# Sarah- 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 8 June 2020. Sarah was a Debt and Benefits Specialist Adviser for a British Armed Forces charity in Northern England. The transcript and written reflection have been anonymised, with identifying names and places removed, or replaced with pseudonyms.*

## Written Reflection

Many of our clients have ‘hidden’ disabilities and their outward projection of themselves is so different.

Whilst the majority have PTSD, mental health issues and similar symptoms, they often present differently.

Background

I assisted a client who suffered with depression, low mood and stress. He tried therapy (group) but found this too difficult. He could not face trying to get some diagnosis. He served his time in the Navy then worked in the public sector for 30 years. One day a member of the public spat at him and he snapped and he left the job. He felt that he had some form of a breakdown following this.

He claimed ESA and PIP. DWP found him fit for work and scored him 0 points for PIP, both elements.

(ESA appeal refused but permission allowed to UT, 2nd hearing also refused).

He felt that his mental health problems were not taken into account at all for both PIP and ESA.

The PIP MR focussed on his need for prompting (from his partner who did not live with him but did stay over from time to time).

PIP submission referred to caselaw

* CPIP/13/2018 Health Care Professional failure to conduct mental function assessment in reliance on what claimant said.

Also argued points for prompting under DL and Going Out.

Tribunal Hearing- PIP

First hearing was adjourned after lengthy questioning, panel requesting more medical evidence

Second hearing – an observer (training to be a disability panel member) was sat at back. Client and his partner attended. I was there as representative. The hearing lasted for 1hour 20 minutes. Client gave good insight into his feelings of despair but his manner was rather distant. He didn’t cry [or] break down.

The appeal was refused, 4 points for going out was awarded.

He did not want to pursue error of law and UT application.

He felt relief that it was all over .  he did not [like] to ask for help anyway so it had been a drain.

He thanked me for all my help and said I had been a great support.

The client had been through 4 hearings in all (2 ESA and 2 PIP).

I feel that compared to my other clients this client did not present as the panel would wish. He hadn’t sought diagnosis and was trying to cope as best he could. I also felt that the panels were not the best that I have had before. (I have attended over 100 hearings and the majority are fair even if they are gruelling). Some are definitely ‘adversarial’ when they should be ‘inquisitorial’. Some panel members just do not know how to best engage with an appellant and get the best out of them.

After the hearings he and his partner were so demoralised. I have recommended diagnosis as I felt that he just couldn’t move forward.

## Interview Transcript

I= Interviewer P= Participant

I Okay. So, if you could just confirm for me, you've had the information sheet and the consent form?

P Yeah, yeah

I And you voluntarily agree to participate in this study?

P Yes.

I Good, thank you. So, I'm going to be just making some notes so if I'm seem like I'm not paying attention, I definitely am. And, so to just sort of start us off. How long have you been an advisor, is that you're official role?

P Benefits advisor, yes. Um we have a team that deal with debt and benefits, and some of us do both, and some of us just do debt, all benefits aren't just benefit. Yeah. My role is called benefits advisor, but I tend to do a lot more of Welfare Rights type of work.

I And I was quite surprised, I've not heard of … it is the [British Armed Forces] *charity* you work for, isn't it?

P Yeah, I didn't know before I joined them four years ago, the debt, the amount of stuff that they have anyway. But we're a very small specialist team and our teams are replicated in other parts of the country. So, our team covers [area in Northern England] and very small team, who specialised in debt and benefit. And yeah, I haven't realised that [they] offer that level of support, but obviously they have to be veterans, they can only have served a day, but they have to have served.

I And had you sort of done, Welfare Rights before?

P Yeah, I was benefits also at a Housing Trust for a few years, and before that I'd worked [for an organisation that provided grants] so applications to their fund. And a lot of those applications, I think that's where I started to get introduced to people in difficulty or with disabilities. And then I followed that through with some voluntary work with [an advice charity], and financial capability. So, I think my general leaning was always going to be towards the benefits side of things you know.

I Do you sort of think it was sort of an accident how you ended up there or sort of something was guiding you that way?

P Um, looking back I've always wanted to help people. As a teenager, I always volunteered. I was always wanting to be involved and help people and I think yeah probably I got into admin by pure chance, I didn't really want to do admin, and I'm quite efficient, and I like computers, but I also like the people side. So, this job really fulfils that role because you've got the best of both really, you happen to you know fill out complex case studies, complex submissions, looking at case law, but then you've got to meet someone (well pre-covid) you had to meet either home or an office, and engage with them and get their full story. And I think that's the side that I love the most.

I I was going to ask sort of what your, your day to day is like, because I think it can vary quite a lot between organisations and people's role sort of whether you're involved in the like sort of from form filling, the application right through to the appeal.

P Yes, sometimes you see someone before the form and take them through the process and as a result there are very few appeals. But I came to [the charity], and they just had a reshuffle and they decided no, no form filling by the specialists. So, my role has become very much just appeals but with COVID, it's changed again. So, we've been a lot more involved in benefit checks, initially helping people claim and so the roles changed. I don't know what will happen after, whether [they] will change that stance on it. I think they may, and may decide that yeah, we need to do the form filling. I've always vouched for that, you know, we need to be doing it from the start, not trying to fix it at the end when someone's been through 12 months of angst over this appeal pending and yeah, it's not good.

I Do you know sort of why they made that decision to stop doing the form part?

