



Sheila Gilmore MP
Edinburgh East Constituency

30 April 2014

Mr Andrew Dilnot
UK Statistics Authority
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London
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Our Ref: MB/GILM02002/02131962

Dear Mr Dilnot

Thank you for your letter of 21 February 2014 regarding Work Capability Assessment reconsideration statistics.

I recently led a debate on this issue on 9 April in the House of Commons ante-chamber Westminster Hall. I noted that applications for Employment and Support Allowance (ESA) that are initially refused following a Work Capability Assessment (WCA) can be overturned following a request to a civil servant for reconsideration or a formal appeal to a judge. I highlighted the fact that at present the Department for Work and Pensions only publish statistics on the number of successful formal appeals and do not publish the number of successful requests for reconsideration. I argued that as a result we only have a partial understanding of the effectiveness of the WCA, and called on Ministers to publish these statistics in future.

Mandatory Reconsiderations

In response the Minister, Mike Penning MP, quoted from your letter of 21 February. I have reproduced the relevant paragraph in full below:

The Department has told us that it made a significant change to the ESA claims procedure in October 2013 to introduce a 'reconsideration procedure' before applicants are able to appeal formally. However, since the publication of the statistics is up to 10 months behind the application reference point, we expect it to take some time for the effects of such procedural changes to flow through into the published statistics. While the Department was not able to confirm an indicative timescale for the introduction of new statistical tabulations in the relevant statistical release, we have asked DWP statisticians to ensure that this happens at the earliest possible opportunity

Mr Penning implied that the publication of such statistics would only become necessary once the DWP's quarterly statistical bulletin 'ESA: outcomes of Work Capability Assessments' begins to cover the period since the introduction of mandatory reconsideration (presumably the publication due in October 2014).

I am afraid that the facts, as conveyed to you by DWP and presented in the aforementioned paragraph, are inaccurate. Claimants have been able to request reconsideration since the introduction of ESA in October 2008. The change that occurred in October 2013 was that this became mandatory for anyone wishing to challenge their decision (previously claimants could submit a formal appeal to a

judge without first having to go through the reconsideration process – it is this that is no longer possible).

There is also evidence to suggest that claimants were being directed towards requesting reconsideration instead of a formal appeal for a long period prior to the introduction of mandatory reconsideration.

For example Table 3 in the 'ESA: outcomes of Work Capability Assessments' published in April 2014 suggests that no claimants who applied for ESA in December 2012 and were found Fit for Work subsequently appealed this decision. This is striking given that between October 2008 and July 2011 at least 40% of claimants found Fit for Work were choosing to appeal.

There are a number of possible explanations for this. On the one hand the decision making process may have improved so that there are fewer incorrect decisions. On the other there may be such a high volume of appeals that a backlog has built up and appellants who started their claim in December 2012 are still waiting for their cases to be heard.

However I would contend that the most likely explanation is that an increasing number of incorrect decisions were being resolved through reconsideration prior to it becoming mandatory in October 2013. This is backed up by anecdotal evidence from constituents and members of the public who have contacted me.

Given that reconsideration has been available to claimants since October 2008 and it would appear claimants have been directed to use this procedure, it is possible – and in my view probable – that a significant number of applicants who were initially refused ESA could have successfully challenged this decision, without this being identified in the current statistical publication. Therefore the Minister should not have argued, as he did, that publication of reconsideration statistics is not necessary at present – clearly it is. I would be grateful if you confirm whether you agree with this analysis.

Powers of Ministers

Mr Penning then said:

'I cannot instruct the statisticians to produce statistics in the way that the hon. Lady has asked. I think there is some merit in what she is asking to be done, but it will be for Sir Andrew Dilnot and his team and my statisticians to work together on that. I know that the hon. Lady corresponds extensively with Sir Andrew Dilnot and I am sure that he will confirm what I have said.'

He repeated this point in response to an intervention from me:

'There is a difference between having a view and instructing departmental statisticians to do their statistics in a certain way. I have asked whether I have the powers to do so, should I wish to do so, and I understand, having received

advice, that I do not. It is for my statisticians to work on producing statistics on mandatory reconsideration in a way that is as informative as possible, working with the UK Statistics Authority.'

I accept that it would be improper for a Minister to seek to manipulate or distort the publication of specific statistics. However I am unaware of any impediment either in the law or relevant guidance that would prevent Mr Penning from asking his civil servants to ensure statistics on the number of successful reconsideration requests are published.

In some way the Minister implies that you have more influence than he does over what statistics his department publish. As Mr Penning suggests, I would indeed be grateful for your comments on this particular issue.

Commitment to publish reconsiderations statistics

Towards the end of the debate, Mr Penning stated:

'At the moment the information is not ready. It is not in the format that she is asking for. As soon as it is ready it will be published.'

While I took this as a commitment to publish the number of successful reconsideration requests, I was concerned that the Minister subsequently said:

'It may not be in the perfect format that the hon. Lady is looking for. I have asked for this matter to be reviewed, and Sir Andrew Dilnot is doing the same thing, and I look forward to the response.'

I note that both reconsideration and formal appeal statistics for Personal Independence Payment were included in the National Audit Office's report 'Personal Independence Payment: early progress', published on 27 February 2014. For example Figure 6 on page 20 noted that of 16,000 decisions, there were 500 requests for reconsideration and 13 formal appeals.

I acknowledge that these figures don't include the number of people awarded PIP and the number of successful reconsideration requests and formal appeals, but the key point here is that the Department are both able to provide this information for PIP and acknowledge the importance of doing so.

Would you agree with me that it would be hard to conceive of a reason that statistics on the number of ESA reconsiderations could not be published in a similar form, with accompanying figures on the number of successful reconsiderations?

I apologise that this letter is long and rather detailed, but this issue is very important. I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink. The first part is a stylized, elongated 'S' shape. This is followed by the word 'heila' in a cursive script, with a small 'a' at the end.

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