



Submission

Decision making and appeals in the benefits system

Work and Pensions Committee Inquiry

September 2009

National Association of Welfare Rights Advisers

The National Association of Welfare Rights Advisers was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

The response has been put together from evidence collated through a questionnaire to members and feedback from a workshop at our conference in September 2009. It is a representation of views from frontline advisers and their clients from across the UK.

NAWRA response to the inquiry into Decision Making and Appeals

Summary

The main issues as identified by our members were as follows:

- Initial point of contact - while it was generally felt that the first contact was positive at the Pensions Service there were concerns about misadvice when first contacting Jobcentre plus. There was also concern that use of the DLA/AA checklist when a claimant rang to order a form was in some cases putting them off making a claim.
- Processing of claims - general issues that came up included lack of communication between departments, lack of ownership of cases, difficulty in speaking to decision makers, and lack of experienced staff due to high

turnover. Other issues that came up in respect of particular benefits included:

- Delays - pension credit, social fund, ESA, housing benefit
 - Lack of understanding of rules - social fund, housing benefit, DLA/AA
 - Poor decision letters - ESA, DLA/AA, housing benefit
 - Speaking to reps and implied consent - pension credit
 - Seeking appropriate evidence - DLA/AA
- Compliance cases - there were examples of claimants being given incorrect information during the course of compliance interviews. Also a concern that cases were sometimes suspended too easily without being considered properly first.
 - Overpayments - there was concern that decision-making was flawed without valid revisions/supersessions being carried out. In addition there were delays in cases being resolved and concerns about when and how recovery was sought.
 - Revisions - there was a feeling that there had been a marked improvement recently in DLA/AA decisions being looked at again and overturned at revision level - this was noted across the UK. It is hoped that this trend will be built on further.
 - Appeals - it was felt that having a representative made a huge difference to the claimant's experience of the appeal process and there was enormous concern at the erosion of services that could provide representation. Although it was noted that many tribunals tried to make the process not too daunting there were also examples of inappropriate comments by tribunal members. Concerns were also raised about problems with use of interpreters and lack of confidential interviewing space at some premises. There were also comments about how long a case could get to appeal though responsibility for this was sometimes down to the DWP.
 - The Tribunal Service - there was positive feedback about the provision to ask judges to make directions. Also the reduction in the number of appeals being struck out due to failure to return the TS1 was welcomed.

Initial contact

1. The pension service was felt to be a good example of initial contact with the person spoken to seen as approachable and helpful. However, at the customer contact centre for Jobcentre plus there were concerns about misadvice - examples of this included a claimant being told they could not claim ESA if they were still receiving wages, and other claimants being told they had they had to claim ESA not income support when they were already on incapacity benefit.
2. Although previously there were no problems with phoning to ask for a DLA/AA claim form, it was felt that the new checklist was in some cases acting as a deterrent to claim as claimants felt they were being told they were not eligible. It was not made clear to claimants that the questions asked were merely a scripted checklist and they were not speaking to a person qualified to make a decision about entitlement.
3. There were a number of problems with claiming a crisis loan. Firstly, it was very difficult to actually get through. When a claimant did get through there were often lengthy waits - although it is a 0800 number this is not free from mobiles and claimants are not allowed to use Jobcentre phones to make a crisis loan claim. There were also concerns about misadvice - one claimant in Edinburgh had been told that he could not have a crisis loan if he was not on benefit - further that this was part of the internal guidance in the office.

Processing of claims

4. There were a number of general issues raised. These included lack of communication between different departments. For example an award of DLA/AA did not always result in the appropriate premium being added to their means-tested benefit. When an award of DLA/AA is made it was felt it would be good practice to advise claimants that they may be due an increase in means-tested benefits or indeed become eligible for the first time and encouraged to claim or seek advice.
5. It can be difficult to make contact with the processing centre. For some benefits there are long delays when you ring - this is particularly so for ESA - delays of 20-30 minutes are typical. These calls are to an 0845 number and

start being charged immediately as there is a message system and callers are then put in a queue. One claimant had a phone bill totalling £15 for the calls necessary to resolve the problem on her case.