P I think they felt…they didn't know much about benefits, they’d always been predominantly about debt, as my understanding of it. And I think they felt that the debt role was the prime one because that was regulated by the FCA. It was a proper process. And I think the benefits side was almost left to the Independent Living team, who used to go out and look at just those few grants, and so they felt it fitted in that role initially. So, they need to fill forms a lot with some people, and often don't go to appeals with people and then they decided to completely reshuffle over five years ago, and create a specialist team that will do the benefits and debt, but no applications so that the clients have been left…so where do they go? CAB, or we do refer to [another veterans charity], they do a lot of form filling, which is really good. But yeah, it's a bit strange coming from my background, somebody comments on my way they just do appeals. But I've sort of got used to it, I found it beneficial actually not doing the form because, very occasionally I do a form with someone, and then they wouldn't get the award, then we take it to appeal and because I'd helped them all along, it's almost as if the panel are thinking that you've put words into a client's mouth and so I found myself at a complete disadvantage. About a year ago, where I was absolutely treated dreadfully by this judge in the first-tier, as she accused me of possibly being in contempt of court.

I Goodness.

P Oh it was dreadful experience…but that really put me off. And so, in some ways, I think, yeah, maybe it's better I do, just do the appeals and then I've really got a great chance. Our success rate’s about 87 percent, higher than the national so... yeah.

I Would you mind sort of telling me a bit more about that situation with the judge and what had gone on there?

P It’s horrendous, yeah. Now this was a client with hidden disabilities. He was trying to work but his wife literally looked after him, she got him into work, if he was struggling at work, he had a really understanding boss who would drive him home straight away. There was a lot of support for him because they realised his condition, but they also realised that he needed to work. You know, for his mental health, that was helping him, that he had a purpose.

Um but we had this dreadful judge. And from the moment we got in there she…her manner was… I’ve never been treated like that before. The client was in shock, his wife was in shock. And I was completely in shock, at one point opened mouth as she looked down to write and I looked at the other panel members in disbelief and shook my head, and they looked terrified of her. She was… it was an awful, awful experience. And at one point I… I thought, do we just put a stop to this, with hindsight, I should have said I am going to stop this, but you don't want to damage the clients appeal at all. The client was refusing to answer her questions in the end because she was so hostile and he just looked at the floor. And she… she said to him, ‘if you don't cooperate then this is, this is finished now’. And so, we agreed to cooperate, and she didn't really change her manner, it was horrendous. And then, when she asked a question of the wife, the wife answered, and I confirm because I've met this couple in their home, you know, assisted them throughout the process really, and she just accused the wife of not telling the truth and then when I was trying to back it up she accused me and then she accused us both of possibly being in contempt of court. And then because the bundle wasn't in great order, because I don’t know what the clerk had done, but when evidence had been sent in by the client, it had been copied with pages in the wrong place. And yes, I should have checked that before we got there, but she made it as if it was all my fault. And I said ‘well, I didn’t put the bundle together’ but then thinking I should have checked it, but it's not really my job, I'm not a clerk. And so she really had to go at me about that and then she sent us out and we went away. And I thought, that's it. We've lost that appeal, but no, she awarded him. To this day, um, I was in shock for about a week after that. I've never been in an appeal like that. And she was in [local area], a really nasty judge. I think if I knew she was doing another appeal, even though…you know, we won that one, I don't think I’d subject anyone else to it. I don't know if she had some mental health problem, but she was really… she was strange, there's something not right.

I So was it just her manner that was very hostile?

P It was very abrupt the moment we got there, which is fine because you know you get different people all the time, you get used to that. Some are great, some aren't so great, but her whole manner was immediately hostile, aggressive… how she expected to get anything out of him, I don't know.

I I was gonna say it seemed like it really impacted on his ability to, sort of, communicate, as well.

P Yeah, it was really bad anyway, before we even got in there, you could see from his body language that he wasn't coping. And he turned up in his shorts because he lives in shorts. And I don’t know, they just seemed to take a view of this person… you can't do right for doing wrong, because you've got that case where people will turn up in their natural attire because that's the way they live and then I've got other clients who want to wear the full regalia with all their medals, and they get penalised. ‘Do you wear these medals every day?’ one judge said to my client. And he really made an effort, you know, when you think, well you can't do the right thing for some of these panels. They either want you to look smart, or they want you to look scruffy, and they don't seem to…I don't know, the more I do, the more astounded I am. The more appeals I go to… it opens your eyes.

I I know you'd said you've done over 100, which is a lot, and you must have a general sense of sort of what they get right and what they get wrong, and maybe we can go into that a little bit more.

P Yeah, there's some fantastic panels, panel members, especially… there’s either awful GPs or there's amazing ones who are really interested in the person. And they've built up that rapport from the start, it only takes a few, a smile and a few nice words and you've got that person hooked, but they don't do that. Some of them have got no bedside manner, and it's nice to see when someone gets it right and you come out of there and you think that was a really fair hearing, that person questioning the client knew exactly how to question. And they just let them open up, you know, they'll, they'll say to someone ‘well describe this for me’, ‘describe how you feel when this happens’, and they really get into the nitty gritty of it, and that's the sort of questioning that I like to see because the clients, you know, they will open up with that sort of questioning and, so that's been good. I've had some excellent judges where they immediately put the client at ease with their introductions and they're very clear in what they say at the start and in a nice ordinary way, not you know, with language that… I mean a lot of my clients don't understand. Just plain English and just be really fair, and, you know, say it like it is, but be nice with it, it doesn't take much to do that. You know, they've already been through an awful system and it's almost like a lot of them feel that they're guilty of something, when they go to court, they still feel that after all this time. I, I get nervous before every hearing. And it's just the way it is.

I Yeah, it's a very artificial environment, I guess isn't it so, yeah.

P Yeah.

I Do you think they're sort of your I don’t know if you call them clients?

P Yes

I They're experience with the assessment, sort of factors into that tribunal sort of expectation and stuff as well?

