WRITTEN EVIDENCE SUBMITTED BY CITIZENS ADVICE RICHMOND

ON ESA AND PIP ASSESSMENTS – NOVEMBER 2017

Introduction

1. Citizens Advice Richmond provides free advice to anyone who lives, works or studies in the London Borough of Richmond. 32% of our clients have disabilities or long term health conditions and in the 12 months to September 2017 we advised 402 ESA claimants with 785 issues and 271 PIP claimants with 602 issues. We are well placed to contribute to the Committee's enquiry because we have provided annual reports to our local MPs on our clients' experience of ESA and PIP, with recommendations for improvement, since 2013 and a detailed analysis of Work Capability Assessments (WCAs) and PIP assessments as part of our response to the Government's Green Paper on Improving lives. We have drawn on this analysis (link) for this submission.

FAULTS WITH THE ESA CLAIMING PROCESS

2. We consider that there are fundamental flaws in the design and operation of WCAs and the ESA claiming process:

First time assessment

- reliance on a mechanical points system to assess physical and mental functions without any consideration of the claimant's ability to cope with life, or their previous education, or employment experience, or the practical requirements of getting and keeping a job
- reliance on the impressions of a health care professional who has never seen the claimant before, asking a series of closed questions in a half hour interview, to the exclusion of medical evidence about long term health conditions provided by the claimant's GP or consultant
- inadequate medical qualifications for Maximus' health care professionals to assess the impact of a range of disabilities and health conditions and inadequate training for them to deal sensitively with vulnerable claimants who have mental health problems or learning difficulties
- the failure of DWP decision makers to examine thoroughly the evidence presented by Maximus' health care professionals where it runs counter to evidence provided by the claimant's GP or consultant
- the failure of health care professionals and DWP decision makers to consider evidence relating to claimants' employment experience or prospects in the labour market
- the failure of DWP decision makers to respond to objections and additional evidence provided for Mandatory Reconsideration (MR), leading to a rubber-stamping of the original decision.

Reassessment

- inadequate control of the frequency of reassessments with no requirement for the DWP to call for evidence of ESA recipients' current state of health before launching the full reassessment process or to consider tribunal's recommendations on appeal for a long interval before reassessing claimants placed in the Support Group
- continued, exclusive focus on Maximus' health care professionals' application of the points system, at a half hour interview, without regard to the reasons why claimants were granted ESA, whether there has been any improvement in their health since their award, or progress in preparing them for paid work.

The "no points" syndrome

- due to these flaws, it is common for our clients to be awarded no points by DWP decision makers but granted ESA with 20-30 points or placed in the Support Group by tribunals on appeal and to have to go through the same cycle again, every time they are reassessed

FAULTS WITH THE PIP CLAIMING PROCESS

3. Most of the same flaws apply to ATOS' PIP assessments and the rest of the PIP claiming process. In addition we would stress that:

- ATOS seem to have particular difficulty in assessing claimants with serious mental health problems
- the stricter PIP requirements for entitlement for enhanced mobility have deprived claimants of their Motability cars, often causing them to be trapped at home
- there is a lack of consistency between ESA and PIP assessments. The same medical evidence accepted for ESA may be dismissed by the PIP decision maker. Furthermore having to go through two separate and lenghty processes greatly increases the stress for the majority of ESA claimants who also want to claim PIP.

Lack of accountability for assessments and decisions on entitlement

4. A disturbing feature of the current system is that neither the health care professionals nor the DWP decision makers seem to be accountable for their assessments or decisions. We have no evidence that when DWP decisions are overturned on appeal the health care professionals and DWP decision makers involved are informed or that tribunal decisions are taken into account for reassessments.

The costs and delays of the current system

5. With the involvement of external contractors, two sets of decision makers and social security tribunals for all ESA and PIP claims that are decided on appeal, the costs to the taxpayer of DWP decisions that are overturned are enormous. When neither expert medical evidence provided through the NHS nor the reasons for tribunal decisions influence the claiming process, public funds are being wasted. Furthermore the delays inherent in the current system often condemn claimants to many months' uncertainty about whether and

when they will receive the benefit that they have claimed. Substantial changes are needed to streamline both claiming processes and make them fit for purpose.

