

Complaints about Assessments for PIP and ESA



At a glance

This briefing outlines the process of raising a complaint about assessment for Employment and Support Allowance (ESA) or Personal Independence Payment (PIP) and provides tips on how to set out the issues of complaint.

This briefing is aimed at:

- Advisers
- Members of the public

Law Centre NI:

- promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals
- in four areas of law: social security, community care, immigration, employment.
- through advice, casework, training, information and policy services

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Introduction

When a claim is made for ESA or PIP, the claimant will normally undergo an assessment of their functional ability as part of the application process. If there is dissatisfaction with the treatment received as part of making an application a complaint may be raised

1. The complaint process is separate and different from the appeals process

If there is disagreement with the decision about entitlement to benefit, a mandatory reconsideration and an appeal should be sought. Information about mandatory reconsideration and the direct lodgement of appeals can be found [here](#).

If the dissatisfaction is about the assessment process, then a complaint should be made to the assessor and the Department for Communities. Information about the complaint process can be found in this briefing.

2. What is the assessment process?

In order to claim ESA and PIP it is likely there will be an assessment process to determine whether the criteria for an award is met.

The department has responsibility for administration of these benefits. Third party private organisations have been contracted to conduct these functional assessments on its behalf. In Northern Ireland the assessment for ESA is conducted by Atos and the assessment for PIP is conducted by Capita.

In the majority of cases this involves a face to face assessment by a healthcare professional who will prepare a report on the functional ability of an applicant to complete a number of set tasks.

This report will then be considered by a decision maker within the department who will consider all of the evidence and make a decision on entitlement to the benefit.

3. Why complain?

A number of applicants, and advisers on behalf of applicants, have contacted Law Centre NI with concerns about the quality and accuracy of assessments.

Where there is dissatisfaction with treatment received, it is important that a complaint is raised in order to bring this to the attention of the assessment provider and the department.

In individual cases this allows the assessment provider or the department to acknowledge there was deficiency in their treatment of the claimant and enables them to put things right.

This will also potentially help others by allowing for the identification of any consistent issues and trends, and provides the opportunity for improvements to the process to be made in the future.

4. Complaints process?

Generally there is a four stage complaints process:

Stage 1

An initial complaint should be sent to the Department for Communities with a request that it is forwarded to the assessment provider for a response. Law Centre NI recommends this step as an important way to alert the department to potential difficulties with the process.

The complaint will be considered by a member of the customer services department within the assessment provider. A full response should be received within 20 days including details of how to escalate a complaint.

Stage 2

If dissatisfied with the initial complaint response it is possible to escalate the complaint by writing back to the assessment provider. The elements of the complaint which have not been satisfactorily addressed in the stage one response should be set out clearly.

This stage two complaint is dealt with by a more senior member of the customer services department. It may be possible to request a clinical governance review to contribute to this complaint response.

Clinical governance reviews are a full review of the case by a healthcare professional. Currently, these will only be conducted in exceptional circumstances where requested in cases with a high degree of sensitivity relating to the case. For example where there is a serious complaint/allegation or press involvement.

The stage two response should advise how to escalate a complaint further.

Stage 3

Following the stage two response the department's Director of Disability and Corporate Services should be contacted.

At this stage it may be possible to request input from the health assessment adviser within the department.

Again, at this stage the elements of the complaint that are considered not to have been adequately addressed in the previous responses should be set out.

Stage 4 - Independent Consideration

There is now a choice of where to direct a complaint for independent consideration. An applicant can complain to the Northern Ireland Public Services Ombudsman (NIPSO) or to the Independent Case Examiner.

Each will consider matters relating to maladministration. This means they will consider matters such as delay; failure to follow procedure; failure to address and respond to elements of the complaint; misleading advice and discourtesy.

It is important, therefore, to note that both organisations will **not** address disputes relating to the quality of or disputes about the accuracy of the assessment itself.

Other options

If the applicant is unsatisfied with the complaint responses regarding the behaviour or accuracy of the assessment conducted by the healthcare professional, it may be an option to raise a complaint with the professional body with which the assessing healthcare professional is affiliated. The applicant may wish to involve his/her elected representative to assist with the complaint.

Remember that an appeal is a separate matter which considers if the decision about benefit entitlement is correct. The appeal may therefore succeed even if the issues of complaint are not satisfactorily addressed.

5. Complaint outcomes

- The complainant should receive an acknowledgement of the complaint.
- The complaint may ultimately be rejected.
- If it is upheld the complainant may receive an apology that they have received treatment which is below the expected standard.
- If the complaint is upheld the assessment provider may seek to arrange a new face to face assessment.
- If the complaint is upheld the department may review the decision.
- In more serious cases of maladministration the department may consider providing a compensatory payment to reflect the treatment the applicant has received. Information regarding this process can be found [here](#).
- If a higher volume of applicants pursue complaints to conclusion this may result in wider awareness of the issues that complainants have experienced. The Independent Case Examiner provides an annual report and NIPSO has [announced](#) a proposed investigation into systematic maladministration following a significant number of complaints regarding PIP.

