



**PROBLEMS IN CLAIMING EMPLOYMENT SUPPORT
ALLOWANCE AND PERSONAL INDEPENDENCE PAYMENT
IN THE LONDON BOROUGH OF RICHMOND**

A report by Richmond Citizens Advice Bureau on the experiences of some of its sick and disabled clients in 2015

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INTRODUCTION

In February 2015 we submitted a report to our two local MPs, Zac Goldsmith and Dr Vince Cable, to draw attention to our concerns about our sick and disabled clients' recent experience of Employment Support Allowance (ESA) and of claiming Personal Independence Payment (PIP) and to recommend improvements in the operation of both schemes. Both Zac Goldsmith and Dr Vince Cable forwarded our report to Department of Work and Pensions (DWP) Ministers, and in a letter to Dr Vince Cable in April 2015 the Secretary of State for the Department of Work and Pensions, Iain Duncan Smith, provided a detailed response to many of the issues raised in the report.

This report reviews our clients' experience of ESA and PIP since then and identifies issues that in our view still need to be tackled urgently.

Quite a high proportion of our clients are sick or disabled. 1272 or 26 per cent of all clients who came to our bureaux for advice in 2015/16 reported that they had an illness or disability. 362 of our clients raised an issue about ESA or 9 per cent of all those claiming or receiving ESA in the borough in that period, and 188 of our clients were involved in claiming the relatively new benefit, PIP.

Most of the evidence analysed for this report derives from clients whose experience of ESA or PIP in the 9 months between April and December 2015 highlights what seem to us systemic problems in the operation of these schemes. The report examines evidence of clients' problems at each stage of the process of assessing and awarding ESA and PIP and with the implementation of decisions and payments. The points made are linked directly to case summaries that illustrate them in Annex A. In addition we draw attention to an emerging local problem about where assessments for ESA and PIP are being held. Our report concludes with a summary of recommendations for changes in the administration of ESA and PIP that we believe will improve the operation of both schemes.

THE FIRST STAGE IN ASSESSING ESA AND PIP CLAIMS

Less delay in assessing/reassessing ESA and PIP claims

In our previous report in January 2015 we expressed concerns about the backlog of ESA claims waiting for Work Capability Assessment (WCA) and PIP claims waiting for medical assessment. In his response to these concerns the Secretary of State set out a variety of measures being introduced to clear the backlog of claims waiting to be assessed. As a result of these measures clients' claims that had been waiting in the queue for between one and two years were assessed in the first half of 2015/16, and new claims are now being assessed more quickly. However for some clients the long delay in having their claim assessed has been only the first problem in a process that has taken many more months of hardship, stress and uncertainty before their ESA or PIP entitlement has finally been accepted on appeal to a tribunal. We return to this issue in our review of mandatory reconsideration.

Problems with where the assessments are held

As WCA assessments for ESA and medical assessments for PIP concern claimants who may have disabilities that affect their ability to travel Maximus and ATOS could

be expected to provide a network of local assessment centres to prevent claimants having to make long journeys for their assessments. It is also a feature of both organisations' contracts with DWP that they should provide home visits to assess claimants who are unable to travel. However recently Maximus has summoned one of our clients who has severe mobility problems for a WCA in Barking and another client who has severe mental health problems, including schizophrenia, for a WCA in Wembley, and ATOS has summoned one of our clients who suffers from agoraphobia and claustrophobia for a PIP assessment in Ilford. For this PIP assessment the client's GP had provided detailed evidence to support a home visit; but it seems that under ATOS' rules a home visit will only be granted if the PIP claimant is physically housebound and that mental health issues such as agoraphobia are not considered relevant.

It is not clear why Maximus and ATOS are requiring claimants to travel so far from their home areas for their assessments: whether it stems from a policy to allocate claimants to the next available appointment at any assessment centre in Greater London regardless of their ability to travel or whether Maximus and ATOS have too few assessment centres in South West London to deal with the number of ESA and PIP claimants in that area. Either way it is unreasonable to expect disabled claimants to make long journeys for their assessments.

Problems with the quality of assessments for ESA and PIP

In our previous report we noted that there were cases where clients were being awarded zero points for ESA at their WCA despite clear medical evidence that they were not fit for work. Since then the Health Assessment Provider, ATOS, has been replaced by a new Provider, Maximus, and DWP has followed up many of the recommendations for improving the quality of the WCA made as a result of the five independent reviews of the WCA, including the requirement for Maximus to ensure that its health professional assessors are better trained to understand mental health problems and learning disabilities. Nevertheless we continue to have clients who are awarded zero points for ESA at their WCA although the medical evidence that they are not fit for work is overwhelming.

This was the experience of Kathleen who was awarded zero points despite providing evidence of multiple disabilities with an obvious impact on her work capability. (Case summary 1). There have been similar assessments, carried out by ATOS, for clients who have applied for PIP. Mike was awarded zero points for PIP despite medical evidence indicating that he had serious mental health problems, including self harming and overdoses, which compromised his ability to lead a normal daily life without support. (Case Summary 2) In both cases the DWP decision makers simply confirmed the zero points assessments without raising any query, but these decisions were firmly rejected at successful tribunal appeals.

The difference between these zero points assessments and the tribunals' subsequent assessments is striking and suggests that too narrow a focus on whether claimants should be awarded points for particular descriptors at the WCA or PIP assessment

may stop claimants being able to describe the cumulative impact of their disabilities in their own words and so result in an unreliable overall assessment.

THE SECOND STAGE: MULTIPLE FLAWS IN MANDATORY RECONSIDERATION

Several of our clients' experiences of ESA have revealed serious flaws in the whole process of Mandatory Reconsideration (MR).

No ESA payments during MR

The first problem is that the claimant will receive no money from ESA while the original decision is being reconsidered; so the only way to continue receiving benefit is usually to claim JSA on the basis that the claimant has been found fit for work; but what if the original decision was wrong and the claimant is not fit for work and has a certificate from his doctor to confirm it?

To qualify for JSA claimants must sign an agreement that they are immediately available for work, will attend Jobcentre Plus regularly for work focussed interviews and usually follow a plan to apply for a certain number of jobs. Failed ESA claimants who sign this agreement to receive JSA could be guilty of fraud if they know that they cannot fulfil it.