HOW TO IMPROVE ESA AND PIP CLAIMING PROCEDURES

6. We propose the following main changes:

i. end the contracts with Maximus and ATOS and bring the assessment processes for ESA and PIP in-house so that DWP has full responsibility for them

ii. abandon a separate assessment based on a points system and short interview with a health care professional and rely instead on:

for ESA

- the response to a questionnaire sent to the claimant's GP to obtain relevant medical evidence
- the claimant's response to a form enquiring about the overall impact of disabilities or long term health conditions and also about educational qualifications, skills and previous employment, supplemented by an open-ended interview with the decision-maker only if the written information is unclear and
- a report from the JCP work coach that identifies from a Health and Work Conversation with the claimant, what type of work (if any) the claimant can do, what training or other employment support might be available and what reasonable adjustments are required to overcome barriers due to illness or disability

for PIP

- the response to a questionnaire sent to the claimant's GP to obtain relevant medical evidence
- the claimant's response to a form enquiring about the overall impact of disabilities or long term health conditions on their ability to cope with activities essential for daily living and on their mobility, supplemented by an open-ended interview with the decision-maker only if the written information is unclear

for a joint ESA/PIP application

- the response to an extended questionnaire sent to the claimant's GP, an extended form sent to the claimant (and if necessary a short interview), and a report from the JCP work coach

iii. end mandatory reconsideration within DWP as a separate stage in the process and allow the claimant to appeal directly to a tribunal to challenge the DWP's decision; but require the DWP to reconsider its decision within a strictly limited period before the appeal can be heard, with the claimant continuing to be paid ESA at the basic rate until a final decision is reached or the current rate of DLA if the claimant is being transferred from DLA to PIP

iv. reduce the time taken for ESA and PIP entitlement to be decided by setting time limits for each stage of the procedure e.g. a maximum of 2 months for DWP to reach a decision and of 3 months for tribunal appeals to be heard and 10 days for ESA and PIP awards to be paid

v. make DWP decision makers more accountable for their decisions by changing the Regulations:

- to require them to show in their decisions what efforts they have made to acquire and consider up-to-date medical evidence from the claimant's GP or consultant, including for reassessments whether there has been any improvement in the client's medical condition since ESA or PIP was awarded
- to require them to show in any decisions on reassessment, following a previous ESA or PIP award, that they have considered the reasons for the previous award, including awards by tribunals on appeal, and any recommendation by a tribunal on the duration of the award before entitlement should be reassessed and
- in any case where this evidence is not provided to allow a tribunal to require the DWP to provide this information and reconsider its decision within a month prior to any tribunal hearing.

vi. establish a small team independent of the DWP, with expertise in assessing the impact of different illnesses and disabilities on daily living activities, mobility and occupational requirements, to monitor the operation of ESA and PIP claiming procedures and report to the Secretary of State for Work and Pensions on the effectiveness of the changes proposed within a year of their introduction.

The application of our proposals to a current ESA reassessment

7. We are currently advising a 60 year old man who has constant pain in his back and right leg due to a serious accident. This restricts his mobility and obliges him to alternate frequently between sitting and standing. Over the last four years he has been through the "no points syndrome" twice achieving ESA in the WRAG on appeal but in his third reassessment has once again been refused ESA with no points, now confirmed at MR. Here are five changes in the way that his reassessment would be handled under our proposals:

- **consideration of the last ESA award-**there was no consideration in the first decision on his current reassessment of the terms of his last ESA award in 2015. Under our proposals it would be compulsory to take account of the last award before embarking on a reassessment. In this case it was a tribunal award that focused on the restrictions to his mobility and his inability to remain sitting or standing. So the first requirement for the DWP decision maker should have been to find out whether there had been any improvement in these medical conditions.

- **getting well-structured medical evidence from the claimant's GP-**there had been no attempt to contact his GP for up-to-date medical evidence on his condition before the first decision was reached. When this was challenged for MR the response was that it was for the claimant to contact his GP for any medical evidence and that Maximus' health care professional had made an up-to-date medical assessment. In our view it should be the DWP's responsibility to send the claimant's GP a letter and questionnaire that will elicit the information needed. We have included at Annex A what this letter and questionnaire might look like and at Annex B the text of a letter

to be sent to the claimant's GP for a claim for both ESA and PIP and the questions to be posed for PIP.

- **analysing the relevance of the medical evidence**-it was clear from the health care professional's report that our client had to change his position from sitting to standing during the 32 minute interview; but this was not recognised with the allocation of any points for this problem. When this was pointed out for MR the response was simply that the health care professional had covered all the relevant functions and activities. Under our proposals the DWP decision maker would not be able to hide behind the points system and an external contractor's report because neither would be available but would need to consider more generally the relevance to our client's work capability of the GP's answers to the questionnaire and his own information in his claimant's form.

- **consideration of employment experience and prospects with reasonable adjustments** – our client has been refused ESA because he has been found capable of "some type of work". There is no indication in the DWP decision of what type of work that might be. He has been keen to find work and get off benefits; but during the last four years he has received no advice or support from Work Programmes or JC Plus staff to identify what work he could do or what reasonable adjustments might be necessary. When DWP's failure to identify what work our client could do was pointed out for MR the response was that the health care professional's job was just to examine his ability to carry out particular functions and activities. Under our proposals, unless the claimant was unlikely ever to be able to work, it would compulsory for any WCA for work coaches to use the Health and Work Conversation to discuss with claimants their previous employment experience and current skills to identify what type of work (if any) might be compatible with their current disabilities and what training and/or reasonable adjustments might be necessary for them to get this work. The DWP would need to take account of the work coach's report as an essential element of the WCA and, in any case where the claimant was judged to be fit for work, give a clear indication of what type of work that would be.