P Yeah, a lot of them want to fixate on what the assessor got wrong, and I say to them… Yeah, some judges will run with that, they'll go through it. But I don't see that much anymore. I will say to the client now, forget that, it’s the past, that assessor is getting paid to do a job that doesn't necessarily involve getting your story and getting it right and this is your chance to get it right and I’ll try and focus on it that way rather than having them run away with this is what was wrong, the assessor did this wrong and they did that. And so that won't win your appeal, you need to concentrate on, on the facts of your case and forget about the assessment. Yeah, because it's…that's where they feel the most, umm… how to describe it. The most let down by the system is the fact they've met this assessor, who was either lovely to them and said, ‘Oh, you've got nothing to worry about’, or has been really nasty, and then written things that the client actually thinks they've got the wrong report back. They don't even see that it's them, who sat in front of an assessor, they say they must have got the reports muddled up. Mind you that’s another issue as I did have that happen.

I Sometimes that is the cases isn’t it. So, so a hearing is going to be very stressful anyway, isn't it, and sort of added to that… feeling like you're on the backfoot already. I know in your, in your reflection, you'd sort of mentioned about the inquisitorial-ness (that’s not really a word)… versus the adversarial. And so, I just wonder what your experiences are with that because that's definitely what the tribunal is supposed to be doing.

P Yeah. Umm as I say that it's almost assumed that… I think it's like going for a job interview, you walk through the door and the panel look at you and they at the client and they make a judgement immediately. And I think, you know, we all do that to some extent but then I think they carry it too far because, like I say, there's one client who'd made a big effort to wear his medals, and he was in a very bad way… He’d served alongside two colleagues who both committed suicide and he remembers the bodies, because they committed suicide they were treated quite badly and were just put in bags and carted off, and he just remembers the thud of the bags carrying them. And so, he has nightmares, and he sees his friend sitting on the end of his bed. And he, he cries quite a lot, but he’d made this effort this day and come and immediately they said, ‘do you wear your medals every day?’ And I thought, 1. it's not relevant to anything to do with this PIP appeal at all. And why would you say that to somebody? I found it offensive, because… you just wouldn't say that to somebody, it’s really rude. And you think, that's not your job to be rude to somebody, you know, leave that to somebody else, who's got an issue with it. And I was quite annoyed with that. And we did win that appeal, but not to the level we wanted… they really didn't like him.

And the reason it stood out so much, I'd got two appeals running concurrently one after the other. And I said to the clerk, I want to make sure that I meet and greet my second client. And he said ‘oh you'll be out of there, you’ll be out of there’. So, as it was, I did go in with this client who they treated badly because he was dressed up and he was older. My next client was quite a young bloke who’d served in more recent operations like Afghanistan, and he was a lovely bloke and he'd got issues as well and hidden disabilities. He went in and he was treated like a different person by the same panel members, and I remember coming out of that thinking, I've seen them behave how they should behave, and I've seen them behave how they shouldn’t, and there was no difference in those clients, other than their age and their appearance. They both struggled with similar mental health problems, and so to me, I just find the system so wrong when I see that, because I hate, anything like that when someone's made a judgement just by looking at someone and thinks they can be rude to them. And they were so nice to my second client, you know, ‘Oh, why don't you feel like that’ and ‘when this happens while you're working’, and ‘blah blah’. Maybe because he was working, they thought he deserved it more, you know you just don't know with some of them why they take the stance that they do. Sorry am I waffling?

I No, we love the waffle, this is perfect. It's, it's really interesting that you've got one that was sort of back-to-back, and very different, because I think it's the consistency you assume that if it's the same people, it will be the same experience. And, yeah, often it's quite different. And it's hard to pinpoint sort of what, what was the difference there.

P What I don’t like is…oh what was her name… sorry it will come back to me.

I Don’t worry I do that a lot as well. I was wondering if we could look at some of the, the sort of good experience you've had, and sort of maybe dig in a bit more as to sort of why that was. So, you talked before about sort of people walking in and making that sort of judgement and sort of the difference in how much value I guess is put onto that later…

P Yeah, sorry, can I just mention this one awful thing?

I Yes of course!

P I put in a complaint, and it wasn't carried forward. It was just the disability panel member, and my client had a stress ball that he needed. And, and he previously won at appeal. And then he'd been reassessed because he put in a new worsening condition, and he lost that, so we went back to appeal and this time we had an awful panel. The disability panel member scowled. And I remember her scowling at the whole, all of us me, the wife, and the client. I mean, really scowling and, you know, if you had to sit with someone scowling like that you'd get up and leave. And I wish I had because she was making me feel uncomfortable. And when we came out, I said to the client, you know, how did you feel, and he said ‘I didn't like the way that lady was looking at me’ and I said she was looking that way to me as well and it wasn't right.

So, I put in a complaint, and they said ‘oh well, they all have training panel members’, and it will be brought up as a training issue and I thought, how can you get someone on the panel who's prepared to scowl at someone throughout the whole thing and I mean really, scowling. I just can't believe that someone in a panel …and the judge. Some judges won’t stop proceedings, or if they're aware of it, which they must be sometimes, when the doctors sometimes go off on a tangent and it's not even relevant to PIP and you think, come on judge pull him back in, or her, but no, they let it go. And I think that's not a good judge either. Anyway, I'll stop going on about the negative. There’s not many positives.

I It's definitely an issue and I think because the assessment part is often quite bad and the overturned ratio here was so high. I do, I certainly went in with an assumption that oh it's definitely much better, but I think it's like in terms of consistency and the fact you're getting three different individual humans, there are going to be flaws in it, and, and it's useful to sort of pinpoint those because ultimately you just want to improve it for people.

P Yeah… I think what I go in now like, is… making a note of everything, because of I’ve had, I think it's five Upper tier now allowed, where I've recognised it's been an error of law, and I've got help with it from Child Poverty Action Group (CPAG). And we've appealed it to Upper tier and we've won, so now I'm going in with a different frame of mind. I'm going in with, I'm going to watch that you apply the law here. And so, as such, I'm doing what you're doing, when I'm writing, so perhaps not observing as much as I would normally do. But that doesn't seem to, to be a problem, but I am going in with a different frame of mind. Yeah, and I never give a client any idea because I never know myself which way it's going and they'll say to me after, while we're waiting for the decision, ‘did you think that went well or was that awful?’ and I’ll say I really don’t know. You know, because you don't. The ones you think you've won, you haven’t… and yeah so…

I Yeah, very similar to an interview, like you mentioned before.