In theory they can place restrictions related to their illness or disabilities on the type of work they can apply for, the number of hours that they can work and the sort of reasonable adjustments that they will need; but we have little evidence that in practice Jobcentre Plus staff take account of these issues. In theory an ESA claimant found fit for work could instead make a fresh claim for ESA; but under current rules a new application for ESA cannot be considered for 6 months unless there is clear evidence that the claimant's health has deteriorated.

So ESA claimants who cannot cope with JSA requirements will often have to borrow money and get into debt or depend on food banks and emergency grants from charities until the MR is decided, without knowing how long they will have to wait. Lydia's experience is a good example of the sort of difficulties that our clients face when they are found to be fit for work but are too ill to meet the commitments required to qualify for JSA while the MR is being carried out. (Case Summary 3).

MR decisions taken quickly without considering all the evidence

On the other hand we still have some examples of decisions on MR being taken too quickly without waiting for our clients to provide further evidence from their GPs or other health professionals or without taking the time to compare the medical evidence supplied by our clients with the evidence based only on the Work Capability Assessment.

In our previous report in January 2015 we recommended that the DWP decision maker responsible for MR should seek and consider medical evidence from the claimant's GP or other relevant Health Professional who had recent contact with the claimant before considering whether to change the original decision. In his response to this

point in his letter to Dr Vince Cable the Secretary of State confirmed the importance of taking enough time to get the MR decision right: "Regarding the MR process itself, it was introduced so that there could be a full review of the decision made in respect of a benefit to ensure its accuracy. This is the claimant's opportunity to provide additional information about their condition and that should not be compromised. It is about quality, not speed. DWP does not want to delay the decision making but there is nothing to be gained by making a decision on a benefit claim which is premature and is simply likely to generate an appeal. The guidance issued to staff makes this clear."

Unfortunately some staff still seem to believe that the priority for MR for ESA is to review the original decision quickly and focus only on whether the Health Professional employed by DWP's contractor, Maximus, carried out the assessment procedure correctly rather than comparing the outcome with medical evidence that conflicts with that assessment. We provide examples of such MR decisions being reached within a week of MR being requested both where independent medical evidence had already been provided and where a request had been made to allow at least two weeks for further medical evidence to be provided. (Case Summaries 4 & 5).

No information about the right to receive ESA payments during an ESA appeal

The failure to consider all the relevant evidence in the MR process leads many claimants to take their cases to a tribunal on appeal. Claimants then face a further problem in getting a minimum level of benefit paid while they are waiting for the appeal. Legally once claimants have appealed to a tribunal against DWP's refusal to award them ESA they are entitled to be paid the basic level of ESA until their appeals have been decided as long as they continue to provide sick notes from their GPs to confirm that they are not fit for work. However this is not mentioned in DWP's letter conveying the refusal to award ESA as a result of the MR, and, where claimants have switched to JSA during the MR process despite not really being fit for work, there is no standard guidance for them on how they can switch back to ESA during the appeal stage.

By raising the issue of how to get ESA payments reinstated during the appeal process with the team in Belfast Benefit Centre that monitors the development of ESA claims for the borough of Richmond we have been told that the right procedure is for claimants to ask JSA staff at their local Jobcentre Plus office to close their JSA claims at a future date and then to tell the ESA Maintenance Team in Belfast the date so that they can instruct DWP's payment team to start making basic level ESA payments from that date; but in the example that we give in our case summary of Jacob 's experience the local Jobcentre Plus staff responsible for monitoring our clients' ESA and JSA claims seemed to be unaware of this procedure until we drew it to their attention. (Case Summary 6).

Although our ESA clients no longer have to wait more than a year for their appeals to reach a tribunal hearing they may still have to wait three to five months, dependent all this time on no more than the basic level of ESA and needing to supply new sick notes to confirm that they are not fit for work even when they are known to have a long term health condition. Consequently a wrong WCA decision confirmed through MR leading to a tribunal appeal may condemn our clients to many months of hardship and

uncertainty, which is particularly stressful for those clients who have mental health problems. They may eventually receive substantial lump sums of one or two thousand pounds in back payments if on appeal they are awarded ESA in the WRAG or Support Group; but these are funds that they should have received much earlier as regular payments for their daily living expenses if the original decision on the WCA, or the MR decision, had been more carefully considered. The experience of Lydia, Khani and Jacob are all examples of this problem. (Case Summaries 3,4 & 5).

Similarly the very long delay in the assessment of PIP claims when the benefit was first introduced, combined with a struggle to achieve entitlement through MR and appeal, has caused some of our PIP clients stress and uncertainty over a period close to two years, as evidenced by Vivian's experience. (Case Summary 7).

Lack of statistics to show the quality or cost benefit of MR decisions

In our report in February 2015 we recommended that DWP should provide detailed evidence to evaluate the quality of decisions on MR, including statistics to show:

- (a) the proportion of all MR decisions that are NOT appealed where the second decision maker changes the decision in favour of the claimant so that there is no need for an appeal to a tribunal; and
- (b) the proportion of all MR decisions that ARE appealed where the tribunal upholds the MR decision.

In his response to our report in April 2015 the Secretary of State mentioned that work was underway in the DWP to "develop robust data streams across all benefits to incorporate MR statistics within existing publications"; but the information available so far on the outcomes of MR and appeals for ESA and PIP is not sufficient to justify the quality or cost benefit of MR for those benefits.

The latest statistics on new claims for ESA covering final decisions reached by the end of December 2015 (but not claims still being considered at that date) focus on the outcomes from initial assessments after the WCA for claims started between April and the end of June 2015 and the outcomes of appeals for claims that were started between October and December 2014; but they do not contain any separate analysis of the outcomes of MR. So there is no information yet about the proportion of MR decisions that are changed in favour of the claimant. The statistics do show that of all the claims that reached a final decision by the end of December 2015 only 36 percent had been subject to an appeal. However some claims will have been abandoned after the decision on the initial assessment at the WCA; it follows that the proportion of claims that will have been appealed against after MR will have been higher. Moreover the analysis of appeals for claims started between October and December 2014 shows that 52% of the DWP decisions were overturned. Since initial decisions on these claims had to be referred for MR before the MR decisions could be subject to appeal this outcome suggests that there is plenty of room for improvement in the quality of MR decisions on ESA.

