Lapse of Judgment?

Policy Exchange

An Assessment of the Benefit Appeals System: From Mandatory Reconsideration to the Social Security Tribunal

Jean-André Prager

Foreword by Rt Hon Sir Robert Buckland KBE KC

Lapse of Judgment?

An Assessment of the Benefit Appeals System: From Mandatory Reconsideration to the Social Security Tribunal

Jean-André Prager

Foreword by Rt Hon Sir Robert Buckland KBE KC

Policy Exchange

About the Author

Jean-Andre Prager is a Senior Fellow at Policy Exchange, specialising in welfare reform. He was previously a Special Adviser for the Department for Work and Pensions and the Department for Culture, Media and Sport to the Prime Minister.

The author is grateful to all the interviewees who kindly gave their time and shared insights which helped to inform this report. I am also thankful for the contributions of Dr Sean Phillips, former Head of Health and Social Care at Policy Exchange (2022-2025), to the development of this project in its early stages, and to Ben Sweetman, who supported data collection and analysis for this report.

Work and Welfare at Policy Exchange

- **For Whose Benefit?** – Sets out a series of reforms to the health and disability benefits system.
- **Not Fit for Purpose** – Calls for reform of the 'fit note' by creating two new categories 'Further' and 'Ongoing Assessment' to enhance work and health support and improve return to work rates.
- **None Of Our Business?** – Considers the role of workplaces can play in supporting the health of the nation – advocating fifteen measures to enhance occupational health provision.
- **Welfare, Work and Young People** – Suggested the Government should do more to differentiate welfare support for people under 25, trialling Youth Employment Centres which would operate separately from the rest of the jobcentre, and provide specialist advice to young people.
- **Joined Up Welfare: The next steps for personalisation** – Called for major reforms to Jobcentres through a new structure centred around the specific needs of the individual.

Published by
Policy Exchange, 1 Old Queen Street, Westminster, London SW1H 9JA

www.policyexchange.org.uk

ISBN: 978-1-917201-86-5

Contents

Abbreviations & Glossary

Adjournment	Where the Panel decides that the appeal/ case cannot be finalised. This can happen on the day of the hearing or the case could be adjourned in advance if, for example, the appellant is unwell.
Appellant	A person who is appealing a decision of the DWP.
Disposal	Closure of a case when work has ceased to be done. This can be through a claim being withdrawn, settled, dismissed or being decided at a hearing.
DWP	The Department for Work and Pensions
ESA	Employment and Support Allowance
HMCTS	Her Majesty's Courts and Tribunals Service
Lapsed appeal	Is where DWP changes a decision in the customer's favour after an appeal was lodged but before it was heard at a Tribunal hearing.
MR	Mandatory Reconsideration
Non-hearing clearance	These are cases withdrawn prior to a hearing, struck out or superseded. There is no Tribunal judgement.
Outcome	Final determination of proceedings; it may include an award of compensation, a declaration or recommendation and may also include orders for costs, preparation time or wasted costs either in favour or against an appellant.
Overturned appeal	Is where the decision was changed in

	the customer's favour after an appeal was lodged and was heard at tribunal hearing.
Paper Hearing	Consideration of the case using documents, and not requiring any physical appearance by the parties.
PIP	Personal Independence Payment
SSCS	The Social Security and Child Support Tribunal

Foreword

By Rt Hon Sir Robert Buckland KBE KC

Visting Professor in Practice, LSE Law School. Former Lord Chancellor & Secretary of State for Justice, Secretary of State for Wales and Solicitor General.

For far too long, the debate about benefits in the UK has been dominated by the sweeping statement and the grand gesture, with confident claims about the cutting of costs and the reduction in the ever-burgeoning benefits bill. Politicians of all stripes have not prevented their seeming lack of knowledge of the system from telling us that they have solutions.

For policymakers looking for solutions, they would be well-advised to start with this excellent paper from Policy Exchange. The proposals sensibly call for a fundamental reform of the Mandatory Reconsideration (MR) process, suggesting it be led by judicial case workers at the Ministry of Justice rather than the Department for Work and Pensions (DWP), with powers to order new assessments, correct errors, and use technology like machine learning and ambient voice tools to improve case management.

There is a powerful recommendation that the criteria for Personal Independence Payment (PIP) and the Work Capability Assessment (WCA) should be reviewed every two years to ensure they accurately reflect the extra costs faced by disabled people. A very good example of developing obsolescence is the "planning and following a journey" mobility descriptor, which, due to modern navigation tools is just outdated.

An interesting proposal is that the Upper Tribunal be empowered to issue suspended remedies, giving lawmakers a set period to respond to rulings. A joint case management system between DWP and HMCTS is recommended for better tracking and analysis. Finally, it is proposed that translation services for PIP and ESA tribunals be funded by appellants (except for British Sign Language), arguing that the social contract includes conversing in the national language. With AI translation tools becoming ever more reliable, the use of this assistive technology should become the norm.

It is in his plea that Parliament end its practice of legislating on eligibility criteria in a vague and undefined way, and that the discretionary power it has given to judges to interpret the law should be returned to the lawmakers that this paper's author is at his most compelling. The sub-contraction of decision-making of this nature and scale should concern all of us who care about what should be the proper role of the courts here.

Policy Exchange's report by Jean-André Prager makes a substantial and distinctive contribution to the debate. I very much hope that it leads

to sharper and thresher thinking in an area that absorbs a breathtaking amount of public expenditure and which is clearly unsustainable.

Executive Summary

Reform of the health and disability benefits system has become one of the most salient, yet divisive issues facing the Government. Debate over the measures and impact of the Government's *Pathways to Work* Green Paper (published in March 2025) has shone a spotlight upon the current performance of our system. Widespread rebellion among Labour Party backbenchers over prospective reforms demonstrates that welfare reform will remain a pressing and contentious issue throughout the Parliament.[1] Rachel Reeves has indicated that the Government cannot "leave welfare untouched" suggesting that, "We (the Government) can't get to the end of this parliamentary session and I've basically done nothing … We have to do reform in the right way and take people with us."[2]

The challenges in our health and disability benefit system have only grown more acute since the failed reforms of the summer. More than 300,000 young people are currently supported by out-of-work benefits that carry no work-search requirement, representing a doubling over the past five years.[3] These benefits are incredibly sticky, with over 90% of claimants remaining on the benefit for two years or more after claiming.[4] The benefit is a gateway to additional financial support but does not consider any other support. This is not only a travesty for our economic prosperity, but also for the social fabric of the nation.

Similar challenges are seen with Personal Independence Payment. Over 1,000 people a day are now claiming PIP.[5] This is equivalent, in a year, to the size of Leicester moving onto this benefit. The rise in disability benefits is occurring at twice the rate of the increase in working-age disability prevalence in the country. Fastest growth in this area is found in both young people and those with a mental health condition. Between 2019 and 2024, there was a 190% increase in those claiming disability benefits with mental health issues, and awards to those under 40 have risen by 150%.[6]

The debate on health and disability benefits has centred on eligibility criteria and the mechanics of assessments, while appeals have been largely overlooked. The appeals process should be central to the debate around reform. This report examines the system's design, operation, and performance, covering DWP-administered assessments, Mandatory Reconsideration (MR), and the MoJ-run Social Security Tribunal. The focus is on Personal Independence Payment (PIP) and the Work Capability Assessment (WCA), which underpins entitlement to Employment and Support Allowance (ESA) and the Limited Capability for Work and Work-Related Activity (LCWRA) group in Universal Credit (UC).

1. https://www.gov.uk/government/consultations/pathways-to-work-reforming-benefits-and-support-to-get-britain-working-green-paper/pathways-to-work-reforming-benefits-and-support-to-get-britain-working-green-paper
2. https://www.theguardian.com/politics/2025/oct/17/chancellor-says-she-cant-leave-welfare-untouched-this-parliament-ahead-of-tough-budget?CMP=Share_iOSApp_Other
3. https://www.thetimes.com/article/eac31f6c-5add-400f-b8fa-797321ded267?shareToken=06889c2655ce29827332f1e672d72f06
4. https://assets.publishing.service.gov.uk/media/6814ba7f78d8cdc68ff03b46/chapter-3-supporting-people-to-thrive.pdf
5. https://www.gov.uk/government/speeches/secretary-of-state-for-work-and-pensions-speech-to-the-house-of-commons-on-welfare-reform
6. https://ifs.org.uk/sites/default/files/2024-09/Health-related-benefit-claims-post-pandemic_2.pdf

Parliament has increasingly shown itself to be impotent in setting the eligibility for disability benefits. Since the Welfare Reform Act 2012 introduced the Personal Independence Payment (PIP), Parliament has provided only the broad framework. In practice, it has been the courts that have defined who qualifies through successive appeals and judicial reinterpretations. Through legal challenges, how we define "activities" and "descriptors" in PIP has changed. Entitlement has not been primarily determined by Parliament, but rather by judicial decisions that have cumulatively redrawn the practical boundaries of entitlement for thousands of claimants. Upper Tribunals make fine-grained distinctions that have centred on interpretations of vague statutory language and now capture the impacts of some health conditions and disabilities differently than was intended when originally designed. Crucially, Parliament has failed to react to these judicial interventions. Its inaction has left the courts not just to fill in the gaps, but to dictate the meaning of PIP itself. In effect, Parliament has ceded control of a cornerstone of social policy to judicial decision-making.

Eligibility criteria are not immutable, and Parliament has a duty to reassert its legislative authority. The debate about eligibility should be less fraught and more adaptable to the changing circumstances of society and technological advances. Eligibility criteria should be reviewed more routinely and dynamically, and Parliament should take remedial action if it believes that the Upper Tribunal has misinterpreted the intention of legislation. We need to pose the large philosophical questions, such as "What constitutes a disability in 2025?" and "Is support administered through an ongoing cash payment the right type of support for all recipients, or is there more appropriate support in some cases that can be tailored to individual needs? The public discourse surrounding health and disability benefits needs to be transformed. It too often operates at the lowest common denominator, reduced to politically convenient simplification and campaigning. Parliament must recover both the political resolve and the philosophical imagination to redefine our health and disability benefit system.

The public spending implications of this broadening of eligibility criteria are immense. Considering the mobility element of PIP alone, if one were to take those with stress reactions, anxiety disorders, mixed anxiety and depressive disorders, eating disorders and hyperkinetic disorders claiming the Mobility element of PIP and return it to pre-COVID levels, the Government would save nearly £750m. Instituting a more routine and dynamic updating of eligibility criteria across the whole of our disability system would prevent exploitation, end the very rapid growth we have seen in certain areas of benefit claims, and could save billions.

While the Upper Tribunal has filled a legislative gap, the appeals process has filled an administrative gap. The appeals process has evolved into a parallel assessment process. It has become a second gateway, in which new evidence is introduced, and eligibility is effectively reassessed. This has created a system where there are weak incentives for accurate first

decisions, clouds accountability, and gradually increases judicial influence over questions Parliament was meant to resolve. The system should return to its core function: to determine whether the decision reached initially, based on the evidence and testimony provided, was correct.

The structure of the appeals process fosters a systemic lack of accountability. The Department for Work and Pensions makes the original decisions, the Ministry of Justice administers the tribunals, and HM Treasury bears the cost of any overturned award. This fragmentation means that rising appeal rates do not trigger meaningful reform, because neither department directly feels the cost of inaccuracy.

The lack of accountability at a departmental level is mirrored within the individual appeals process itself. The appeals process lacks transparency, performance benchmarking, and proper feedback loops. Decision-making is often opaque. It is often unclear who made which decision or why, making it impossible to drive system improvement. Outcomes should be analysed, standards monitored, and accountability enforced. A more proactive approach should be taken to alleviate errors at the earliest stages of appeals with iterative case management, the use of new tools such as machine learning to improve consistency and more streamlined evidence.

Summary of Recommendations

1. Mobility Activity 1 in PIP (planning and following journeys) needs to be tightened. It has become an ever-widening gateway to receive the mobility element of PIP. The Government should re-draft this descriptor.

a. Descriptor E (*Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant- 10 points*) is very rarely awarded because almost anyone who meets E will almost certainly meet Descriptor F (*Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid- 12 points*). The concept of "planning and following a journey" has become an increasingly unhelpful proxy for an extra cost in a world of navigation tools. If one were to take those with stress reactions, anxiety disorders, mixed anxiety and depressive disorders, eating disorders and hyperkinetic disorders claiming the Mobility element of PIP and return it to pre-COVID levels, the Government would save nearly £750m.

b. After starting with Mobility Descriptor 1, all the PIP and WCA criteria should be reviewed more dynamically and more routinely (every two years). The PIP and WCA criteria represent a moment in time, and they should be consistently evaluated as to whether they are an appropriate proxy for the extra cost a disabled person might incur.

2. Tribunals should be expressly empowered to assess current entitlement at renewal, without being constrained by a narrow requirement to demonstrate functional improvement. This would enable tribunals to consider all available evidence at the point of renewal, while preserving a presumption that existing awards continue unless compelling evidence justifies a change.

3. The Upper Tribunal should be given the power to issue suspended remedies (but delay the effect of that decision for a fixed period (six months).

a. This would force lawmakers into an active decision over whether to accept the ruling of the Upper Tribunal and prevent inaction from being a neutral option, ultimately allowing for more democratic accountability.

4. The DWP and HMCTS should establish a joint case management system in which every claim, individual assessor, DWP 'decision maker', judicial assistant, Tribunal member(s) and venue should be given a unique identification number to enable an anonymised, yet rigorous and targeted analysis of performance and standards across the appeals system.

