# Christopher- Written Reflection and Interview Transcript

*This document contains a written reflection (submitted by the participant before the interview) and the transcript of a semi-structured interview conducted online on 17 April 2020. Christopher was a Case Manager, working at a University Law Centre in the Midlands. The transcript and written reflection have been anonymised, with identifying names and places removed, or replaced with pseudonyms.*

## Written Reflection

**Background**

I am employed by the Law School Legal Advice Centre, the University’s teaching law firm. They offer pro-bono and low-cost legal services to individuals, SMEs and not-for-profits across the East Midlands. I am a Senior Paralegal/trainee solicitor (equivalent means) with responsibility for Welfare Benefits and Special Educational Needs service areas. In addition, I am the Principal Legal Officer for Social Security appeals for [charity that provides legal advice to claimants].

I supervise the work of student volunteer representatives who are trained to represent Appellants in Social Security appeals, as well as having conduct of a small number of my own files.

**Experience of Invisible Disabilities and Disabled Identities in PIP Tribunals**

My overall view of the experience of those with invisible disabilities in PIP Tribunals is perhaps best summarised as ‘mixed’. I have found there to be a huge disparity in the treatment of those with physical health conditions vis-à-vis those with mental health conditions in the PIP assessment process

Generally, I think there is a good appreciation of how mental health conditions, most commonly anxiety, depression, PTSD etc, can restrict a person’s ability to carry out day to day tasks, and to safely and reliably get around. Particularly so where an Appellant’s oral evidence is supported by documentary evidence of their engaging with secondary mental health services. Understandably, supporting medical evidence is often limited to clinical opinions or retellings of an Appellant’s (patient’s) own account e.g. ‘*She* ***reports*** *that she struggles to attend to personal care tasks*’. Notwithstanding a lack of specificity as to the functional impact of mental health conditions, I have found Tribunal panels to be generally very receptive to such supporting evidence, and this is often reflected in comments on their decision notices

On the whole, I have found the Tribunal to be receptive to an Appellant’s oral evidence detailing the functional restrictions of their conditions for the purposes of the PIP framework. However, I can recall a couple of examples involving neurodivergent Appellants where they have faced scepticism - or on one occasion, incredulity - as to the effects of their invisible conditions. Perhaps most notably, whilst representing a client whose primary condition was Asperger’s syndrome, I was told by a Tribunal Judge that:

*‘[Christopher], I am struggling with this appeal as* *I have been advised by my fellow panel members that cognitive difficulties are not associated with Asperger’s. Whilst it may be a neurological condition, it is not one which causes a cognitive impact.’*

The inference I drew from these comments was that this particular panel’s approach was to consider the Appellant’s ability to carry out the PIP activities through the lens of a cognitive impairment/learning disability. The panel appeared resistant to the notion that Asperger’s could impair his ability to carry out daily tasks in other ways as was being suggested. As it transpired, the Appeal was adjourned to allow further medical evidence to be obtained. The Appeal was ultimately allowed although it may be noteworthy that the final substantive hearing was decided by a completely different panel!

**Observations on wider PIP assessment process**

What continues to astound me is the difference in decisions of the DWP and those of the Tribunal at appeal (although this of course is not limited to cases involving invisible/less visible disabilities). I have found that such a disparity in the reasoning of the DWP decision-maker and the tribunal panel has had the consequence of undermining Appellants’ faith in the system. It seems to me incredibly unfair that the same legal framework can lead to such wildly differing outcomes. Whilst I appreciate that the focus of this work is on the Tribunal and their evaluation of those with hidden disabilities, I have found that the wider experience of claiming PIP directly impacts Appellants’ attitudes to the appeal stage.

For example, [I] represented an Appellant with, *inter alia*, anxiety and Emotionally Unstable Personality Disorder who failed to submit further medical evidence – that was in their possession - with their Mandatory Reconsideration request, nor with their Notice of Appeal (SSCS1). This omission was at least in part because of their frustrations at having to first go through the Mandatory Reconsideration process ‘just to be told no again’. They believed that the DWP was responsible for administering their appeal and had not appreciated/had not been advised that the Tribunal was impartial from the DWP. Ultimately, the further medical evidence was relied upon to support written Grounds of Appeal, and their appeal was successful after an oral hearing. Whilst it is of course speculative, I do wonder whether this Appellant would have been spared from having to attend an oral hearing if the Tribunal (or indeed the DWP) had had prior sight of what proved to be persuasive medical evidence.

## Interview Transcript

I = Interviewer P = Participant

I So if you're comfortable and ready we can get started. I just need you to confirm for me that you've had the consent form in the information sheet, and you're voluntarily agreeing to participate in this study.

P Yes.

I Thank you. And thank you so much for sending through your reflection, it was really useful. And so, one of the first sort of questions I ask people is about how they ended up where they are sort of doing that job. So, how did you end up?

