

More than half a million wrongly deprived of Incapacity Benefit

Steve Griffiths

Successive governments draconian and incompetent changes to benefits for people who were unable to work through illness and disability led to more than half a million sick and disabled people being wrongly thrown off incapacity benefit and its successor, Employment and Support Allowance, over the last fifteen years. More than 300,000 had it restored at appeal after disallowance, at huge public expense, and at great personal and health cost.

Half a million is a conservative estimate, because DWP research in 1998 found that 35% of the people disallowed ended up sick and back on the benefit. About 1.5 million people failed the All Work Test, the discredited Personal Capability Assessment and the harsher Work Capability Assessment over fifteen years.

The average rate of reversal of incapacity benefit disallowance through Tribunal over the period has been 47%. See appendix for more about the evidence base for these figures.

What would happen if, in the criminal justice system, half of appeals were found in favour of the appellant? It would be evidence that there was something deeply wrong with the criminal justice system. There would be mayhem about wrongful imprisonment. But because these disallowances only affect the financial support of hundreds of thousands of very poor sick and disabled people, nobody puts two and two together: it's been ignored for fifteen years. Both major political parties have sung to the same hymn sheet, hardening public attitudes with the help of the media. Well, it's time we looked at the evidence and stopped this. It's been cruel, dishonest and unjust on a massive scale

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A review of the Work Capability Assessment by Malcolm Harrington, published in November, advised the government that its method of assessing capacity to work was "inadequate". The medical tests were "impersonal and mechanistic" and failed those with mental illnesses and long-term disabilities.

The government has endorsed the Harrington Review, but the Disability Alliance has expressed disappointment that only a quarter of its recommendations for improvement will be implemented by the time the rollout of the WCA to assess 1.5 million existing incapacity benefit claimants starts. The Disability Alliance have called it an "ineffective test" operating at "substantial and material cost". See Steve Griffiths' briefing on the inadequacy of the Harrington Review recommendations on www.informedcompassion.com.

Also in November, inadequacies in social security decision-making were criticised by Richard Thomas, Chair of the Administrative Justice and Tribunals Council, who chastised officials, saying they must do more to reduce the number of successful appeals made against them. In a Today programme interview, he said:

“The cases heard by tribunals are probably the “tip of the iceberg” and there must be tens of millions of (social security and other Tribunal) cases that are not heard. If a million people need to appeal, there must be cases beneath that where people feel aggrieved or the decision has been wrong in the first place [but they] don’t reach a tribunal.....In many cases we are particularly concerned that the public body does not learn [from] the outcome of the tribunal appeal. They might put it right in that particular case but they don’t change their system ... so the same mistakes [are] being repeated time and time again. Now that is obviously a waste of taxpayers’ money [and] it’s stressful for the people concerned.”

The Human Cost

Hundreds of thousands wrongly disallowed? It’s not just numbers, it’s not just scroungers. Here are two stories, one from the beginning of the New Labour era, one from the beginning of the Coalition era. Then ask yourself if the same Assessments should be rolled out to existing Incapacity Benefit recipients at 10,000 a week from April.

‘Mrs. J has arthritis in her spine and knees, and asthma. She was found fit for work so incapacity benefit stopped. She appealed and signed on for Jobseeker’s Allowance to avoid the 20% reduction in benefit. She found a job, worked two weeks, couldn’t cope physically, started a different job, worked three weeks, had to give up, couldn’t cope again, started third job, gives up. By now the linking period allowing a break of 8 weeks in entitlement to incapacity benefit without penalty was broken. So despite the fact that the appeal was successful and she was found again to be unfit for work she had to start again with a new claim for incapacity benefit at a lower rate’.¹

‘A Yorkshire bureau saw a woman in her forties who was working full-time and was enthusiastically looking forward to starting a new job, when she became ill. At first it was thought she had a viral illness, but she was subsequently diagnosed with lupus erythematosus and transverse myelitis. She was in a great deal of pain in her muscles and joints and had extreme fatigue. At times her balance was affected and she could not walk without someone to support her. Sometimes she lost sensation in her legs, and on her worst days she could not walk at all. Any exertion such as walking 40 or 50 metres led to days in bed. She had had a bad reaction to some of the treatment and an ECG showed her heart muscle had been damaged. Her husband had to come home from work each lunchtime to help her. Her immune system was weakened, so she had to be careful when mixing with others. She claimed ESA but was given six points in the Work Capability Assessment (WCA) and found capable of work. Her doctor supported her claim and she is currently appealing, but under Incapacity Benefit she would probably have been exempt and would have avoided this process’.²