The latest statistics on PIP include an analysis of MR decisions reached by January 2016. This analysis shows that only 15% of the decisions reached after initial assessment of new claims for PIP were changed after MR and only 28% of the

decisions reached after the initial reassessment of claimants previously receiving DLA. These low percentages could support the view that too often MR has not reviewed critically the initial assessment, or reassessment from DLA, and not considered medical evidence that conflicts with ATOS' assessment; but as the latest statistics on PIP do not yet include any analysis of appeals it is not possible to see what proportion of MR decisions are subjected to appeal and then upheld or overturned. This information is obviously required to complete the picture.

There is also the question of whether the cost of running the MR process for ESA and PIP is offset by a cost saving from a reduction in the number of ESA and PIP claims being submitted to tribunals on appeal. There is no sign yet that DWP has any plans to undertake this kind of cost benefit analysis.

FAILURES OF CO-ORDINATION IN THE ADMINISTRATION OF ESA AND PIP

The smooth operation of ESA depends on prompt and accurate communication between several, different parts of a very complex administrative system, including:

- the claimant's local Jobcentre Plus office, the most regular location for the claimant's face to face contact with the system;
- the local centre of the Health Care Professional, Maximus, where the WCA will be carried out;
- DWP's central teams of AO and EO grade decision makers who will take the original decision on ESA entitlement, on receipt of the completed WCA, and later, if requested, the MR;
- the local centre of HM Social Security and Child Support Tribunals Service for appeals;
- DWP's ESA Maintenance Teams (based in the Belfast Benefit Centre for most claimants living in the borough of Richmond) that keep an up-to-date record of individual claims, awards and payments;
- DWP's payments section;
- DWP's team that specialises in work-related issues such as the approval of permitted work;
- the local Work Programme contractor responsible for providing the tasks that ESA recipients in the WRAG must perform as a condition of continuing to receive ESA.

The administrative system for PIP seems to be similar, but slightly less complex, than that for ESA, with ATOS providing the Health Professionals and local centres for assessment, and a focus on a central PIP Information Unit that keeps a record of individual claims, awards and payments.

Unless the right information is passed to each part of the ESA and PIP administrative systems **and** to claimants at the right time claimants can find that their claims are stalled, or no payments made, through no fault of their own. In our case summaries we include examples of how failures and delays in co-ordination between different parts of the administrative system and with our clients have stopped ESA awards

being implemented and caused serious problems with ESA and PIP payments. (Case Summaries 8-12).

INADEQUATE SUPPORT FOR ESA RECIPIENTS IN THE WORK RELATED ACTIVITY GROUP

The stated purpose of allocating some ESA recipients to the Work Related Activity Group (WRAG) is to prepare them for a return to work if their health condition improves; but the ESA scheme itself seems to offer them little support to achieve this goal. First the WCA that has put them in this Group has considered only their medical fitness. There is no requirement for any vocational expertise in carrying out the assessment; so the WCA does not include any information about the types of work that would be compatible with their health condition or the sorts of reasonable adjustment that might be necessary.

Secondly once claimants have been awarded ESA in the WRAG they have to sign up to “claimant commitments” as a condition for receiving ESA payments. These claimant commitments are likely to be linked to basic programmes offered by local Work Programme providers such as training in job search methods, interview skills and applying for work experience. It is not clear how particular programmes are chosen for individual ESA recipients in the WRAG, but most of these programmes seem more appropriate for JSA recipients who are ready to apply for jobs immediately rather than people with disabilities who may need to overcome a lot of obstacles before they will be ready to consider returning to work. Some Work Programme providers do claim to provide access to other organisations that can provide training or help with particular disabilities (see the list of claimant commitments for the Work Programme provider, Igneus, at Annex B); but in practice our clients seem only to be required to attend programmes more appropriate to JSA claimants.

A more promising approach would be to arrange for a personal interview, or series of interviews, with an adviser with occupational knowledge to establish the ESA recipient’s educational and employment background, the limitations due to their illnesses and disabilities, any further treatment planned and the individual’s aspirations for working in the future. From this process it may be possible to develop a realistic plan to prepare for working again in the future that could form the basis of a “claimant commitment” that would make sense for the individual. This plan might include vocational education or training to upgrade skills or to retrain for a different type of job. It is not to be expected that Work Programme providers could afford to supply specific vocational education or training; but it should be their role to signpost ESA recipients in the WRAG to other organisations that can provide it, and to the main sources of loans and grants.

This more proactive, personalised approach is particularly important for ESA recipients who have mental health problems. They may need a lot of encouragement to take the first steps towards preparing for paid work and to build up their confidence over a long period of time. This approach is also important for ESA recipients who are keen to return to work as soon as possible but need information and advice that is tailored to their own circumstances. Jacob’s experience of ESA in the WRAG over the last four

and a half years illustrates the failure of the current system to give him the help he needed to complete training as an accounting technician so that he can have a realistic chance of getting at least a part time job in his chosen field (Case Summary 13)

THE MISTREATMENT OF SICK AND DISABLED CLIENTS THROUGH THE MALADMINISTRATION OF ESA AND PIP

In this report we have identified a number of different issues that have obstructed our clients' legitimate claims for ESA or PIP; but some of our clients' claims have fallen victim to a catalogue of errors over a period of months or years that have caused our clients needless anxiety and stress. This applies to nearly all the cases that we have cited in this report. In such cases it is difficult to avoid the impression that there is no incentive in the system to treat claimants with respect and administer these benefits efficiently or fairly, and no adequate penalty for failing to do so. None of our clients has received compensation for the long delays in dealing with their ESA or PIP claims, and special payments for gross errors in dealing with their claims have been limited to £25 or £50. In our experience admissions of errors or bad practice are difficult to secure, and even when errors have been admitted special payments are routinely refused.