I Well how long have you got? This could take a while. In brief, I'm actually a chemistry graduate. So, I did a four-year integrated master's and did the law conversion course, the GDL at [removed] Law School in 2015 and 16, and then off the back of that umm... Was at a bit of a loss as to what to do I suppose if I'm honest. I knew that I wanted to become a lawyer, you know, haven't committed that time and that money to sort of convert from, from a degree. Got a job, a 12-month contract, at the legal advice centre and [removed] law school just to build up some experience, you know, CV. And to be honest, as with everything, funding for next stage. So, sort of bounced around a few roles within the advice centre so I've covered quite a lot of different areas of law.

But one of the first things I got involved with early was Social Security welfare benefits law and tribunal representation. And, having previously volunteered as a representative in the employment tribunal. So, I think this is it's gonna make me sound … well I hope it doesn't make me sound awful. But when it was a choice of either doing employment work or social security as a student, I suppose I was a little bit ignorant as to what social welfare law was around, and the skills that actually I would develop. And so, I thought, well, it has to be employment because that's a more marketable area of law if that's not too callous a thing to say. But then when I started paid work at the advice centre, I was… so having previously been a volunteer, it was something that landed on my desk really, and it was ‘okay you've had experience of tribunal advocacy, we’d like you to have a go at some social security cases’. And so that was stuff to put my head. Probably October/November 2016. When I started, probably within weeks I was on social welfare benefits cases. And, and sincerely it's the most rewarding part of my job. So, I bounced around different areas of law as I've said, so I've done a bit of employment, and quite a lot of commercial and kind of civil litigation work. And, but nearly always throughout that time with a few Social Security cases kind of underlying that and then in December 2018 I applied initially as maternity cover for the role of welfare benefits caseworker. And the rest is history.

I It’s really interesting how you've come at it because I think that's what I've been looking at is that it's not taught in university courses, like, so I'm in London. There are centres but no undergrad programmes seem to teach social security or welfare law, so it's just really bizarre to me.

P Absolutely, yes in particular what you do. And, you know, with the GDL it was just the seven core modules, so there was no exposure to that. Please don't quote me on this but I think [my] University, stopped teaching social welfare in the mid, kind of noughties as part of the law course, so yeah good 10-15 years ago at least.

I Did you think people that you've worked with have they sort of come to this in a similar way, sort of by accident rather than design?

P Yeah, I think so. And, yeah, somewhere in between so particularly for a lot of our students. You know, it's a competitive world, particularly the legal sector, even more so. So, they're there, as much as anything they're anxious to get some sort of tribunal advocacy experience under their belt. And quite often it's just a pure numbers game, so they're more likely to people to take on a social security appeal through the advice centre than they are an employment case, because of complexity, resources that sort of thing. So, a lot of the students that I work with, definitely. The, the feedback, and a lot of the students that I work with definitely come at it from a just, ‘I need to do something, I need to get something on my CV’, never come across social security law, you know, ‘what do I do?’, sort of thing. And so yeah, absolutely.

I Did you find it quite difficult switching from the employment tribunals to Social Security? I'd imagine they're quite different.

P Yeah, they are quite different. Um, I mean actually, I suppose I did it backwards, in some ways, so for a lot of our well, as we have everything done a slightly, slightly different route, and I try to encourage our postgraduates in particular to start with Social Security, because the cases are a little bit more discrete, they tend to be more about the written advocacy in terms of the representative’s role anyway. And so actually I think that gives quite a nice platform for them to go on and do employment work, which then might require them to undertake more oral advocacy and a bit more witness handling sort of in the hearing itself. And so yeah, it was maybe not difficult, but it was certainly different, and certainly in the way that I approached that tribunal setting, it's, it's definitely very different between the two. You know the Social Security it's certainly more… When you get to the appeal hearing anyway more of a sort of companion role and steering the client from an emotional point of view really and, with it being tribunal lead. So, that is, that's probably the biggest point of difference. Definitely.

I Is that just how sort of the panel is kind of helping you out.

P Absolutely.

I Whereas that's different in the employment side?

P Yeah, most definitely. Yeah, so the interaction between, between the client and the appellant, and the panel is, is significantly different between that experience, and the employment tribunal, definitely.

I Thank you. Related to this, and if you can kind of just take me through sort of a typical hearing and how you prepare and that kind of thing, if there is such a thing as it will come to you in the process, I guess, generally.

P Generally, yeah, so most of the Social Security clients that we represent, we come into the process of the 11th hour really. So, there is an appeal bundle that's been put together by the DWP, and there's a hearing date. So typically, anything from two to four weeks’ notice of the hearing, um… which is what makes it very kind of useful and accessible experience for our students, but it obviously then comes with a kind of counterpoint which is it's, it's the time pressure. So, a client will come to us, they'll say that they've got a PIP hearing and, in you know, two weeks, three weeks typically. We will review the paperwork that had been provided often five to six months before they get a date. And certainly, that was my experience of late and have a conference with them, and typically it only requires one meeting with maybe some follow up questions by telephone or by email, and it's a case of taking them through the descriptors. And, you know, trying to advise as far as we can.