5. Significant improvement in the transparency and flow of information between the DWP and HMCTS is required.

a. The DWP should use advanced data analytics, based upon information resulting from Recommendation 4, to identify common causes of incorrect initial decisions and appeals. This would allow the DWP to proactively address systemic issues, evaluate the performance of assessment providers, improve training for assessors and decision-makers, and to reduce the need for appeals.
b. The DWP and HMCTS should publish more comprehensive data regarding the performance of the system. This should include publication of information including: the number of assessments where from an initial decision to MR or at Tribunal, a decision is markedly changed from, e.g. zero to twelve points; the percentage of instances a 'lapsed' appeal results in a change in award. The purpose of this reform is to isolate discrepancies and to create greater trust in the accuracy of the process.

6. The current system of Mandatory Reconsideration (MR) should be fundamentally reformed.

a. Instead of being a DWP-led (and funded) process, MR should be conducted primarily by judicial case workers at the MoJ. This is similar to the "legal officers" role in immigration tribunals. They should have the ability to suggest that an assessment be conducted from scratch. They should be able to instruct an assessor to ask specific further questions before the case can be considered by a Tribunal. They should be able to rectify procedural errors and award more points in instances where an obvious error has occurred.
b. Judicial case workers, who are more fluent and experienced in PIP and ESA case law, should proactively indicate what additional evidence is likely to help determine a claim.
c. Judicial assistant(s) should be able to utilise machine learning options to assess the quality of the assessment and the information/evidence provided by the claimant. Greater use could also be made of AI-enabled and assistive technologies across the whole application process, from digital application forms that prevent submission until all required information is provided, through to accessible automated interpretation tools

for applicants whose first language is not English. Ambient voice technology should be used to support and speed up case-management functions. This builds on a recommendation for all PIP assessments – as per the "Pathways to Work" Green Paper – to be recorded.[7]

d. Given the relatively small caseload for ESA MR decisions (compared to PIP), we would recommend a "test and learn" approach to introducing these reforms and in shifting ESA claims to the MoJ, with further evaluation before full rollout to include all health and disability benefit appeals.

7. Social Security Tribunals should become "virtual by default", but with the opportunity for the claimant to request an in-person hearing.

a. Notwithstanding concerns about access to justice, this reform is designed to improve the efficiency and accessibility of hearings for the vast majority of claimants. One would need to ensure that protections are in place to ensure those who are digitally disadvantaged can still access the process. This could be done through a structured questionnaire in advance of hearings to determine whether a virtual hearing is appropriate. It is important to distinguish between video and telephone hearings: while video hearings can preserve many of the benefits of face-to-face engagement, telephone hearings are generally more difficult for claimants and often result in poorer quality evidence being obtained, and therefore, it would be important to keep the virtual mode of hearing under review. An advantage to this approach is to vastly improve the number of hearings at which a Presenting Officer from DWP is present.

b. The claimant should be able to opt out of a virtual hearing if they so choose.

8. Evidence provided to the Tribunal should be streamlined and standardised.

a. Any medical evidence submitted to the Tribunal must be up-to-date and must have been validated by a healthcare professional. The tribunal should be able to download the last 12 months of GP records, before the claim was submitted, as a minimum, from NHS app, helping to create a joined-up digital approach.

b. This should be an evidential foundation and required for the case to be considered. The only exception should be claimants who have a lifelong condition and/or a terminal condition. This fits with the constrained eligibility rules regarding PIP and ESA.

c. From the date of the initial assessment, only evidence from the past five years should be admissible.

7. https://www.gov.uk/government/consultations/pathways-to-work-reforming-benefits-and-support-to-get-britain-working-green-paper/pathways-to-work-reforming-benefits-and-support-to-get-britain-working-green-paper

9. For PIP tribunals, panel membership should be expanded over time so a wider range of healthcare professionals – in addition to doctors – can act as the expert health adviser on the panel.

a. Given the breadth of disabilities which are now considered and their functional impact upon claimants, it seems counter-productive to exclude wider professional input. This development should be led by the Chief Medical Member of the First-Tier Tribunal.

b. A consequence of this change could be improving the speed or volume of tribunal hearings, whilst also enhancing opportunity for a wider range of professionals to enhance their specialisation – building on proposals Policy Exchange made in our previous paper, *For Whose Benefit*.

10. The Government should set a target of recovering the speed any case is heard at Tribunal to three months (on average) following the commencement of an appeal.

a. This is essential, given the nature of fluctuating conditions, and would improve the prospect of claimants returning to work.

11. In the vast majority of cases, HMCTS should no longer fund translation services for PIP and ESA Tribunals.

a. Where foreign language translation is required, the appellant should be charged for interpretation services. Individuals requiring BSL interpretation should be exempted. An independent, professional service should provide any interpretation.

b. If it appears an advocate, e.g. a family member, is providing language assistance during a hearing, a Judge should use their discretion as to whether it is appropriate. Where not, the hearing should be adjourned and professional translation service(s) used.

c. This would require careful legislative provision and appropriate safeguards; without them, the Tribunal risks increased applications for adjournment on the basis that the interests of justice require the provision of an interpreter.

Section 1 – Mapping the Appeals Process: Development, Current Structure & Outcomes

This section sets out the relevant stages through which an initial decision taken by the DWP, relating to health and disability benefit claims, can be appealed.

Figure 1 – Personal Independence Payment (PIP) Claimant: Appeal Journey

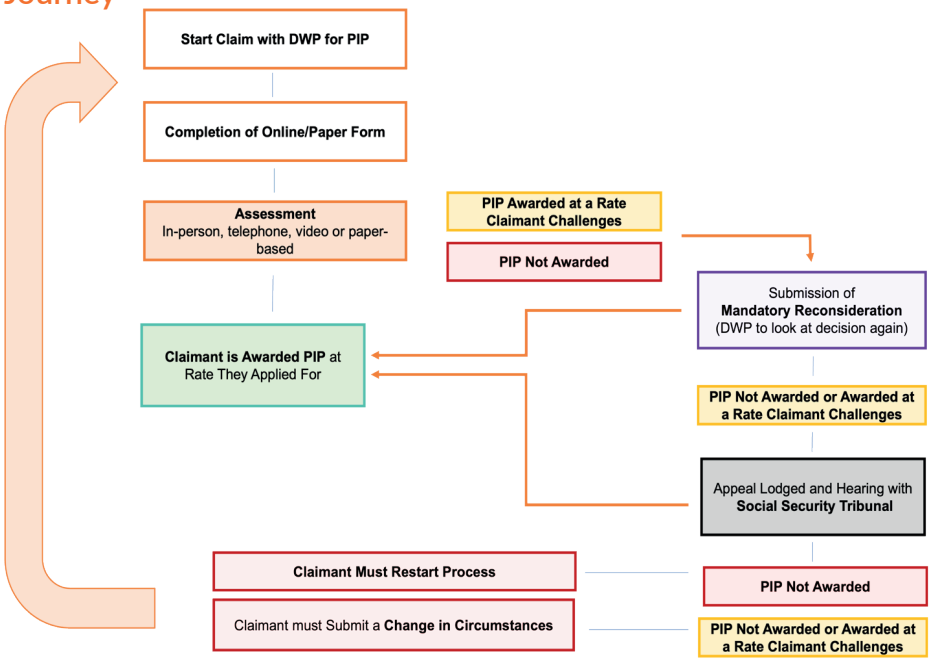
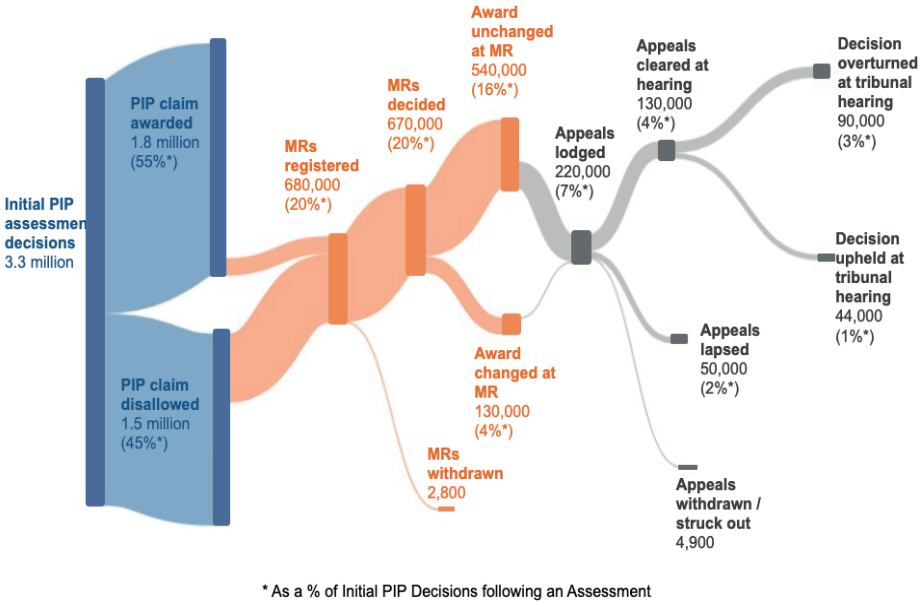


Fig. 1 above sets out the current process for applying for the Personal Independence Payment (PIP), including the relevant stages at which the claimant can challenge the decision made by the Department for Work and Pensions (which has been informed by an assessment, delivered by an assessment provider, on behalf of the DWP).

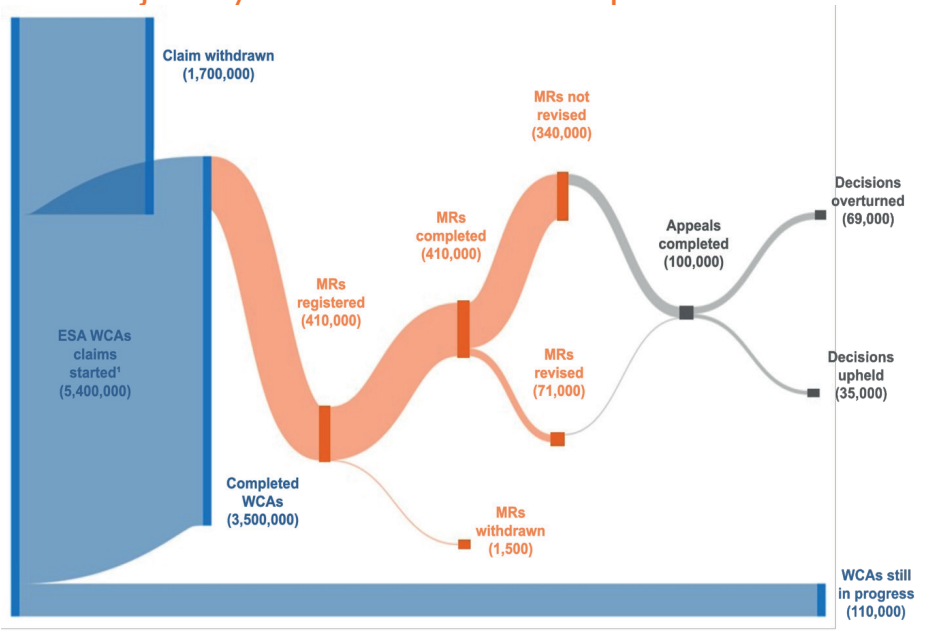
Fig. 2 and 3, below provide an indication of the current volume of claimants who go through the different stages from application, assessment and through the appeals process for both PIP and ESA respectively.

Figure 2 – Initial Decisions through to MR and Appeal



Source: PIP Statistics to April 2025, covering initial PIP decisions between January 2020 to December 2024, and the MR and appeals related to those decisions to March 2025, https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-april-2025/personal-independence-payment-statistics-to-april-2025

Figure 3 – Numbers of all ESA WCAs, MRs and Appeals at stages in customer journey from October 2013 to September 2024



Source: Data tables: ESA WCA customer journey statistics for initial and repeat ESA WCAs, by period of claim start October 2013 to September 2024, https://www.gov.uk/government/statistics/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-june-2025

Figs. 4 and 5 below depict the total volume of claimants who register for PIP and PIP cases with entitlement (based on April 2025 figures), demonstrating the volume of individuals that are claiming and are having their benefit claim or award reviewed in certain parts of the country – particularly areas known to have high levels of claimants, such as Knowsley, Port Talbot and Middlesborough. Fig. 6 below depicts the ESA caseload as a proportion of the total local authority population.

