

HENRY SMITH: WELFARE RIGHTS AND REPRESENTATION PROJECT

*Assessment of the benefits
appeals process and the impact of
the advice sector*



Clackmannanshire Citizens Advice Bureau



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Introduction

The welfare system in the UK is highly complex. Many have reported finding it difficult to understand and do not know where to begin navigating the system. To help combat this issue in Clackmannanshire, the Henry Smith Welfare Rights and Representation project was introduced. The project began in 2018 and was renewed in 2021, running until 2024. The project aimed to target those who face additional barriers in accessing the welfare system such as people affected by mental illness and/ or caring concerns to ensure they are given the support to access their rights and entitlements. The project supported clients with a range of issues and concerns from general advice to reconsiderations and tribunal representation. This project served as the only representation of its kind in Clackmannanshire.

Throughout the projects duration, several key changes impacted the benefit system and the appeals process. Firstly, the outbreak of Covid-19 and the subsequent lockdowns and social distancing restrictions which led to changing formats of advice provision and tribunal hearings- with a move to more digital means rather than face-to-face. Secondly, Social Security Scotland began rolling out Scottish disability benefits. The most significant of these was the introduction of Adult Disability Payment (ADP) which is set to replace Personal Independence Payment (PIP) in Scotland. The benefit was first launched in July 2021 and was rolled out in pilot areas in March 2022, before a full roll out of the benefit in August 2022. Other benefits and grants have also been introduced such as child disability payment, best start grants, and more recently carer support payment was piloted in certain areas. While ADP has been rolled out across the country, managed migration to ADP from PIP has not yet started and as a result this report will discuss both benefits as both were dealt with extensively as part of the project.

The project has seen a high number of clients, with 297 distinct client records being identified from the start of 2021 to the beginning of May 2024. The project has also seen high levels of successful appeals against benefit decisions, with a success rate of 91% of successful appeals in 2022-23, indicating there are a number of issues with the current system. These issues shall be explored throughout the duration of this report.

S.1. The Appeals Process

The appeals process for DWP decisions and Social Security Scotland decisions are similar. If a claimant disagrees with a decision about their benefits, they must go through a two-stage process to challenge it. Firstly, they have to ask the decision maker to look at the decision again. This process is known as a mandatory reconsideration for DWP decisions and a re-determination for Social Security Scotland decisions. These two processes slightly differ in approach. For a mandatory reconsideration, a different decision maker will look at it again and can decide to change the original decision, which may or may not result in a change to the claimant's benefits entitlement. Whereas for a re-determination, Social Security Scotland will look at an application as if it is a new one and will make a new decision, meaning the amount a person is awarded can go up or down. If a claimant disagrees with the outcome of either of these reviews they can appeal the decision at the first-tier tribunal.

Mandatory reconsiderations were not introduced until 2013, and prior to this claimants had the option to appeal straight to tribunal. The appeal would be lodged with the DWP and they would have the option to reconsider the original decision first, meaning the appeal would lapse if they changed their decision or progress to appeal if they did not without the claimant having to take any further action. The reasons provided for the introduction of mandatory reconsiderations included to resolve disputes as early as possible; reduce unnecessary demand on the tribunal service; and to provide a full explanation of the decision. However, whether mandatory reconsiderations have actually had this effect is another matter. When mandatory reconsiderations were first introduced, the rates of decisions being overturned were low, with the percentage of PIP decisions being overturned ranging from the high teens to early twenties until 2018 and for Employment Support Allowance (ESA) Work Capability Assessments the percentage of overturned decisions was around 15% between 2015 and 2017. The DWP did change the process for mandatory reconsiderations in 2019, which involved them proactively contacting claimants to collect further evidence, which saw a rise in decisions being overturned with ESA rising to 69% in January 2021 and PIP rising to 52% in January 2021. Showing similar rates in Scotland, a 2024 report from the Social Justice and Social Security Committee at SPICe showed that 54% of ADP redeterminations raised with Social Security Scotland found in favour of the client.

However, despite the rises in decisions being overturned, the success rates of appeals at tribunal still remain high. In the 2020/21 reporting period, 75% of PIP and ESA decisions and 61% of Universal Credit decisions were successfully overturned at tribunal. In Scotland, 365 appeal hearings have taken place for ADP up to the 31st of January 2024. Of these, 56% were upheld. These statistics highlight that despite the improvements in the mandatory reconsideration/ re-determination process, a significant number of incorrect decisions are still being missed. This in turn causes significant stress to the claimants, many of whom are already vulnerable and struggling with poor health.

