



Executive summary: **Burden of Proof**

The role of medical evidence in the
benefits system

May 2017



Medical evidence and benefits

Our 'Burden of Proof' report explores the role that medical evidence plays in assessing ill health and disability benefits, from the perspective of Citizens Advice Bureaux clients, advisers and some of the professionals involved.

The report is based on evidence gathered by Citizens Advice Scotland during 2016 and 2017 exploring the use of medical evidence to assess ill health and disability benefits.

It includes findings from an analysis of existing qualitative and quantitative data held by the Citizens Advice service in Scotland and, in addition, data gathered via a survey of Citizens Advice Bureaux (CAB) advisers, an online mapping exercise, and a survey of GPs and other health professionals.

Eighteen Citizens Advice Bureaux from across Scotland participated in the project by undertaking surveys in their local areas, and gathering longitudinal case histories and documentary evidence.

The findings reveal a complex picture, but suggest that in many cases, not enough information is available at initial claim stage, or at Mandatory Reconsideration stage, to make fully informed and accurate decisions.

The case analysis showed a pattern in which clients received few points at initial claim stage and are disallowed the benefit, then requested a reconsideration of the decision, at which point the decision remained unchanged, and then appealed the decision and were awarded the benefit in many cases.

Advice and Appeals statistics from the Scottish CAB Service

Employment and Support Allowance (ESA) is the most common single issue that Scottish citizens advice bureaux provide advice on, with Personal Independence Payment (PIP) Daily Living component the second most common.

Following general advice regarding benefit entitlement and the claiming process, the most common issues advised upon in relation to these benefits are reconsideration and appeals, which together make up over one fifth of all advice regarding ESA and PIP.

Advice need in relation to disability benefits has tripled in the last three years, and has increased by six percentage points as a proportion of all benefits advice. Data from the first six months of 2016/17 suggests that ESA issues are also on the rise again,

with CAB advising on over 19,000 issues during this six month period (3,600 more issues than were advised upon during the same period of the previous year).

During 2015/16, CAB in Scotland supported clients to complete 2,731 appeal forms (SSCS1 forms) to appeal against a decision made by the DWP. Of the 2,295 cases heard at Tribunal (not including those which were adjourned), 59% had the decision changed, and a further 4% had the decision partially changed, compared to 38% where the decision remained the same.

Analysis of advice codes shows that 77% of appeals advice and representation is in relation to ill health and disability benefits.



FINDINGS BY STAGE:

Initial claim stage

Clients rarely gather further medical evidence at initial claim stage. This is likely to be due to a number of factors:

- The DWP advise claimants not to gather additional evidence at this stage;
- GP practices sometimes refuse to provide supporting medical evidence direct to claimants, or may charge fees which can act as a financial barrier for claimants;
- The one month timescale within which to return the self-assessment form can be too tight a timescale to gather additional evidence.

Respondents to the CAB adviser survey indicated that it is 'difficult' or 'very difficult' for claimants to obtain supporting evidence from GPs at initial claim stage.

The survey results suggest that GPs and other health professionals spend a significant proportion of their time providing evidence to the DWP or assessment provider at the initial claim stage, filling in ESA113 or PIP forms.

CAB advisers, however, presented a different picture. When asked "what further evidence does Atos request from healthcare professionals, in addition to the PIP2 and consultation," 69% of respondents said Atos 'rarely' or 'never' seeks additional evidence.

Assessment forms and face-to-face assessments

Responses to the CAB adviser survey, as well as case evidence from bureaux, suggests that the application process is currently difficult to navigate for many claimants.

The manner of healthcare professionals during assessments is an issue for bureau clients, which may affect their ability to express themselves during the consultation and could impinge upon the quality of information gathered.

Regarding the accuracy of the healthcare professional's report, 59% of CAB adviser survey respondents said that clients 'rarely' agreed that the healthcare professional's report accurately reflected the discussion that took place.

Some comments made in response to the GP survey also raised concerns regarding the assessment process.

Appraisal of evidence at initial claim stage

The CAB adviser survey results showed that almost half (48%) of survey respondents said that, in their experience, DWP decision makers 'rarely' or 'never' make decisions regarding PIP claims based on all the available evidence.

Some respondents to the GP and health professionals' survey also raised concerns around the appraisal of evidence at initial claim stage.

Mandatory Reconsideration

Many clients experience barriers when obtaining evidence at Mandatory reconsideration stage, including tight timescales, physical and mental health conditions, as well as financial barriers.