In the actual meeting itself ,as to merits of the appeal, particular descriptors that are pleadable and really trying to get that message across to them of our role is to frame that appeal in the best permissible light, so it's no good us going in and asking for every single descriptor because I'm yet to come across the client where they will satisfy, or sorry every single activity, should I say from PIP. Because, you know, I'm yet to come across a client where that is the case. And then from there, it's a question of preparing some written submissions, and really putting them in the best possible position so that when they get to the appeal hearing itself the tribunal have a fairly comprehensive idea, between our submissions and between the paperwork, of what the client can score points on and what sorts of questions. And really the idea being that the questions the panel have to ask are more sort of confirmatory and asking for more detail rather than having to start from bare bones of, you know, tell us about how your disability, how it affects you functionally. Now of course a lot of the maybe more clinical side of things is, is in the paperwork anyway so diagnosis, treatment prognosis, that sort of thing, but very rarely any, from my experience, very rarely is there a clear translation of how does that client's disability affect their ability to wash and bathe, prepare simple meal for instance.

I There's definitely sort of a gap between the clinical evidence and what that actually means for someone's life.

P Absolutely. Yeah, absolutely. And you know I can't, I can't be critical of doctors or healthcare professionals, you know, because that isn't really their job. And actually, particularly for this, if there's a 10-minute consultation that that GP has with a particular person, there's a whole multitude of things that have to be discussed and PIP is probably or ESA, as it may be, it's just one of those.

I Yes, definitely. And I know you'd said from what you sent me and sort of about how the whole process affects how people interact with you. So, is that a particularly tricky part of handling these cases, is their experience before they get to you?

P Yeah, definitely. Um, I think it's something that has increasingly been on my radar, is to think about what sort of public legal education angle maybe we can put on it, whether that be in conjunction with advice agencies, so Citizens Advice. That sort of organisation or either something on our website which sort of sets out a bit of a map of this is who we are, and this is what we're here to achieve. I mean we try and do that as best we can, as best as our representatives can in, in the sort of preamble to the meeting. But, yeah, there is often a massive uncertainty from the client’s perspective as to what we're able to do as representatives. You know, does the fact that they are represented preclude them from having to answer any questions? No, 99% of the time there will be some, you know, interaction that they have to have with the panel. So yeah, that is a huge aspect of our work definitely is the more I can’t think of quite the right word but it's, it's… yeah, it's just basically setting the scene, trying to kind of particularly, they've not been to an appeal before. So, in [local area] they are held at the magistrate's court building… people think ‘oh hang on I'm going to a Magistrate's Court. You know, I'm… are they accusing me of benefit fraud?’, you know, is there going to be a judge on a high platform and you know, are we all going to be wearing silly wigs and robes. No, actually, it's you know in [the local area] they are more just kind of fairly large meeting rooms. So yeah, definitely, sort of 40 minutes, an hour sometimes of our conference with clients is just saying, this is what the room looks like, this is, you know, as best as I can describe who's going to be on the other side of the table to you. And this is what I'm here to do, it's, it's to kind of, you know, give you that platform to come back to that metaphor, and, you know, it's, yeah to steer, to steer the line of questioning rather than to completely kind of remove the need for questioning.

I So, I'd mentioned as well like a lot of people are very unfamiliar with the whole tribunal system, just in general. And so, differentiating that from the other parts of the assessment, so I know sort of for example the face-to-face assessment can be very stressful and difficult for people. Is that something maybe that causes additional stress throughout the process because they're expecting that interrogation?

P Yes, yes most definitely. And, you know, on a couple of occasions I've had clients ask me well, ‘what's, what's the point in all of this?’, you know, ‘why did I have to go to an assessment because I'm gonna have to go through the same thing again’. Oh, hang on. No, it's, it's, it's… a different framing there. You know the tribunal aren't necessarily going to ask you to, you know, stand up and you know someone tiptoes or can stand on one leg that sort of thing, although I have understood that that has happened, and certainly not in a hearing that I've been involved with. And yeah, huge cause of concern for many clients is the kind of line of demarcation between the DWP and the tribunal system. And I think I might have mentioned it in the, in the kind of written piece. Well, again, what was the point in going through mandatory reconsideration stage, etc. If I'm just gonna be up against the same kind of faceless bureaucracy if you like, that's just gonna rubber stamp a decision that has already been made. So yeah, there's a huge, often a huge degree of anxiety and actually anger, I'd go so far as to say, initially from clients of, well I suppose clients but actually, often their relatives, companions, spouses who go, well, who are these people to, you know, to judge me if you like. So yeah, that's a huge, huge source of concern and stress.

I I just had another question, but it is gone… we’ll go ahead move on and it might come back to me later. I know you'd said in your reflective piece about the lack of understanding that seemed to be from different conditions. Some aren't as well known. Is that something that you think has been a problem throughout for lots of different cases or is it maybe there's just a couple that stick out to you?