Consequently in our view it is not just the administrative systems for ESA and PIP that require improvement. There needs to be a fundamental change in attitude to the way in which these programmes are run; an acceptance that ESA and PIP should provide an efficient public service to safeguard a basic standard of living for members of our society who are too sick and disabled to work or have to meet additional costs because of their disabilities; and a culture that treats ESA and PIP claimants with respect and compensates them promptly when serious errors are made in dealing with their claims.

SUMMARY OF RECOMMENDATIONS

On the evidence that we have examined we suggest the following changes in the administration of ESA and PIP:

Assessments for ESA and PIP at local centres in South West London

ESA and PIP claimants living in the borough of Richmond should not be expected to make long journeys outside the borough for WCAs or for PIP assessments. Maximus and ATOS should ensure that appointments are available at local centres within South West London. In addition both organisations should take account of medical evidence that clients are unable to travel away from home for mental health reasons when considering requests for home visits for assessments.

Changes to the WCA for ESA and PIP assessments

1. Less reliance on closed questions focussed on individual functions and abilities and on the total number of points established in that way.
2. More reliance on encouraging claimants to describe in their own words the problems that they face in their daily lives and following up the points that they make to form an overall assessment of how they would cope with a working environment

for ESA and with daily living activities and mobility for PIP, and more reliance on the evidence and views provided by claimants' doctors and others responsible for their long term treatment and care.

3. Health professionals with qualifications and experience in dealing with mental health problems, not just training in mental health modules, to interview claimants with mental health problems.
4. For WCAs health professionals to be accompanied by a careers adviser or someone else with occupational knowledge and of the scope for reasonable adjustments. This member of panel will ask questions about the claimants' education and previous experience of employment in order to form a judgement of the type of work or training that claimants could undertake if found fit for work or allocated to the WRAG. The WCA report should always include this type of vocational assessment unless it is recommending allocation to the Support Group.

Changes to Mandatory Reconsideration

1. Where claimants oppose a decision on their WCA, ask for MR and provide a medical certificate from their GP that they will not be fit for work for a future period, their basic level of ESA payments should continue until a decision is reached on the MR or they are no longer covered by a medical certificate. This will avoid the conflict between the requirement to be immediately available for work for JSA and medical evidence that this requirement is not satisfied. We strongly support the recommendation of the Parliamentary Select Committee on Work and Pensions in its report on Benefit Delivery that "the basic assessment rate of ESA should be paid to claimants throughout reassessment of their claim, not only once an appeal has been lodged".

2. Clear time limits to be set for both the claimant to provide any further evidence and for the MR decision maker to consider **all** the evidence available before reaching a decision. These time limits should be different e.g. 14 days for the claimant and 21 days for the MR decision maker to ensure that the decision maker has time to consider any further evidence presented.

3. DWP to produce additional statistics for MR to show :

- a. what proportion of ESA claims are changed in favour of the claimant
- b. what proportion of ESA claims rejected at MR are appealed against
- c. what proportion of PIP claims rejected at MR are appealed against
- d. what proportion of PIP claims rejected at MR are upheld on appeal
- e. the total cost of MR for ESA and for PIP claims (separately) over a period compared with the costs saved by avoiding tribunal appeals over a similar period

4. The letter notifying ESA claimants that their claim has been rejected after MR to be amended to explain not only that claimants have the right to appeal against this decision to a tribunal but also that they will continue to receive a basic level of ESA payments while the appeal is being considered provided that they supply medical certificates to show they are not fit for work. They should no longer have to request it.

Reducing failures of communication and co-ordination in processing claims

1. The procedures for communicating decisions on ESA and PIP entitlement and generating the appropriate payments for ESA and PIP to be reviewed to provide automatic checks to identify whether the next stage has been delayed or part of the system (e.g. the payments section or the local office of Jobcentre Plus) has not been notified.
2. Where claimants are disadvantaged by errors, for which they bear no responsibility, in processing their claims, they should automatically be compensated for the errors as soon as these have been identified. They should not have to apply for compensation. This change is necessary to provide an incentive to eliminate the errors.

Providing practical support for ESA recipients in the WRAG

1. Every ESA claimant allocated to the WRAG to be referred to a suitably qualified **personal** adviser working for an organisation equipped with information about different types of occupation and training **and** how to secure different types of reasonable adjustment for disabled workers.
2. This adviser will arrange a series of one-one interviews with the WRAG recipient to review the vocational recommendations in the WCA and discuss a flexible plan for an eventual return to work including as appropriate: further medical treatment, specific vocational education or training, work experience, and the sort of part time or full time employment or self employment to work towards.
3. The adviser will provide practical support to the WRAG recipient to carry out the plan once agreed e.g. by identifying local training or work experience providers and sources of funding to pay for fees or equipment or for reasonable adjustments and will review progress at agreed intervals as a condition for ESA payments to continue.
4. The plan will be revised to take account of changes in the WRAG recipient's health that reduce, or improve, the chances of getting back to work.

ANNEX A

ESA AND PIP CASE SUMMARIES

1.ESA claimant with multiple disabilities awarded zero points at WCA

Kathleen is a 50 year old single woman, living in a care home. She suffers from spina bifida, severe back and leg pain, vision problems that have required a stent to be fitted in her brain, and has conjoined fingers on one of her hands. Client had been in receipt of Income Support (IS) on grounds of disability for several years as well as the high rate mobility component of DLA. DWP had considerable evidence of her long term health conditions.

At the end of July 2015 she was summoned to a WCA as she was due to be transferred from IS to ESA, but was awarded zero points. Despite the evidence of her disabilities available to DWP this assessment was accepted and she was found to be fit for work. With help from the CAB she lodged a request for Mandatory Reconsideration (MR); but then to survive financially she had to claim JSA as though she was capable of taking up paid work immediately, and her Housing Benefit (HB) and Council Tax Reduction(CTR) were suspended while her JSA claim was being considered. This made her very anxious and aggravated her health problems.

At the beginning of September DWP upheld the original decision as a result of MR and Kathleen appealed to an independent tribunal. Her case was heard on 16 December 2015 and she was awarded ESA in the Work Related Activity Group (WRAG). So it took nearly 5 months for Kathleen to be transferred from IS to ESA when on the evidence available to DWP from the many years when she had been receiving IS a WCA interview was probably unnecessary to find her eligible for ESA, and the assessment that none of her disabilities would prevent her starting paid work immediately was obviously ill founded.