‘Dark Times for those who cannot work’

Steve Griffiths is the author of *Dark Times for those who cannot work* published as a Compass Thinkpiece, which finds that incapacity benefit reform has been built on the endlessly repeated assertion that there are a million people on incapacity benefit who are fit for work. This belief is

¹ Steve Griffiths, *A profile of poverty and health in Manchester* Manchester Health Authority and Manchester City Council, 1998.

² *Not Working*. CAB evidence on the ESA work capability assessment CAB Briefing, in association with Mind, March 2010.
http://www.citizensadvice.org.uk/index/campaigns/policy_campaign_publications/evidence_reports/er_benefitsandtaxcredits/not_working

based on the assumption that any incapacity benefit receipt above the level in the South-East is evidence of claimants who are fit for work . disregarding regional health inequalities, the huge growth in limiting longterm illness under the last Tory Government, the continuing growth in health inequality, and the increase in the number of women in the workforce which boosted the numbers who could claim sickness benefits when they fell ill. It catalogues a river of disregarded evidence from official sources and advice and disability organisations that the reform is producing suffering and injustice on a massive scale; and House of Commons and National Audit Office reports that are fiercely critical. See his website for the detailed case: www.informedcompassion.com .

APPENDIX

The full period analysed (full years since Incapacity Benefit was introduced in 1995 - I start in 1996 because 1995 was a part year) totals 15 years. There are actually four years missing: 1999 and 2000 calendar years; and 2006-7 and 2007/8 (social security statistics changed from calendar years to financial years in 2006). The earlier two are lost somewhere between the production of hard copy statistical reports and the transition to online data. The 2006/8 period follows the establishment of the Tribunals Service (arms length body): I have been told that they did not publish Tribunal outcomes for the first two years of their existence. This was the first time in many years that the data had failed to be published. Publication of Tribunal outcomes is a pretty basic function of transparency.

The current total I have of claimant-won tribunals, covering eleven years, is 253,527. The mean annual total is 23,048. If that was added for the missing 4 years it would be 345,000. More than 300,000 is therefore a conservative estimate.

Now, the half million figure. Again, this is pulled together from patchy figures, but is a very conservative estimate (given that we already have 254/345k decisions reversed by Tribunal). I have a definite figure for failures of the Personal Capability Assessment Nov 1995 - Feb 2005: 911,000. That's ten and a quarter years. Figures don't seem to have been kept in the same format since then (often the data got more limited as they became more electronic). The challenge is to complete that sequence. Now, the numbers of Incapacity Benefit appeals in 2008/9 and 2009/10 are a massive increase on 2001-2005 (disregarding ESA). So the number of PCA refusals is very unlikely to have gone down. If we add 50% to our 911,000, that's a very conservative estimate. That would be 1.37 million. If we take the successful appeals off that, say 300k, call it a million unreversed refusals.

There are a lot of reasons for people not appealing. Some may indeed not be unfit for work. Many will get better (that's a disregarded factor in all of this, the huge numbers who just get better and go off and get a job: recent DWP press releases have misrepresented these as assessed as fit for work when they have not been assessed; they have got better and moved on). Anecdotally, very large numbers of people do not appeal, through lack of confidence, they didn't know where to go for advice, they were in despair, they were just too ill. See the quote above from Richard Thomas, Chair of the Administrative Justice and Tribunal Council). I decided to take a DWP research figure from 1998 that found that 35% of the people disallowed ended up unable to work and back on the benefit (link and detail in Dark Times paper). 35% of a million is 350,000. I have added just 200,000 to the 300,000 with reversed decisions on appeal. Of course, the tests have got much harsher since 1998, so this estimate is going to be even more conservative. These estimates have been assembled from disordered, neglected and incomplete sources. There has been a good deal of evidence for Government, and the political and media establishment, to neglect over many years.