Respondents to the CAB adviser survey raised concerns about there being no proper reconsideration of the original decision, and decision maker bias.

Appeals

It is much more common for supporting medical evidence to be provided at appeal stage, and for advisers and representatives to be involved in gathering this evidence.

Appellants can, however, experience barriers at appeal stage too. The case studies showed evidence of GPs refusing to provide evidence because they have a policy to only provide this to the DWP. In fact, it is possible for the claimant to go through the whole claiming and appeal process without ever having had medical evidence considered as part of their claim. For example, if the DWP/Atos did not request it at initial claim stage or Mandatory Reconsideration stage, and the GP has a policy of not providing evidence directly to the claimant.

Impact on clients

Receiving an inaccurate decision when first assessed has been shown, in some cases, to have detrimental financial and health impacts on CAB clients.

- Sixteen of the clients represented in the 45 case studies were without benefit entitlement prior to having the decision changed on appeal. This meant they had to manage on less despite incurring the same costs related to their health condition or disability, such as having to travel by taxi.
- This and previous CAS research¹ has found that clients can experience a period of acute income deprivation due to benefits not being payable pending a Mandatory Reconsideration decision.
- The analysis of the case studies showed some evidence of the impact of the assessment and appeals process on clients' mental and physical health. In two cases, clients mentioned suicidal thoughts.

Information available to clients

Limited information is available to clients regarding what support they can expect from health professionals in relation to benefit claims.

- The results from the online mapping exercise showed that at least 25 (31%) of the 81 GP practices for which data was gathered had no information on their website in relation to medical evidence, while 64 GP practices (79%) provided information about certification of fitness for work.
- Very few practices provided a list of fees charged for providing letters, and they tended not to detail whether these referred to letters related to benefit claims.

¹ Citizens Advice Scotland, Living at the Sharp End: CAB clients in crisis, July 2016. Available from: www.cas.org.uk/publications/living-sharp-end

“Our research has shown that accuracy of decisions could be improved by more evidence being gathered at an earlier stage of the claim. This could also include taking better account of evidence provided through the individual’s self-assessment, and the evidence provided by friends, family and carers who see how an individual’s condition affects their ability to carry out everyday activities.”

Full report, ‘Burden of Proof’, Citizens Advice Scotland, May 2017

Conclusions

The research has found that – while the system works for the majority of claimants – improvements could be made to how incapacity and disability benefits are assessed, and the role that medical evidence plays.

Different Government departments and public sector services have different responsibilities in relation to assessment of ill health and disability benefits, which are not always clearly aligned. For example, DWP decision makers and assessment providers have an interest in gathering as much evidence as possible at an early stage so that they can get the decision right first time.

GPs are primarily concerned with the health of their patients, and the resources at their disposal. They experience demands from the DWP, patients, advice and advocacy organisations to provide details of patients' conditions and how these conditions impact on their everyday lives. GPs, however, may not have frequent contact with the patients in question, and do not always feel qualified to make a judgement regarding how conditions are experienced by the individual.

These responsibilities and interests are equally valid and important, but make for a system in which the claimant can receive mixed messages, and means that there is not always the same degree of evidence available at the initial claim stage as there is at the appeal stage.

If the decision maker has inadequate evidence to make an accurate decision, and the decision is appealed, the onus and financial burden of gathering this medical evidence then transfers to the claimant.

Opportunities for change

There are a number of upcoming opportunities to improve and refine the way in which medical evidence is gathered and treated within the benefits system, including:

- The UK Government's Work and Health agenda represents an opportunity to revisit the way in which Work Capability Assessments are carried out, and to improve data sharing between the NHS and the DWP

- The new digital platform for Universal Credit may present opportunities for sharing documentation such as Fit Notes in a more timely and straightforward manner
- The UK Government's consideration of the recently published Second Independent Review of Personal Independence Payment presents an opportunity to rethink the way evidence is gathered and assessed
- The devolution of disability benefits to Scotland presents an important opportunity to design a disability benefits system that considers new ways of assessing eligibility for the new Scottish benefits.

Solutions to the issues raised in this report are not straightforward, and can only be reached with careful consideration and joint working between each relevant government department and agency involved in the process.

Citizens Advice Scotland sees the impacts of decision making and the appeals process on CAB clients, and although we do not have all the answers, we hope that we can be part of an ongoing conversation around improvements that benefit the DWP, GPs, the NHS, HM Courts and Tribunals Service, and most importantly, those in need of benefits.

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