P Yeah, definitely. Yeah, I've got a client who has not yet got to appeal and I’m worried because, especially with COVID, they're offering telephone appointments. Now, he can't cope on the telephone, he's got a wide range of different mental health problems, ADHD, Autism/Asperger, he's got a whole range of conflicting issues. And you can't speak to him on the phone, he slammed the phone down on me before he met me, and he can't cope with telephone because he can't see body language. So, when he met me, he was like a different person. So, he's gonna need face to face, now he will probably come across… well, he is very intelligent man. He will come across fine, face to face, because he'll be able to understand the body language, he might get a bit frustrated, but he'll come across really well. Whereas I know that none, none of us in the [charity], none of us who've helped… cannot deal with it for the majority of the time because he goes off the rails. He will slam the phone down or be… well, I can't go into the details, but he's raised safeguarding issues that’s been another thing. But at an appeal, they will just see what they see and just make an assumption. And that's my worry, I'm trying to try to get the decision changed before repeal. But we'll see.

I Yeah, it's tough at the moment with them all sort of being automatically put to telephone hearings. And I guess, you know, there's all manner of different things they need to think about but, like, it's a lot easier for example us doing this and being able to see each other. And you think like it is possible. Like it's definitely possible but I understand they're probably things in it that I don't get but it's that different methods that suit different people. So, if you found, sort of, generally, you're better off going for a face to face, rather than say a paper one?

P Yeah, I mean it's up to the clients, I always leave it up to the clients, and I say to them, it's probably best if you go. And for some clients that's just not possible and that's fine because that's their decision. But most of them want to go, I think they want to have their chance to get the record straight. And for the… for many of them it's not about money. Loads my clients have said, I'm not interested in the money. What, that one example I gave you, he didn't need the benefit because he had an occupational pension and he was, all of his interest was in getting his stamp paid towards his retirement through being entitled to ESA. And so, for him, it wasn't about the money and for most of them, it's not about the money. You know, some of them might have war payments. They've got all the money, but for them it’s the fact that no one's believed them. I’ve had clients come out crying with relief that someone has finally believed them. And that's, that's really good to see that someone wants to be believed and someone has believed in them. And yes, some of the panels are good and some of the judges are amazing. You know, you think, I wish I could question like that judge, the right… really good questions.

I And there was something else in your reflection about… So, the person you had written about, and you advised in the end to try and get a diagnosis. So, I just wanted to sort of talk to you a bit about the medical evidence and sort of how that fits in.

P Yeah, and, interestingly, we had a case that was refused appeal… It was refused. And we appealed it to the Upper tier, they did have medical evidence in there but there was no formal diagnosis of PTSD, even though there was obviously the… when he'd been away for therapy, there were therapists letters, there was a lot of evidence that was random, but there was no formal diagnosis. And he was undergoing that, it was sort of in place nothing had happened. And when we went Upper tier, they did find an error of law. Also, we were able to provide a letter post appeal that verified his PTSD. The district judge, it only happened last week, has looked at the case and rather than submit it for a fresh hearing, has agreed that he scores enough points. He did say, had the panel been presented with that diagnosis they might have made a different decision, but the fact was he's still got PTSD, you don't just get a diagnosis and you've never had it, you know… So, for me, I always find it strange that they need that diagnosis because if you've had those symptoms and you go through the process of getting a diagnosis… it's just a piece of paper confirming what has been suspected all along, but they do place a lot of emphasis on that.

So yeah, for a lot of my clients who are refusing to get help, or they don't want to go through it because it's painful to go through it. And I have to, I do have to say to them if you want to avoid going to through this appeal process again, I would recommend you get a diagnosis, and it may help you in the long run anyway. Get the diagnosis. And one of my clients has just won the telephone appeal and he, although he had epilepsy, he also had depression and PTSD, which was never diagnosed, and he said to me from the outset, ‘I'm not going to be able to cope with a PIP appeal and a diagnosis’. So, I said, fine, we'll go for the appeal first. So, when we had won the appeal, he felt so much better and he said, ‘I'm going to go for diagnosis now’. Much like, you know, I've been through this so I'll he alright. Which it's good.

I So it seems like, because of who you're dealing with, it's a lot of mental health issues and PTSD and anxiety. That must be quite difficult because the, the hearing is stressful, Stress inducing for anyone. Is that a particular challenge with your clients?

P Yeah, I think because they've been trained to be in the Army or the Navy, that they're quite, they come across as resilient. So, they want to be able to cope and they do. I don't know how they do it, but they do get through it, majority go for a face to face. They want me there, but I do say, you know, I can't always be there, but I am for the majority. And I say to them, me being there won't make any difference on the day, but if you want me there, I'll be there. And they do seem to like that support. But, umm… Yeah, I think they, they manage it, and I don't know how. They don't sleep the night before and they'll be anxious for weeks before. And I do warn them at the start, you know, and start working with them that this is a very long process, it can take up to a year and most of them will still stick to their guns, they want to go through what they… and I think because they feel it's a massive injustice, they feel that they fought for their country and then no one’s believed them that they've got these issues.

I Maybe you sort of said as well about your one of your clients, not presenting, maybe the way that the panel wanted, I just wondered if you could sort of take me through a bit more of that.

