability of tribunal members to see the appellant in the flesh and to make their own assessment of the medical issues and the degree of functionality’ is critical to the appeal process (House of Commons Justice Committee 2019: 15). In addition, concerns have been raised about the capacity of disadvantaged and vulnerable groups to utilize digital systems (House of Commons Justice Committee 2019: 12-13).

Both welfare and legal aid reform were ushered in as part of wider austerity measures following the 2008 financial crisis. The brief overview of PIP given in this Note suggests that efforts to simplify and reduce public expenditure can carry hidden costs. DLA was a relatively minor and stable component of welfare spending, but its transition to PIP set in motion a trajectory of changes which ultimately increased DWP expenditure. PIP has also had a significant impact upon HMCTS. In order to meet demands, over the past year the Social Entitlement Chamber has trained 350 medically and disability qualified personnel who had no prior legal or judicial experience (Aitken 2019: 26). It is evident that cost-cutting in one department can lead to increased costs in other areas.

It remains to be seen whether the transition to ODR in the tribunal system will be successful in reducing pressures in the Social Entitlement

Chamber. More research is needed to fully assess the impact such reform will have, particularly upon disadvantaged and vulnerable groups. In addition, it is unclear how reforms in the SSCS will impact upon the NHS. An inability to access welfare can lead to a downward spiral of indebtedness, relationship, housing and health issues. As noted above, withdrawal of public funding reduced the capacity for early intervention in social issues. It is thus not surprising that there has been an increase in individuals turning to their GPs for support. A survey carried out by the Citizens Advice (2015: 1) 'indicated that GPs spend an average of 19 per cent of their time dealing with social issues that are not principally about health, costing the NHS an estimated £400m per year'. In addition, there is a growing body of research pointing to a bidirectional link between law and health, revealing that 'social and economic problems with a legal dimension can exacerbate or create ill health and, conversely that ill-health can create legal problems' (Genn 2019: 159).

The impact upon the NHS is demonstratable, albeit hard to quantify. More insidious and incalculable are the broader implications of a deficit in social justice. A parliamentary Select Committee that investigated PIP heard evidence that the 'ramifications of incorrect decisions ... go far beyond those claimants directly affected'. The final report highlighted that 'Trust is fundamental to the overall running of a successful society' and emphasized the necessity of procedural fairness and transparency (Work and Pensions Committee 2018: paras 8-9). Following the reforms, legal aid frontline agencies have reported a growing sense of anger as individuals face seemingly intractable barriers to justice. As Lord Neuberger has said, such circumstances can place the rule of law itself under threat:

My worry is the removal of legal aid for people to get advice about law and get representation in court will start to undermine the rule of law because people will feel like the government isn't giving them access to justice in all sorts of cases. And that will either lead to frustration and lack of confidence in the system, or it will lead to people taking the law into their own hands. (Neuberger 2013)

As a preliminary conclusion to further research, this Note observes that, whilst the adoption of the digital delivery of public services, including ODR, has the potential to increase access to justice, processes to simplify administrative procedures need to be undertaken with caution. The potential for negative socio-legal consequences should not be underestimated. This is especially so given that such consequences may manifest in areas different from those where initial reform was initiated and, by hiding in the shadows of wider social issues, make good

governance harder to evaluate and failures of governance harder to bring to account.

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