P Umm… that’s a really good question. I suppose the vast majority of clients report that they, they feel like they've been misunderstood somewhere along the process, and I can understand, you know, why they might think that. When we get to the appeal stage, generally it is those less visible conditions, and it is those kind of neurodivergent clients who I think struggle, sorry struggle is not the right word but… well maybe is the right word, they encounter the most misconceptions maybe. And if that if that is the right word. So, I think, you know, certainly the appeal that immediately jumped to mind when, when [a colleague] forwarded, you know, the email [interviewer email], initial email over to me, was the case that I mentioned in my written piece about the client with autism, amongst other conditions and that panel seemed to be approaching it from a… forgive me, actually I think it was it was Asperger’s. Specifically, and that panel was approaching it from a learning disability standpoint from the off when actually, you know, that wasn't the crux of our argument at all. Yeah, this was a young man who was very intelligent, very articulate, at that time was partway through an undergraduate degree, albeit not without its hiccups, shall we say, and adjustments. So, so that panel seemed anyway… to me whether I've misunderstood or misinterpreted I'm not sure but, they certainly seem to be approaching it from well, you know, this individual, you know, isn't restricted, they don't have a learning disability, they are, you know, at University studying what was perceived to be quite a difficult subject, a bio-sciences subject. So, what's all this about? And actually, well, as I think I mentioned in the piece, it was adjourned, and we came before another panel, but it did definitely make me think about what I could do the meantime in terms of preparing supplementary submissions just to reframe, you know, the crux of our argument and say look, we're not contending that this individual has significant cognitive restrictions. It's more social interaction, it's more emotional intelligence if that's the right way to describe it, which he struggles with and as a consequence, he is restricted in terms of certain PIP activities. So, engaging, engaging with others being an obvious one, planning and following journeys that sort of thing. It was his ability to cope with change with yeah new people, new surroundings, and interruptions, to his routine, to his very kind of structured life that he leads. Sorry, that was a very rambley.

I No not at all, that was perfect. I was just wondering, sort of what the impact on him was, and about the gentleman and what the panel had said before that?

P Yeah. So, I think my recollection of that first hearing was that actually, both hearings that he went through was a lot of it actually washed over him. I mean his mum who was present for both hearings, you know was, was livid. Now I think is the only word I can use. And, you know, not quite to the point of, you know, wanting to go in and give the panel what for, but you know she really, really wasn't happy. But certainly when we had that sort of debrief after the adjourned hearing and we had to go through the explanation of all this as well this is what an adjournment means, it's not that they are disallowing your appeal or that they don't believe you necessarily, but you know these are quite clearly instruction signposts, if you like, from the panel as to what we need to do to address their concerns and yeah absolutely that anxiety of having had to mentally prepare for weeks, you know, to go into this hearing and for it all to be over in five minutes maybe tops, to be told ‘Oh well I'm gonna have to come back again’. You know, it was a huge obstacle. Yeah, absolutely. And actually, at that point, you know, there was a discussion as to whether he even wanted to go ahead with the appeal and actually was it worth it? Now, you know, with time and the kind of the support of his family he came round to the idea of, obviously it was, his decision to proceed with the appeal and it did pay off. And again, you know, for a client like that individual, he had done a lot of research into the court system in the UK, and had this idea of, you know, what the appeal was going to be like and I think almost, it's probably not too much of a hyperbolic statement to say that he thought he was going to be dragged away in cuffs, you know, if it didn't go his way. It was really, yeah, a really, really stressful experience for him.

I I think it sort of goes back to what you'd said earlier about there being this link with criminality because it's happening in court. I think that's something that does seem to happen a lot in clients minds, is that it just does have that link. You have having to prove something rather than it being sort of a neutral space for them.

P Yeah, most definitely. Yeah, absolutely. At the forefront of their mind is yeah. This, I think, you know with clients with ASD, in particular, those barriers that are often present are just so visible in that court setting because, you know, they are. Yeah, on the defensive straightaway for understandable reasons, and actually, you know, I find myself saying to nearly every client, you know the simple fact is, it's the… the reason that it's held in magistrate's court is because that's what where there’s court space, it is simply a logistical thing, it's not that is supposed to cast any aspersion on you, by element of criminality as you said, it's purely space. And it's unfortunate that that is, you know how, how it's worked out.

I But, by the way, and just going back to sort of what you did after that adjournment and what other evidence, you looked at. Could you just sort of give me a run through of what you did after, before the next hearing?

P Yeah. Um, so it was a case of getting in touch with specialists, specialists actually my client hadn’t seen for a number of years so particularly paediatricians and a consultant psychologist who had seen my client, up until the age of 16-17, and just really trying to draw the tribunals attention to, to the narrative really and the reasons that might …maybe not the reasons.

Yeah, it was, it was speaking to specialists and really seeking more of an opinion than sort of arbitrary, you know, scores and various kind of clinical tests and the like. And just to really be able to build a picture of….um well yeah, you know, there are certain things that the client can cope with absolutely fine and indeed he's very academically gifted. But these are the limitations that he experiences in terms of emotional kind of intelligence, being able to read body language in particular, which I know doesn't necessarily always map directly to the PIP descriptors but just to give that context. And if I'm honest, to maybe tug on the heartstrings a little bit, and to kind of set the scene, provide that context. So yeah, it was more specialist evidence that we got, which admittedly, and I guess with the benefit of hindsight, was what was lacking from the appeal bundle when we went to that first hearing. So, yeah, it was a bit of a learning curve for me as well I suppose as to what evidence I should be looking out for from the outset. To be a bit more proactive.