P Yeah, he was a nice guy but he’s very strange though, even with me he was quite withdrawn, hardly any facial expressions and came across, he’s a big man and quiet, not aggressive. It's hard to explain but he looked hard. And when he spoke, it's almost like you didn't want to believe him… and want to know how to explain it. I believed him because I'd met both him and his partner who didn't live with him. They were lovely; they came to the office, and they sat with me, and she got quite emotional and she described how he was. And they were really nice couple, they did a PIP diary and they, they really engaged with what I asked him to prepare for it. And so, I was quite surprised really that on the day, I knew he wouldn't come across well, but I hadn't realised how much emphasis the panel made with that, and the GP was nasty. There’s a particular GP going around who asks a question, and the client misunderstands the question, because she doesn't phrase it properly. And when they answer and it's not the answer she's looking for, instead of saying, sorry, maybe you misunderstood I’ll rephrase it and she says ‘NO!’ And then she… she asks what she should have asked it like in the first place. And you think, that's not the client’s fault, so immediately he became defensive and that made him even more withdrawn. And then the GP on the other hand, sorry no not the GP that’s another case…they started the GP, this is another case on this case we're talking about another GP, a male he was really good. And he was drawing out from him ‘you know, you've been to therapy, what didn't you like about it?’ And he was really getting some good evidence, but it still wasn’t enough. I don't know if the judge didn't like him, I don't know. But as far as I was aware he should have scored the points, at least enough to get the standard rate, and he didn't, and he just didn’t just to take it any further. Which is a shame but that's his decision.

But again, his attitude I think and there's not many like that because most will engage. But I think his problems are so deep rooted and he's never had any diagnosis of anything. You know, to work all his life and then get spat at by a customer and then just walk out of the job. You know, something snapped. And something probably from years ago, but he doesn't want to face up to that. That's really sad to me when you see someone who can't move on. I've got another client like that, quite a young bloke with diabetes and his mental health is bad, but he won't do anything about it, he just keeps having hypos and then not managing his diabetes, but the other side of it then anxiety he doesn't do anything about. Over the last four years we've had two appeals and he's won them. But I've said to you really, you know, I would suggest you get some therapy or diagnosis to move forward because I think they're gonna clamp down on people and say ‘right you know you're not on PIP anymore’. Because they don't want people prolonged on PIP do they, they're trying to get them off with these constant reviews, which is clear. And I see, I see where they're coming from, because you know you want to see someone improve if there's a chance they can. And so, in that case, if I could see, you know, that you would, you would want someone to get a diagnosis and try to move forward. You know, even if it's a few steps over a few years or…

I Do you find it quite difficult, so I think it's often sort of termed like insight into your condition, isn't it? So, like, the people you've described there seem very much… maybe not willing to engage with certain bits, is that hard to…

P Yeah, it is because I'll try and put a submission together based on what they've already told me and when I've met them. And I'll have to go through it again with them and say look we need some more examples. Can you explain this? If they've got a partner, it's a little bit easier because partners will say ‘no you don't do that, I do that for you’. Often, they're embarrassed, I had a client who put on his form that he forgets to take his medication two to three times a week. So… when I've done the submission last week I thought, well, that's not the majority of the time, I'm going to struggle with that, so I called him. And he said, ‘oh I forget every day’, and I said well, why didn’t you put that down? And he said, ‘I didn't want to look stupid’. So, you've got these older men who are quite proud, and they don't want to say these things. And I think, over the years, you know I've developed, luckily, this ability to speak to people and get some information from them without them feeling ridiculous. And they will open up to me. I think it's only that way that we get a submission together that's got elements in it that hopefully the panel are gonna focus on and try and get out of the client themselves. So, yeah, it's that sort of insight isn’t it, trying to get people to reflect on the, you know, that it's not a bad thing to actually say this, you know, it's not a bad thing to say, you don't bother washing, you know, for the majority of the time, because you can't be bothered because of your depression. It's getting people to admit how often that is actually happening and what prompting they do get, or all that they need.

I So, it's quite a weird position to put people in isn't it, because it's quite personal, private really information. So, yeah, it must take a lot of hard work, making people feel comfortable is probably the biggest thing to help with that.

P Yeah, it's like the toilet needs. Many of them won’t claim that, you know, they've got grab rails everywhere else, and I'll say well what about the toilet. And yeah, the information comes out then. I mean you to get the odd client who tells you far too much [laughs]. Generally, it's the ones who tell you nothing. And I'm trying to think I've got quite a few examples where… yeah. A client who had some prostate cancer, and problems getting investigated and he’s said he was embarrassed about meeting people. He didn’t have real anxiety or depression, so I asked, what is the issue with this? And he said, ‘well you know I dribble sometimes’, so I was like, ok he meant like urine… So we built up a case and I had to say are you okay with me putting that in the submission? And he was saying ‘yes’. And so, they will give you the information.

I had one client, who's in fact its tomorrow, or Wednesday his PIP appeal. And when I met him, he was still living with his wife, and subsequently she has left. And the reason she left was that he threatened her with an axe. So, I have to put this in the submission because I said to him, well, if that panel is going to question his, his engaging with people and how he can cope day to day. I mean that's a major issue, you know, threatening someone with an axe, and he said I wouldn’t have done anything with it. And I said, are you okay with that being in the submission? And he said ‘yeah’. So… And, and it would have been better to see this client, because I think he might clam up on the phone, I think you probably will. Yeah, we'll see what.