A further concern about mandatory reconsiderations and re-determinations is the length of time it takes for them to be carried out. There are no time limits within which the DWP must make a mandatory reconsideration decision. Some claimants have reported making repeated requests for mandatory reconsiderations and only receiving a decision when they have made an official complaint. While there are no statistics published on Universal Credit mandatory reconsideration clearance times, data reported by JUSTICE and the Administrative Justice Council showed that the average time for the DWP to make a decision from the registration of a Universal Credit mandatory reconsideration was 79 days or more. Even more concerning than this is that in January 2021 the average time for a PIP mandatory reconsideration decision was 389 days.

For Social Security Scotland, a deadline of 56 days or 16 working days to complete a redetermination, depending on the benefit, is in place. If Social Security Scotland miss the deadline for redetermination then the claimant can lodge an appeal. Despite this, in January 2024 the average processing time for a decision on a redetermination for ADP was 59 working days and for Child Disability Payment (CDP) in December 2023 it was 97 working days. It is worth noting that both of these wait times have reduced significantly, with previous figures being 96 days and 114 days respectively, however the wait time is still far above the Social Security Scotland deadline.

The impact of these wait times on a claimants wellbeing are undeniable. In their written submission to the SPICe report on Social Security Scotland, CAS reported that “delays cause stress, anxiety and financial instability,” and that wait times in any stage of the appeals process “have all been described by the network with very serious implications for the health and well-being of the clients involved.” Similarly, in the case of *R (Connor) v Secretary*

of State for Work and Pensions the High Court acknowledged that a small delay of seven to ten working days caused by a mandatory reconsideration “may be very significant to those who receive the benefit.” For many, these benefits can be a lifeline and have a substantial impact on whether they will be able to meet their basic living costs. Perpetual delays to claimants receiving payments to which they are rightfully entitled can have significant negative effects on a claimant’s wellbeing, and may leave them in financial hardship, having to make a choice between heating and eating.

A further issue with the appeals process is how complex and time-consuming the whole process can be. Claimants can struggle to understand the process and often find it extremely stressful to navigate. Concerns have been raised that this is causing claimants to drop out of the appeals process, even when they have a strong case. From April 2014 to September 2020, 780,000 PIP awards were unchanged after a mandatory reconsideration and only 46% of claimants went on to appeal at tribunal. Of this 46%, 67% that proceeded to a hearing were successfully overturned and a further 13% had the decisions changed by the DWP before it could be heard by tribunal. With success rates of this level, this would indicate that of the 54% that did not proceed to tribunal, many would’ve had the wrong decision and most likely would have seen this decision changed by the tribunal, in turn granting them the money they are rightfully entitled to and improving their financial position. The current appeals process involves significant amounts of re-entering information to the tribunal that claimants had already provided to the DWP. Similarly, they may have to re-upload evidence they had already provided with their initial claim. This process can be time-consuming and exhausting, especially for those with poor mental health or who struggle with technology. It has therefore been suggested that some form of data sharing process between the DWP and Her Majesty’s Courts and Tribunal Service (HMCTS) is introduced. One example of this is the Traffic Penalty Tribunal has developed a ‘digital pin’ system. Where a motorist challenges a traffic penalty notice from a local authority and this challenge is rejected, a pin code to the digital appeal system is provided. When the appellant enters this code, all the information and evidence already provided is populated into the appeal. If some form of data sharing process is introduced, the appeals process could be significantly streamlined and less daunting for claimants.

Issues with the stressful nature of the appeals process for Social Security Scotland have also been raised. Some of the appeals process is laid out in legislation, while other elements are policy and operational decisions of both Social Security Scotland and the tribunal. The legislative requirements can cause some confusion such as inconsistency in legislative deadlines, with either 42 days or 31 to request a redetermination depending on the benefit and some deadlines being in working days while others are in calendar days. Other issues that have been raised are the requirement to have a redetermination before an appeal, that appeals have to be made on the form provided, and that redetermination requests are to be made 'in such forms as the Scottish Ministers require.' For claimants to be able to effectively navigate the system there needs to be consistency and clarity in how it works. For example, if a claimant has applied for multiple Social Security Scotland benefits and has been rejected from all of them, they may be confused by the different deadlines and may end up missing one as they did not realise there were differences. Similarly, if they do manage to appeal the decision, they can be waiting far longer for a response to some redeterminations than they are to others. A consistent, effective approach to redeterminations and appeals with an easy to navigate process is necessary from both Social Security Scotland, the DWP and the tribunal service in order for claimants to access the system and receive the correct decisions in a timely manner.