2. PIP claimant with severe mental health problems awarded zero points

Mike is a 25 year old, single man who lives at home with his brother and mother. He has a long history of mental illness including depression, with symptoms of low mood, lack of concentration, insomnia and inability to take pleasure in everyday activities. He also finds engaging with other people extremely stressful. Mike self harms and has had occasional emergencies where he has taken overdoses. He has a history of engaging with therapy for a time, and then feeling it is not effective, and so withdrawing. This can in turn lead to him not engaging with medical professionals, and at times going for an indeterminate period without treatment, leading to additional risk of a significant downturn.

Mike made a claim for PIP on 13th April 2015. The CAB helped him complete the form which was returned with medical evidence on 8th May 2015. The decision maker phoned Mike on 13th May but Mike could not remember anything said during the call. Mike was not called for a medical assessment and on 20th May received a zero points decision. This was at odds with the evidence in his claim form and his submitted medical evidence.

We recommended that Mike request Mandatory Reconsideration and he did so by phone on 28th May. With our help he submitted a further statement about his difficulties, linking them to specific PIP descriptors. Mike was still not called for a medical assessment face to face and the MR decision letter, dated 16th June, confirmed the zero points decision. We then assisted Mike with a tribunal appeal. The appeal was successful and on 23rd September Mike was awarded the standard rate Daily Living Component of PIP for four years.

There are two aspects of the two DWP decisions in this case that may reveal systemic problems with the operation of PIP. First the points system for individual descriptors may encourage a purely mathematical and mechanistic assessment of the claimant's ability to carry out individual activities. By taking a very strict view of each activity the Health Professionals and two DWP decision makers felt able to reach a zero points decision on Mike's ability to lead a normal daily life without considering whether this overall assessment was compatible with evidence of self harm, overdoses and intermittent use of treatment and therapy.

Secondly both the WCA and the MR were carried out without any face to face interview with Mike. It is striking that the Health Professionals and two DWP decision makers felt able to reach a judgement on Mike's ability to engage with other people face to face and award zero points without interviewing him face to face. The tribunal in its decision on appeal stressed that they had been influenced by Mike's oral evidence at the tribunal hearing and awarded him 8 points on the grounds that he was unable to form social relationships. Mike's case therefore suggests that the decision making system for PIP is not yet sufficiently sensitive to the issues that affect claimants who have significant mental health problems.

3. Financial difficulties for ESA claimant during MR

Lydia is a 41 year old single woman living on her own in social housing. She suffers severe depression and stress. Her GP became concerned that she was showing suicidal tendencies and signed her off work. She then made a claim for ESA in April 2014, but because of ATOS' backlog in providing WCAs for ESA claims her WCA did not take place until 30 June 2015. She received a decision that she was fit for work on 21 July with just 6 points awarded for difficulty in completing tasks, and her ESA payments stopped. We requested MR on her behalf by phone and letter on 24 July and supplied further medical evidence on 5 August.

In the meantime Lydia had no money and so logically should apply for JSA as being fit for work. However she felt that she could not cope with going to Jobcentre Plus. Her GP wrote a very strong letter to DWP warning that she would be at risk if she was forced to go to work and that her mental condition was worse. She then made a fresh claim for ESA; but this was initially refused.

Lydia now had no way of obtaining financial support except by claiming JSA on the grounds that she was ready for work. We wrote a letter for her to take to Jobcentre Plus to explain the position and provided a copy of the GP's letter expressing his concern. The Jobcentre Plus staff were considerate but confirmed that she did need to be available for work. Despite her doubts her JSA claim was accepted. In the meantime however Lydia had requested MR on the refusal of her fresh claim and, later

in August after this MR, the fresh claim was allowed to go ahead so that she could have a basic level of ESA payments reinstated; but during periods when Lydia had no money she had to depend on food bank vouchers, and had her Housing Benefit and Council Tax Reduction suspended so that she risked problems arising from arrears of rent and Council Tax.

Attention now turned to MR on the original claim, which seemed to have got lost. We pressed for a decision for Lydia in September and October; but it was not until December 2015 that a decision was reached on this MR. Lydia was now finally awarded ESA in the Support Group with the prospect of 74 weeks' back payments of the additional payments due to this award; but given Lydia's mental health problems the strain of having to survive on the basic level of ESA for so many months while waiting for a WCA and then again because of the long delayed MR had a serious impact on Lydia's health. Lydia's experience strongly suggests that the whole approach to ESA assessment for claimants with serious mental health problems needs to be reviewed and entrusted to health professionals who are qualified and experienced in mental health.

4. MR decision reached quickly without considering new evidence

Khani is a 49 year old Pakistani mother of 4 children who is separated from her husband but living in the same housing association property. She is in constant pain due to serious back problems and is severely depressed. She applied for ESA in 2013 and after 18 months delay received a WCA. She was found fit for work in a zero points decision dated 21 May 2015 and came to the bureau on 4 June with a full medical history and a prescription indicating that her medication for her depression had been increased. The bureau submitted an application for MR the same day rebutting several of the conclusions that the Health Professional had reached, citing specific evidence on several ESA descriptors and enclosing all the new information that CI had brought. CI then received a decision on the MR dated 16 June confirming the original decision that she was fit for work. The MR decision was based entirely on the Health Professional's assessment at the original WCA and did not address any of the specific points raised in the new evidence.

We then helped Khani to appeal to a tribunal and four months later on 27 October she was finally awarded ESA in the WRAG. In its decision the tribunal awarded Khani 12 points for her restricted mobility and difficulties in sitting and standing and 24 points for the impact of her depression on her ability to complete tasks, cope with change, travel to unfamiliar places and make social contact with new people. The tribunal also stressed that it was influenced by Khani's own evidence at the tribunal hearing.

The result of Khani's appeal underlines the serious failure of DWP decision making, and particularly at MR. Had the MR decision maker taken the time to consider the detailed evidence provided with the MR request Khani would have been spared a further 4 months waiting for a final decision on her ESA claim, and the tax payer would have been spared the cost of a tribunal appeal.