I Do you think with…so for example, it kind of makes sense to me that people with PTSD who have been in the army and been trained in that way, that often that would maybe be a bit of violence or anger that comes out with that. And do you think, sort of the panels are aware of sort of the different ways mental health can sort of come out and…

P They struggle, or I had a really good panel once in [another local area] who questioned my client, and it was for PIP, but they asked him about his job that he used to do. And they said, ‘why did you get the sack?’, and they obviously recognised it was a pattern, he wasn't holding down a job. And it was something that, was in the early days of me doing appeals, and I hadn’t explored that side of it enough really. So, they were very good because they were going into the depths of, you know ‘why haven’t you held down a job?’, and ‘what happened to your last job?’, and he said, ‘oh well I punched the manager’. And then, ‘oh, why did you do that?’, and he explained why, and they said, ‘so presumably you lost your job?’, he said ‘yeah, but he lost his teeth’[laughs]. I was dying to laugh, and I was writing my notes, trying to supress… so they managed to get the, the anger and the aggression story out of him quite cleverly really. But yeah, not every panel does that. I mean the client had never told me that. So that's the something now, I think going into all these appeals helps you build up a lot more of your questioning skills, and the examples that you need, and makes you explore a bit better. And I think someone going in without representation would probably be okay if they got a good panel, but because you can't count on that I think the clients do want the representation, because at least we've had a chance to discuss it with them. I always play devil's advocate now; I have to say I'm only asking you this because this is what you may be asked and they’re quite good then they'll, they'll open up.

I Do you think that helps to sort of prepare them, if it's you asking those questions and yeah…

P Yeah, definitely. Yeah. Cause, it's the unknown isn’t it, it’s all right for me, I go to many appeals, but for some and for many of them it’s the first time. So, they don't know what it's going to be like at all. And that's difficult to try and explain to someone what it's going to be like. Yeah, really hard without being negative, but with being realistic, because I've never raise their expectations. I tell them the facts and figures that you know… so many are successful, but even that you know you can't rely on that, people have had some refused that I wasn't expecting.

I How do you sort of describe the, the hearing to them and, and sort of help them prepare?

P Umm... I just tell them the straightforward process first of all, I do that initially on my initial advice. And then, rather than letting them think about it, I just focus on preparing the submission, speaking to them regularly. But then, about a week before, I call them and that's when I give them a lot more information about… what will happen on the day, what's likely to happen and how they, they may be questioned in a way that feels like it's the DWP speaking to them. There's a lot of panels who seem to have taken on this DWP terminology and that worries me. They're asking the questions the way the DWP have presented the questions, the way the healthcare professionals ask the questions, they sound more like people from the DWP. And I also warn them that we may get DWP presenting officer there, but it's nothing to worry about. And quite often they're on our side, which has happened, so many times now… And, yeah, so I give them as much information, or I say what do you want to ask me. And yeah, they do struggle that week before the hearing. And then on the day itself. Yeah, it's, it's struggle for them. And, but yeah, most of the time it's, it's a good hour call like go like quite... relieved, very relieved.

I Have you found…I am thinking how to phrase it… so when you've had a good panel, that’s good at those drawing out the questions, so that even when it's maybe been a negative outcome for the appeal, how do people feel after that?

P Yeah, yeah, I have had a few where it’s not been a strong case I thought. I've told the client that, and the panel have been very fair. And they've not been horrible, they've been, you know, really considerate to the client and they have applied the law, and you just come away thinking. Well, yeah, they did the best they could, but it's a shame. But that doesn't happen very often because I think I generally represent the ones that have good a good strong case, and I feel really strongly about. I wouldn't put someone off appealing, but I'd say to them, you know, you may struggle with this, this and this and they agree on the whole. Yeah.

I Are there people that you do have to say, basically I don't think you would be successful.

P Yeah, or I give them the questions I'll say, can you honestly answer that you can't do this? The majority of the time, repeatedly, and they'll be honest, and they'll say, ‘well, yeah, I can do that’. And then a bit more probing, you might find out well actually they can’t but for years they've managed. So yeah, it's a curve ball line isn't it I mean, I'm managing their expectations because you don't want them to go through all that to just fail. And some of them will then realise they didn't do the form properly and they want to do a new form. So, there's all those options in the beginning that you can go through with them.

I You’ve got quite a few years of experience now, doing this, it seems like an understatement…. do you think you've learned a lot, just from doing these sort of applications and hearings, sort of how has that changed your practice?

P Yeah, I think it's changed it a lot and I think going to the Upper Tier has massively impacted on how I go through an appeal with someone now. Having seen it, you know it’s a completely different scale. It helps… umm, but it's also, you know how people say yoga is a practice you can never learn it. Well, I think it's the same with appeals, I think it's all a learning process, every single one, we learn something that you apply the next time, which is awful because you don't want your clients to be guinea pigs. But to me, it's a constant learning curve, and some of it, well I'd say, the majority of it is luck. Honestly, I do still believe it's the luck, it’s who you get on the day on the, on the panel and then that is all it boils down to. I obviously can't say that to the client. And I don't bore them, the client with, you know, lots of case law but if I feel that they're interested in that side of it then I will. But for the majority of my clients, I focus on it in very simplistic terms, really. Yeah, sorry. Did I answer the question?

I Yes, no you did. Are there things that you think you do differently now than say when you were a year or two into it?

P Yeah, because it’s a constant learning curve. Thinking of a submission I did last year because the hearings has just come up, and I think that was an awful submission. So, you're constantly improving and some tribunals, like that awful one I always put it down to, well I had to go through that awful one because now I'm hot on the ball. And if it's not right, so, in a way that's done me a favour, because it's something I was a bit haphazard on because I'm more of a people person. I will think, oh yeah, the paper works fine on… trundle off to the tribunal with it- not really checking that all evidence is in the exact order, so I am more thorough now. And so, every bad thing that happens, it changes you for the better. Um, and then also seeing how good some judges are, you know, it has given me that ability now to go in objectively and think is the is the judge good, are they applying the law, are they doing the right thing? And so, I make quite a lot of notes now and those notes were helpful in a recent Upper tier permission to appeal that we applied for, because in the statement of reasons the judge has hadn't recorded a fact that I'd recorded, that actually was quite significant. And we quoted that, and we will now have permission to the Upper tier. So that was good. So yeah, it makes you, not only a lot better at questioning your own client, but a lot better at preparing and being active in the tribunal because I'd sit there making notes, but I wouldn't be actively making notes, I'd be just looking busy as I was afraid to miss something, I don’t know why in the beginning I was… I was more of an observer in the beginning and moral support. And then as time has gone on, I thought no, I've got to make sure that there's no error of law here, so my notes are like five, six pages long now, I've managed to make it so it can read my own writing…[laughs]

I That's always very handy.

P Whilst yeah, I'm not looking up, I'm not observing quite as much, I feel I'm doing a better job. And so, obviously if it needs to go to the Upper tier and we want to prepare. And I don't want it to go to the Upper tier but sometimes I'm so angry with First tier and I know that they didn't do it right, that you just, you just get angry it makes you pursue it.

I How would you sort of describe the difference between the First tier and the Upper tier, I’d imagine they're quite different?

P Well, this is what I didn't understand you don't go Upper tier. I did go and observe in London, and the actual Upper tier, how it works, anyone can go and observe, I didn't realise, you just sit at the back. It's very, very different. It's just a judge and all they’re doing is deciding whether there's been an error of law and giving permission, and then they'll either direct it for another hearing with a fresh tribunal, or they’ll make a decision and that's where your case law comes from. And that will make case law, but all of mine I've only ever gone back to First tier for a new decision. So that second, Upper tier process is very different, but apparently the judges at Upper tier really know the law, whereas FFT judges are not that good, not that knowledgeable,as they like to think, and they don't apply the law or they don't reason it out. I think that's down again to the questioning and so when they write their statement of reasons, they've come up with conjecture… pure conjecture. And the way they've written it, which is demonstrated by the fact they haven't been able to ask the right questions.

Some will be really good, some judges will… sorry I've gone off on a tangent… now some judges will say to me ‘do you want to ask your client about this?’, because they'll realise, they're not getting anywhere with the questioning. And, in fact, it happened only two weeks ago on the telephone hearing, the judge was going round the houses trying to get to the crux of this question about social engagement. Um, and I thought he was asking all the wrong questions. But at least the judge turned me on the phone, and he said, ‘would you like…?’ he said, ‘you said you get where I'm coming from?’. He said ‘you're obviously knowledgeable about these things, what do you think? What are you meaning by this?’ We wanted him to get the extra points for needing social support to engage. So, I ended up telling this judge what the descriptor actually means and then how it applies to my client’s case, and they actually did, they awarded those points. But I thought that's not my job, that should be a proper judge would be able to do that. So, I got quite… I was glad cause he's asked me and given me the chance, but he should have done it. And, and so that's why I've always been told, by all the training that goes on, that the Upper tier judges are really knowledgeable, where the First tier aren’t. And you see it so much and they don't know how to deal with a panel, especially a doctor who is going off on the tangent and let them talk for like 20 minutes about something that's not even relevant and you feel like saying your job as a judge is to rein that in and get the relevant question. And if you can't manage your own panel, you know, I just find it shocking.

I Interesting thing as well about the balance between three people instead of one where it's, at the Upper tier it's, it's one. Yeah. And have you sort of noticed the sort of power dynamic there, I guess?

P Yeah. Yeah, definitely. And you can almost tell when some of the panel members don’t like each other [laughs]. And, yeah, it's interesting when you get to know the same faces, so although I might not remember a name when you see their face, oh yeah, I remember you. And, and you remember the, the daft questions they asked or how ridiculous they make the client feel, and that's hard because you know them. And, yeah, I just think, some panel members like the ones with that horrible judge who said we were in contempt of court virtually, the other panel members looked terrified of her. And I was thinking, can you imagine having to go to work, all day listening to appeals with a judge treating people like that? You would, I don't think I'd be able to do it. And they looked like they didn't want to be there. You think that’s horrible. It's not good.

Some of the rooms are very official, and some are very cosy. So, there's not even a consistency in the rooms, and one client had asked not to be facing busy traffic. Because if horns go off or, you know, a loud bang then he thinks he's back in a war zone and dives under the table. And they, they actually had the hearing in a room facing a busy street, and the window, him looking out the window. You know, I try where possible cover all those angles, I'll say, you know, the client’s liable to explode, or the client’s liable to do this or they need a separate room in the waiting area, and often that's not possible. I had one client who couldn't sit in a waiting room. And they had no rooms available, we had to stand outside in the porch, which wasn't convenient, it was freezing cold for a start. And so, there's … the things they ask you before a hearing, just does… the client needs… they'll be around like hearing loops you know, the obvious, easy access for wheelchairs. They won't be around all those little things that people with mental health difficulties experience, that you don't even think about. You know, I wouldn’t think that facing a busy street was a problem, but it clearly is for some people. Yeah, so there's not that sort of consideration taken, and especially in terms of the waiting areas which can often be awful places, very uncomfortable with chairs that I struggle to get out of, and I haven't got a bad back or anything. They’re very busy and horrible places. [There are] some courts that are good, and they have a separate little room that you can go into.

I Are there any other sort of adjustments that you've asked for your client so like similar to not being in a room with traffic, that sort of different from the usual hearing loop and wheelchair access?

P Yeah, I think it's been mainly around the waiting areas, stressful for the clients who've got hypervigilance. Some will say that they don't want their back to a door, that they have to be facing the door. Which, if I think of most of the courts, the door is behind you. So yeah, a lot of my clients are very uncomfortable with that.

I It seems like something that would really vary from person to person as well.

P Yeah.

I That's not really what the court is made up for is it?

P No…no.

I All right. Well, that's, that's all been really great. Thank you. Is there anything that we’ve not covered that maybe is still sort of floating around in your head or…?