Figure 4 – Total PIP Registrations as Percentage (%) of Total Local Authority Population (April 2025)

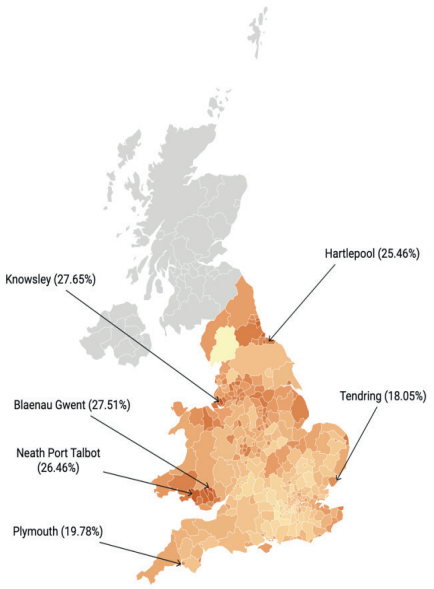
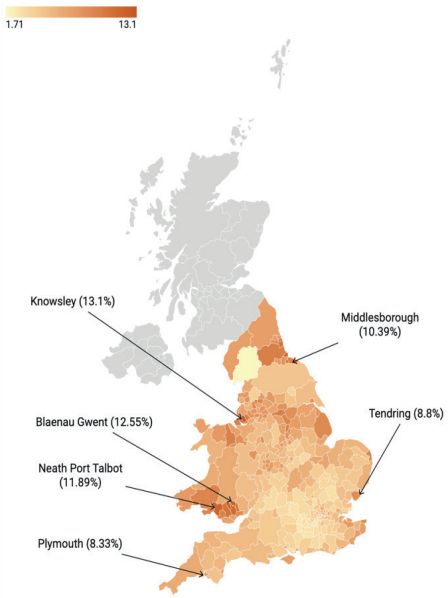
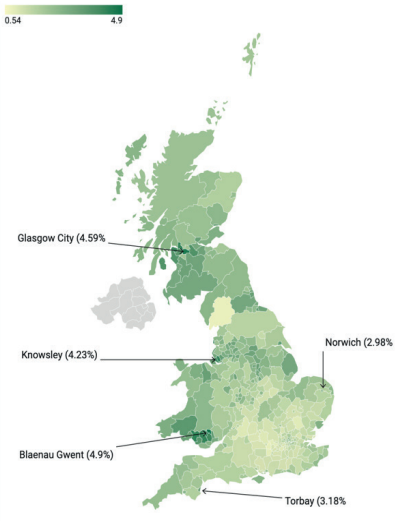


Figure 5 – Total PIP Cases with Entitlement as Percentage (%) of Total Local Authority Population (April 2025)



ESA

Figure 6 – ESA Caseload as a Proportion of the Total Local Authority Population, November 2024



Looking closely, we see a system beset with challenges, failing claimants and the taxpayer. An analysis of the current system reveals the following key statistics:

For PIP:

- **Mandatory Reconsideration (MR):** Between January 2020 and December 2024 there were around 3.3 million initial PIP decisions following an assessment. Of these, about 680,000 — just over one in five — were challenged through MR. In around 20% of completed MRs (excluding withdrawals) the award was changed in the claimant's favour. That means roughly 130,000–140,000 people received a changed award after going through the MR process. To put the scale in perspective, that is equivalent to the entire population of a town the size of Blackpool.[8]
- **Lapsed appeals:** For the period January 2020-December 2024, out of roughly 3.3 million PIP decisions following assessment, an estimated 680,000 went to Mandatory Reconsideration. After their MR was denied, about one in three (33 % or around 224,400 people) went on to lodge an appeal. Of those appeals, 22 % (or around 49,280) were changed in the claimant's favour (so-called "lapsed" appeals) before they reached a tribunal hearing.[9]
- In recent years, a striking pattern has emerged. An increasing number of people have gone from being told they were entitled to **nothing at all** to, after appeal, being awarded the **highest level of support available** — the enhanced rate for both Daily Living and Mobility. In 2019/20, this happened in about 9% of appeals; by 2023/24, it was 14%. That year alone, around **4,900 people** made the leap from complete exclusion to the maximum award.[10]

For ESA:

- 410,000 MRs have been registered, following a completed Work Capability Assessment. Of registered MRs raised after the Work Capability Assessment (WCA), the original decision was revised 17% of the time. [11]
- 100,000 appeals have been completed, 34% of which had the DWP decision upheld at hearing, while the remaining 66% were overturned in favour of the claimant.[12]

For HMCTS:

- We see significant variation both year-on-year and by Tribunal Venue in the number of cases overturned in favour of the claimant – the reasons for which are unclear.
- Significant growth in spending on translation and interpretation

8. https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-april-2025/personal-independence-payment-statistics-to-april-2025
9. Ibid
10. https://www.benefitsandwork.co.uk/news/astonishing-number-go-from-pip-zero-to-double-enhanced
11. https://www.gov.uk/government/statistics/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-june-2025/esa-work-capability-assessments-mandatory-reconsiderations-and-appeals-june-2025
12. https://www.gov.uk/government/statistics/esa-outcomes-of-work-capability-assessments-including-mandatory-reconsiderations-and-appeals-june-2025/esa-work-capability-assessments-mandatory-reconsiderations-and-appeals-june-2025

services, provided by HM Courts and Tribunals Service, which has increased by 80% since 2020/21 alone. HMCTS spending on interpreters rose from £7.1 million in 2020–21 to £12.8 million in 2023–24.

Stage 1 – Mandatory Reconsideration

Claimants who wish to dispute a decision relating to a health and disability benefit can ask the DWP to reconsider the decision. This is a Mandatory Reconsideration (MR) and must be completed *before* any appeal is made and lodged with His Majesty's Courts & Tribunals Service (HMCTS).

MR is a recent innovation, having been introduced in 2013, alongside changes to the benefits appeal process made via the Welfare Reform Act 2012. [13] Up to this date, a claimant who disagreed with a benefit decision could appeal directly to the Social Security Tribunal. MR can be requested where a benefit has been removed in its entirety or where the award is set at a level below that the claimant believes they are entitled to.

In law, there is no time limit within which a MR decision must be made, but claimants are expected to submit a request within a month, or must set out reasons for the delay. Late requests may be accepted with good reason (e.g., illness, bereavement) as long as they are received within 13 months of the decision date. MR can be requested by phone, in writing or by using an online form called the 'CRMR1'. The DWP suggest phoning the Department, arguing this allows the claimant to explain over the phone why they believe the decision is incorrect. The information DWP require for an MR is why the claimant believes the initial decision was wrong.

The current system lacks a clear rationale. It is neither swift nor reliable. The ability to introduce new evidence during appeals undermines the intended role of the process, turning it from a review of decisions into a de facto re-assessment. MR has developed less as a genuine way to correct errors and more as a tool to reduce the number of appeals reaching tribunals. The stark difference between MR outcomes and appeal decisions has created a perception that the process aims to deter challenges rather than deliver fair results. By April 2025, only about one in five PIP Mandatory Reconsiderations (21%) resulted in a changed award, yet when cases reached tribunal, around 60% were overturned in favour of the claimant. This has, in turn, diminished confidence in the system's fairness and legitimacy. The latest data shows that the DWP spent £22.8 million on MR and a further £24.5 million on the operational costs of administering appeals in the 2022-23 financial year.[14] (This does not, of course, include the ongoing costs in the increase in benefit award.)

The process has always enabled claimants to submit additional evidence to support their case, including any evidence about how their condition affects them. Since 2019, the DWP has gone a step further by introducing a process whereby "case managers" (employed directly by the DWP) can proactively contact claimants to gather further written or oral evidence.[15] It is not clear, based on research, what proportion of claims are subject to

13. https://assets.publishing.service.gov.uk/media/5df204a940f0b6094e25ac29/Tribunal_and_GRC_statistics_supporting_document_Q2_201920.pdf (p. 28)

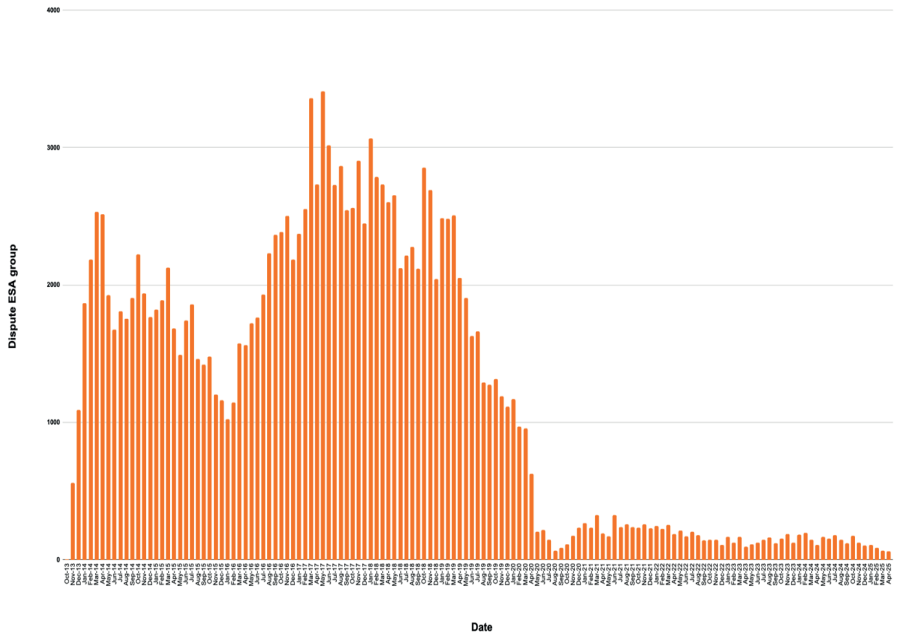
14. https://hansard.parliament.uk/Lords/2025-01-09/debates/9EFD7205-67B3-474E-A931-724D03963299/BenefitsEligibility?highlight=%22mandatory%20reconsideration%22#contribution-00463108-75A0-4501-A7D3-41D1B-3C21C72

15. https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-april-2025/personal-independence-payment-statistics-to-april-2025

further contact of this nature.

This evidence (largely collected over the phone) is another stage at which evidence to support a claim is received. The collection of further evidence, via a remote modality, does not sufficiently distinguish MR from the initial assessment (other than that the process is conducted entirely by the DWP).

Figure 7 – Mandatory Reconsiderations (Registrations), ESA Dispute Group, October 2013-April 2025



Source: Policy Exchange analysis of Stat-Xplore

Looking at Fig. 7 above, we see that monthly registrations for MR to dispute a decision on ESA has reduced significantly over time, now averaging under one hundred every month. This reduction is due to the managed migration of claimants onto the Support Group element of Universal Credit over time.[16]

For PIP, the total has increased on average over time, with a fairly constant 20,000 to 30,000 registrations now each month. See Fig. 9, below.

16. Claimants could also be migrated to the "Work Related Activity Group" of Universal Credit.

Figure 8 – PIP MR Registrations, June 2013-May 2025

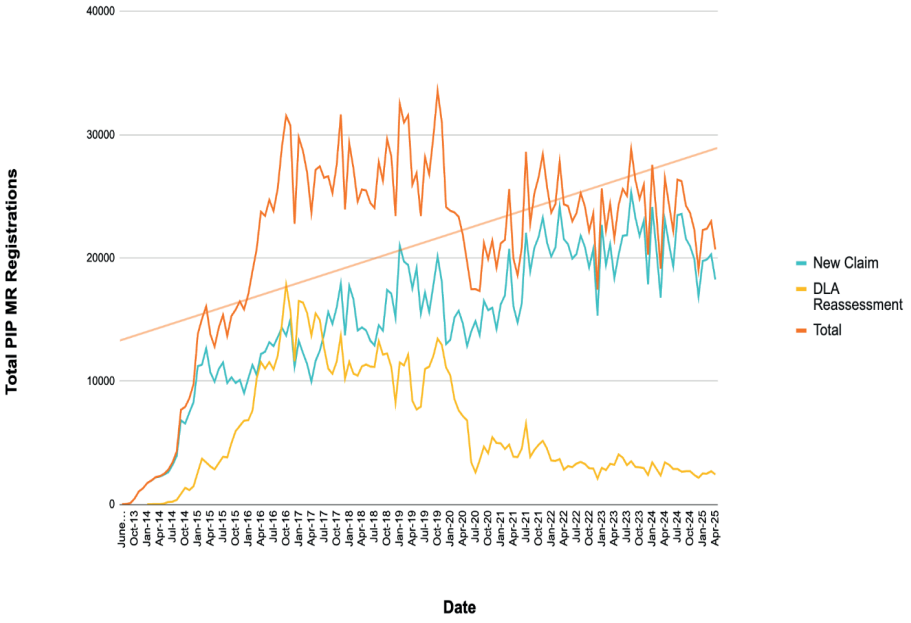
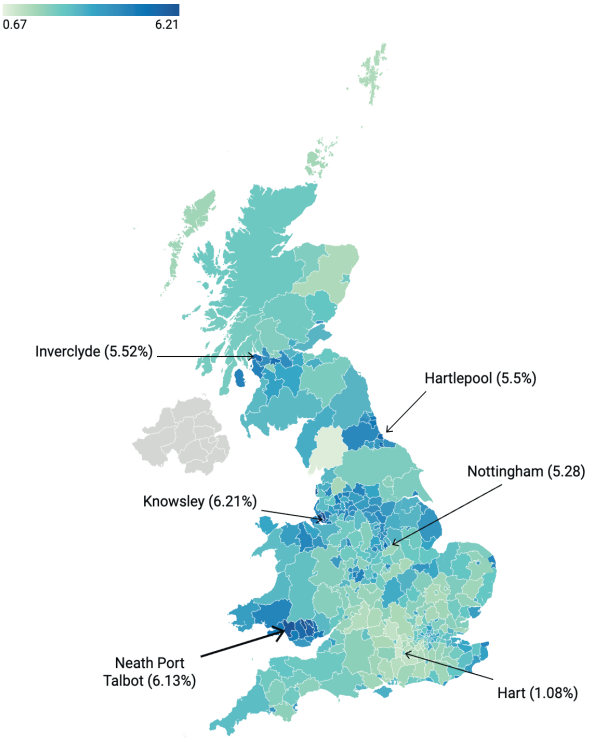


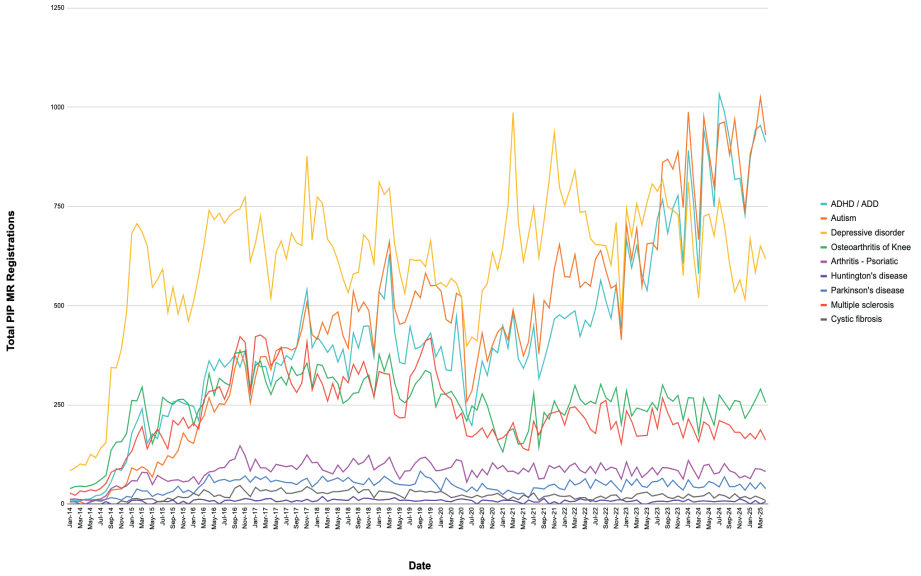
Fig. 9 below depicts the geography of registrations, where in Knowsley (for instance), 6.21% of the total overall population challenged an outcome of their initial assessment for PIP, registering a "new claim" for MR.