I It also seems sort of counterintuitive as well, from the outside, to need to go to a specialist that he's not seen for years, because the whole point is that it's meant to be functional and his evidence is supposed to be, you know, just as important. But do you think there's an issue there with sort of the appellants own evidence in certain cases?

P Yeah, definitely, yeah. I mean kind of counter, counter intuitive is the right way to describe it. And, yeah, I think there's. Yeah, there is often an issue with oral evidence. You know, for every client I think regardless of the nature of their disability, you know, and again I can understand it, who would want to go and sit in front of three strangers and talk about what they struggle with? And often, you know, particularly with the personal care side of things, you know, it's quite, quite delicate subject to put it mildly, never mind, any sort of traits, or aspects of their, their condition, their disability that, you know, might exacerbate that tendency to downplay things or to be compliant, perhaps. The classic example that springs to mind is a client who will, you know, during their disability assessment be asked a question by the assessor, you know, ‘can you wash yourself?’, ‘Yes’, you know, ‘can you dress yourself?’, ‘Yes’, but it's that context that's missing, it's, you know, that's not necessarily true. And sorry not necessarily exclusive to clients with invisible, you know less visible, disabilities but they're a textbook example, really. And the answer, in truth is ‘yes, but if someone lays my clothes out for me, or if someone reminds me that actually after two or three days I probably should get changed and that it's not necessarily hygienic to be sleeping in my clothes and then to be getting up again’. ‘Physically, yeah I can put a shirt on and I can pull some jeans on’. But of course, that's not just what, you know, law is asking. It's that wider context. Now I do find that generally panels are quite good at navigating and sort of working with that sort of compliant attitude and they tend to do it and, you know, with a few exceptions, in a sympathetic way. But certainly, you know what's been reported to me is that at assessment stage, there's a huge problem with that tick box approach, can you do something. Yes. Fine. Next question.

And then of course, that also makes the actual appeal, a little bit more difficult because you're then fighting a bit of an uphill battle sometimes with panels to get across to them, actually, you know, someone might have answered yes or no problem, no issue in their questionnaire, or at the assessment, but that's because the kind of real nuance of the question hasn't been communicated or understood for a whole host of reasons. And so yeah that's definitely, definitely an issue there.

I You hit on a really important point there about umm sort of fighting against the assessment report. How have you found that, and sort of what's the best way to do that, I guess?

P I don’t know if it's the best way, it's certainly the way that I've kind of found to be most effective without, you know, taking too much stick from the panel. And I think it's doing the sort of, you know, well, respectfully, ‘madam, you know, we, you know, we've seen this, we have to kind of accept that, yes, something has maybe changed in what's been reported’, but it's trying to give that context again in that detail, and that explanation as to why, you know, a certain box has been ticked on the claimant question or a certain answer has been given. Actually, I find it crops more in the context of where a client has maybe had some assistance from Citizens Advice or another advice agency. And I don't want to level criticism at them because they do a stellar job, but our experience is that sometimes they can be quite ambitious in what they put in the SSCS1, so the notice of appeal for instance, and they’re may be pleading, you know, every eight point descriptor across the board. And then you get to the tribunal, and you've maybe been a little bit less ambitious, you know, in the pleadings and the first question is, ‘well, Mr. [Christopher] there's a bit of a difference between, you know what your client is submitted at this stage and what you're putting forward. Can you explain?’ And I think it's just that, well, you know again no criticism of whoever's been assisting the client, but, you know, again no criticism who has been assisting the client but we've explained the law, we've discussed it and this is a bit more appropriate, I think is probably the word I always kind of reach for. Sorry did that answer the question?

I Yes, it's really fascinating, do you think maybe that's a case of having either sort of no help to start with, and then too many people involved?

P Absolutely. Yeah, absolutely. And actually, yeah I think I mentioned it a moment or two ago, you know, increasingly, as a legal advice centre we're thinking about what we can do to…. I’m reluctant to use the word educate because I know that welfare rights advisors at Citizens Advice often have, you know, far, more experience practically of the kind of claim side of things, but some sort of training or kind of education to say, well, this is what the law is looking for, you know, in common sense, kind of accessible terms. This is how we can all, you know, better support our clients, our service users from the outset. Yeah, I think there is a there is an issue with that lack of continuity of support, definitely. Yeah, I mean, yeah, just to emphasise again, yeah, I don't want to come across as being critical of these advice agencies. But yeah, yeah…. and you know as much as anything, I suppose we're all human so we're going to have slightly different opinions, views on what is the most appropriate descriptor for instance and actually never mind the fact that from a client's point of view, they're having to tell their story, you know, as it were, not only to the DWP but then maybe to Citizens Advice, and then maybe to, you know, another organisation in the meantime who will help with the mandatory reconsideration stage for instance, and then to come to us, you know, we might be the third organisation that they've had contact with in respect of their appeal.