- **speeding up the claiming process** – with our help our client has just appealed to a tribunal to try to overturn the DWP's decision. It could be several months before the appeal is heard. Under our proposals his appeal would already be before the tribunal because he could have appealed against the original decision, and the DWP would have had to reconsider that decision against a strict time limit as part of the appeal procedure and without interrupting the payment of benefit.

ANNEX A

TEXT OF LETTER & QUESTIONNAIRE TO GP FOR WORK CAPABILITY ASSESSMENT

We understand you have information about the medical condition and treatment of X, who has applied for [Employment and Support Allowance (ESA)] [Universal Credit (UC)] on the grounds of having limited capability for work or work related activity.

To assess whether X is eligible for this benefit we need evidence about the impact of his/her medical condition and treatment on his/her capability for work or work related activity both now and in the future. Please complete the attached questionnaire and return it within 4 weeks.

Normally we also ask ESA and UC applicants to answer a questionnaire to provide information about how they are affected by their illnesses or disabilities and the treatment that they are receiving. If however you consider that because of his/her medical condition X would be unable to provide this information at the present time or that his/her condition is so serious and long term that there is no reasonable prospect of him/her being able to work please contact us urgently to explain the situation.

CAPABILITY FOR WORK QUESTIONNAIRE FOR EMPLOYMENT AND SUPPORT ALLOWANCE AND UNIVERSAL CREDIT

Patient's Name:

Patient's Address:

Details of your patient's condition:

Details of treatment including expected duration and medication:

Is your patient:

Awaiting Surgery – YES/NO

Estimated date for Surgery:

Recovering from surgery or surgery related complications-YES/NO

How long do you estimate the recovery period will be?

Awaiting or undergoing chemotherapy or radiotherapy- YES/NO

Recovering from chemotherapy or radiotherapy-YES/NO

In your opinion is it likely that your patient will be able to do paid work within the next 12 months? YES/NO

If YES please describe any areas of work you would disqualify purely on medical grounds:

If NO, please provide reasons and explain how long it will be before your patient will be able to start preparing to do paid work by taking part in programmes or training linked to work.

In your opinion is it likely that your patient will never be able to do paid work?

YES/NO/NOT SURE

If YES, please explain why

ANNEX B

TEXT OF LETTER AND QUESTIONNAIRE FOR GP TO ASSESS ELIGIBILITY FOR ESA OR UNIVERSAL CREDIT AND PIP

We understand you have information about the medical condition and treatment of X, who has applied both for [Employment and Support Allowance (ESA)] [Universal Credit (UC)] on the grounds of having limited capability for work or work related activity and for Personal Independence Payment (PIP) to help meet the additional costs caused by his/her disability or long term health condition.

To assess whether X is eligible for these benefits we need evidence about the impact of his/her medical condition and treatment on his/her capability for work or work related activity now and in the future and on his/her needs for support with his/her daily living activities and/or mobility. Please complete the attached questionnaire and return it within 4 weeks.

Normally we also ask ESA, UC and PIP applicants to answer a questionnaire to provide information about how they are affected by their illnesses or disabilities and the treatment that they are receiving. If however you consider that because of his/her medical condition X would be unable to provide this information at the present time or that his/her condition is so serious and long term that there is no reasonable prospect of him/her being able to work please contact us urgently to explain the situation.

QUESTIONS RELEVANT TO PERSONAL INDEPENDENCE PAYMENT

In your opinion is your patient likely to need help from another person with any of the following activities on a daily basis:

Preparing or cooking food	YES/NO
Eating and Drinking	YES/NO
Managing medication or therapy	YES/NO
Managing severe depression	YES/NO
Washing/bathing	YES/NO
Managing toilet needs	YES/NO
Dressing/undressing	YES/NO
Communicating verbally	YES/NO
Reading/understanding written/typed information	YES/NO
Making social contact with other people	YES/NO
Making budgeting decisions	YES/NO

In your opinion is your patient likely to need help with their mobility ? YES/NO

If YES can your patient stand or move more than a metre unaided?
YES/NO

If YES can your patient move more than 50 metres unaided? YES/NO

If YES can your patient move more than 200 metres unaided? YES/NO

Is your patient unable to undertake a journey because of the psychological stress that it causes? YES/NO

If NO can your patient plan and follow the route of a journey unaided? YES/NO

Can your patient use public transport? YES/NO

If NO can your patient drive a car? YES/NO

Please add further comment to explain difficulties that your patient has in managing daily living activities and/or with mobility: