

Our role in securing Personal Independence Payment for up to 220,000 people

Citizens Advice Sheffield is the city's leading advice service. As well as providing advice to over 20,000 people every year, we undertake specialist casework. In 2013 and 2015 we were asked for help by two people with their claims for Personal Independence Payment. This briefing tells the story of how these two cases have led to PIP being secured for up to 220,000 people.

On 19 January 2018 the new Secretary of State for Work and Pensions, Esther McVey, announced that the Government would not be appealing a High Court decision that will entitle up to 220,000 people with mental health problems to extra support from Personal Independence Payment (PIP). This announcement is the culmination of over four years of advice and legal casework which began with two cases represented by Citizens Advice Sheffield.

The PIP rules

At the heart of this issue has been a simple question: should people whose ability to undertake journeys is affected by mental health problems be entitled to receive the mobility component of PIP?

PIP was introduced by the Welfare Reform Act 2012. It has two components – daily living and mobility. A person is entitled to the mobility component standard rate if their ability to carry out mobility activities is limited by their physical or mental condition and the enhanced rate if their ability to carry out mobility activities is severely limited by their physical or mental condition. A person's ability to carry out mobility activities is determined by an assessment of two activities – planning and following journeys, and moving around. The "descriptors" for planning and following journeys include "cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid". This descriptor attracts 10 points, which entitles the person to the standard rate mobility component. Another descriptor "cannot follow the route of a familiar journey without another person, assistance dog or orientation aid" attracts 12 points and hence the enhanced rate mobility component.

The first case – Ms C

Ms C asked us for help in September 2013. We helped her to apply for PIP, to seek a mandatory reconsideration when her claim was turned down, and to appeal to the First-tier tribunal.

Following a hearing on 29 November 2014 the Tribunal dismissed her appeal. The Tribunal accepted that in practice [Ms C] would be unlikely to undertake a journey to an unfamiliar place unless she were accompanied, as she would be anxious and would want somebody with her for reassurance. However, this does not necessarily mean that she cannot follow the route of an unfamiliar journey. In our view, the ability to follow the route of a journey involves being able to work out where to go, to follow directions, and to avoid getting lost. Persons who would not be able to do this are likely to be those with a cognitive or sensory impairment. The assistance provided by the other person would be with navigating the route and making decisions about where to go. We did not think the descriptor covered those who need someone with them in an unfamiliar place due to their anxiety, because the assistance provided by the other person would not be with the activity of following the route of the journey.

Ms C, with our support, was granted leave to appeal this decision to the Upper Tribunal.

The second case – Mrs D

In August 2015 we were asked for help by Mrs D. She had applied for PIP but had been turned down. Her claim had already been the subject of a mandatory reconsideration, which had upheld the original decision. We helped Mrs D to appeal this decision. The First-tier Tribunal met on 17 November 2015, and decided that Mrs D should receive PIP. The tribunal:

noted that Mrs D was under the care of a psychiatrist, had irrational fears for her safety when out of doors, and had not been out of her house unaccompanied since 2011. It thought that her complex mental health difficulties had been underestimated, and awarded the enhanced rate of both components [of PIP].

The Secretary of State decided to appeal this decision to the Upper Tribunal.

The Upper Tribunal decision

Ms C's and Mrs D's appeals were heard together by three judges, together with a third case brought by another claimant, Mr H. On 28 November 2016 the judges decided in Ms C's case that the First-tier Tribunal had erred in law and allowed her appeal, and agreed that a new tribunal "must undertake a complete reconsideration" of her case. They decided in Mrs D's case that the First-tier Tribunal had not erred in law, and therefore dismissed the Secretary of State's appeal. The judges decided to dismiss Mr H's appeal.

The Government's response

The Government's reaction was swift. It asserted that the Upper Tribunal's decision flew in the face of the intention of the PIP regulations, as determined by Parliament. The Government announced its intention to appeal the Upper Tribunal's decisions about Ms C and Mrs D to the Court of Appeal, for which it was granted permission on 15 February 2017.

However, the Government also took the somewhat more surprising step of issuing new regulations to reverse the effect of the Upper Tribunal decision and the decision made in a separate case about the support needed to take medication and monitor a health condition. In other words, the Government changed the law so that the effect of the Tribunal decisions would be null and void. These regulations were laid before Parliament on 23 February 2017

and came into force on 16 March 2017, having been subject to much comment and indeed anger, but little Parliamentary scrutiny. The explanatory note to the regulations was explicit:

Regulation 2(4) reverses the effect of the judgment of the Upper Tribunal in the case of *MH v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 0531 (AAC) by making it clear that, in the activity “planning and following journeys” in Part 3 of the Schedule (mobility activities), the effects of psychological distress are not relevant to descriptors c, d or f (planning or following the route of a journey).

So, even if the Government’s appeal against the Upper Tribunal decision was unsuccessful, it had already ensured that the law had been changed, nullifying the effect of the Tribunal’s decision.

The Minister of State Penny Mordaunt said she was reforming the PIP payments to “restore the original aim of the benefit” to make sure support was given to the most needy.

The Head of the Number 10 Policy Unit added:

These tweaks are actually about rolling back some bizarre decisions by tribunals that now mean benefits are being given to people who are taking pills at home, who suffer from anxiety. We want to make sure we get the money to the really disabled people who need it.

But: the story did not end here.

The judicial review

Another claimant, RF, represented by the Public Law Project, with support from MIND and the Equality and Human Rights Commission, brought judicial review proceedings in the High Court seeking to quash the new regulations. RF’s case was that the regulations breached Article 14 of the European Convention on Human Rights, which prohibits discrimination; were “ultra vires Part 4 of the Welfare Reform Act 2012”; and that the Government’s failure to consult prior to making the regulations was unlawful.

On 21 December 2017, Mr Justice Mostyn handed down his judgment. He said of the Upper Tribunal’s decision about Ms C and Mrs D that

I have read the judgment carefully and I agree with it fully. I have had the benefit of exposition of far more of the background than did the Upper Tribunal. I have little doubt that had the tribunal judges had this benefit they would have expressed their decision with even more conviction.

He decided that

the 2017 regulations introduced (and I emphasise introduced) criteria to descriptors c, d and f, which were blatantly discriminatory against those with mental health impairments and which cannot be objectively justified. The wish to save nearly £1 billion a year at the expense of those with mental health impairments is not a reasonable foundation for passing this measure.

He also found that the regulations were indeed incompatible with the Welfare Reform Act and that the regulations introduced a change of such magnitude that it should have been consulted upon.

The Government’s change of heart

We awaited the Government’s next move. On 19 January 2018, the new Secretary of State for Work and Pensions, Esther McVey, announced that the Government would accept the High Court’s judgment, that the 2017 regulations would be rescinded, and the Upper Tribunal’s judgment would be implemented. And so, after four years of legal casework by Citizens Advice Sheffield and the judicial review brought by the Public Law Project, up to 220,000 people whose mental health problems seriously affect their ability to undertake journeys will be entitled to claim the mobility component of Personal Independence Payment.

This outcome has been widely welcomed

Andy Buck, Chief Executive of Citizens Advice Sheffield, said

We are so pleased that following over four years of painstaking casework, this outcome has been secured for thousands of people with mental health problems.

We believe that people with mental health problems should have the same rights as people with physical disabilities, and are glad to have contributed to achieving this. We look forward to the Government acting on their commitment to contact all the people who will benefit from the Tribunal's and High Court's judgements.

We will continue to support the very many disabled and unwell people who approach us for help about PIP and other benefits.

Paul Farmer, Chief Executive of Mind, said:

We are delighted that the Government has decided not to appeal the High Court's ruling. This is the right decision. More than 160,000 people will now be able to access support which could make the difference between whether or not people can get to work or appointments, see friends and family and live independent lives.

We now need to see the Government make sure that everyone affected by this decision can access the support that they should have been entitled to all along. This announcement is a victory for people with mental health problems. It upholds the principle that PIP should look at the impact your condition has on your life, rather than the kind of condition you have. We'll continue to campaign for a welfare system that helps people with mental health problems stay well and live independently.

Mark Atkinson, Chief Executive of disability charity Scope said:

It's absolutely right that the Government has accepted the High Court's ruling over the "discriminatory" changes made to PIP last year. This announcement is a victory for the many disabled people who have been unable to access the support they are entitled to.

The regulations introduced last March made crude and unfair distinctions between those with physical impairments and mental health conditions.

Thousands of disabled people rely on PIP to live independently and meet the often substantial extra costs they face related to their condition or impairment.

While those affected by these misguided changes will now receive the payments they are entitled to, the fundamentally flawed PIP assessment process still needs radically overhauling so it accurately identifies the extra costs disabled people face.

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