Figure 9 – Proportion (%) of Total Local Authority Population Lodging a 'New Claim' for Mandatory Consideration as part of a Personal Independence Payment (PIP) Claim



We also see that the number of registrations relating to different health conditions has changed over time. Those registering for an MR, where their primary disabling condition is a neurodevelopmental disorder, have grown considerably in recent years. As Fig. 10 shows, whilst registrations for those with Parkinson's disease or cystic fibrosis have remained constant month-on-month since 2014, for ADHD/ADD registrations have grown from almost zero per month in 2014 to around 1,000 every month by May 2025.

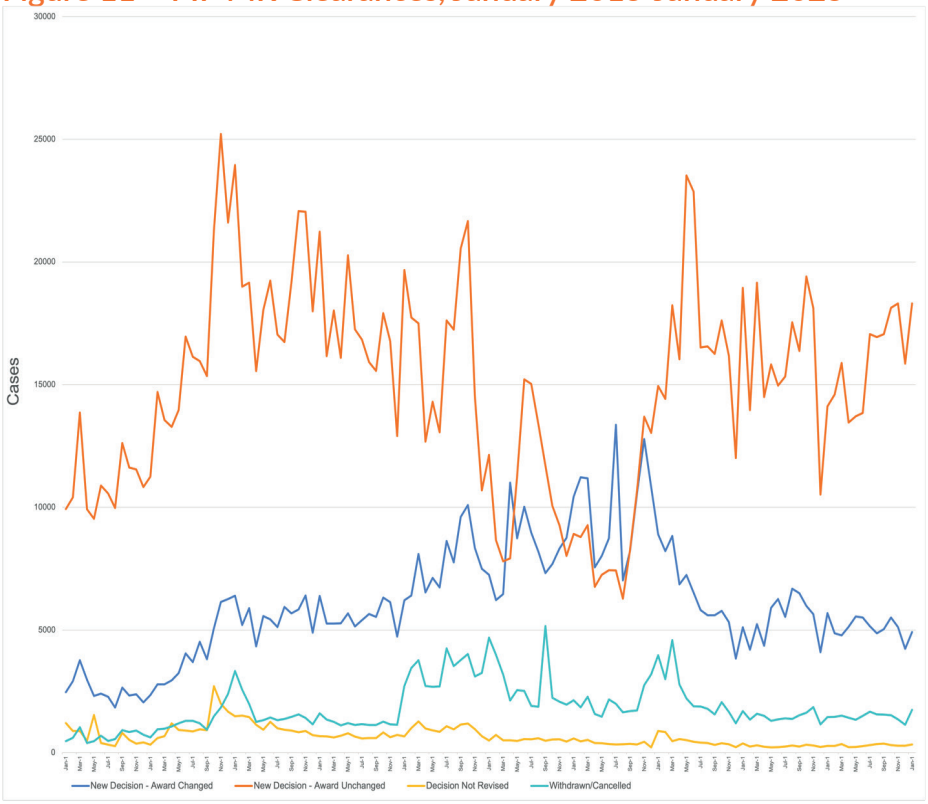
Figure 10 – PIP MR Registrations, January 2014 - May 2025, Select Conditions/Disorders



Source: Policy Exchange analysis of Stat-Xplore

Fig. 11 below sets out the outcomes which emerged from MR processes overall for PIP from January 2015 to January 2025. In most cases the award remains unchanged. This was the case for 72% of cases (for example) in January 2025. (18,314 cases from 25,303 in total). As mentioned above in around 20% of cases, the award was altered following the review.

Figure 11 – PIP MR Clearances, January 2015-January 2025



Source: Policy Exchange analysis of Stat-Xplore

The DWP has a "multi-tiered Quality Assurance Framework to ensure MR decisions are legal, and payments are accurate", with 'Decision Makers' receiving "thorough training on all aspects of decision-making". In early 2024, it was reported that the Government had reduced waiting times from a peak of 79 days in 2021 to 36 days in October 2023.[17]

It has been reported that letters sent to claimants no longer contain specific reasons for a particular decision reached at MR, instead becoming skeleton letters that mostly contain general information about PIP entitlement and stating the number of eligibility points awarded to a claimant. This is due to a policy change, beginning in May 2022, which introduced 'standardised decision reasoning',[18] with instructions introduced for DWP staff to provide standard wording for letters. This development reflects more standardisation in the process.

Aligned to the overall number of welfare claimants in each local authority, there are significant variations in the proportion of individuals who lodge a MR as part of their claim for a benefit, e.g. PIP. This aligns with the total number of claimants for health and disability benefits we observe across each of these local authorities more broadly.

If one were to clarify that MR was about administrative accuracy, then a speedy decision should become the norm, e.g. within one week. With the changing nature of technology and the greater use of artificial intelligence

17. https://hansard.parliament.uk/Commons/2024-02-05/debates/F59DF80E-38EF-4C6C-9491-32C1624BDE1F/PIP-MandatoryReconsiderationDecisions

18. https://cpag.org.uk/sites/default/files/2024-04/Mandatory_Reconsideration_in_2024.pdf#:~:text=Policy%202:%20Standardised%20decision%20reasoning%20Abandon%20'standardised,benefit%20lines%20where%20the%20practice%20currently%20applies

– especially within the DHSC (which will have to confront similar ethical considerations to DWP) – there is an opportunity to make greater use of ambient voice technology (AVT) to capture and transcribe conversations. This is plausible given the Government's stated intention via their recent green paper (and subsequent statements) to record all future assessments.

Pat McFadden, the DWP SoS, in his previous incarnation as the Chancellor of the Duchy of Lancaster, stressed that he wanted the Government to develop more of a "start-up culture" utilising technology to create a "test and learn culture".[19] The MR process is perfectly suited to that type of innovation, and in his current incarnation, he should set about reforming this inefficient process into one that is a dynamic, technology-enabled system that he has championed.

Stage 2: 'Lapsed' Appeals

A 'lapsed appeal' refers to a situation in which the DWP changes the initial decision in the claimant's favour *after* an appeal has been lodged by the claimant with HM Courts and Tribunals Service (HMCTS), but *before* the appeal is heard at a tribunal. The purpose of having 'lapsed' appeals is to save time and resources (for both the DWP and HMCTS).

A lapsed appeal does not always mean that the DWP accepts the outcome the claimant desires. Instead, the DWP accepts that they should have awarded the claimant more points, but this does not always alter the rate of award. Instead, under the law the claimant receives a "more favourable" decision but in reality that does not necessarily change the overall award amount.

The practice of lapsing appeals has drawn criticism from some quarters. Concerns have been raised that revised decisions may not always be the most advantageous award that a claimant could achieve, were they to take their case to a tribunal. This practice effectively prevents the tribunal from happening. The DWP is supposed to inform the claimant that they are entitled to continue their appeal to the Tribunal if they are not satisfied with the outcomes of the 'lapsed' appeal.

A notable proportion of appeals lodged against DWP decisions, particularly for PIP are lapsed.

- In 2022/23, 22% of the 81,000 PIP appeals registered were lapsed.[20]
- For appeals against initial decisions following a PIP assessment, 24% of appeals lodged saw the DWP change the decision in the customer's favour before the appeal was heard at tribunal (as of January 2024).[21]

Table 1 below provides information on PIP appeal registrations and 'lapsed' appeals. (The data provided below relates the financial years 2018/19 to 2022/23).

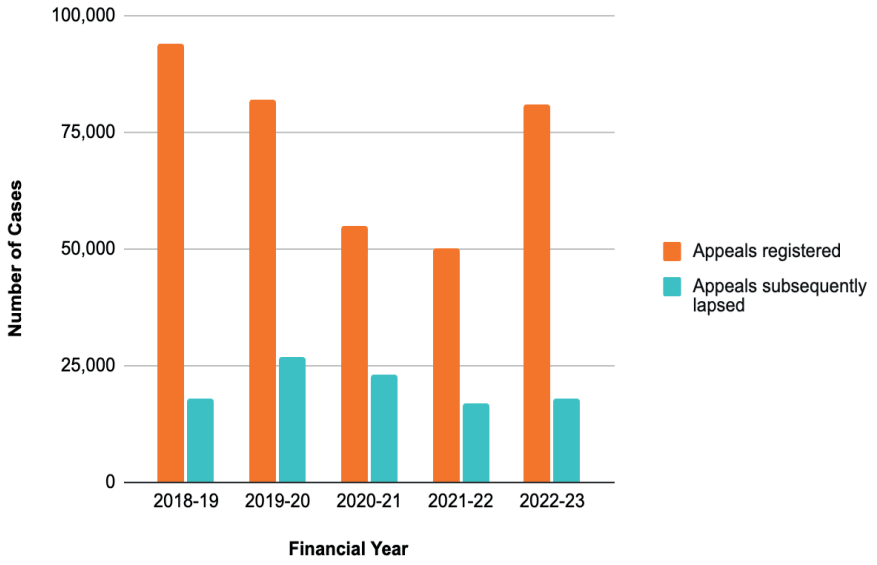
19. https://www.gov.uk/government/news/pat-mcfadden-vows-to-make-the-state-more-like-a-start-up-as-he-deploys-reform-teams-across-country
20. https://www.bristolcab.org.uk/more-than-a-fifth-of-pip-appeals-lapsed/
21. https://www.benefitsandwork.co.uk/news/3-5-million-claimants-now-getting-pip

Table 1 – PIP appeals registered for each financial year (and how many were subsequently lapsed)[22]

Financial year	Appeals registered	Appeals subsequently lapsed	Proportion lapsed
2018-19	94,000	18,000	19%
2019-20	82,000	27,000	33%
2020-21	55,000	23,000	42%
2021-22	50,000	17,000	34%
2022-23	81,000	18,000	22%

Source: *https://questions-statements.parliament.uk/written-questions/detail/2024-01-17/10200*

Figure 12 – PIP Appeals registered for each financial year (and the total subsequently 'lapsed')



Source: *https://questions-statements.parliament.uk/written-questions/detail/2024-01-17/10200*

22. Note: Figures have been rounded to the nearest 1,000; Data provided is for England and Wales (excluding Scotland); These figures include appeal registrations and decisions for PIP New Claims, Reassessments, Award Reviews and Change of Circumstances. These figures include appeals registered from April 2018 to March 2023 and any lapsed appeals related to these appeal registrations up to the 30th September 2023, the latest date for which published data is available; Appeals data has been taken from DWP PIP customer system's management information. Appeal data may differ from that held by His Majesty's Courts and Tribunals Service, incl. delays in data recording and methodological differences in preparing statistics.

Stage 3: The Social Security and Child Support Tribunal (SSCS)

If a decision is not changed at MR or an appeal does not 'lapse', then a claimant may take their case to the Social Security Tribunal.

Tribunals are specialist judicial bodies which decide disputes in particular areas of law. Appeals made to tribunals are generally against a decision made by a Government Department or Agency. The main exception when comparing our current Tribunal system is the Employment Tribunal,

where cases are between employee versus employer.

As The Rt. Hon. Sir Ernest Ryder, former Senior President of Tribunals, has reflected, "the [tribunals] system is, by statutory design as well as of necessity, specialist, innovative and (by comparison with most of the courts)… less formal. Its processes are often inquisitorial or investigative, rather than the traditional model of adversarial justice."[23]

The Tribunals, Courts and Enforcement Act 2007 significantly restructured the UK Tribunal system. Before this legislation, tribunals were often administered and controlled by individual government departments, with each department effectively "owning" its respective tribunals. This meant that departmental policies were closely interwoven with tribunal operations, which raised issues about independence and impartiality. An overview of the evolution of tribunals since the 1990s is set out in Table 2 below.

The 2007 reforms created a unified and independent tribunal structure under the HMCTS. It established a First-tier Tribunal and an Upper Tribunal. The First-tier Tribunal is what most people consider "the tribunal" as it is the actual hearing body that adjudicates the facts and evidence of the case (and is the focus of most of this report). The Upper Tribunal hears. A plaintiff can be granted a right to appeal to the Upper Tribunal, because there has been an "error of law". This could be that the law was applied incorrectly, it could be that the correct procedure was not followed, the Tribunal considered erroneous facts or gave inadequate reasons for its decisions (this is not a complete list of the reasons).[24] The 2007 reforms introduced common procedural rules across tribunal jurisdictions. This was intended to enhance the independence, consistency and transparency of tribunal decision-making and to bring the system more in line with principles of administrative justice.

