

NEWS REPORT

More than half of disability benefits appeals in NI won in tribunal court

In the past six years, the majority of those with illness or disabilities who took the government to tribunal after being denied benefits went on to win the case. **Alex Homer** and **Paul Crowe** report

ANALYSIS

The success rate for disability, sickness and incapacity benefits appeals in Northern Ireland has risen to 54 per cent.

Charities and advice providers have said the figures showed the government's benefits tests were beset by "poor decision-making" and "obvious inaccuracies".

The rate of successful benefits appeals was 31 per cent during the 2013-14 period, analysis of data at the BBC's shared data unit has found.

More than 20,000 people in the Province have been wrongly denied disability benefits since then, Freedom of Information responses have shown.

Most of the appeals concerned Employment Support Allowance (ESA), which is paid to people who cannot work because of illness or disability; the Disability Living Allowance (DLA), which is paid to people with extra care or mobility needs; and Personal Independence Payments (PIP), which was introduced to replace DLA.

Across the UK, there were more than half a million successful appeals heard at tribunal.

Daphne Hall, vice chair of the National Association of Welfare Rights Advisers, said: "The reason for the high success rates [at tribunals]... is because of the poor assessments carried out by health professionals.

"The DWP tend to base their decision purely on these assessments and disregard other evidence sent in by the claimant."

When all types of benefits

are considered, the success rate in Northern Ireland rose from 30 per cent in 2016-17 to 52 per cent in 2018-19, with some 9,520 people successful over that period.

Across England, Scotland and Wales, 56 per cent of disabled people who took the government to tribunal after losing out on benefits went on to win the case in the past five years.

Initial assessments are carried out there on behalf of the Department for Work and Pensions (DWP) - in Northern Ireland, the Department for Communities - by the private companies Capita and the Independent Assessment Services, which have come under criticism for scoring claimants too harshly.

Capita and Maximus said the majority of people were satisfied with the process, and they were working with charities and disabled people's organisations to improve their services further.

The government says appeals represent a small percentage of all benefits claims it handles.

There was a 59 per cent drop in the number of benefits appeals received by tribunal from 2013-14 to 2018-19 in Northern Ireland.

Owen McCloskey, a legal officer from the Law Centre NI, said this broadly coincides with the introduction of mandatory reconsideration - the first stage of the appeal process.

Regarding the rise in successful appeals, Mr McCloskey said: "I would be speculating about reasons for increased success. A possibility suggested is that the sub-contracted assessments provided by the contracted providers may be given reduced evidential weight."

Sinead McKinlev does ap-

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National Association of Welfare Rights Advisers

peal work for the Belfast City-wide Tribunal Service, which is currently handling around 2,500 appeals.

She said: "We have been doing PIP appeals, and we see from a lot of the Capita assessments and decision making by PIP lack understanding of the criteria for benefit, so the department is not applying the criteria the way the appeal service members are, therefore when it comes to appeal these are straightforward-win cases."

Kevin Higgins, head of policy from Advice NI, said: "I think increasingly with welfare reform, people - and in particular people with disabilities, poor health and poor mental health - are being down-trodden, another element contributing to less appeals..."

"Plus an arm's-length pri-

vate sector company doing the assessments does not help... plus increasing problems for claimants in getting additional medical evidence from GPs and other health providers to challenge the 'official' assessments - due to the pressures they are facing."

Northern Ireland's Department for Communities said it does not have data on why cases are overturned at tribunals.

"The President of Appeal Tribunals produces an annual report on the standards of decision-making within the department," it said.

"You have indicated that one of the reasons for appeals being decided in a more advantageous way may be due to inaccurate recording of health complaints during assessments by Capita.

"Since the introduction of PIP, over 200,000 PIP assessments have been carried out



There was a 59 per cent drop in the number of benefits appeals received by

by Capita and only around two per cent of these have resulted in complaints to Capita and the Department."

The department said it could not confirm that the reduction of appeals is as a result of the introduction of the mandatory reconsideration process.

But it said it was worth noting that the policy intent behind the introduction of

changes to the disputes process in the form of a mandatory reconsideration was to encourage more disputes against benefit entitlement decisions to be resolved at the earliest stage in the process.

It added: "The department is committed to ensuring that we get decisions right first time and in the vast majority of PIP cases that already happens."