I And do you think, so they're obviously there were quite a few people that probably go to the appeal without getting the help of people like you. Can you sort of see what that must be like comparatively with the ones that you have been there for?

P Yeah, chaotic, I think often, when I kind of started out with [legal advice organisation], I actually went to observe a few tribunals and just kind of from my own interest as much as anything. And yeah, there is a lack of structure, I think. And again, I think, a large part of that is due to a lack of awareness, of knowledge, of what to expect. And so, you know, the client has been sat in a court building for, you know, 40-50 minutes before their appeal hearing, they go into a room, they've not met the panel before you know, a clerk will have come out to speak to them and, you know, sign them in as it were. But this is a complete kind of leap into the unknown. And then, particularly because of the time, you know, time constraints, the panel are pretty rapid fire. So, to then be, you know, sat down and be hit with a barrage of questions about, you know, your difficulties with getting dressed, toileting, whatever it might be….um also, then added to that the, yeah… maybe defensive, and again understandably so, defensive nature or approach that they're taking. Yeah, I think it can be quite unstructured. And that's, I think probably the, when it gets to the appeal hearing itself, that's probably one of the most, I hope anyway, one of the most beneficial things that we do, is to give a bit of structure, a bit of order, a bit of reassurance to both the appellant but also to the tribunal too actually, you know, from the tribunals point of view, so they can hopefully have a bit more confidence that someone's had the opportunity to sit down and explain the law, and explain what's expected of them in terms of their, their answers.

And, you know, particularly so what, you know, there's also a huge thing about a sense of injustice, perhaps, and actually, when it gets to the appeal hearing, you know, yes, it is the appellant’s opportunity to kind of tell their side of the story, if you like, but a huge part of our work is focusing that evidence and that testimony onto the functional side of things. And, you know, I probably have conversations with clients on a weekly basis, that go along the lines of, yes, you know, we're all really sympathetic to your experience of the assessment process. And, yes, there are points that you feel the assessor didn't note down, or even misrepresented or even fabricated. But unfortunately, the panel won't have time to examine this, you know ad infinitum, we have to focus on the descriptors, and the point system. And, you know we can, to a certain extent, make reference to your frustrations with the system and what you feel is, or are, the shortcomings and indeed we might have to address some of the discrepancies. But, you know, in the nicest possible way, let us do that for you, in terms of the written submissions, in terms of any oral kind of submissions we make on the day as your rep, and you just kind of focus on you, your health and your disabilities and how it affects you functionally.

Actually, a case that just popped into my head actually, it wasn't PIP admittedly it was ESA, and it was a chap that had been going through the appeal process and 2017, there were various… yeah, various issues I suppose with, with the evidence and with... It was an appeal that had gone to the Upper Tribunal and then had been remitted so it had been going on for just over two years by the time we took it on, which was late last year. And it was only heard in January. And by that point, understandably so again, you know, our client was just so… to use his word ‘done’ with this system. Well, that was one of his words, which I won’t repeat. You know, he was so, so fed up with the system and he just wanted his 50 minutes in that courtroom, as he saw it, to basically give the DWP hell. And it was a case of well, Mr Bloggs, let's call him, you know, again, really appreciate your frustrations and I'm sorry that you know, on a human level, you know, how could you not be sympathetic to what he'd gone through, but this is, this isn't going to help you, ultimately. And yes, there maybe complaints procedures and there may be other you know legal routes of recourse for you, but this isn't, this isn't the one for you present. You know this appeal is, is it has to be about the benefit. So, as I say, admittedly not PIP, and that ESA, but again the same structural issues across the board.

I It seems that an important part of your role is sort of diffusing it at that point, because you absorb some of that need to get out how frustrated they are, and angry about the process. Do you sort of find that that's how it works out, is that you're able to sort of diffuse that and then that affects how they go into the hearing?

P Um, I'd like to think so… generally, I think. Generally, we absorb most, maybe not all, of that frustration. And invariably, you know, some of it will spill out in the hearing, you know, particularly if the panel, are you know, really delving into a particular point. And, yeah, absolutely. I think, you know, but it is, I'm sure not unique, I know it's not unique to Social Security Law, but you know, I think a lawyer’s role is as much as anything to be a bit of a counsellor, to be a bit of a sounding board, a bit of a punching bag, as much as anything. And, yeah, so a huge part of the work, I keep going back to sorry, is that just more emotive kind of support, and just explaining to them look, you know, this is what we're trying to achieve, this is why the tribunal might seem to dwell on a particular point, it’s not necessarily that they don't believe you, and that they're trying to trap you, it's because they're trying to, I genuinely believe anyway, most of the time, they're trying to give you the entitlement that you deserve, and they're just trying to test the law to the kind of fullest extent. And yeah… so yeah, it does…you know, quite often, some of that emotion and that frustration does still spill out, but I hope it's, yeah, less so than it otherwise would if we weren't there as the reps. And that's perhaps, you know, the experience I've, I've had of observing an unrepresented appellant, is that it just turns into a very heated, very yeah disjointed, disordered I think is the word I used a minute ago, you know, process. And, and I feel for the panel having to unpick that and, you know, reaching a decision that they feel is fair.