23. https://www.judiciary.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf
24. https://commonslibrary.parliament.uk/appealing-benefits-decisions-beyond-the-first-tier-tribunal/

Table 2 – The Evolution of the Tribunals System since the 1990s

- The landscape of social security appeals has undergone significant transformation in recent decades, driven by legislative changes, Government initiatives aimed at efficiency and reform, and the evolving character of welfare provision.
- In the early 1990s, the system of appeals was primarily governed by the **Social Security Act 1986**. Appeals against decisions on benefits, including Income Support, Disability Living Allowance, and Jobseeker's Allowance were heard by independent **Social Security Appeal Tribunals (SSATs)**. These tribunals, administered by the Independent Tribunal Service (ITS), aimed to provide an accessible route for individuals to challenge Government decisions. However, concerns regarding consistency, delays, and the increasing volume of appeals began to surface. The late 1990s and early 2000s saw a growing emphasis on reform to the tribunal system.
- The **Tribunals, Courts and Enforcement Act 2007** aimed to create a unified and more efficient structure, bringing together previously separate tribunals, including the aforementioned SSATs and the Child Support Appeal Tribunals, under a unified framework.
- The **First-tier Tribunal** was established, with a specific chamber dedicated to social security. This aimed to streamline administration and to improve consistency in decision-making.
- **The Social Security and Child Support Tribunal (SSCS)** within the First-tier Tribunal became the primary forum for appeals related to a wide range of benefits, including those previously handled by SSATs and Child Support Appeal Tribunals.
- Between July 2013 and July 2017, fees were introduced for Employment Tribunals and the Employment Appeal Tribunal.[25] Sir Stephen Laws offered a critique of the Supreme Court decision to rule that this policy was unlawful arguing in his paper Second-guessing policy choices that the judgement "extends the reach of the courts into policy formulation and the management of the public finances, it creates a challenge for political and democratic decision-making."[26]

Today, the Social Security and Child Support Tribunal (SSCS) is the largest part of the Social Entitlement Chamber of the First-tier Tribunal, administered by HMCTS. Appeals to the First-tier Tribunal are made against the decisions made by government departments (and other public bodies). In the case of the SSCS, the DWP. SSCS tribunals usually account for the largest proportion of receipts – 44% of all tribunal receipts in 2018/19.[27]

The Social Security Tribunal is, effectively, a non-Article 6 administrative system[28]. While it may engage civil rights under the European Convention on Human Rights (ECHR), its design and function are administrative rather

27. https://assets.publishing.service.gov.uk/media/5df204a940f0b6094e25ac29/Tribunal_and_GRC_statistics_supporting_document_Q2_201920.pdf (p. 12)

28. https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-6

25. On 26 July 2017 the Supreme Court in its judgment in R (on the application of *Unison v Lord Chancellor* held that the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, SI 2013/1893 ("the Fees order") which came into effect on 29 July 2013 was unlawful under both domestic and EU law because it had the effect of preventing access to justice: https://assets.publishing.service.gov.uk/media/5df204a940f0b6094e25ac29/Tribunal_and_GRC_statistics_supporting_document_Q2_201920.pdf

26. https://policyexchange.org.uk/wp-content/uploads/2018/03/Second-guessing-policy-choices-2.pdf p.39

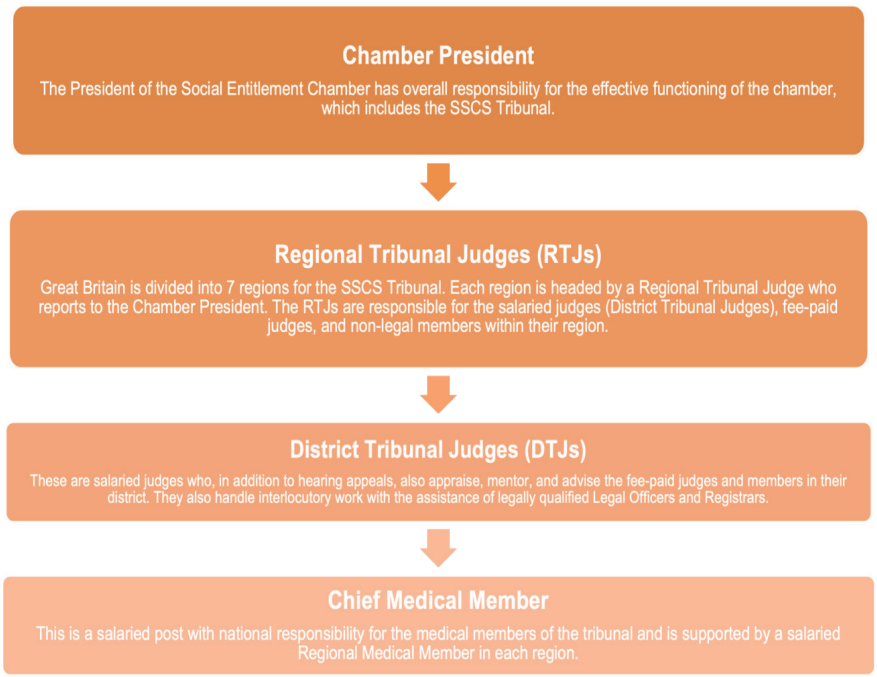
than judicial. The importance of this distinction is that the system is less formal as a result, with processes intended to be inquisitorial, as the earlier quote from Sir Ernest emphasises, rather than adversarial. Tribunal Judges (and the wider panel) aim to investigate and clarify issues with the desire to determine the factual basis of the claim, rather than merely preside over a dispute between two opposing parties. The system is accessible to laymen and laywomen without the need for formal representation by a lawyer. The rules are codified in legislation, but the role of the Tribunal is to ensure the efficient and consistent application of predefined eligibility criteria, rather than legal interpretation or precedent-setting. They are supposed to remedy errors in the process and application of eligibility criteria. Tribunals were designed to offer independent oversight.

Below is a table outlining the ways in which the Social Security Tribunal complies – and potential areas of non-compliance:

Table 3 – Where the Social Security Tribunal May (And May Not) Comply with Article 6

Aspect	Compliance	Possible Non-Compliance
Independence & Impartiality	Judges and members appointed independently. They operate under a unified tribunal judiciary, headed by a Senior President of Tribunals.	While generally independent, concerns can sometimes arise regarding the perception of independence if, for example, the tribunal system is seen as too closely tied to the executive body whose decisions are being appealed.
Fair & Public Hearing	Hearings generally public. Parties have right to present case, submit evidence, and challenge opposing evidence.	Privacy concerns may lead to closed hearings, permissible under Article 6 in specific circumstances.
Reasonable Time	There is a general duty for cases to be heard within a 'reasonable time'.	Delays in the tribunal system can occur in periods of high caseload.
Access to Legal Assistance	Individuals have the right to present their case in person. While there is no absolute right to free legal aid for all civil matters under Article 6, it may be required "where the interests of justice so require."	Legal aid for social security appeals has been more constrained in recent times.
Public Pronouncement of Judgment	Decisions of the tribunals are generally published (often in anonymised form), contributing to transparency and public accountability.	Not all decisions are published, and while major decisions with wider public interest are, the accessibility of *all* final decisions for public scrutiny can vary.

Figure 13 – Current Structure of the SSCS



The composition of an SSCS Tribunal panel will vary by appeal type. Some appeals are heard by a Judge sitting alone (e.g. decisions on Job Seekers' Allowance) while others e.g. for PIP will include a Medical Member (MM) / Senior Medical Member (SMM) and a Disability Qualified Tribunal Member (DQTM) alongside a judge.[29]

Fig. 14 below sets out a typical panel composition, whilst Table 4 sets out the differences in current sitting fees for these members respectively.

Figure 14 – Composition of a Social Security Tribunal Hearing for PIP

Table 4 – Judicial Daily Sitting Fees (effective 1 April 2023)

Member	Day Rate (£)
Medical Member (Where medical examination may be required)	456.98
Medical Member (No medical examination required)	380.60
Medical Member (Appraisal Fee)	281.88
Financial Member	371.06
Disability Qualified Member	236.24
Judge of the First Tier	£575.08 London Weighting £593.26

Source: https://assets.publishing.service.gov.uk/media/65129fe1f6746b-000da4b9ab/judicial-fees-2023-2024.pdf

Legislative Considerations

There is no question that the gateway of both PIP and ESA has become enlarged due to the poorly written and ambiguous nature of the original legislation and interpretation by the courts. An "Entitlement" benefit defined in legislation with scope for subjective interpretation by claimants, assessors and the Department for Work and Pensions is always going to be complex to predict and control. This inherent ambiguity makes these benefits particularly complex to administer, predict, and control. Both PIP and the ESA are always at the mercy of changes in claimant behaviour and legal challenges. The Government, especially concerning PIP, altered the narrative as the benefit became more mature. The criteria are suitable for a moment in time and need to be consistently re-evaluated to remain relevant, given technological advances and the changing nature of our society.

29. https://assets.publishing.service.gov.uk/media/5df204a940f0b6094e25ac29/Tribunal_and_GRC_statistics_supporting_document_Q2_201920.pdf (p. 12)

There have been several legal judgments that have reinterpreted the policy intent and the considerable Annual Managed Expenditure (AME) implications that arose from changes to the regulations. As we laid out in our recent report, *For Whose Benefit* (2025), many cases have centred around the interpretation of the qualifying criteria, introduced in 2013, that the activities under assessment need to be conducted "safely, to an acceptable standard, repeatedly and in a reasonable time. They have also impacted how physical and mental health should be considered.[30] These are some of the most notable cases:

- **In MH v *Secretary of State for Work and Pensions* [2016] UKUT 0531 (AAC)**, the Upper Tribunal clarified how decision-makers must approach assessments for, Mobility Activity 1 concerning planning and following journeys. Fundamentally, the Upper Tribunal held that psychological distress can constitute a functional impairment and must be considered when determining whether a claimant can undertake a journey. It held that Descriptor 1(e) applies where overwhelming psychological distress prevents a person from undertaking any journey, meaning the definition of a "journey" includes both physical and psychological capability. The ruling also reinforced that PIP activities must be judged according to whether they can be performed safely, to an acceptable standard, repeatedly, and within a reasonable time period.[31]

The Government subsequently responded with a change to exclude those experiencing psychological distress from the PIP mobility component. The Government argued that there should be a distinction between those who cannot navigate because of assistance due to psychological distress, and they should not be treated in the same way as a person who needs assistance because they have difficulties navigating.[32]

- In layman's terms, they wanted to distinguish between those who experienced an "isolated social phobia or anxiety" and someone who was blind. The Government argued that before this judgement "the assessment made a distinction between these two groups, on the basis that people who cannot navigate, due to a visual or cognitive impairment, are likely to have a higher level of need, and therefore face higher costs." This attempt, however, was struck down by the courts because it was "blatantly discriminatory," in breach of Article 14 of the ECHR and therefore unlawful.[33] The original law did not try to make a distinction between psychological distress and other mental health issues or other disabilities. In January 2018, the government decided not to appeal this decision and announced a review of 1.6m PIP claims, dating from the initial decision.[34] The Government estimated that up to 220,000 people could benefit from the judgment, at a total cost of around £3.7 billion. The change, in reality, has impacted far fewer. According to the last data release in 2022, around 990,000

30. https://policyexchange.org.uk/publication/for-whose-benefit/
31. https://assets.publishing.service.gov.uk/media/60f17253e90e0764cfc22a25/_2018__AACR_12ws.pdf
32. https://questions-statements.parliament.uk/written-statements/detail/2017-02-23/hcws495
33. [2017] *RF v Secretary of State for Work and Pensions* EWHC 3375 (Admin), 21 December 2017, [link]
34. 'Personal Independence payments: All 1.6 million claims to be reviewed', *BBC News*, 30 January 2018, [link].

cases have been reviewed against the MH decision. Around 4,300 arrears payments have been made from the application of the MH decision and the application of this decision has cost £22 million.

- The definition of safety was addressed in ***RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ (PIP)***: [2017] UKUT 105 (AAC).[35] The court lowered the threshold of what was unsafe by ruling that it did not require an occurrence of harm to be "more likely than not", rather that there must be a "real possibility of harm that cannot be ignored of harm occurring" which is to be balanced against the severity of harm.[36] RJ applies to any PIP descriptor. One of the particular examples the court considered in this case was the likelihood of a fire occurring when the claimant was in the bath, which it deemed to meet the threshold of an activity carried out unsafely.[37] The Upper tribunal increased eligibility for PIP, as claimants, as those who only have conditions that affect them infrequently became eligible for the benefit. The Department examined 1,100,000 cases and this has led to around 4,100 arrears payments to the sum of £21 million according to the most recent data.[38] This case also meant that mental health must be considered on par with physical health. Similar to the MH case, RJ reinforced that mental health conditions like anxiety or PTSD can disable functionally as much as physical conditions. This has had a particular effect on assessing what is safe.
- ***TR v Secretary of State for Work and Pensions (PIP)*** [2015] UKUT 626 (AAC) concerned the definition of "repeatedly."[39] The court overturned the tribunal's decision "that the descriptors were not met simply because there was only a difficulty for part of the day" ruling that "it was sufficient that the claimant was unable to perform the relevant task at some point in a day."[40] The court also addressed the Government's advice in the PIP assessment guide that a claimant can be still considered to conduct an activity repeatedly, even if they cannot do so without painkillers. Here the judge decided that the activities cannot be carried out to a reasonable standard "if he or she is obliged to wait for a disruptive period of time until the painkillers take effect."[41] In practical terms the case was important because it confirms that people with fluctuating conditions, partial-day or intermittent inabilitymay still meet the descriptor thresholds under PIP. It set a legal precedent.
- ***Secretary of State for Work and Pensions (Appellant) v MM (Respondent) (Scotland) [2019] UKSC 34*** redefined how the government should understand the meaning of "social support" in the PIP assessment.[42] The case involved a claimant who applied for PIP partially because he needed social support engaging with others due to mental health reasons. The Supreme Court found that a "narrow and technical" approach to social support was unwarranted and that it could include just "prompting". However, prompting will amount to

35. [2017] AACR 32, *RJ, GMcL and CS v Secretary of State for Work and Pensions* (PIP), [2017] UKUT 105 (AAC), [link]
36. Ibid.
37. Ibid.
38. https://www.gov.uk/government/collections/pip-administrative-exercise-progress-on-cases-cleared
39. [2016] AACR 23, *TR v Secretary of State for Work and Pensions* (PIP), [2015] UKUT 626 (AAC), [link]
40. PIP Assessment Guide Part Two - The Assessment Criteria, *Department for Work & Pensions*, [link]
41. [2016] AACR 23, TR v Secretary of State for Work and Pensions (PIP), [2015] UKUT 626 (AAC), [link]
42. [2019] UKSC 34, *Secretary of State for Work and Pensions (Appellant) v MM (Respondent)* (Scotland),18 July 2019, [link]