6. How to Lodge a Complaint : Key Points from Law Centre NI's Experience

A complaint should be raised in writing and assistance sought if necessary. When writing the complaint, it is recommended that each element of the complaint is numbered clearly. This will assist the assessment provider to consider each part of the complaint and help prevent a general response which overlooks parts of the complaint. It also allows the applicant to outline which parts of the complaint response are unsatisfactory should it be necessary to escalate the complaint to the next level. When lodging or escalating a complaint:

- Try to be concise and to the point to ensure the matter is clear.
- Highlight factual disputes and any evidence which supports specific issues of complaint.
- If referring to something specific in the report, provide the page reference so it is more easily identified.
- If complaining about the quality of the assessment, it may assist to make reference to the [work capability assessment handbook](#) and the [PIP assessment guide](#) which outline how ESA and PIP assessments should be conducted. If it is evident the

healthcare professional has failed to follow this guidance, ask the assessment providers to address this.

- If pursuing a complaint at the same time as an appeal we recommend that copies of the complaint correspondence is sent to the Appeals Service in advance of the hearing so the tribunal will know the issues of concern and can consider if this information is relevant to the appeal.

7. Appeals

It is important to also consider appealing the decision if you are unhappy with the outcome. The applicant may wish to seek advice and assistance with this. The tribunal's concern is with the decision to award the benefit, or not. It will not decide on the merits of a complaint.

However if a complaint has been raised, the tribunal may wish to know the issues of complaint and the responses that have been issued as it will have to decide how much weight it will place on the assessment report.

Some tribunals may be reluctant to proceed while there is an outstanding complaint and therefore may seek to adjourn the hearing to await a final outcome of the complaints process. If the appellant would not like the appeal to proceed until the complaint is resolved it is important to let the tribunal know this request.

A tribunal may, however, choose to proceed with the appeal even if there is an outstanding complaint. The tribunal should consider the issues of complaint and consider all of the evidence before reaching a decision on entitlement.

Even if the tribunal agrees with the issues of complaint, it will not allow the appeal unless it determines the evidence demonstrates that the appellant meets the criteria of an award.

You can contact the social security hub at Law Centre NI for advice and assistance on (028) 90 244401. The social security advice line is open Monday to Friday, 9.30 – 13.00. Our welfare reform advice line is open Monday to Friday, 9.00 – 17.00.

Template: PIP Assessment Complaint

[DATE]

[Address of Benefit Provider]

[Applicant's Address]

[National Insurance Number]

Stage 1 Complaint

To whom it may concern,

Re: Assessment

Following receipt of my appeal papers I have now for the first time had sight of all of the evidence used to make your decision including the assessment report.

I would like to raise a complaint regarding the assessment of my functional ability relating to my claim for Personal Independence Payment. I would appreciate it if you could forward this complaint to the assessment provider to acknowledge receipt and provide a detailed response addressing each of the issues outlined below.

1. I am unhappy that the assessor's report indicates that I attended the assessment alone. This is inaccurate and I was in fact accompanied by [Insert Name]. They have provided the attached statement to indicate they accompanied me to the assessment.
2. I wish to highlight that the assessment report is inaccurate on page 3 which documents my medication. I was not asked about medication during the assessment and therefore did not indicate as recorded that it was *effective*. It appears this medication has been copied from my PIP2 claim form. However, between the completion of the claim form and the face to face assessment my medication had been changed because it was not effective. I have attached a medication printout to support my account.

3. I am upset that you have recorded information in the mental state observation on page 7 which is supportive of an award of points but you have not addressed this evidence in your justification of descriptor choices on page 17. Your failure to do so is contrary to the PIP assessment guide which states at para 1.8.12 that the healthcare professional's advice and justification must provide a clear explanation as to why more reliance has been placed on some evidence over others.
4. You have noted that I require the use of an aid to get on and off the toilet but have decided that I can get in and out of an unadapted bath unaided. These findings are contradictory and I would like you to provide a reasoned explanation in relation to this.
5. You have recorded that I have a variable condition and that most of my days are bad. However you have justified your choices regarding my functional ability on the basis of what I have reported I can do on good days only. As a result the report does not meet the variability requirements as outlined in the PIP assessment guide.
6. I feel it is inappropriate that I was examined by one healthcare professional and that a second healthcare professional completed my assessment and changed the points as originally awarded. Because I suffer from a mental health condition I do not feel someone who has never met me should be able to determine that the opinion of the person who examined me is less reliable than their own.

I would appreciate it if you could deal with each of the above issues in turn and look forward to receiving your response.

Yours sincerely,

[Your Name]

Enc. Statement from friend
Medication Print Out

cc The Appeals Service



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