6. It was also noted that there was a lack of ownership of cases - one advisor spoke to 22 different people concerning a particular case. It is extremely difficult to speak to a processor or decision maker. The main point of contact is through the telephony (letters often remained unanswered) - this is to a member of staff who is trained to read the computer screen but without full benefits knowledge. The only way to speak to someone with benefits knowledge is to wait for a callback. If you are not in when the call comes a message may be left but no number to return the call. It is then necessary to start the whole process again which may take some time as detailed at 5 above.
7. Some of our members have formed the view that a large number of the staff are inexperienced due to high turnover. In one area a member has been told informally that only 5% of staff at the local BDC had worked longer than 9 months and the average length of employment was only 3 months.
8. It was also noted that when decisions had been made, either by decision makers or by tribunals, there was often a significant delay in these actually being implemented.
9. Other problems related more to specific benefits. For ESA there was a concern about the length of time decisions were taking to be made. It was also felt that the decision letters were not clear - in particular they do not make clear whether a claimant has been awarded income-related ESA, contribution-based ESA, or both.
10. In another case the claimant had been awarded income-related ESA for themselves and their partner. The partner was also submitting medical certificates to claim incapacity credits but was told they should not be doing this as the ESA was already in payment.
11. Claimants were also not being advised whether the permitted work they were undertaking counted as supported permitted work.
12. Within the Social Fund there was concern about the delays both for initial CCG claims and for the reviews - times of

13. There was also concern about the lack of knowledge staff had. In Rotherham a claimant had been told that the appeal deadline for funeral payments was 28 days not a month. When this was queried the member of staff would not look at the guidance. Examples of Direction 4 not being understood by staff at Plymouth included someone being refused a CCG because they were not visiting a sick person although they were visiting their ex-husband who was in hospital. Another adviser reported staff being unaware what a DS1500 was and refusing to prioritise the award because of terminal illness.
14. There were also examples of decision letters being incorrect - one recent letter said you could not make a repeat application within 26 weeks - it had not been updated to say 28 days.
15. For DLA/AA it was felt that decision letters did not give enough information. Although long there was very little information that was specific to the claimant. While sources of evidence were listed it was suggested that it would be helpful to advise claimants that they were entitled to ask for copies of the evidence.
16. With respect to the evidence that is requested by the DCS there is still an over-reliance on reports from GPs (although there has been improvement in this area) whereas there may be more appropriate people to ask eg support workers, CPNs. It was also felt that the report that goes to GPs etc does not ask appropriate questions to determine the claimant's needs in respect to the law for DLA/AA.
17. For claims for DLA for children it was felt there was an over-reliance on school reports and these were not read in the context that they were written eg if a report said there was great progress in speaking/listening it was assumed there were no problems in that area, without considering where the child was relative to other children of the same age.
18. Generally with children's claims reported a lack of understanding of the rules was reported, eg comments such as 'all children aged 5 need supervision out of doors'. Also complex cases, eg involving high rate mobility and autism, invariably had to go to appeal.

19. At the Pensions Service the main problems concerned delays with processing claims for pension credit - delays of 2-3 months were reported at Derbyshire, Swansea, and Rotherham. One adviser reported cases of claimants dying before their claims were settled.
20. The other main issue related to disclosure of information where there was implied consent and also in cases where authority to act had been sent in. Firstly, there was a lack of understanding as to what implied consent was - comments such as 'we can only do implied consent if you fax the authority slip over' were typical. Even where there was authority it was not noted on the system and was asked to be faxed over again on every phone contact. This is in sharp contrast to other areas of the DWP where the 'Working with representatives' guidance is followed well. It was reported to work well at both Bristol and Glasgow BDCs, and Carer's Allowance have a standard policy of calling the representative back. There is a need for consistent good practice in this area.
21. Within housing benefit there are substantial regional differences. Generally there were a number of examples of lack of understanding of the rules - the following are some examples:
- Newcastle - the housing benefit claim form does not ask whether a claimant or their partner get IB credits or have been sick for 52 weeks thus possibly missing application of the disability premium.
 - Rotherham - new computer software not issuing legal decisions - just a computer printout with no explanation, income breakdown or appeal rights. In addition letters were sent with a date 2 months previous so that appeals were out of time.
 - Northumberland - claimant aged 64 refused 3 months backdating as did not have continuous good cause which is not required for those over 60. Also a refusal to process housing benefits until tax credits assessed although housing benefit is assessed on actual tax credit in payment.
 - Cleveland - refusing an appeal as valid although the claimant had written in using the word 'appeal' in her letter.
 - Scotland - issuing a new claim form when a change of circumstances is reported

1. There were also substantial delays within the housing benefits system causing potential homelessness. In some cases advisors were having to spend time preparing court submissions for people under threat of eviction because of this.
2. Cornwall also reported delays caused by the new 'one Cornwall' system whereby all post goes first to County hall and then goes on via the internal mail and is not always correctly delivered.