5. Another MR decision reached quickly without waiting for new evidence

Jacob is a 57 year old Iranian with indefinite leave to remain living in a private tenancy. He has mobility problems due to a severe injury to his right knee in 2008 that required surgery that was unsuccessful so that he now has pain in both knees and his back as well as a stomach problem that is still undiagnosed. The pain becomes acute when he walks and he cannot sit or stand comfortably for more a short period so that he has to alternate between sitting and standing for a long interview. In addition he is subject to mental health problems and insomnia due first to imprisonment and torture before he escaped as a refugee from Iran; but he has now also become severely depressed because of the restrictions that his physical disabilities impose on what he can do.

In 2009 after he had come to London to live he applied for income-based ESA and was turned down; but with our support he appealed to a tribunal and after a delay due to a loss of his appeal papers was eventually granted ESA in the WRAG in 2011 because of his mental health problems. Over the next two years he was obliged every month to attend group sessions provided by a local Work Programme provider as a condition of receiving his WRAG payments (see further Case Summary 13); but in January 2014 ATOS sent him an ESA 50 to complete to update the effect of his disabilities on his daily activities for a reassessment of his work capability.

With the bureau's help Jacob submitted his completed ESA 50 on 23 January 2014. On the form he made it clear that he would need an interpreter for his WCA interview because his first language was Farsi and he could not always understand questions posed in English. He heard no more about his ESA reassessment for the next 16 months until he was suddenly summoned for an appointment for a WCA interview on 5 June 2015. His GP had been asked to submit medical evidence about his condition at the beginning of September 2014; but no attempt was made after that to refer back to the GP or to Jacob himself to check whether there had been any change in his condition in the eight months before the WCA in June 2015. When Jacob arrived for the WCA he found that there was no Farsi interpreter to support him, but at the end of the interview he was persuaded to sign a declaration that he had been able to respond at interview despite the lack of an interpreter. However in practice he was confused by some of the questions put to him and wasn't sure if he was answering correctly.

In July 2015 Jacob was notified that he had been found fit for work in a zero points decision. The Health Professional's assessment relied heavily on evidence provided in ESA 50 submitted more than 16 months before the WCA but also included statements that Jacob was alleged to have made at interview that he did not recognise. Jacob was convinced that his daily activities were now more severely restricted by his physical disabilities than they had been at the time when his ESA 50 had been submitted; so on 20 July we wrote a letter on his behalf to ask for MR and for a delay of two weeks from the receipt of this request before a decision was reached on the MR to allow time for his GP to provide medical evidence relevant to the decision. In addition our letter set out Jacob's detailed evidence opposing the Health Professional's assessment of his mobility, ability to sit and stand and to cope with change and make social contact with others.

Seven days later on 27 July the MR decision maker wrote to confirm the original decision that Jacob was fit for work. He relied entirely on the health professional's assessment, made no reference to the request for delay for the GP's evidence and stated that he would not address "any other issues that may have been raised for mandatory reconsideration" because they could have no effect on the issues to be considered.

The evidence that the MR decision maker had ignored was then included in Jacob's tribunal appeal. Three months later on 2 November 2015 the tribunal heard his appeal with a Farsi interpreter. Jacob had the opportunity to describe much more fully the ways in which his physical disabilities restricted and isolated him. He was awarded ESA in the WRAG on the grounds of the disabilities affecting his mobility and sitting and standing.

There seems to have been a catalogue of errors in the reassessment of Jacob's ESA due partly to the huge gap in time between ATOS' instigation of the reassessment in January 2014 and the WCA more than 16 months later. However the MR decision maker had a chance to put it right by allowing time for medical evidence to be properly updated and by considering more accurate evidence that Jacob supplied to correct misunderstandings that the absence of an interpreter at the WCA may have created. By failing to do so he made Jacob wait for another three months on a basic level of ESA until the higher WRAG payments could be awarded, and triggered all the costs of an unnecessary appeal.

6. Confusion about what benefits claimants can be paid during a tribunal appeal for ESA

When **Jacob** was notified that he had been found fit for work as a result of the WCA (see previous case summary) he applied successfully for JSA so that he could continue to receive benefits while his request for MR was being dealt with; but when he was notified that the original decision had been confirmed through MR and we helped him to launch a tribunal appeal he asked his GP to provide a medical certificate confirming that he was not fit for work, and wanted to reinstate a basic level of ESA payments.

As it became clear that this would not happen automatically as a result of his tribunal appeal we contacted the manager of the JSA team at the local Jobcentre Plus. He advised that JSA payments could not be stopped until ESA payments had been reinstated but passed us on to the manager of the ESA team for further information. However this manager advised that Jacob would need to remain on JSA until his tribunal appeal for ESA had been determined. The fact that Jacob's GP had supplied a medical certificate indicating that he would not be fit for work for a period of months was irrelevant because of the decision confirmed through MR that he was fit for work. Jacob's only other option was to make a fresh claim for ESA; but he would have to wait six months to do that unless he could show that his medical condition had deteriorated.

Faced with this confusing advice we contacted the central ESA maintenance team in Belfast. They confirmed immediately that Jacob should have a basic level of ESA payments reinstated once he had appealed to a tribunal. The correct procedure was

for Jacob to sign for his next JSA payment but to ask for his JSA to be stopped after that payment and for the local office of Jobcentre Plus to notify the Belfast maintenance team of the date when it would stop and provide a copy of the GP's medical certificate stating that Jacob was not fit for work. As soon as the Belfast team received this information and the GP's medical certificate they would notify the ESA payments section and Jacob should receive his first reinstated ESA payment within two weeks, backdated to the date when his JSA had stopped. We then contacted the manager of the JSA team at the local Jobcentre Plus on Jacob's behalf and passed on the advice from the Belfast maintenance team. Jacob signed on for JSA for the last time as advised, and the manager of the JSA team provided his Belfast colleagues with the information and medical certificate as required, leading to Jacob's ESA payments being reinstated from the date when his JSA stopped.

The complexity of this process, which clearly baffles some Jobcentre staff as well as claimants, suggests that it would be better to arrange for JSA to stop and the basic rate of ESA to restart automatically from the date when a tribunal appeal for ESA is accepted, or, better still, to continue with the basic level of ESA payments during MR so that the switch to and from JSA can be avoided.

7. PIP claimant waits nearly 20 months before her claim is accepted on appeal

Vivian is a 38 year old single woman living in a private tenancy. She has a degenerative hip problem with wide-ranging effects on her mobility. She cannot sit, and has to alternate between lying and standing. She had to give up her civil service job because she could no longer sit at a desk. She also suffers depression.

Vivian had great difficulty securing ESA which she only won on appeal to a tribunal after a long struggle (We reported on this experience in our last report in February 2015). She also claimed PIP on 11 September 2013. Because of ATOS' backlog in providing medical assessments Vivian was not assessed until almost 10 months later on 7 July 2014. She then received a letter dated 1 August rejecting her claim for PIP with a score of 6 points for Daily Living and 4 points for Mobility so that she had not quite reached the total of 8 points required to qualify for each of the two components of a PIP award.

Vivian asked for MR, but it was six months later before the MR was completed. On 3 February 2015 she received an unchanged decision. We then helped her to make a tribunal appeal, and, after a further three months, on 5 May 2015 her appeal was heard, and she was awarded the Standard rate for Daily Living and Mobility.

As a result of the delays in dealing with her claim Vivian had no access to her PIP award for nearly 20 months. Combined with problems with her ESA claim she had periods when she had no income and had to rely on a food bank voucher. In addition she incurred significant debts. She has been due about £6500 in back payments for PIP as well as back payments for ESA; but if she had received this money as regular payments much earlier she would have been spared much stress and anxiety that greatly increased her depression.

Failures due to inadequate communication and co-ordination

(a) Failures to implement ESA awards

8. Robin is a 37 year old single man living in social housing. He started claiming ESA because of mental health problems, including severe anxiety, in 2014 and was called for a WCA in November 2014. Since then he continued to provide medical certificates to confirm that he was not fit for work and to receive the basic rate of ESA, but heard nothing about the outcome of the WCA. Eventually in September 2015 he came to the CAB to check on the situation with his claim. When we contacted DWP we discovered that as a result of the WCA in November 2014 Robin had been allocated to the Support Group; but this decision had never been implemented so that he had just continued to be paid at the basic pre-assessment rate. It was not clear where the breakdown in communication had occurred. It could have been between the decision makers' team and the Belfast Benefit Centre or between the Belfast Benefit Centre and the Payments section and the local office of Jobcentre Plus; but the impact of the breakdown on Robin was clear. For months he had been struggling to survive on the basic rate of ESA with the added stress of having to provide medical certificates to ensure continuing entitlement to ESA. In the period from December 2014 to end March 2015 he should have been receiving an extra £51.50 a week (including an enhanced disability premium), and in the period from April 2015 to September 2015 an extra £51.95 a week, or well over £2000 for the whole period.

9. Henry is a 61 year old single man living in social housing. He has a long history of alcoholism as well as problems with painful ulcers on both legs. In December 2014 he enrolled on a 12 month rehabilitation course to help him stop drinking alcohol. Then early in 2015 he was assessed for transfer from Incapacity Benefit to ESA and was placed in the WRAG. For several months he continued to receive ESA payments at the rate for the WRAG without being asked to take any action to show that he was preparing to return to work; but in November 2015 he received a letter from his local Jobcentre Plus warning him that he needed to join a Work Programme to avoid his ESA being stopped and was then sent a first appointment with the Work Programme company, Ixion, on 15 December.

Up to this point Henry had been doing well on his rehabilitation course and had reduced his intake of alcohol considerably; but the sudden prospect of having to cope with a Work Programme unnerved him and he had a serious relapse with his drinking. He came to the CAB for help with his ESA, and when we investigated his ESA status it emerged that his transfer to ESA in the WRAG had been challenged with a request for MR, and it had been accepted in a MR decision in March 2015 that as Henry had recently enrolled on a 12 month rehabilitation course to tackle his alcoholism he should be placed in the Support Group for at least the next 12 months.

However when we contacted the MR decision makers in Stratford they confirmed that this decision had not been notified either to the pay department or to the local office of Jobcentre Plus or to Henry. Consequently the pay department had no reason to increase Henry's payments to the level for the Support Group and the local Jobcentre Plus assumed that as Henry was in the WRAG he should attend a programme geared

towards preparing him to return to work. In December 2015 the decision to place Henry in the Support Group was finally implemented, he was paid over £1000 to cover the additional payments that he should have received in the Support Group and it was confirmed that his ESA status would not be reviewed until the anniversary of the MR decision in March 2016. Had we not investigated Henry's ESA status before he was due to attend the Work Programme at Ixion it is very likely that his ESA would have been stopped for non-attendance and his promising progress on the rehabilitation course would have been undermined.

(b) Problems with ESA and PIP payments

10. Terence applied for ESA after he had a stroke and could only return to work for a two and a half hours a week earning only £20. Normally he would have received the basic rate of ESA (£73.10 a week) until his work capability was assessed; but he received no money at all for three months, forcing him to rely on family and friends and the food bank to survive. It was only when he came to the CAB and we investigated that it emerged that his claim had been referred to the team that could decide whether to accept his part time work as permitted work within the rules for ESA entitlement. His claim was stalled until this decision was made; but no one had explained this to him or done anything to speed up the decision. When the Belfast Benefit Centre were alerted Terence's part time work was quickly accepted as permitted work and he was paid £1132 for the payments that he should have received in the previous three months.

11. Zafari is a divorced Iranian mother of two children who applied for ESA in November 2014 because of her anxiety and depression and received the basic rate of ESA for six months until May 2015. Then her payments suddenly stopped. She noticed a reduction in her income but did not realise that this was due to her ESA no longer being paid. She found that she did not have enough money to pay the rent and eventually was threatened with eviction as her rent arrears mounted. In July she went to Jobcentre Plus to inform the staff that she was going on holiday to Iran for 4 weeks; but no one checked her claim and it was not until she contacted Jobcentre Plus on her return in August that she was told that her ESA had been stopped. It turned out that she had never been told (or had never understood) that she needed to provide medical certificates that she was not fit for work in order to qualify for ESA payments, and her failure to provide these certificates had eventually led to her ESA being stopped; but it took the system six months to respond to her failure to provide medical certificates and the local Jobcentre Plus another three months to notice that her ESA had stopped and tell her about it.