During the course of this project, the Covid-19 pandemic happened, causing life as we know it and our day-to-day activities to change drastically to accommodate new measures such as social distancing and lock-down. Not only did this impact the projects operations and how the bureau went on to provide advice, but it also impacted the tribunal service and its operations. A key change that had to take place during the pandemic was moving away from face-to-face hearings. With full-scale lockdown moving to social distancing and restrictions on how many people could be gathered together, face-to-face hearings were no longer practical and a move to conducting the majority of hearings over the phone was made. Despite Covid restrictions ending, a more digital approach to hearings has been maintained. The HMCTS First Tier Tribunal service has utilised a cloud video platform to conduct hearings, while still having face-to-face in some cases. Similarly, for ADP it has been reported that of the hearings held between 1st of January 2023 and the 31st of January 2024, 343 were teleconference, 10 were video conference and just 1 was in person. Following the

pandemic, telephone hearings have become the default, and face-to-face appeals seem to only take place in exceptional circumstances.

While the Scottish Courts and Tribunal Service (SCTS) annual report for 2022-23 reported that only one request was made for an in-person hearing, evidence from other organisations indicates otherwise. A representative of Stirling Council advised SPICe that there were some occasions where the box for a face-to-face hearing was ticked and this request was not accommodated. Similarly, CAS reported that the network has received several reports that requests for face-to-face hearings are not being accommodated. The SCTS have since advised that in light of feedback received the template letter sent to appellants will now include a clear invitation for the appellant to state their preferred form of hearing. This will be similar to what is currently in place for PIP, ESA and Universal Credit which asks appellants to select the types of hearing that are suitable for them and sets out the requirements for each type. The SCTS have said they will accommodate this preference wherever possible, but the extent to which this will happen is yet to be seen. HMCTS have gone one step further and are developing toolkits which will help staff better understand the circumstances in which remote hearings may not be appropriate. A similar toolkit being designed for the SCTS or utilisation of HMCTS' toolkit would also be highly beneficial to ensure that those challenging a benefit decision in Scotland have the same level of consideration granted to which method of hearing is appropriate to them.

S.2. Clients Perception on Accessibility and the Role of the Advice Sector

The benefits system is deeply complex and many individuals are not aware of their potential eligibility or struggle with navigating the application process. These concerns are mirrored in the appeals process, with this process also taking a substantial amount of time and energy to manage. Many of those applying for benefits will also have additional needs which can make the process even more challenging such as poor health, not speaking English as a first language and being digitally excluded. Furthermore, a lack of advice can result in errors being made or financial hardship. One such example of this is during the pandemic furloughed workers claimed universal credit without knowing how it would impact their tax credits, and ended up worse off financially when they subsequently lost them. Therefore, it is crucial that additional advice and support is available to help people claim the benefits to which they are rightfully entitled.

Research by Ipsos MORI identified that people who did not receive early advice were approximately 20% less likely to have resolved their issue at a particular point in time. Advice is also crucial for helping people understand the decision they have received and if they should and how they can go about appealing it. This is particularly important as many have reported finding the two-stage appeals process too stressful and confusing to navigate alone. JUSTICE's Understanding Courts report found that appellants often go to a court or tribunal without sufficient understanding of what they should expect from the process. This uncertainty can then impact the outcome of their case. Consultees to JUSTICE's Reforming Benefits Decisions report advised that appellants often did not know what to expect at a tribunal hearing. Therefore, it is important that appellants have access to easy to understand and clear advice on what to expect from a hearing and how the process works.

Another element that advice services can provide, and was a key part of our project, is representing an appellant at a tribunal. Evidence suggests appellants who are represented or receive expert advice are likely to have a greater level of success, at a rate of 63% compared to 47% overall. Research conducted by the EHRC in 2010 found participants who tried to represent themselves at benefit tribunal hearings found the process complex and intimidating, with this being exacerbated due to many struggling with health conditions. Even if they were successful in their appeal, they did not feel it was a quick or

straightforward process to do. Consultees to JUSTICE's report reflected this view, noting that while having legal representation was not necessary, having a representative with knowledge of the system was preferable, and in some cases essential. This was especially the case for vulnerable clients and those with mental health conditions.