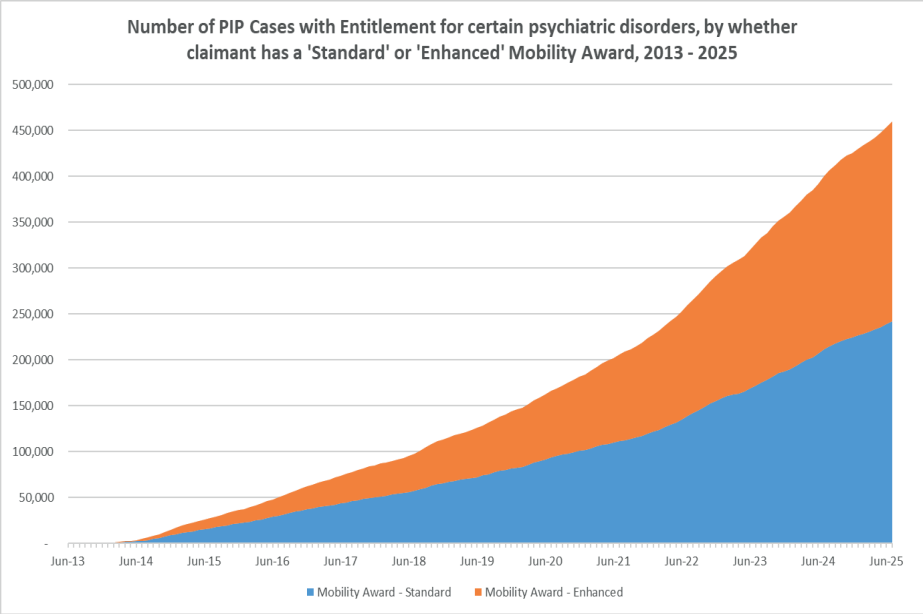
social support only where the claimant requires assistance from a person trained or experienced in assisting people to engage in social situations. The Court also ruled that social support does not need to be provided contemporaneously with the face-to-face engagement itself and may include support provided in advance or in other non-concurrent ways, provided the claimant continues to need that support in order to engage. The Court rejected the argument that support must be physically present or "on site" during social interaction. This meant that claimants who require such social support and meet the legal test should be awarded four points under Activity 9 (descriptor 9c), rather than two points under descriptor 9b. According to DWP figures, by 31 August 2023, DWP had reviewed around 79,000 cases against the MM judgment, and made 14,000 payments totalling £74 million as a result. The exercise is supposed to conclude by 2026. [43]

Some of the most significant cases that have been altered by the Upper Tribunal have been in relation to Activity 1 of the Mobility component of PIP Planning and Following Journeys. Those we spoke to while carrying out this research suggested that this descriptor was particularly poorly drafted and now encompasses functions that were not the original purpose of the legislation. It is therefore imperative that Activity 1 of the Mobility Component be redesigned and narrowed. Activity 1 of the Mobility Component demonstrates the dynamic relationship between judicial interpretation and government policy, but ultimately Government has allowed the interpretations to widen, and it ultimately has the power to redesign the descriptor. Mobility descriptor should be the first descriptor that the Government examines and should be used as the test case for looking at the other descriptors, especially those in the Daily Living element of PIP.

To give an example of the impact of poorly drafted descriptors, we have looked at how the costs of certain PIP payments have developed since the pandemic. DWP's Stat-Xplore provides data on the number of PIP cases over time, broken down by the claimant's primary disability and their Mobility Award Status.[44] This allows us to analyse the growth in the number of people with certain mental health disorders who are awarded each classification of Mobility Award, as well as the associated costs. In this instance, we consider the following psychiatric disorders: stress reactions, anxiety disorders, mixed anxiety and depressive disorders, eating disorders and hyperkinetic disorders. The chart below shows a significant increase in the number of people with these psychiatric disorders who have been awarded 'Standard' and 'Enhanced' Mobility Awards since PIP's introduction.

43. PIP administrative exercise for MM: progress report to 31 August 2023, Gov.uk, 26 October 2023 [link]

44. DWP, Stat-Xplore (2025), Link



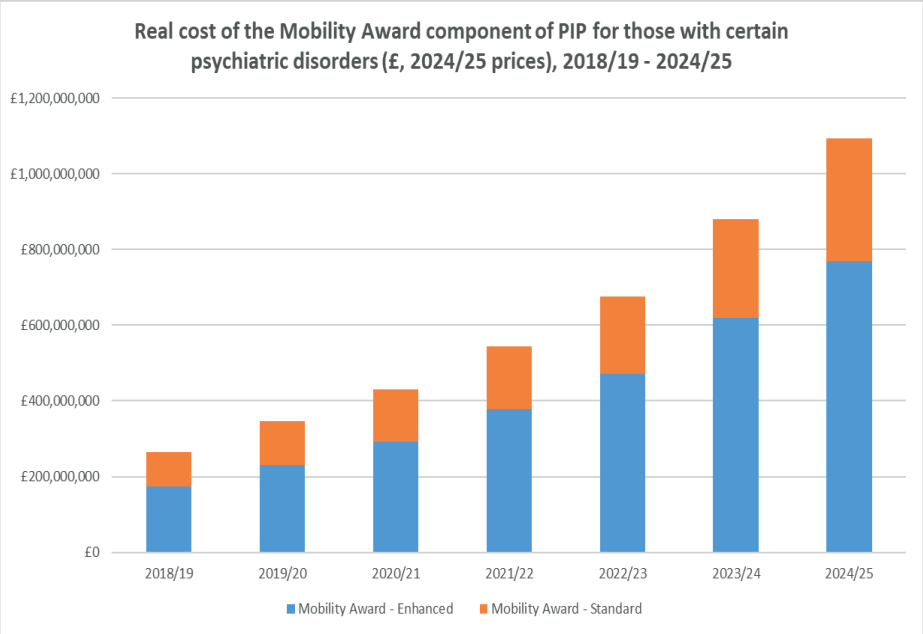
There are significant costs associated with these increases. Using data on historical weekly rates for the Standard and Enhanced Mobility Award, we have estimated how the costs associated with giving these awards to claimants with the above listed psychiatric disorders have increased over time.[45] We find that, if the Mobility Awards given to people with these primary disorders were to fall back to pre-pandemic (2019/20) levels, there would be savings of almost £750 million.

Table 5 - Real cost of the Mobility Award component of PIP for those with certain psychiatric disorders (£, 2024/25 prices), 2018/19 – 2024/25[46]

Year	Mobility Award - Enhanced	Mobility Award - Standard	Total
2018/19	£173,944,000	£91,880,000	£265,823,000
2019/20	£230,201,000	£115,759,000	£345,960,000
2020/21	£292,008,000	£139,599,000	£431,608,000
2021/22	£377,326,000	£166,906,000	£544,232,000
2022/23	£471,457,000	£204,041,000	£675,497,000
2023/24	£619,795,000	£261,521,000	£881,316,000
2024/25	£768,896,000	£324,982,000	£1,093,878,000

45. Department for Work & Pensions, Stat-Xplore: Field: Measures (2025), Link

46. We consider the following psychiatric disorders: stress reactions, anxiety disorders, mixed anxiety and depressive disorders, eating disorders and hyperkinetic disorders.



Parliament and the Courts

There have been arguments, most prominently advanced by Lord Hoffmann, that fidelity to the democratic ideal requires judges to defer to the elected branches of government in cases that risk redistributing public resources. This view implies that decisions about resource allocation fall squarely within Parliament's domain, as only the legislature possesses democratic legitimacy to balance competing claims on the public purse.

This line of reasoning has, however, been criticised. Justice Chamberlain (then writing as a barrister) argued that judicial restraint of this kind is misplaced. Courts should not decline to decide resource allocation cases, because their role is to resolve disputes brought before them in accordance with principle. If Parliament considers a judicially imposed redistribution unacceptable, it retains the sovereign authority to legislate and reverse the decision. In this sense, judicial rulings do not usurp democracy but instead operate within a constitutional dialogue, subject always to Parliament's ultimate will.[47] This argument has resonance for the Social Security Tribunals. These tribunals often confront disputes, as we have evinced, that have outcomes that have significant implications for the public purse.

The legislator has used the judiciary as an arbiter of decisions that fall squarely in the purview of the legislature. The lack of legislative oversight over PIP and the WCA is a dereliction of duty. As we wrote in *For Whose Benefit*, the Government should evaluate the criteria and descriptors for health and disability benefits more routinely (every two years), and Parliament should play a more active role in scrutinising and voting upon changes. For too long, Parliament has placed tackling the disability and health benefits system in the "too difficult" basket (somewhat evinced by the Government's failure to enact any reform this past summer), and we believe that the Tribunal process could be utilised to ensure that Parliament

47. Chamberlain, Martin. (2003). Democracy and Deference in Resource Allocation Cases: A Riposte to Lord Hoffmann. Judicial Review. 8. 10.1080/10854681.2003.11427242.

takes a more active role.

The effect of an Upper Tribunal decision on a point of law is that it takes immediate effect and becomes binding on the First-tier Tribunal and lower decision-makers. The Upper Tribunal should be given the power to issue suspended remedies but delay the effect of that decision for a fixed period, six months, with the Secretary of State being able to extend the suspension once for a further three months on application. During that time, the existing rule would continue to operate, while Parliament is afforded a structured and time-limited opportunity to amend the law if it considers that appropriate. This mirrors the suspended quashing order introduced by section 1 of the Judicial Review and Courts Act 2022, which permits a finding of unlawfulness to take immediate effect while temporarily suspending its legal consequences to allow legislative correction.[48] In this way, systemic flaws identified by the Tribunal must be acted upon, but ultimate authority would remain with Parliament. The availability of a suspended remedy would be confined to cases where the Upper Tribunal identifies a systemic error of law with wider regulatory implications, rather than an error confined to the facts of an individual case

Supersession

Where a claimant's PIP award comes up for renewal, the practical effect of the current framework is that an existing award is generally only reduced or removed where the DWP can evidence an improvement in the claimant's functional capability. In practice, this evidence most often takes the form of an assessment carried out by healthcare professionals employed by third-party contractors. As documented in *For Whose Benefit*, such assessments have been subject to sustained criticism for poor quality and inaccuracy.

Tribunals are able, and do, consider all of the evidence before them at the time of appeal. However, the legal structure governing supersession decisions means that an award is typically only changed where there is evidence of a change in circumstances, most commonly framed as an improvement in function, whether drawn from medical records or a new healthcare professional report. As a result, tribunals often reinstate existing awards where the DWP has failed to demonstrate such improvement, even where the tribunal may consider that the original award was incorrect.

Research conducted for this report suggests that this framework can unduly constrain tribunal decision-making. While tribunals are not prevented from assessing the evidence as a whole, the emphasis on demonstrating improvement means that errors in the original decision may persist unless a change in circumstances can be clearly evidenced. This creates a system in which existing awards carry a strong presumption of continuity, but changes to those awards depend largely on contested assessment evidence, rather than a full reconsideration of entitlement based on the totality of the evidence available at renewal.

To rectify this, Tribunals should be expressly empowered to assess

48. https://www.legislation.gov.uk/ukpga/2022/35/section/1

current entitlement at renewal, without being constrained by a narrow requirement to demonstrate functional improvement. This would enable tribunals to consider all available evidence at the point of renewal, while preserving a presumption that existing awards continue unless compelling evidence justifies a change.

Outcomes at the Tribunal

Following the staged introduction of MR from April 2013, the number of appeals initially declined in 2013/14, reaching their lowest in July to September 2014. Since then, the number of appeals grew considerably to 2018/19, before reducing each year. See Fig. 15 below for a depiction of this decline in the total number of receipts and disposals.

ESA and PIP appeals are currently the main benefit types whose award is disputed – and made up 79% of all receipts in the SSCS Tribunal in 2018/19.

Figure 15 – Total Receipts, Disposals and Outcomes at the Social Security Tribunal, 2015/16-2024/5

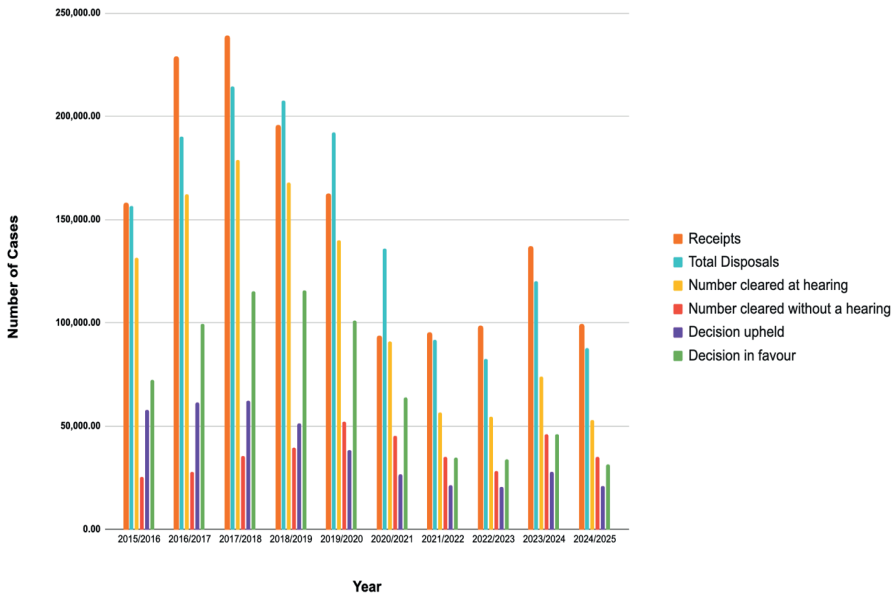


Table 6 (and Fig. 16) below provides information on the number of Personal Independence Payment (PIP) appeal clearances, and whether they were lapsed (pre-Tribunal) or following a Tribunal hearing.[49] Table 7 gives an impression of how much some awards can change, i.e. the proportion of appeals that go from nil award to enhanced-enhanced. For a claimant, this would be the difference from receiving nothing, to their PIP award being worth £110.40 (Daily Living) + £77.05 (Mobility), i.e. £187.45 per week.