I You said earlier, saying to clients like ‘this isn't going to help you’ sort of thing. Do you find, so when you've witnessed the people that don't have representation, sort of, does that impact how the panel takes that on, so I guess if you’ve got someone who's very angry, does that sort of get people's backs up, I guess?

P Yeah. Um, but as you were saying there was a certain judge who popped into my head…who I won't name. Actually, with him, it doesn't matter whether an appellant is represented or not he does come across quite, umm… yeah, more stern, he sort of bristles quite a lot. And actually, he, yeah, as it happened, he heard the appeal that I just mentioned a moment ago, the ESA appeal with a chap who'd been, you know, waiting a number of years. And, and so when my client, inevitably, got frustrated and got angry, you know, the judge just completely cut him off and spoke over him. Now, in that judge’s defence I think he gives reasoned decisions, I think he does, you know, he does consider the law properly. But, you know, in every hearing that I've sat before him, I've thought to myself ‘my god, like you're really not helping, you're just pouring petrol on this, on this flame’. Now, you know, that's maybe just his style and, you know, touch wood to date we are yet to have to try and challenge one of his decisions, but that whole emotion, and that whole appellant experience, you know, there have been times where I've thought, you know, if I was a bit more discourteous I’d ask you to basically, not speak to my client in this way. Fortunately, yeah… we've come up to the line a few times with him.

So yeah, sorry coming back to your point, I think it depends from panel to panel really and certain judges will, you know, let appellants have their two or three minute rant, and then do a very sort of calm, you know, appreciate your frustrations, understand what you've gone through and actually do some of the role, or some of explanation that we would maybe have done beforehand. This is why we're asking the questions, it's not to try and trip you up, we're not accusing you of doing anything wrong, but the law requires us to look at this. There are the judges that are a little bit more… yeah, blunt, less patient, however you want to term it. And, and, yeah…

I I was wondering if it's sort of something to do with the emotion of it, and that sort of law and emotion not going together. Adding in these chaotic, angry emotions is sort of not what you're supposed to do in court, is it is supposed to be well behaved, logical, reasonable, and yeah maybe people just can't direct people that way all the time, and you…

P No, no…I hadn’t really thought of it in that way before but yeah, I suppose, I suppose that probably is it and yeah, it's interesting actually because now I'm thinking about it aloud and sort to take you on a bit of a tangent. I think there's sort of two judges who I'm thinking of, one who's a lot more patient and, and more, well more obviously understanding, and I think her background is in academia, and is in teaching, whereas actually, I think I’m right in saying that the other judge, who's more stern is or was should I say, you know, private practice lawyer of a number of years, so maybe that is partly to explain the style, is you know, that background and, but maybe, maybe I'm joining dots that shouldn't be joined but I'm sure there is an element of that…different experiences.

I And how are you doing, do you need a break?

P No, no okay sorry my microphone was just giving me a bit of feedback, but no. I hope this is helping.

I It’s been really good, you keep apologising for tangents that's exactly what I'm after. Oh, I remember the thing that I forgot, have you had many where the DWP representative has come to the hearing?

P So, no in short. A tribunal user group from, I think it was December 2017, has a couple of couple years ago now, we were advised that they were intending to be presenting officers at about 50% of hearings, I think, is their target. And I mean this is completely a stab in the dark I'm afraid, but I'd say it's probably somewhere between 5 and 10% of hearings that we represent at. Well, while over two years down the line. And to be honest, I, my admittedly limited experience of having a DWP presenting officer there, I don't think it makes that much difference. And, well I'll rephrase that actually, I think it again, understandably adds to the stress and the anxiety when the clerk informs the appellant that there is someone from the DWP there. But then actually, by the time it comes to the presenting officer’s questions, if there are any questions, from the presenting officer, I think appellants generally deal with them quite well. And, you know, part of our preparation with our clients is that maybe someone from the DWP there, we wouldn't necessarily have advance notice, this is what to expect, and then you know, when the clerk tells us that there's someone from the department there, is just to reassure them again look, you know, this is what their role is in many ways is similar to my role, but just to present the other side of the case. And… and to remind the client that, you know, there is that impartiality between the panel and the presenting officer, and they're not all, you know, kind of in cahoots, if you like.

I Okay… so there's just some other things that have come up just from the situation recently that I thought would be useful just to ask you sort of what's happening given their sort of pandemic situation. What you're having to do and, yeah, I guess I think they’ve switched to telephone hearing, or there was some online stuff in different regions that sort of being trialled wasn't there?