More than 20,000 people in the Province were wrongly denied disability benefits over the past six years



tribunal from 2013-14 to 2018-19 in Northern Ireland

‘Complex’ system reformed

In 2010 the government said it would reform the “complex, outdated and wildly expensive system” of multiple types of benefits, to cut long-term welfare dependency and fraud. Then-Work and Pensions Secretary Iain Duncan Smith said those who were “genuinely sick, disabled or were retired... had nothing to fear”. About three-quarters of working-age benefits are spent in one of three ways:

- Universal credit or tax credits, mostly topping up the incomes of families with someone in paid work, but on modest earnings
- Housing benefit, helping low income people meet the cost of rent
- Disability, incapacity and sickness benefits, for those whose health limits their ability to work or adds to the cost of living.

Since 2013, people seeking to overturn a benefits ruling must complete a written challenge within a month, known as a mandatory reconsideration. If unsuccessful, people can appeal against the decision at tribunal.



52%

success rate for all types of benefits appeals in Northern Ireland in 2018-19

20,856

people who had lost disability, sickness and incapacity benefits between 2013-14 and 2018-19 won their appeals at tribunal

COMMENT

‘The advice sector has huge concerns at how people are assessed’

BY

SINEAD MCKINLEY

Regarding the drop in the number of appeals, some of this was because people were not advised to appeal – here we had some confusion as people thought by not appealing you would get the WSP rather than the other way around; others felt the system was out to remove benefit from them anyway so couldn’t face the process of appeal.

However, the big factor was the introduction of mandatory reconsideration and people believing this was the end of the process.

Having an advice representative increases your chance of success from 35 per cent to 65 per cent.

Representation allows people to focus on what is relevant to their case and to bring focus evidence with

them to hearing if required.

In Belfast, council took the lead to fund our Belfast Citywide Tribunal Service as we highlighted to elected members the gap in service, the need for representation, the advantages for client and the economic return to the city.

As we know, people on benefits spend their money locally, keeping community businesses and shops open.

Our reps are not legal experts, they are advisors. Good reps need to have an understanding of the benefit system so they can advise appropriately.

The advice sector has huge concerns at how the department and Capita assess people for Personal Independence Payments – poor decision-making and quality assurance measures means the wrong outcome from PIP but correct by appeal service.

We realised there would be teething problems and the government agenda was to cut the level of spending

on disability benefits here in NI by 25 per cent so we knew what we were facing in terms of people being disallowed.

I’m more baffled by the types of cases we have seen disallowed – there is no logic to this process, cases we believe would sail through the process being disallowed while others being awarded that wouldn’t necessarily warrant an award.

Fewer people may have challenged their benefits award because of stress, anxiety, unable to face the process, unable to get representation – for so many people it is such a worrying time.

But everyone has a right to appeal and we should allow people to exercise that right.

We advise clients on all options, especially where we feel they may not have a strong case.

Sinead McKinley is from Belfast Citywide Tribunal Service.

‘This data doesn’t surprise me’

A number of questions were put to Owen McCloskey, a legal officer from the Law Centre NI. Here are the responses:

Between 2016-17 and 2018-19 there was a large rise in the percentage of appeals being decided in a more advantageous way for appellants. Why do you think that might be?

I would be speculating about reasons for increased success. A possibility suggested is that the sub-contracted assessments provided by the contracted providers may be given reduced evidential weight. We are aware that in NI almost one in 20 assessments for PIP were not fit for purpose and that this was the figure after they have been potentially audited and amended internally for quality purposes. Also, it is worth mentioning

that further evidence plays an important role in successful appeals. Representatives can aid appellants to obtain the relevant evidence which will assist with their appeals. The government intention in MR was to give the appellant an opportunity to present additional evidence so they could make the correct decision. However, it raises questions as to why this evidence wouldn’t be presented in the first place. Everyone who proceeds to appeal has to be told at least twice that they are not entitled before they can proceed to appeal. As some think MR is the appeal stage they may not have the endurance to continue.

Is that a good thing for efficiency - for fewer appeals with little chance of success to clog up the system?

If this was working as

intended there would be much less successful appeals and a higher success rate at MR. Decision-makers appear to have to ask permission from the assessment provider before changing a decision. This could give rise to a conflict of interest as the assessment provider has already carried out an assessment that the claimant is not entitled.

Is it a surprise to see that so many government decisions on benefits are being overturned on appeal?

This is not a surprise. I do think there are meritorious cases which do not proceed to appeal if clients do not seek advice. The data is not surprising as I would see the annual Appeals Service Stats. Personally, and as an organisation, our stats have always exceeded the success rates referred to in your stats.