The clients advised during this project echoed these views. As the project came to an end, clients who had consented to being contacted were invited to participate in a short survey about their experiences with the project. One question participants were asked was "if this service wasn't available, would you have felt able to challenge a benefit decision and/ or attend a tribunal without advice and representation?" Out of the 105 respondents who participated in the survey, 94 of them (90%) said they would not have felt able to challenge a decision without advice and representation. A range of reasons were given as to why clients felt this way. The most prominent response was that they lacked the confidence and knowledge to do it on their own, and having someone who understood the system increased their confidence in their case significantly. Another common response was that due to mental health struggles they would not have been able to navigate the system on their own. This therefore highlights the vital role this project served, and on a wider scale how crucial advice and representation can be to a client's success at tribunal.

S.3. Conclusions and Recommendations

Over the projects duration, we saw high levels of success. From the 1st of January 2021 to the 1st of May 2024, 297 clients were seen as part of the project. From these clients, there were 504 client financial gain records identified, with a total client financial gain of £2,295,262.54. This is made up of benefits claimed via financial health checks, mandatory reconsiderations and tribunal appeals. The benefits representing the highest proportions of this figure were PIP (daily living and mobility), ADP (daily living), Universal Credit, and ESA. In the 2022-23 financial period, the project challenged 133 DWP and Social Security Scotland decisions, which led to 120 decisions being overturned in the client's favour. This was achieved with 38 successful mandatory reconsiderations/ redeterminations and 82 appeals- including pre-tribunal decisions. With only 13 cases lost over this period, the project had a success rate of 91%. The impact of this project for the people of Clackmannanshire is undeniable, with millions being brought into the area by helping people access what they are rightfully entitled to. But such a success rate also highlights that there are clear issues with the benefits system that need to be addressed. Furthermore, issues with the appeals process also needs to be looked at so that an adviser is not required for a client to feel able to challenge an unfair decision.

A simple yet highly effective change is putting emphasis on getting the decision right first time. If more time was put into correctly assessing an initial claim, the suffering and hardship inflicted on claimants who are denied what they are rightfully entitled to or have their benefits suddenly stopped unjustly would be significantly reduced. There is a severe lack of trust in the assessment process, especially amongst claimants with health conditions and disabilities. Not only would these clients be better supported if more decisions were being made correctly in the first instance, but it would free up time and resources amongst the DWP and Social Security Scotland from dealing with reconsiderations and redeterminations. Furthermore, there may be a wider public sector saving with improved health outcomes for claimants which in turn leads to savings on health and social care. This idea was echoed in our survey feedback, where 80% of respondents stated that they had noticed an improvement in their wellbeing since being assisted by the bureau with their benefits.

Similarly, a change as to how mandatory reconsiderations and redeterminations are operating also needs to be carried out. Under the current system, too many wrong decisions are being missed, requiring the claimant to pursue the matter further with a tribunal, which can be an incredibly long and stressful process. Furthermore, as discussed in section one, many are opting not to pursue their case to a tribunal, even when they have an incredibly strong case. In the first instance, data should be gathered and analysed from the tribunal service in regard to reasoning for overturning decisions. This should help identify recurring issues which can then be addressed. Secondly, the creation of a data sharing pathway between the DWP and HMCTS and Social Security Scotland and the SCTS respectively, which allows claimants to lodge appeals with the tribunal without re-entering lots of information would simplify and streamline the process. It is hoped that by both resolving internal issues with the reconsideration and redetermination processes, the need for tribunal appeals would be reduced, but simplifying this process for those who still need to use it makes the entire process more accessible. There has also been suggestions that reverting back to the previous process of appealing straight to tribunal, but having an appeal being lodged automatically trigger an internal review from the benefit decision maker, which may allow the appeal to lapse due to the decision being overturned. This system would operate similarly to one already implemented by the Home Office, where if an appeal is made to the first-tier tribunal (immigration and asylum chamber) then the Home Office has 14 days to conduct an internal review of the case, and they must apply for additional time if it is required. Tribunal caseworkers actively manage the case so if no review is conducted there are multiple routes of redress such as a case management hearing or an 'unless order' - which is an order with a consequence for non-compliance, which could include the appeal being permitted. It is noted that this would also reduce pressure on the DWP, who currently review a case at mandatory reconsideration stage as well as having the option to conduct a review when an appeal is lodged. While this is not required, in 2019/20, 29% of PIP appeals were lapsed. Therefore, this system would also be a more effective utilisation of resources as they would only conduct one review, rather than two. This system also takes pressure off the claimant, as if the appeal does not lapse due to the decision maker overturning their decision, then it can progress to tribunal without them having to do anything else.