49. https://questions-statements.parliament.uk/written-questions/detail/2024-10-04/6601

Table 6 – Proportion of lapsed or overturned appeals for each financial year

Financial Year	Appeals Cleared	Appeals Lapsed	Appeals Overturned
2019-20	99,800	27,100	53,700
2020-21	77,000	26,300	37,000
2021-22	48,300	17,100	20,500
2022-23	65,300	19,000	30,500
2023-24	77,700	25,600	34,400

Financial Year	Appeals Lapsed (%)	Appeals Overturned (%)
2019-20	27	54
2020-21	34	48
2021-22	35	42
2022-23	29	47
2023-24	33	44

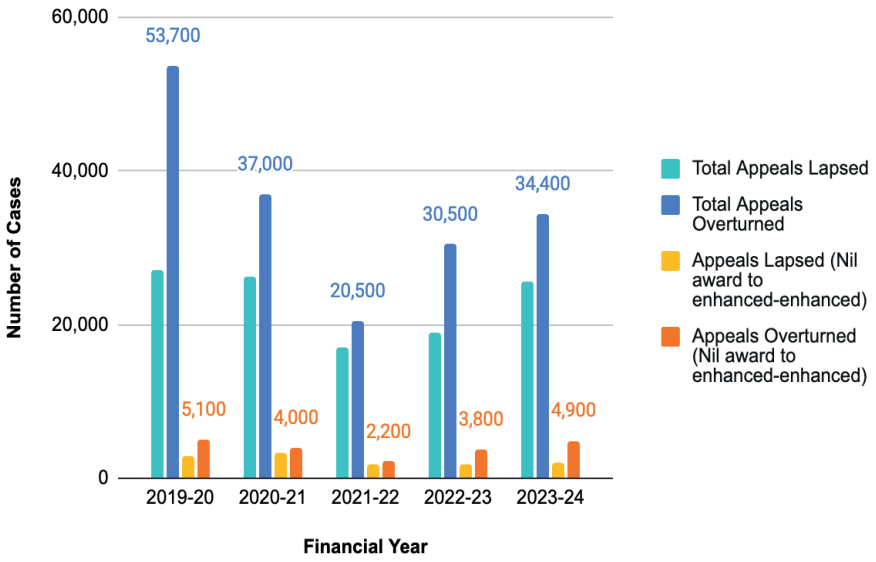
Source: *https://questions-statements.parliament.uk/written-questions/detail/2024-10-04/6601*

Table 7 – Proportion of appeals overturned from nil award to enhanced-enhanced, 2019/2020-2023/2024

Financial Year	Total Appeals Lapsed	Total Appeals Overturned	Appeals Lapsed (Nil award to enhanced-enhanced)	Appeals Overturned (Nil award to enhanced-enhanced)
2019-20	27,100	53,700	2,900 (11%)	5,100 (9%)
2020-21	26,300	37,000	3,300 (12%)	4,000 (11%)
2021-22	17,100	20,500	1,900 (11%)	2,200 (11%)
2022-23	19,000	30,500	1,900 (10%)	3,800(12%)
2023-24	25,600	34,400	2,100 (8%)	4,900 (14%)

Source: *https://questions-statements.parliament.uk/written-questions/detail/2024-10-04/6601*

Figure 16 – proportion of PIP appeals overturned from nil award to enhanced-enhanced, 2019/2020-2023/2024

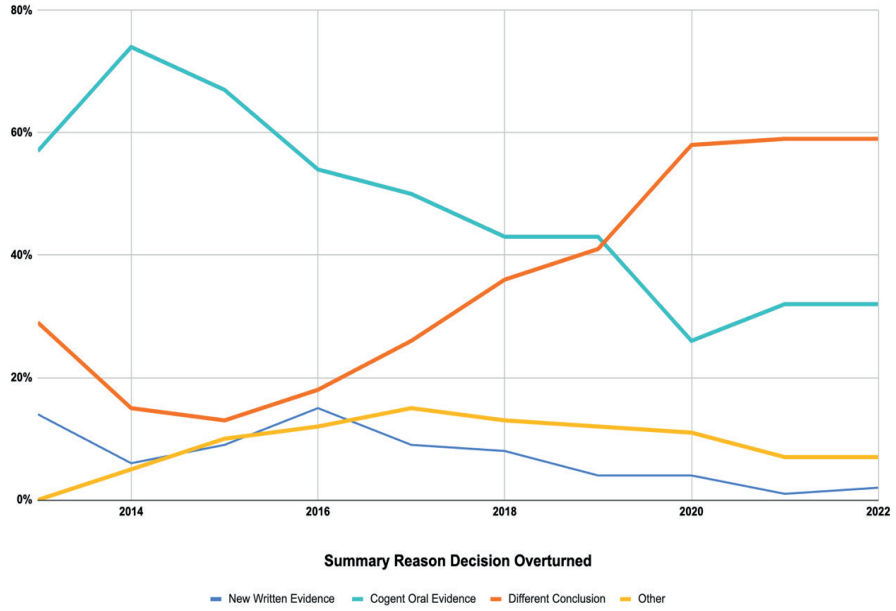


Source: *https://questions-statements.parliament.uk/written-questions/detail/2024-10-04/6601*

In the year to April 2024, 7,000 claimants who were initially assessed as having no eligibility for PIP at all, went on to get the enhanced award of both components. 2,100 of these did not attend the Tribunal, with the DWP changing the award before the appeal was even heard. The figures also show that almost one in seven claimants who won their appeal in that 12-month period, went into the hearing with nothing and came out with double enhanced. So, there are challenges with both the effectiveness of initial assessments, but this is compounded by the fact that in at least these 7,000 cases, the DWP failed to realise how badly they had got it wrong even at MR stage. It was not until the claimant lodged an appeal that, in over 2,000 cases, the DWP actually took a proper look at the evidence and dramatically altered their decision.

Fig. 17 below sets out the summary reason that a DWP decision was overturned at Tribunal. In recent years, the Panel reaching a 'different conclusion' has grown considerably.

Figure 17 – Summary reason DWP decision overturned at Tribunal hearing



Source: *https://questions-statements.parliament.uk/written-questions/detail/2022-07-21/42121*

On an average list, Tribunals will hear six cases a day. As part of our research, we have heard anecdotally, that one of these six cases will be a 'paper case' (a case that can be decided only on written evidence without any in-person or telephone/video hearing). Judges are under considerable pressure not to adjourn.

Currently, only in a minority of instances will a presenting officer from the DWP give evidence at the Tribunal itself. The percentage of hearings for PIP and ESA which were attended by a Presenting Officer (PO) from the DWP can be found in Table 8 below:

Table 8 – Proportion of tribunal hearings for selected Social Security and Child Support (SSCS) benefits which were attended by a DWP Presenting Officer

Benefit	2020/21	2021/22	2022/23	2023/24
PIP	6%	30%	26%	30%
ESA	7%	31%	21%	23%

Source: HMCTS administrative data shared with DWP, see: *https://members.parliament.uk/member/4988/writtenquestions#expand-1804742*

Venue-to-Venue Comparison

As part of our research, we also explored the possible variation in performance across Tribunal venues. Tables9 and 10 below sets out the percentage of all hearings held by year and nation or region that were overturned in favour of the claimant.

Table 9 – Social Security and Child Support - Percentage of hearings overturned in favour of the claimant by financial year and UK nation, 2020/21 to 2023/24

Nation	2020/21	2021/22	2022/23	2023/24
England	71%	61%	63%	62%
Scotland	60%	57%	56%	61%
Wales	78%	69%	70%	68%

Source: https://questions-statements.parliament.uk/written-questions/detail/2025-05-19/HL7587/

Note: At venue level, some venues either did not record any cases disposed of at hearing in certain years or were closed for some of the years reported. These values are shown as instead of a number. The regions to which the venues are attached are specific to this dataset and may not match other reports.

Table 10 – Social Security and Child Support - Percentage of hearings overturned in favour of claimant by financial year and region, 2020/21 to 2023/24

Region	2020/21	2021/22	2022/23	2023/24
London	74%	66%	70%	74%
Midlands	74%	64%	60%	60%
North East	63%	54%	53%	50%
North West	69%	61%	62%	66%
Scotland	60%	57%	56%	61%
South East	71%	57%	63%	62%
South West	79%	69%	72%	65%
Wales	78%	69%	70%	68%

Source: https://questions-statements.parliament.uk/written-questions/detail/2025-05-19/HL7587/

Further analysis reveals significant differences by venue across the country. Table 11 below represents a selection of venues across the country – a mixture of urban and rural locations, big cities and small towns and locations where there are known high levels of inactivity or welfare recipients, as well as locations where the figures are comparatively small. We see, for instance, that at just 27% of hearings in Eastbourne in 2023/4 were overturned in favour of the claimant in comparison to 75% in Port Talbot; 33% in Sunderland, compared to 72% in Exeter. We also

see significant variation year by year.

Table 11 – Social Security and Child Support - Percentage of hearings overturned in favour of claimant by financial year across a selection of venues, 2020/21 to 2023/24

Venue	Region	2020/21	2021/22	2022/23	2023/24
Blackpool	North West	71%	45%	56%	68%
Bradford	North East	59%	52%	54%	48%
Bristol	South West	84%	71%	73%	66%
Cambridge	South East	66%	52%	58%	60%
Coventry	Midlands	77%	65%	64%	69%
Darlington	North East	59%	54%	50%	45%
Dundee	Scotland	58%	59%	54%	57%
Eastbourne	South East	79%	64%	60%	27%
Exeter	South West	82%	66%	73%	72%
Leicester	Midlands	73%	65%	66%	64%
Liverpool	North West	69%	65%	66%	67%
Newcastle	North East	54%	46%	42%	36%
Newport IOW	South West	80%	67%	83%	71%
Nottingham	Midlands	75%	66%	64%	64%
Port Talbot	Wales	73%	66%	69%	75%
Sunderland	North East	65%	52%	41%	33%
Wigan	North West	67%	53%	55%	55%
Wolverhampton	Midlands	71%	61%	58%	53%

Based on the above findings, there is considerable variation in the year-to-year and venue-to-venue percentage of hearings overturned in favour of claimants. It is not clear to the authors why this is the case. Further investigation is required to develop a more granular understanding of the reasons behind this but it is concerning that there is such a disparate

Interpretation Services

HMCTS also offers a range of services to support claimants, such as translation and interpretation services, including the interpretation of official languages of the United Kingdom, including Welsh, as well as to provide equality for those with conditions that can be defined as a disability, such as sign language interpretation.

The Government does not hold information on the percentage of SSCS Tribunal hearings where a language interpreter provided to appellants whose first language was not English.[50] Table 12 sets out spending by HMCTS on translation and interpretation services, revealing an 80% increase in interpretation and translation services since 2020/21. These figures, however, do not include any translation or interpretation spend covered by Legal Aid Agency central funds as these are not included in the accounts for HMCTS.[51]

50. https://questions-statements.parliament.uk/written-questions/detail/2025-05-19/HL7588/

51. https://questions-statements.parliament.uk/written-questions/detail/2025-05-20/HL7669/

Table 12 – Total Expenditure by HM Courts and Tribunals Service on translation and interpretation, from the financial year 2020/21 to 2023/24

Financial Year	Total Expenditure (£)
2020-21	7,094,093
2021-22	10,788,205
2022-23	11,489,997
2023-24	12,774,105

Source: *https://questions-statements.parliament.uk/written-questions/detail/2025-05-19/HL7589/*

These figures reveal a significant growth in spending over the past five years. We believe, however, that there is a distinction between criminal proceedings, where freedom and liberty are on the line.

Section 2 – Challenges & Solutions

This section provides a commentary on the key challenges which have been identified in Section 1, and our overview of the appeals system. We include commentary of our proposed recommendations in this section.

Challenge 1: The Tribunal system has allowed Parliament to take too passive a role in legislation

As we have argued both in this report and our previous report, an entitlement benefit defined in legislation with subjective interpretation by claimants, assessors and the legal profession is difficult to predict or control. PIP and ESA have been subject to significant legal challenge but, normally due to the politics involved, the Government has failed to respond robustly to these legal challenges, which have re-interpreted the policy intent and has sizeable AME implications because they have widened the gateway to the benefit (even if the LEAP exercises don't themselves have significant cost implications).

Recommendation. More active decision making about the descriptors.

- Some descriptors especially Activity One (Planning and following a journey) have morphed owing to appeals and the poor drafting of the original legislation that allowed for the gateway to increase beyond the intent of the Government. The Government should re-write this descriptor. This should be the first activity that is reviewed, and they should then more to other descriptors in the daily living component of PIP.
- The descriptors for health and disability benefits should be constantly reviewed to ensure that they are in keeping with the intention of the benefit. The PIP and WCA criteria should be reviewed every two years. The PIP and WCA criteria represent a moment in time, and they should be consistently evaluated as to whether they are an appropriate proxy for the extra cost a disabled person might incur.
- Tribunals should be expressly empowered to assess current entitlement at renewal, without being constrained by a narrow requirement to demonstrate functional improvement. This would enable tribunals to consider all available evidence at the point of renewal, while preserving a presumption that existing awards continue unless compelling evidence justifies a change.
- The Upper Tribunal should be given the power to issue suspended remedies but delay the effect of that decision for a fixed period of six months.
    - This would force lawmakers into an active decision over whether to accept the ruling of the Upper Tribunal and prevent inaction being a neutral option, ultimately allowing for more democratic accountability.