P I could talk all day [laughs]. When I think of all the different cases, but I think predominantly… the one I mentioned that was most awful experience. And then, one I had was a lovely experience but that was up in [local location] when I first started the job and I was doing a lot of travelling and the GP was extremely interested in the client's history in the Naval Service and… what I liked was he put the client at ease straightaway and he asked him about his life. In a nutshell, you know, not that we were there for hours. It was basically ‘can you tell me what you did as soon as you left school’. And then it was the client immediately sort of engaged with that and they got a lot out of him. And so that was really good, but that has very rarely happened since, and sometimes when I'll mention to the panel, and this is an important point, in all the submissions, I refer to the Armed Forces covenant. And I refer to the fact that the person served in whatever countries they've served in, whether that be Bosnia, they've been in the Gulf, there’s so many different conflicts that they've served, and I'll always highlight that at the start. And it's very, very rare that the panel wants to take that on board and their usual stance is ‘yes, yes, yes’ we understand about PTSD. And I think, well you actually don't, by the way you have conducted this appeal, you don't understand about PTSD. And one of my clients when he related that story of seeing his best friend speaking to him at the end of his bed, the one who died, the health care professional laughed in his face, and we put in a complaint. Now when that got to court, they didn't laugh at him, but I genuinely thought, they weren't in the slightest bit interested, whether they didn't believe it... And there's quite a lot of times that happens where I'll had a client who served in Northern Ireland and he can't get in the shower for long, because he feels claustrophobic in there because when his friends were in the shower cubicles, they got blown up. And so, he had this association. Well, they weren't interested in that, they didn't score him points for needing prompting to shower and bathe, which he clearly did. And… and I just found it appalling that someone would… it's almost like ‘yeah, yeah we know about PTSD’, but they actually don’t. And I don't think they really want to know. I don't know what it is, whether it's just a phrase that's been bandied about that much now that people aren't interested in it, but I find it shocking really that, um… because the more I speak to clients who've got it, you know, the more you need to understand about it really. So, yeah, I'm really shocked.

There was one client who had quite bad PTSD and when he went for the assessment, the assessor was Asian and she was very interested because he was referring to his partner and she had an Asian name because she was Asian. And she said ‘Oh, does she practice her religion?’ This is not connected to his assessment whatsoever, but she was asking him, ‘does she pray every day?’ And he went, ‘no, she's not practising,’ and she started accusing my client, and then… what was it? Umm… basically that he was leading her astray, and he wasn't respectful of all the faiths. And does she see her family and asking him all these questions, so we put in a big complaint. And they went, the DWP went to see him, and they went to question the assessor, and nothing really ever came of it. There was no apology, nothing. And, and when that one went to appeal, he did win that appeal, but sorry I've digressed a bit but that was a reflection of how awful health care professional assessment had been. She wasn't interested in his PTSD; she was interested in his partner's faith. And you’re thinking, you know, they've got these people doing those assessments who, they might have been trained in how to complete the form on the computer, a few tick boxes, but they haven't got a clue how to speak to people… it’s just horrendous. But yeah, I get to hear all sorts of stories about those assessments. With a witness in there with them, no one ever took their blood pressure and then there, clear as day, in the notes is blood pressure read as such and such and they make up a blood pressure readings. Yeah, it is shocking, and I do go through…just this one case, sorry, went to a hearing in [local area] I think it was, I can't remember where it was. The judge was excellent and the minute he looked at the bundle of paperwork and had seen this assessors’ name on the assessment. And then he questioned the client, and he did go through that assessment, and he said, ‘did this happen?’ and the clients said ‘no’. And he got the bundle, I'll never forget it, the judge, and he flung it across the table in front of the DWP presenting officer, and he went ‘usual inconsistencies in that assessment’ and bunged it down.

Now I write down all the assessors names and I have a list of the ones who have had complaints made about them, or where the judges know, they know full well that assessment hasn't been done properly. And that's what you need, you need someone on the panel who knows that it hasn't been done right from the start or why you're putting this person through so many questions. I had one client who literally could hardly walk, and I went to his assessment with him. The minute we walked into the room, the judge said, ‘I'm not even going to ask you any questions’ she said, I can see that the DWP should have awarded you points so on that basis I am reinstating your award. And he broke down, he actually just broke down in front of her. Because there is someone who's had the sense to read the bundle, see the client for herself and know full well what was going on. And that’s one where I've been amazed that someone's had the, the sense to look at the paperwork properly because half the time I think that paperwork, it doesn't even get looked at really by the panel. Sometimes I've gone in, and they said ‘oh thank you for your useful submission’, and then halfway through this appeal it's clear they haven’t read any of it because the answers are all in there. And I know they're trying to get it out of the client, but, you know, they clearly haven't read it at times, and I don't think, from the outset that the mandatory reconsideration is read, I don’t think the assessment is properly looked at, I don't think any of it is…but yeah that’s my gripe.

I With ones where you have got sort of got an assessment report that you know is inconsistent. Do you have to sort of put in a lot more written submissions to that to sort of try and balance it out?

P No, I started not doing that no, now I say to the client ignore that. Let's forget it even happened because none of it makes any sense and very occasionally the tribunal, the judge, might say, ‘oh, it says in the assessment that you did this, this and this’. But that doesn't happen very much now, so I've tended to forget that side of it now. I try and deal with that where I know we can probably turn it round at MR stage. But even then, it's really difficult. But saying that, I don't know if it's a sign of the times, but I've had six appeals reversed by the DWP before they've got to appeal and that's been since lockdown.

I Were they ones that you'd put in the application to appeal though or was that done at the MR stage?

P No, I… it was put in the appeal. Yeah. Six of them, completely from zero points to 12. And you think, there's clearly something wrong.

I Yeah that's quite a difference isn't it.

P Yeah. Its mad.

I Right. I can't think of anything else in particular, but again, if there's something that springs to mind.

P No I think that is everything.

I Well it's been really useful. Thank you so much.

[Recording ended]