Compliance

3. There was feedback that where there were cases of suspected fraud the claims were suspended without full consideration first. For example, a man had claimed benefit for himself and his wife and the wife's claim was automatically suspended. If they had looked at the claim the decision maker would have seen that this had happened previously and the case had already been to tribunal (within the last six months) where it was accepted the couple were estranged and that the man had previously exerted financial abuse over his estranged wife in a similar manner.
4. It was also noted that during interviews done by compliance officers incorrect information was given. For example, one claimant was told they could only get high rate mobility if they couldn't walk more than 50 yards. Another claimant was told they could not claim carer's allowance and DLA at the same time.

Overpayments

5. In overpayments cases there were reports of decision-making being flawed - valid revisions/supersessions were not being carried out, eg in one case a claimant had been claiming income support as a lone parent but the child had gone into care - the claimant also had entitlement to income support through the incapacity route but this was not considered.
6. There are also substantial delays in getting to an appeal for overpayments - up to 2 years is not unusual - frequently with a series of decision which are amended over and over again with a new appeal required to be registered at each stage.

7. Concern was also expressed at Debt Recovery's policy of asking claimants to pay back non-recoverable overpayments. Also at the policy of automatically asking for recovery at 30% of benefit level where there were no means-tested benefits in payment.

Revisions

8. There was very positive feedback in this area that recently there had been a significant improvement in DLA/AA decisions being looked at again and changed at revision stage. This was noted across the UK with advisers from Edinburgh, Neath, Leeds, Glasgow and Cardiff all making this observation. It was hoped that this could be reflected in other benefits also.
9. However, it was felt there was still room for improvement - particularly with seeking evidence from other sources, talking to reps etc. Although it was noted that again there was improvement at widening the range of sources, eg using support workers, CPNs, it was felt there was still over-reliance on 'medical' sources such as the GP or EMP.
10. It was noted that where the revision stage worked well it was cost-effective, efficient, and much less stressful for the claimant.

Appeals

11. Generally this is a stressful process for the claimant. However, the experience is much improved by having a representative who helped to prepare the claimant and support them through the process. There were reports of cuts and losses of representation services across the UK and there was huge concern about the detrimental effect of this.
12. With regard to information, it was felt that claimants weren't given enough. For example, there should always be acknowledgement that the appeal has been registered and accepted (although this happens in some cases it is not consistent) with an explanation of what to expect next. The schedules of evidence are bulky and off-putting to claimants and there was no indication given of how long the process was likely to take.

13. It was also felt that the one month deadline to appeal was too short particularly given the difficulty in obtaining advice. It was suggested that it would be helpful to let the claimant know that there was an opportunity to put in a late appeal and what the criteria for this were. Having said that, the rest of the process was felt to take too long particularly in cases where benefit had been suspended, eg cases where suspected of living together as husband and wife. In one case a claimant had waited over 6 months for her appeal with no income support (this was due to delay by the DWP as opposed to the Tribunal Service).
14. With respect to what happens at the actual appeal there were a number of observations. Firstly some premises do not have private interview rooms so claimants can discuss their case confidentially. Also the treatment of interpreters was inappropriate - in a number of venues the interpreter was not allowed to meet the claimant before the actual hearing although this is important to establish that they can understand each other. In some areas they were not even allowed to interpret the pre-hearing discussion with the clerk!
15. Derbyshire reported cases of the tribunal adjourning the hearing to get an EMP report without even calling the claimant in to speak to them.
16. Generally it was felt that the tribunals did try to make the process less daunting but there were examples of inappropriate comments or understanding. For example, tribunals not appreciating the side-effects and emotional effects of cancer treatment, one tribunal asking a Muslim claimant if he could make bacon and eggs. One adviser's comment was that tribunals were mostly professional and fair 'but on the few occasions they do stray from the path of fairness, it can be staggering'.
17. It was also noted that on occasions written statements of reasons had contained judgmental statements about the nature of a client's personality.

The tribunal service

18. The overall feedback since the new tribunal rules was positive with an appreciation of the fact that judges can be asked to give a direction for example, where the DWP are

being slow. Also that they can go ahead and list a case without the DWP input if necessary.

19. It was also noted that there had been a reduction in cases being struck out due to non-return of the TS1 - instead a reminder letter was being sent to both the claimant and, where there was one, the rep. This was felt to be very positive.

20. The one point which was not seen as so positive was the replacement of Chair by Judge, which was seen as unnecessarily intimidating.

Conclusion

21. The members of NAWRA generally tend to see cases where processes are not working so well. We have tried in this response to acknowledge where there has been improvement and also to highlight where there is a need for change. As representatives of our clients we are seeking to work with the DWP to enable resolution of problems as quickly and effectively as possible.