Challenge 2: Insufficient coordination between the Ministry of Justice (MoJ) and the Department for Work and Pensions (DWP)

Total day-to-day spending on the HM Courts and Tribunals Service overall (which includes the Immigration Tribunal etc.) was £2.3bn in 2023/4, a fraction of total spending on health and disability benefits, which is set to rise to £70bn by the end of the Parliament, according to the latest estimates.[52] When DWP lose a benefits appeal, ultimately the Department does not bear the cost because it falls under Annual Managed Expenditure (AME). Whilst they are operationally responsible, the cost is borne by HM Treasury. There must be improved transparency and flow of information between the Departments to ensure improved procedural outcomes.

52. https://www.gov.uk/government/consultations/pathways-to-work-reforming-benefits-and-support-to-get-britain-working-green-paper/spring-statement-2025-health-and-disability-benefit-reforms-impacts#fn:1

Recommendation. There should be vastly improved transparency and flow of information between the DWP and HMCTS to improved procedural outcomes.

- The DWP and HMCTS should publish more comprehensive data regarding the performance of the system overall. This should include publication of information including: the number of assessments where from an initial decision to MR or at Tribunal, a decision is markedly changed from, e.g. zero to twelve points; the percentage of instances a "lapsed" appeal results in a change in award.
- The DWP should use advanced data analytics, based upon information resulting from the Recommendation above, to identify common causes of incorrect initial decisions and appeals. This would allow the DWP to address systemic issues proactively, improve training for assessors and decision-makers, and reduce the need for appeals.

Challenge 3: Insufficient analysis and benchmarking of performance

Partly as a consequence of Challenge 2, there is insufficient oversight "end-to-end" of the performance of the appeals system overall. As Policy Exchange has identified in our previous report, *For Whose Benefit*, the initial assessment process is beset by challenges. This is compounded by an absence of data on decision makers and how decisions have been made, limiting accountability and the ability for systematic improvement. If repeated errors are going to be corrected, it is imperative to understand where the error is made. A crucial feedback loop is absent. Every claim, assessor, venue, Tribunal judge, and panellist should be assigned unique identification numbers to facilitate further analysis of performance and overall standards.

Without understanding where there are failures in our benefit system, improvement is impossible. A more transparent and accountable system is paramount. This will hopefully help facilitate a cultural change in our appeal process that will enable continual learning and allow for errors of process or decision-making to be rectified more swiftly. Only by moving towards a system of radical transparency will we be able to remedy the obvious flaws that have persisted for over a decade.

Recommendation. Every case, individual assessor, original DWP 'decision maker', judicial assistant, Tribunal member(s) and venue should be given a unique identification numbers to enable more rigorous and targeted analysis of performance and standards of the appeals process overall.

Challenge 4: The current MR process does not rectify errors, but perpetuates them.

The procedural step of MR is conceptually sound but, in practice, ineffective. It is not rectifying errors to the extent it should. It is not placing the right incentives on first decision makers. One could try to create a similar process to the airline industry's "no fault feedback loop," where individuals can report issues, mistakes, or near-misses without fear of reprisal and to foster learning and improvement. While we believe this is a necessary step and should be instituted and encouraged in the appeals process, we do not believe it sufficient, given the volume of appeals.

We therefore propose a fundamental reform to the design and delivery of the MR process. Instead of it being a DWP-led and funded process, it should be conducted by a set of judicial case workers from the MoJ. While this would be a new means of deploying case workers, it is not without precedent. Judicial caseworkers already play a role in supporting judges in the Immigration and Asylum Chamber, primarily in case management and procedural matters, including determining whether a case is "ready to list". Similarly, in the Court of Appeal, judicial assistants provide essential support to judges in handling appeals, including those brought by unrepresented litigants.

Judicial caseworkers should have the power to take evidence, they should be answerable to judges for their appraisal, quality and training. Where failings in the assessment process are found, the judicial caseworker should have the ability to suggest an assessment is conducted from scratch. They should be able to instruct an assessor to ask specific further questions before the case can be considered by a Tribunal. Some challenges would occur with ensuring the independence of the appeals process because this could be seen as overly collaborative approach with DWP but overall, this change in the procedural check could have significant benefits, creating greater efficiency and outcomes for both the state and the claimant.

Recommendation. The current system of Mandatory Reconsideration (MR) should be fundamentally reformed.

a. Instead of being a DWP-led (and funded) process, it should be conducted by a set of judicial case workers from the MoJ. Where failings in the assessment process are found, they should have the ability to suggest an assessment is conducted from scratch. They should be able to instruct an assessor to ask specific further questions before the case can be considered by a Tribunal.
b. Judicial assistant(s) should be able to utilise machine learning options to assess the quality of the assessment and the information/evidence provided by the claimant. Ambient voice technology should be used to speed up case management. This builds on a recommendation for all PIP assessments – as per the 'Pathways to Work' green paper – to be recorded.
c. This approach should limit the number of 'lapsed' appeals to a small number of exceptional circumstances.

Challenge 5: Greater innovation in Tribunal case management and hearings

It should be the aim of a modern judicial system to ensure the provision of "flexible, digital tools and problem-solving techniques to help them get to the heart of their cases quickly; resolving wrong decisions, or weeding-out the hopeless case."[53] Some progress has been made towards digitising the Tribunal system. Take the example of employment tribunals, where the vast majority of new claims are now commenced online.

But there are considerable opportunities to move to a system of 'Online Dispute Resolution'. Such a system exists in other jurisdictions, such as in the Netherlands (who have the Rechtwijzer 2.0.)[54] And there has been work undertaken in England and Wales too. "Online continuous hearings" have been trialled in recent years in the Social Entitlement Chamber, but much could still be done to enhance the role of the extant 'Online Appeals Platform'.[55] We still have a largely episodic, rather than iterative approach to case management.

Moreover, discussion within the judiciary about the extent to which artificial intelligence can be applied remains in its infancy but given the non-article 6 nature of the Social Security Tribunal, there is an opportunity to introduce innovative approaches more swiftly than in other settings. AI could be used across the whole of the PIP and ESA process. It could be used to ensure that initial applications are complete. Specifically, with a reformed approach to MR, the judicial assistant should be able to utilise machine learning options to assess the quality of the assessment and the information/evidence provided by the claimant. As outlined in the NHS Ten Year Plan, the Government is already using, and will

53. https://www.judiciary.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf (p. 6)
54. https://rechtwijzer.nl/
55. https://www.gov.uk/appeal-benefit-decision/submit-appeal

accelerate the use of, ambient voice technology to alter our approach to healthcare. Ambient voice technology is being used to record the salient points from an appointment and also capture administrative and clinical information without having to enter it manually. Obviously, this should be used cautiously, but one would hope the DWP and MOJ could learn something from the NHS's approach and vice versa and truly innovate for the benefit of claimants. The role of AI could expand as the tools improve alongside a more accurate and efficient appeals process itself. The use of the judicial assistant, coupled with deploying ambient voice technology, should revolutionise the MR process.

Recommendation. Tribunal hearings should become 'virtual by default' but with the opportunity for the claimant to request a physical hearing. One advantage to this approach is to vastly improve the number of hearings at which a Presenting Officer from DWP is present.

Challenge 6: Clearer rules relating to the submission of evidence to support an appeal are required

At present, the informal nature of the Tribunal process means that the appellant is able to provide significant additional evidence to support their case. There should be certain requirements and certain restraints introduced. At a Tribunal which is Article 6, the relevance of evidence is decided by the Tribunal Judge first (either at a procedural hearing or by a determination derived from written evidence). It is difficult for a claimant to ever determine relevance because, from their perspective, almost everything that has occurred to them is successively causative of their functional capability or the condition they are currently suffering from. This has led to too much extraneous material being provided to the tribunal on many occasions, another barrier to an effective appeals process. Often, very little objective evidence is provided to the tribunal.

To rectify this, we believe the last twelve months of the appellant's medical records (e.g. the GP record) should be provided as a requirement, to ensure an up-to-date, yet manageable volume of material. This fits with the neatly constrained eligibility rules regarding PIP and ESA. Coupled with this requirement, there should only evidence from 5 years before you made your claims is admissible.

Recommendation. Evidence provided to the Tribunal should be streamlined and standardised.

1. Medical evidence submitted to the Tribunal must be up-to-date and must have been validated by a healthcare professional and the Tribunal should be able to download the last 12 months of GP records as a minimum from the NHS app.
2. This should be provided unless of instances where the claimant has a life-long condition and/or terminal condition. This fits with the neatly constrained eligibility rules regarding PIP and ESA.
3. From the date of the assessment, only evidence from the past five years should be admissible.

Challenge 7: It takes far too long to reach a Tribunal hearing from an initial assessment

As outlined in *For Whose Benefit*, Policy Exchange has encouraged a return to the use of face-to-face for initial assessments. However, a different approach should be taken for the Tribunals. Too few presenting officers from the DWP attend hearings (less than a third according to recent figures). Notwithstanding concerns around digital exclusion and access to justice, if one had effective screening in place, with appropriate questions (the kind of questions we set for other remote hearings), a far greater number of hearings could be digitised, leading to more efficient and effective justice. There is a benefit to the state and taxpayer also, where use of estates is optimised.

Recommendation. The Government should set a target of recovering the speed at which a case is heard at Tribunal to three months on average following the commencement of an appeal. We believe a target of this kind to be of importance given the nature of fluctuating conditions and the fact that the greater the less likelihood of an effective return to work (RTW).

There are smaller-scale inconsistencies in the design of the system that ought to be considered too. Whilst a wide range of healthcare professionals can conduct an assessment on behalf of the DWP, when to comes to the Tribunal, the 'Medical Member' is a qualified doctor, exclusively. In our previous work, we have encouraged the development of a dedicated diploma in functional medicine, to enable a wider range of professionals to undertake the role, but where they have dedicated expertise in the topic.

Recommendation. Tribunal membership should be expanded over time so a wider range of healthcare professionals – beyond doctors – can act as expert advisers on the panel.

Given the breadth of disabilities considered, their functional impact upon claimants, it seems counter-productive to exclude wider professional input. A consequence of this change could be improving the speed or volume of tribunal hearings, whilst also enhancing opportunity for a wider range of professionals to enhance their specialisation – building on proposals Policy Exchange made in our previous paper.

Challenge 8: The use of interpreters at the Tribunal requires far greater scrutiny.

Translation and interpretation services are currently provided free of charge at PIP or ESA hearings. The appellant must request these services in advance, usually when they are requesting the appeal, and the Tribunal will arrange a qualified interpreter. Friends or family cannot usually act as interpreters for a hearing.

However, the social security system is part of a social contract that one has with society at large – part of this is the ability to converse in the official, national language. Foreign language interpretation should be borne at the appellant's own expense. When it comes to interpretation services for those with conditions that can be defined as a disability, such as sign language interpretation, these should be treated differently and should be available for those attending a hearing, with the costs borne by HMCTS.

Recommendation. In the vast majority of PIP and ESA appeals, HMCTS should no longer routinely fund translation services.

- Where foreign language translation is required, the appellant should be charged for interpretation services. Individuals requiring BSL interpretation should be exempted. An independent, professional service should provide any interpretation.
- Where it appears that language assistance is being provided informally during a hearing, for example by a family member or other advocate, the Judge should exercise discretion as to whether this is appropriate. Where it is not, the hearing should be adjourned and professional interpretation services arranged.
- This would require careful legislative provision and appropriate safeguards; without them, the Tribunal risks increased applications for adjournment on the basis that the interests of justice require the provision of an interpreter.

Conclusions

Reform of the health and disability benefits system has become one of the most salient, yet divisive issues facing the Government. However, the focus of the policy debate has been primarily upon eligibility for health and disability benefits, the initial assessment process and criteria. Largely neglected has been a discussion of the current appeals system. This report has made the case that appeals can no longer be overlooked, for it is a system beset with challenges, failing claimants of health and disability benefits – and the taxpayer at present.

We have identified issues with oversight and benchmarking performance, with the administration of the constituent parts of the appeals process split between the MoJ and DWP, and proving less of a priority for both as a consequence. We have recommended – as a priority – the development of an improved feedback loop through the use of unique identification codes to be used throughout the system.

We also propose fundamental reform to the design and delivery of MR. Instead of it being a DWP-led and funded process, it should be conducted by a set of judicial case workers from the MoJ. Where failings in the assessment process are found, they should have the ability to suggest an assessment is conducted from scratch. They should be able to instruct an assessor to ask specific further questions before the case can be considered by a Tribunal. This approach should be underpinned by reform of the volume and quality of evidence presented. The last twelve months of the appellant's medical records (e.g. the GP record) should be provided as a requirement – as a way to ensure an up-to-date, yet manageable volume of material.

We propose greater innovation in the way cases are assessed and hearings are conducted, with greater ongoing case management, underpinned by improved digital tools. A shift to digital by default should proceed as a means to more efficient and effective justice. Judicial case workers meanwhile should optimise the use of the Tribunal in the first place through greater use of machine learning to assess the quality of initial assessment and the information/evidence provided by the claimant. Parliament should assert its sovereignty over the descriptors in a more robust manner. Over time, membership of the Tribunal panel should be expanded so a wider range of healthcare professionals – beyond doctors – can act as expert advisers. Lastly, the Government should scrutinise the volume of Tribunal hearings at which interpretation services are required

– and the accuracy of translation which occurs during them**.** It should be assumed that the appellant can speak English. The judge should then decide and call upon professional translation services, but only in circumstances that it is necessary.

In sum, the basis of our recommendations here are to create a more transparent, efficient and innovative appeals process – which is less prone to dramatic fluctuations in decision-making. As the Government commences with the Timms Review and seeks to build on its proposals from the Pathways to Work green paper, it is vital that appeals are no longer neglected.

£10.00
ISBN: 978-1-917201-86-5

Policy Exchange
1 Old Queen Street
Westminster
London SW1H 9JA

www.policyexchange.org.uk