A further change which would benefit claimants significantly is the introduction of clear and strict time limits on when a reconsideration or redetermination decision has to be made. Currently the DWP has no set time limits, which means claimants are waiting an undetermined amount of time to hear back and realistically could go months without knowing whether they are going to be awarded a benefit that they are rightfully entitled to. While Social Security Scotland does have time limits in place, they are inconsistent and targets are persistently not being met. While it is understandable that benefits with lower claim rates will be reviewed quicker than bigger benefits like ADP, the difference in time frames could confuse claimants on when they need to request a redetermination by. Furthermore, changing between calendar days and working days for wait times per benefit can be highly confusing for someone trying to look into when they should receive a decision. Therefore, consistent formatting is key to making the system accessible. Finally, it has been reported that while delays have reduced, Social Security Scotland still aren't meeting their targets for making redetermination decisions. As discussed in section one, even a small delay can have detrimental effects on the client. Claimants can appeal if Social Security Scotland fail to meet their target but this needs to be more heavily publicised so that claimants are fully aware of their rights in these circumstances. In light of this, we would advise that strict, consistent time scales are imposed on both the DWP and Social Security Scotland, as well as at the time of lodging a request claimants are properly advised of their rights if these time scales are exceeded.

Finally, a key point highlighted to us by our clients was that a significant barrier to being able to challenge a benefit decision on their own was lack of knowledge and lack of confidence. JUSTICE suggested in their report Reforming Benefit Decisions that a single access portal is created to explain in comprehensive but accessible ways to process of going to a court or tribunal and what they should expect, as well as signposting to organisations who can provide benefit advice and support. HMCTS have initiated a signposting strategy and are working with the organisation Support Through Court, who help people who may have to attend court alone and empower them to do so. They are also creating a verified list of support providers. This signposting currently takes place through staff in service centres with the aim of expanding to frontline staff in courts and tribunals. This work is highly important and going forward we would like to see signposting from Social Security Scotland

and the DWP on their decision letters and contact information for this service being provided on DWP communications as well. It was discussed in the previous section how crucial advice can be in determining the outcome of an appeal, but many may not know where or how to access support. Having support networks clearly highlighted throughout the whole appeals process, coupled with more tailored signposting over the phone, allows more claimants to access the advice and support they may require and in turn would enable them to effectively challenge a decision, empowered with the knowledge and confidence needed to do so.

It is hoped that with the introduction of these proposed changes that we would see a significant improvement in claimant outcomes, especially in the initial stages of the process. With how lengthy and complex both the application and appeal stages can be, simplifying and streamlining the process in a way that ensures more decisions being made correctly first time but also that anyone who wants to appeal is not overwhelmed by the process, will significantly improve the wellbeing of claimants. Currently, levels of attrition from the appeals process between mandatory reconsideration and tribunal are high, which means thousands are missing out on entitlement that could drastically improve their wellbeing. Our bureau will continue to support our clients in navigating this process, empowering them with knowledge and support as well as providing representation when it is requested. The role of the advice service in the appeals process is crucial and signposting so that people know where to access the support and advice they need is important. However, the role of the advice sector cannot make up for parts of the system which are evidently not working. More focus needs to be put into getting decisions right the first time, reducing stress for claimants and improving outcomes. Second to this, the mandatory reconsideration and redetermination processes need to be reformed. Whether this is through improving data sharing and time limits for completing them or completely overturning the system and allowing claimants to appeal directly to the tribunal, any reform would provide a better, more efficient system than what we currently have. Our benefit system is a lifeline for many individuals all over the country and receiving their rightful entitlement can have a huge impact on their wellbeing. It is therefore vital that the system and its appeals process is designed in a way that people can easily access, allowing them to receive that support and protect their wellbeing. The system does not currently provide this, instead creating a

complex and time-consuming process that can be overwhelming for already vulnerable people. It is therefore vital that not only is support from advice services easily available to these people, but also that the system undergoes reform to allow people all over the UK to be effectively supported by the benefits system.



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