P Yeah. Um, so unless I've just completely missed it, which is possible, and I've not seen on the HMCTS updates, you know, a Social Security or Entitlement Chamber, to give its proper name, specific update. So, I think all of the chambers, barring the Social Entitlement Chamber, have had a specific practice direction or guidance now as a minimum put up, and that just seems to be a huge oversight. And whether it’s because… I wonder if there's two factors behind that, maybe the sheer number of appeals, but also maybe just the proportion of appellants that are represented maybe it's seen as less of a priority, and a bit more flexible, perhaps. So, you know, I'm yet to see any SEC specific guidance on it, how it's worked in [local area] certainly, even on even on the 23rd of March, you know, when the lockdown was first announced, and we were just going to tribunal on the Tuesday, on the 24th. And, you know, there was, there was no clear understanding from the clerks at that venue, nor the ASC, the Administrative Support Centre, as to how these appeals are actually going to work. Even just yesterday, I had a conversation with a call handler at ASC which went along the lines of, well we're not, we're still not sure how it's gonna work with telephone hearings. But, ‘oh yeah, I suppose… yeah, you can't be in the same room as your client can you? So, we're gonna have to set up some sort of conference call’. And it was a bit like, well, yeah… Particularly given the nature of these appellants and their health conditions, you know, there is no way that I'm gonna, you know, risk their health nor my health if, you know, to be selfish, by making sure that we're all crowded around this person's mobile, you know, it's just not… well it's procedurally, it just can't be right. So, there’s a huge… Yeah, I mean I can't speak for other hearing centres, but in [local location] they're definitely playing catch up and it's definitely, and my perception of it again rightly or wrongly, is that it's a bit of an afterthought. Um, and, you know, from seeing, kind of peers and people in the industry on LinkedIn for instance, you know, I think they've figured it out quite well for the criminal side of things, generally speaking, and I've seen some positive comments about the SEND Tribunal for instance, and fully virtual hearings that have all gone, you know, really smoothly. But, you know, from a social entitlement point of view…umm… yeah, I can't share that view as of yet. So, we're getting word from the tribunal in sort of dribs and drabs as to when we might expect telephone hearings to start. I'm expecting the next within the next two weeks, I hope we'll have actually had one.

I So the one on the 24th for example, have the hearings not been going ahead if they've been cancelled or postponed or...?

P Yeah postponed. Yeah, yeah, to my knowledge, I don't know, certainly when I got hold of the clerk on the Tuesday, just to confirm that it had indeed been postponed, and he said yeah for the next, as it was then, two weeks. They were all going to be postponed until something happened, which I think is the something is still, you know, to be determined. Other than we know it's, they're gonna try and move to telephone hearings where possible. But I just I do worry about, again not unique to social entitlement or social security, but I do worry about the impact on clients both from a just a kind of emotional well-being point of view and a mental health point of view, but actually just wider issues around justice and fairness, and the fact that, you know, as of Monday the 23rd March [2020], you know, there was an impression anyway that hearings were gonna go ahead on the Tuesday, but it was gonna be a judge calling from home. You know what, how was the panel going to be, you know, made up? The court staff again, you know, not to be critical of them because I'm sure they didn't know. They just didn't have an idea as to as to how that might look like. Never mind, you know, the added complication of little old me, you're trying to try to stick my nose in and be involved. The tribunal weren't even sure how it was going to work from their end so…

I Just thinking about how many hearings take place every month, or even just a two week hold on that…that's tens of thousands, like across the country at least.

P Yeah, it must, it must be... I can’t do the maths quick enough. Typically, typically [in the local area] you know, they sit five days a week, and for PIP, there are often two listings of four or five hearings a day. So, I mean, okay, you know, split the difference, eight PIP hearings a day. And, you know, 40 a week, yeah, we're gonna be hitting, we're already in excess of 100 cases that potentially have been affected, potentially postponed. And so yeah, it's, um yeah…

I The thing that's concerning about the PIP ones, is obviously, until you've had your decision, that's people still without their money.

P Yeah, yeah, absolutely. Yeah, so, um, in fact it was, no it wasn't the client who was due to be there on the 24th, her appeal had been postponed for different reasons the week before, but now she's been caught up in this backlog and this uncertainty and yeah textbook example, you know, PIP, it's her income, it is as simple as that. So, yeah, never mind the impact of social distance and having to isolate. Yeah, I do, I do really, do really worry for individuals like her.

I I've been checking their website a lot, but there's just yeah, I was thinking have I missed something because there was nothing on there specific to the social entitlement chamber about what was going on and what to do.

P Yeah. Well, it sounds perverse but I'm glad you're not seeing it either because I was, I was really nervous speaking to colleagues who practice in different areas and, you know, they've got, you know, quite helpful guidance and to give credit where it's due and I've just been sort of scratching my head saying, well, there's nothing that I've seen, specifically for, you know, for social entitlement. So, yeah. Huge uncertainty for everyone, but particularly for that client base, some yeah do worry, worry about.

I Well thank you very much. And is there anything else you need to say or think about?

P No, I don't think so. Let me just say again, yeah just fully supportive of your research and if there's anything else that you know I can do, or people want to put you in touch with or the like do please let me know.

[recording ended]