12. Mike is the young man with serious mental health problems who was finally awarded the Daily Living Component of PIP for four years on appeal to a tribunal. (For full details of Mike's experience see Case Summary 2) Following the tribunal's award he should have started to receive regular PIP payments as well as arrears of about £1250; but he received nothing. He phoned the PIP Programme Information Unit several times and was assured that his payments were being processed urgently; but nothing happened. Eventually we spoke to the manager of the Centre who agreed to escalate Mike's case; but six weeks after the tribunal had notified Mike's PIP award he had still received no payments.

13.No practical support for ESA recipient in the WRAG to use accountancy skills

Jacob is the 57 year old Iranian with mobility problems due to a knee injury and mental health problems who was finally reinstated in ESA in the WRAG in November 2015 after a reassessment process that lasted a total of 20 months. (For full details of his experience see Case Summaries 5 & 6).

Jacob first applied for ESA in 2009 and came to the bureau for help until he finally secured ESA in the WRAG on appeal to a tribunal in 2011 and later asked for help with other problems, culminating in further support to secure reinstatement of ESA in the WRAG after the flawed reassessment process. Throughout the period since 2009 that Jacob has been in contact with the bureau he has always wanted to find a way of getting a job despite his disabilities. This came to a head in December 2013 when he complained to the bureau's adviser that in order to maintain his entitlement to ESA he had to attend group meetings that were very difficult for him to travel to at a Work Programme run by the company, Ixion. At these meetings several ESA recipients in the WRAG like himself had to produce CVs or look at websites for jobs or discuss the health problems that made it difficult for them to get back to work. He felt that these group meetings were not relevant to his particular circumstances, but he never had the chance to discuss his background and aspirations with a personal adviser at Ixion to improve his chances of getting back to even part-time work.

He explained that in Iran he had been a senior manager helping to run a large accountancy company. When he fled to the UK and stayed in Manchester with friends while he was waiting for his asylum claim to be decided, he started an accounting technician course and acquired Intermediate Qualifications as a student member of the Association of Accounting Technicians (AAT). Unfortunately shortly after his claim for asylum was finally granted he had the accident that led to him being hospitalised and unsuccessful surgery on his right knee so that he could not complete the course to gain his final qualifications or do any work.

His AAT membership had lapsed and he was not sure whether he could resume his course to complete his accounting technician qualifications; but he wanted to discuss this with someone at Ixion. So the bureau wrote to the Chief Executive at Ixion, to describe Jacob's background and half-finished training and to ask for him to be allocated a Personal Adviser to help him make plans for his future employment. Eventually he was allocated a member of staff to interview him on his own; but Jacob found that he was not offered anything different from the rudimentary CV preparation and website search that he had done before. This increased his feelings of depression and hopelessness.

Later he suggested to his Personal Adviser at Jobcentre Plus that he could gain some useful work experience of accounting in the UK by doing some book keeping for an organisation on a voluntary basis; but he was told that this would be impossible because he had no relevant experience.

When Jacob found himself back in the WRAG as a result of his successful appeal in November 2015 he was desperate to make some progress towards getting a job that made use of his accountancy skills and experience. So with Jacob's consent the bureau adviser wrote to the Head of Business courses at Richmond Adult Community

College (RACC) describing Jacob's background and the training that he had undertaken in Manchester and asking him to arrange to interview Jacob to see if he could do a part time book keeping course or some other part time course that made use of his experience and his half-finished training.

The interview went ahead, and the Head of Business Courses at the RACC wrote back immediately to say that as Jacob had already gained AAT Intermediate Qualifications he had only to pass a simple Maths and English exam to be accepted onto a further part time 6 month course starting in January 2016 leading to final exams that if passed would qualify him to work as an accounting technician in the UK. His course and exam fees could be covered by a student loan and he could renew his student AAT membership for £129. Jacob passed the entry exams, was granted the student loan and started the course in January 2016; unless his health breaks down further he is very confident of completing the course and passing the final exams. Although there is no improvement in his physical disabilities his depression has lifted and he has a sense of purpose. He feels that once he has qualified as an accounting technician he will have some hope of getting at least a part time job that will make some use of his skills and experience and make him less reliant on benefits.

There is still the question of how Jacob will be able to achieve the reasonable adjustments necessary for him to work for an employer or on a freelance basis; but he could have been tackling this issue as a qualified accounting technician four years ago if Jobcentre Plus or Work Programme staff had explored his employment background and training in the UK when he was first allocated to the WRAG in 2011, and any thought had been given to how and where he could finish his training.

ANNEX B .

CLAIMANT COMMITMENTS FOR ESA RECIPIENTS IN THE WORK RELATED ACTIVITY GROUP

Following is an extract from the description of its Work Programme by the provider, Igneus:

- “Activities that, where appropriate to the client's circumstances, ESA clients could be mandated to do as part of Work-related Activity on the Work Programme:
- To attend workshops which are critical to the client's progression towards employment such as
 - "Job search methods"
 - "Interview skills"
- To attend the job station computers in our offices in order to job search / research a particular job goal / research which locations could be travelled to for work within a realistic timeframe .
- To attend a mock interview
- To attend a "Candidate Pool" session where clients are screened for suitability for certain employers in a context that resembles an assessment
- To attend 18 weeks of job search interventions with one of our "Vocational Routeways" providers as part of our standard delivery model
- Assistance in securing work placements, work trials or voluntary work as appropriate to the individual client's needs
- Self-employment-related activities as appropriate, including
 - Business planning and budgeting
- Referral to organisations in the community for appropriate upskilling where there would be a benefit for the client's job goals including
- Access to Third Party Specialists: "ACE Network" including
 - Budgeting advice
 - Support for mental health / learning disabilities
 - Support for blind and partially sighted clients
 - Support for deaf clients
 - IT training
 - Industry-specific training e.g. CSGS / Security.”